

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



GRJH, Inc.
PO Box 728
Sharon, CT 06069

Re: Conway Sunoco
Main Street
Conway, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-021**

April 23, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division (the Division) to GRJH, Inc., pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that a fine totaling \$15,800 be imposed against GRJH, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. GRJH, Inc. is a New Hampshire corporation having a mailing address of PO Box 728, Sharon, CT 06069. GRJH, Inc. is the successor in interest to Peterson Petroleum of New Hampshire.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 146-C authorizes the Department of Environmental Services (DES) to regulate underground storage tank (UST) facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 1401, effective April 22, 1997, which superceded Env-Ws 411 effective September 17, 1985 through November 1, 1990 and Env-Ws 411 effective November 2, 1990 through April 21, 1997).
2. RSA 146-C:10-a authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:10-a, I, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
3. GRJH, Inc. is the owner of two gasoline UST systems at Conway Sunoco, Main Street, Conway, NH further identified as UST #0-110920 (the Facility).
4. The Facility is subject to the requirements of RSA 146-C and the rules adopted pursuant to that chapter.

5. Env-Wm 1401.30(b) requires automatic line leak detectors to be tested annually to confirm that they are operating according to manufacturer s recommendations, and requires the owner to submit the test results to the Division no later than 30 days after the date of the test.
6. Division records reflect that no automatic line leak detector test results for the Facility have been received for the years 1993 through 1999.
7. RSA 146-C:4, I, prohibits any person from operating a UST facility without a permit to operate from the Division. Env-Wm 1401.07(b) requires the owner of a UST facility to apply to the Division for a permit to operate. Each permit to operate has a five-year term.
8. The prior permit to operate expired in April 1999. Division records reflect that the current permit to operate for the Facility was not applied for until November 16, 2000.

IV. Violations Alleged

1. GRJH, Inc. has violated Env-Wm 1401.30(b) in each of the years 1993 through 1999 by failing to provide annual automatic line leak detector test results for the two UST systems at the Facility to the Division within 30 days of the date of the test.
2. GRJH, Inc. has violated Env-Wm 1401.07(b) by failing to timely apply to the Division for a permit to operate the Facility.

V. Proposed Administrative Fines

1. For the violations identified in IV.1. above, Env-C 607.03(j) specifies a fine of \$1,000 per system per requirement not met. For the two violations noted above (one per system) in each of the seven years 1993 through 1999, the Division is seeking a total fine of \$14,000.
2. For the violations identified in IV. 2. above, Env-C 607.02(d) specifies a fine of \$100 for each calendar month or portion thereof the fee is not paid. For the violations noted above, the Division is seeking a fine of \$1,800 for the 18 calendar months May 1999 through October 2000.

The total fine being sought is \$15,800.

VI. Hearing, Required Response

GRJH, Inc. has the right to a hearing to contest the Division s allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 11, 2001 at 10:30 a.m** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, GRJH, Inc. is required to respond to this notice. Please respond no later than May 18, 2001 using the enclosed colored form as follows:

1. If GRJH, Inc. plans to attend the hearing, please have an authorized representative sign

the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.

2. If GRJH, Inc. chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If GRJH, Inc. wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate GRJH, Inc.'s interest in settling.

GRJH, Inc. is not required to be represented by an attorney. If GRJH, Inc. chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If GRJH, Inc. wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, GRJH, Inc. must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If GRJH, Inc. does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that GRJH, Inc. committed the violation alleged and that the total amount of the fine sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that GRJH, Inc. committed the violation and that the amount of fine sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that GRJH, Inc. proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** GRJH, Inc. did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** GRJH, Inc. did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violations were committed, GRJH, Inc. was making a good faith effort to comply with the requirement that was violated.

3.3. GRJH, Inc. has3. GRJH, Inc. has no history of non-compliance with the statutes or3. GRJH, Inc. has no or with any permit issued by DES or contract entered into with DES.

4.4. Other4. Other information exists which is favorable to GRJH, Inc. s4. Other information exists which is fa Division at the time the fine was proposed.


*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation alleged above and that the fine should be imposed. **The hearing is GRJH, Inc. s opportunity to present testimony and evidence that**

GRJH, Inc. did not commit the violation and/or that the fine(s) should not be imposed, or that the fine sought should be reduced. If GRJH, Inc. has any evidence, such as photographs, business records or other documents, that GRJH, Inc. believes show that GRJH, Inc. did not commit the violation(s) or that otherwise support GRJH, Inc. s position, GRJH, Inc. should bring the evidence to the hearing. GRJH, Inc. may also bring witnesses (other people) to the hearing to testify on GRJH, Inc. s behalf.

If GRJH, Inc. wishes to have an informal meeting to discuss the issues, GRJH, Inc. must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If GRJH, Inc. has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

—
Enclosure (*NHDES Fact Sheet #CO-2 2000*)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Thomas R. Beaulieu, Chief
Lynn A. Woodard, P.E., Supervisor

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APPEARANCE

____ I/we will attend the hearing scheduled for **Monday, June 11, 2001 at 10:30 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type):

Title:

WAIVER OF HEARING

I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of **\$17, 800** paid to Treasurer, State of New Hampshire is enclosed.*

** If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type):

Title:

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095