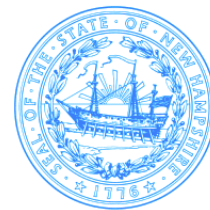


The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



January 13, 2012

JANICE FLAHERTY
HESS CORP
1 HESS PLAZA
WOODBIDGE, NJ 07095

(jhoward@hess.com)

**Subject Site: SALEM, HESS 29203, 362 N BROADWAY RTE 28
DES Site No.199508039, UST Facility No. 0110378, Project Type UST**

**Reference: Underground Petroleum Storage Tank Facility Compliance
Notice of Findings – Compliance Not Met**

Attention: JANICE FLAHERTY

For the past several years, gasoline dispensing facilities in NH have been supplied with “E-10”, a gasoline blended fuel that contains 10% ethanol. Following up on a number of underground piping failures this past year, the New Hampshire Department of Environmental Services (DES) is now aware that a number of gasoline dispensing facilities continue to use piping systems which are not intended for use with ethanol blended fuels. Based on a review of available information, it appears that the subject facility (Tank # 2) has at least a portion of such piping which is incompatible with the ethanol blended gasoline fuel currently used in NH.

Certain elastomers and polymers used in the early manufacture of some brands of flexible underground piping are not compatible with alcohol blended fuels, including ethanol. Specifically, “First Generation” Enviroflex brand pipe manufactured by Total Containment, Inc. (product code PP 1500) was manufactured until 1994 but was never certified by Underwriters Laboratory (UL) as compatible with ethanol. This “First Generation” piping was recalled by the manufacturer in 1995 due to degradation of the outer wall when exposed to water and incompatibility of the inner wall with ethanol. This piping was yellow in color and is commonly referred to as “yellow pipe”. Prolonged contact with water and ethanol blends puts the piping at risk of failure and poses a threat to public health and the environment from a petroleum release.

Using First Generation Total Containment Enviroflex piping with ethanol blended gasoline is a violation under New Hampshire Code of Administrative Rules Env-Wm 1401, Underground Storage Facilities. More specifically, piping standards under Env-Wm 1401.22(j) states the following:

“The piping system and all components, gaskets, sealants that will be in contact with the stored substance shall be compatible with the stored substance.”

If you have the “yellow pipe” in gasoline service at your facility, you have been operating in violation of this rule since use of E-10 gasoline began in NH. In order to avoid a continuing violation of Env-Wm 1401.22(j), piping which is incompatible with the product stored must be taken out of service and permanently closed in accordance with Env-Wm 1401.18. In addition, it is likely that “E-15” (gasoline with 15% ethanol) will be used in NH at some time in the future and would result in an even greater risk of failure of the incompatible piping.

DES Web site: www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

Telephone: (603) 271-3899 • Fax: (603) 271-2181 • TDD Access: Relay NH 1-800-735-2964

Note that any piping which has failed or is in an apparent failing condition must be permanently closed immediately. Otherwise, permanent closure of the affected piping should take place as soon as practical. Many facility owners have already removed "yellow pipe", but considering that some facility owners may have been unaware of the compatibility problem with "yellow pipe", DES will delay pursuing enforcement action for a finite period of time to allow those owners to address the problem.

No later than **June 30, 2012**, please submit a detailed response to DES which identifies your intentions / timeline for permanent closure of the affected piping. **The final date to permanently close "yellow pipe" which has been in service with gasoline will be no later than June 30, 2013.** If you fail to meet either of the above deadlines we will proceed under the DES Compliance Assurance Response Policy to determine an appropriate enforcement response for violations of Env-Wm 1401.22(j). Please note that New Hampshire RSA 146-C authorizes permit revocation, administrative orders, administrative fines of not more than \$2,000 per violation, injunctive relief, civil penalties of not more than \$10,000 for each violation per day, and delivery prohibition.

Please be aware that replacement of underground piping is a substantial modification of an underground storage tank system. Prior to engaging in such work, the owner shall have first received an approval from DES following submittal of an application and engineered plans stamped by a New Hampshire licensed professional engineer (NH PE) in accordance with Env-Wm 1401.20. For your reference, a blank copy of the construction application has been enclosed. If your intentions are for pipe replacement, it is recommended that the application package be submitted to DES well in advance of the above final deadline for permanent closure of the deficient piping.

Please also be aware that Env-Wm 1401.10 requires that owners of underground storage tank facilities maintain financial responsibility for costs associated with the cleanup of releases from systems. The Oil Discharge and Disposal Cleanup Fund ("the Fund") is available to facility owners as a financial assurance mechanism provided that substantial compliance with Env-Wm 1401 is achieved and maintained. **Please note that failure to address the deficient piping can result in the forfeiture of your Fund eligibility.** When a facility becomes ineligible for the Fund, an alternate financial assurance mechanism (such as insurance) must be established which provides for coverage in the amount of \$1,000,000.

Should you have any questions regarding this letter or if you believe the subject facility does not have any of the referenced piping, please contact me in the Waste Management Division of DES. DES appreciates your willingness to comply with the UST program in an effort to preserve New Hampshire's environment.

Sincerely,



Robert A. Daniel, P.E.
Oil Remediation and Compliance Bureau
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E-mail: Robert.Daniel@des.nh.gov

Encl: UST Application to Construct or Substantially Modify