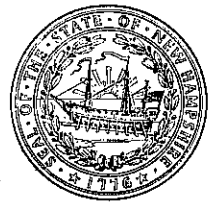




The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Munce's Superior Petroleum Products, Inc.  
453 Alpine Street  
Berlin, NH 03570

Re: 620 Main Street, Gorham, NH  
DES Site #199802078 – Project #6711

NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 09-058

OCTOBER 2, 2009

### I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Waste Management Division to Munce's Superior Petroleum Products, Inc. pursuant to RSA 146-A:15, RSA 149-M:16, RSA 485-C:18, RSA 147-A:17-a. and Env-C 601. The Waste Management Division is proposing that fines **totaling \$33,950** be imposed against Munce's Superior Petroleum Products, 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 ("Division"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. Munce's Superior Petroleum Products, Inc. ("Munce's") is a New Hampshire corporation having a principal office and mailing address of 453 Alpine Street, Berlin, NH 03570.

### III. STATEMENT OF FACT AND LAW SUPPORTING CLAIM

1. Pursuant to RSA 146-A, the Department of Environmental Services ("DES") regulates procedures that expedite the cleanup of oil spillage, mitigate the adverse effects of oil discharges and encourage preventive measures, and the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Or 600 to implement the management of contaminated sites.
2. Pursuant to RSA 146-A:15, the Commissioner is authorized to impose fines of up to \$2,000 per offense for violations of RSA 146-A, or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 606 to establish a schedule of fines for such violations.
3. Pursuant to RSA 147-A, DES regulates the management of hazardous wastes, including used oil, and the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Hw 100-1100 [was Env-Wm 100-1100] to implement these programs.
4. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A, or rules adopted pursuant thereto. Pursuant to this

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 612 to establish a schedule of fines for such violations.

5. Pursuant to RSA 149-M, DES regulates the management of solid wastes and the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Sw 100-2000 to implement this program.

6. Pursuant to RSA 149-M:16, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 149-M, or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 612 to establish a schedule of fines for such violations.

7. Pursuant to RSA 485-C, DES regulates the management and protection of groundwater, and the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wq 400 to implement this program.

8. Pursuant to RSA 485-C:18, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 485-C, or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 609 to establish a schedule of fines for such violations.

9. Munce's is a corporation operating an aboveground storage tank facility, petroleum product re-packaging and distribution operations, used oil generator and burning operations, and solid waste facility operations at 620 Main Street, Gorham, New Hampshire and on adjacent properties north, south and west of this address (collectively "the Facility").

10. On August 30, 2007 and again on October 10, 2007, DES personnel inspected the Facility.

11. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that three (3) containers of less than 55 gallons capacity, six (6) drums at 55 gallon capacity, and three (3) tanks in excess of 55 gallons capacity holding used oil were not properly labeled.

12. Env-Hw 807.06(b)(4) requires all containers of used oil be labeled with the words "Used Oil for Recycle."

13. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that two (2) containers of less than 55 gallons capacity, one (1) drum at 55 gallon capacity, and two (2) tanks in excess of 55 gallons capacity holding used oil were not sealed.

14. Env-Hw 807.06(b)(5) requires that all containers holding used oil are sealed except when used oil is being added to or removed from the container.

15. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented contaminated soil in three (3) locations where drums and other containers holding used oil were staged and had leaked. The locations were behind the former car wash building where empty and nearly empty drums were staged, behind the office where containers of used oil are staged, and to the north of the "Wet Warehouse" building where drums and totes of used oil

were staged.

16. Env-Hw 807.06(b)(6) requires a used oil generator to maintain and operate containers and tanks so as to prevent leaks, spills, & discharges of used oil.

17. DES has no record of notification from Munce's regarding the historic spills observed at the Facility.

18. Env-Or 604.06 requires the responsible party to notify DES of a discharge of oil to land of either 25 gallon or greater, or of less than 25 gallons if not immediately cleaned up and disposed of properly.

19. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that lead acid batteries were stored outside behind the office building, were not on an impervious surface, were not covered to protect the batteries from weather and were not otherwise stored in a manner to prevent spillage and/or breakage.

20. Env-Hw 809.02 requires that lead acid batteries are stored in a manner to ensure batteries do not break or leak.

21. During the August 30, 2007 and October 10, 2007 inspections, DES personnel documented that Munce's burns used oil generated on site in three (3) waste oil space heaters. DES personnel were unable to locate any record that Munce's has notified DES as a used oil burner at the Facility.

22. Env-Hw 807.10(b)(1) requires a used oil fuel burner to notify DES of their used oil management activities.

23. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that one (1) drum containing regulated materials (petroleum product) was stored outside at the tank farm loading rack, numerous drums of "flush oil" stored in a shed behind the wet warehouse, and several drums and totes containing petroleum products stored behind the office building, were not stored on an impervious surface.

24. Env-Wq 401.04(b) requires regulated containers to be stored on an impervious surface.

25. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that the drum of petroleum product stored at the tank farm loading rack, drums of "flush oil" stored in the shed behind the wet warehouse, and drums and totes containing petroleum products stored behind the office were not in an area protected from unauthorized entry.

26. Env-Wq 401.04(c) requires storage areas holding regulated containers to be secured against unauthorized entry.

27. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that one (1) drum containing regulated materials (petroleum product) stored at the tank farm loading rack, and several drums and totes containing petroleum products were stored

behind the office building were not labeled with the chemical or trade name of the materials stored within.

28. Env-Wq 401.04(e) requires regulated containers to be clearly and visibly labeled with the chemical and trade name of materials stored within.

29. During the August 30, 2007 inspection, DES personnel observed and documented that one (1) drum containing regulated materials (petroleum product) stored at the tank farm loading rack was not kept closed or sealed.

30. Env-Wq 401.04(f) requires regulated containers to remain closed and sealed at all times except to add or remove regulated substances.

31. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that one (1) drum containing regulated materials (petroleum product) stored at the tank farm loading rack, numerous drums of "flush oil" stored in a shed behind the wet warehouse, and several drums and totes containing petroleum products stored behind the office building were not provided with secondary containment.

32. Env-Wq 401.04(h)(1) requires that regulated containers in outdoor storage areas be provided with secondary containment.

33. During the August 30, 2007 and October 10, 2007 inspections, DES personnel observed and documented that one (1) drum containing regulated materials (petroleum product) stored outside at the tank farm loading rack, and several drums and totes containing petroleum products stored outside behind the office building were not covered.

34. Env-Wq 401.04(h)(2) requires regulated containers stored outside to be covered at all times unless in the process of being transferred to another location.

35. During the October 10, 2007 inspection, DES personnel observed and documented that Munce's picks up, transports, and stores solid waste (spent oil filters) which are subsequently transported and recycled by another vendor.

36. Env-Sw 103.01 defines "facility" as a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste. The term includes "solid waste facility".

37. Munce's is a solid waste facility as defined in Env-Sw 103.01.

38. RSA 149-M:9, I, states that no person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from DES.

39. RSA 149-M:9, II, states it shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.

40. DES personnel were unable to locate any record of a solid waste facility permit issued to

Munce's for the facility.

#### IV. VIOLATIONS ALLEGED; PROPOSED ADMINISTRATIVE FINES

1. Munce's violated Env-Hw 807.06(b)(4) by not labeling drums, tanks, and other containers holding used oil with the words "Used Oil for Recycle." For violations of Env-Wm 807.06(b)(2) [now Env-Hw 807.06(b)(4)], Env-C 612.10(a) authorizes a per container fine of \$100 for containers that are 55 gallons or greater, \$50 for containers less than 55 gallons, and \$250 per tank. The Division is seeking a fine of \$1,500 for these violations.

2. Munce's violated Env-Hw 807.06(b)(5) by not sealing all used oil containers except when used oil is being added to or removed from the container. For violations of Env-Wm 807.06(b)(3) [now Env-Hw 807.06(b)(5)], Env-C 612.10(b) authorizes a per container fine of \$200 for containers that are 55 gallons or greater, \$100 for containers less than 55 gallons but greater than 5 gallons, \$50 for containers less than 5 gallons and \$500 per tank. The Division is seeking a fine of \$1,500 for these violations.

3. Munce's violated Env-Hw 807.06(b)(6) by failing to maintain and operate containers so as to prevent leaks, spills, & discharges of used oil. For violations of Env-Wm 807.06(b)(6) [now Env-Hw 807.06(b)(6)], Env-C 610.06 authorizes a maximum fine of \$2,000 per violation. In accordance with Env-C 610.06, the Division has determined that this violation is a major deviation from the requirement with a major potential for harm and is seeking a fine of \$1,750 for each of three violations, or a fine of \$5,250 for these violations.

4. Munce's violated Env-Or 604.06 by failing to notify DES of a discharge of oil to land which was not immediately cleaned up and properly disposed. For violations of RSA 146-A:4 and Env-Ws 412.02 [now Env-Or 604.06], Env-C 606.02(a) authorizes a fine of \$2,000 per discharge or spillage. The Division is seeking a fine of \$2,000 for each of the three (3) areas where oil was discharged or a fine of \$6,000 for these violations.

5. Munce's violated Env-Hw 809.02 by failing to store lead acid batteries in a manner to ensure batteries do not break or leak. For violations of Env-Wm 809.02 [now Env-Hw 809.02], Env-C 610.06 authorizes a maximum fine of \$2,000. In accordance with Env-C 610.06, the Division has determined that this violation is a major deviation from the requirement with a minor potential for harm and is seeking a fine of \$1,150 for this violation.

6. Munce's violated Env-Hw 807.10(b)(1) by failing to notify DES of its used oil management activities (burning). For violations of Env-Wm 807.10(b)(1) [now Env-Hw 807.10(b)(1)], Env-C 610.06 authorizes a maximum fine of \$2,000. In accordance with Env-C 610.06, the Division has determined that this violation is a major deviation from the requirement with a minor potential for harm and is seeking a fine of \$1,150 for this violation.

7. Munce's violated Env-Wq 401.04(b) by failing to store regulated containers on an impervious surface. For violations of Env-Ws 421.04(b) [now Env-Wq 401.04(b)], Env-C 609.02(a) authorizes a fine of \$1,000 per non-compliant storage area. The Division is seeking a fine of \$3,000 for these violations.

8. Munce's violated Env-Wq 401.04(c) by failing to ensure storage areas holding regulated containers were secured against unauthorized entry. For violations of Env-Ws 421.04(c) [now Env-Wq 401.04(c)], Env-C 609.02(b) authorizes a fine of \$1,000 per non-compliant storage area. The Division is seeking a fine of \$3,000 for these violations.

9. Munce's violated Env-Wq 401.04(e) by failing to clearly and visibly label regulated containers with the chemical and trade name of materials stored within. For violations of Env-Ws 421.04(i) [now Env-Wq 401.04(e)], Env-C 609.04(b) authorizes a fine of \$500 per container. The Division is seeking a fine of \$1,500 for these violations.

10. Munce's violated Env-Wq 401.04(f) by failing to ensure regulated containers remain closed and sealed at all times except to add or remove regulated substances. For violations of Env-Ws 421.04(j) [now Env-Wq 401.04(f)], Env-C 609.04(c) authorizes a fine of \$1,000 per container. The Division is seeking a fine of \$1,000 for this violation.

11. Munce's violated Env-Wq 401.04(h)(1) by failing to provide regulated containers in outdoor storage areas with secondary containment. For violations of Env-Ws 421.04(g) [now Env-Wq 401.04(h)(1)], Env-C 609.03(c) authorizes a fine of \$1,000 per non-compliant area. The Division is seeking a fine of \$3,000 for these violations.

12. Munce's violated Env-Wq 401.04(h)(2) by failing to cover regulated containers stored outside at all times unless in the process of being transferred to another location. For violations of Env-Ws 421.04(e) [now Env-Wq 401.04(h)(2)], Env-C 609.03(a) authorizes a fine of \$1,000 per uncovered container. The Division is seeking a fine of \$2,000 for these violations.

13. Munce's violated RSA 149-M:9, I, by operating a solid waste facility without first obtaining a permit from DES. For violations of RSA 149-M:9, I, Env-C 612.11(a) authorizes a fine of \$2,000 per calendar month or portion thereof. The Division is seeking a fine of \$2,000 for this violation.

14. Munce's violated RSA 149-M:9, II by transporting solid waste (spent oil filters) to the Facility. For violations of RSA 149-M:9, II, Env-C 612.11(b) authorizes a fine of \$2,000 per 20 cubic yards or portion thereof of waste transported. The Division is seeking a fine of \$2,000 for this violation.

**The total fine being sought is \$33,950.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, Munce's is required to respond to this notice no later than November 6, 2009, using the enclosed colored form as follows:**

1. If Munce's wishes to have a hearing, an authorized representative must check the appropriate line (first section of the form) and return it to the DES Legal Unit as noted on the form. **If Munce's requests a hearing, Munce's may still discuss a possible settlement of the case with Division personnel.**
2. If Munce's chooses to waive the hearing and pay the proposed fine, an authorized

representative must check the appropriate line (second section of the form) and return it **with a certified check or money order in the amount of \$33,950** to the DES Legal Unit, as noted on the form.

Munce's is not required to be represented by an attorney. NH RSA 541-A:31, III(e) provides that Munce's has the right to be represented by an attorney, at its own expense. If Munce's chooses to be represented by an attorney, the attorney must file an appearance in accordance with Env-C 204.07 and otherwise comply with NH CODE ADMIN. RULE Env-C 200 relative to representatives.

#### VI. 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 Munce's committed the violations alleged and that the total amount of fines 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 Munce's committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to any reductions under Env-C 601.10.

#### \*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** All hearings are recorded, and all witnesses testify under oath or affirmation. At a hearing, the Division presents testimony and evidence to try to prove that Munce's committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is an opportunity for Munce's to present testimony and evidence that Munce's did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Munce's has any evidence, such as photographs, business records, or other documents that may show that Munce's did not commit the violation or that otherwise support Munce's position, Munce's should bring the evidence to the hearing. Munce's may also bring witnesses to the hearing to testify on its behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If you have any questions about this matter, please contact the DES Compliance Attorney at (603) 271-7509.

  
**COPY**  
Michael J. Wimsatt, P.G., Director  
Waste Management Division

cc: DES Legal Unit  
ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Peter Demas, DES Hearings Officer

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**MUNCE'S SUPERIOR PETROLEUM PRODUCTS, INC. IS REQUIRED BY LAW  
TO RESPOND TO THIS NOTICE NO LATER THAN NOVEMBER 6, 2009.**

*Please check the appropriate line and fill in the requested information below.*

**APPEARANCE**

\_\_\_\_\_ On behalf of Munce's, I request to have a **formal hearing** scheduled in this matter. (If you request a hearing, you may still discuss a possible settlement of the case with Division personnel.)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**WAIVER OF HEARING:**

\_\_\_\_\_ On behalf of Munce's, I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$33,950 paid to "Treasurer, State of New Hampshire" is enclosed.\*\*

*\*\* If payment is made 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

**Pursuant to Env-C 601.06(d), you must provide the following information:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(please print or type) (please print or type)

Complete Mailing Address: \_\_\_\_\_  
(please print or type)

Phone: \_\_\_\_\_ Fax:\*\*\* \_\_\_\_\_ E-mail:\*\*\* \_\_\_\_\_

\*\*\* if available

**RETURN THIS PAGE ONLY AND ANY PAYMENT TO:**

**DES Legal Unit  
Attn: Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095**



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# ENVIRONMENTAL Fact Sheet

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29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

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2006

## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes and any rules adopted or permits issued pursuant to those statutes. In order to implement this authority, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 600 to specify the procedures for notifying people that a fine is being proposed and the fine amount for any given violation. An administrative fine proceeding is an adjudicative proceeding, which is governed by RSA 541-A and NH CODE ADMIN. RULES Env-C 200. These rules are available online at [http://www.des.state.nh.us/rules/desadmin\\_list.htm#cross](http://www.des.state.nh.us/rules/desadmin_list.htm#cross).

Administrative fine proceedings follow a defined path. The first step is for a division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a **final decision** as to whether to impose the fine **has not been made** – the Notice simply **initiates** the proceeding. The Notice also will inform you that you have an opportunity to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will include a colored form on which you can indicate whether you will attend a hearing or whether you are waiving your opportunity for a hearing and paying the fine that has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules that have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspension of some portion of the fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the hearing process will be governed by Env-C 204. Those rules contain requirements for filing documents and serving them on the other parties to the proceeding, and also require you to submit certain information in advance of the hearing, including a list of witnesses you expect to call, a list of exhibits you expect to present, and any requests for changes to or waivers of the standard procedures as specified in the rules or other matters concerning the conduct of the hearing.

The Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will know about the case only as a result of reading the same Notice you received, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

After the hearing is over, the hearing officer will compile the record (i.e., all of the notices that were sent to you and all information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.10. These include that you have not previously violated a law or rule implemented by DES, or that the violation(s) occurred despite your good faith efforts to comply with the applicable requirements. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such cases, DES has been willing to craft a settlement agreement which specifically recites that any admission of liability cannot be used in a third-party case.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the statutes and rules regarding administrative fines or adjudicative proceedings, but merely to provide a summary of some of the pertinent issues.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072; [appeals@des.state.nh.us](mailto:appeals@des.state.nh.us).

\* Please note the website to view NH CODE ADMIN.RULES Env-C 200 has changed to <http://des.nh.gov/organization/commissioner/legal/rules/documents/env-c200.pdf>. The e-mail address to contact the DES Legal Unit has also changed to [appeals@des.nh.gov](mailto:appeals@des.nh.gov).

<http://www.des.state.nh.us>