

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF)
VIOLATION AND ORDER ISSUED TO:)

Ned Hurley)
Fire Island Holdings, Inc.)
121 Maple Avenue)
Bay Shore, NY 11706)

DOCKET NUMBER: 4434-09

Pub Place C- Store)
4125 South Highway 89)
P. O. Box 1196)
Jackson, Wyoming 83001)
)

NOTICE OF VIOLATION

AND

ORDER

NOTICE IS HEREBY GIVEN THAT:

1. Fire Island Holdings, Inc. owns and operates one (1) underground storage tank (UST) located at 4125 South Highway 89, Jackson, Wyoming. Fire Island Holdings, Inc. has registered this tank as facility 0-004299. Fire Island Holdings, Inc. has registered this tank using Automatic Tank Gauging (ATG) and Inventory Control as its leak detection method for the tank. The tank is a composite fiberglass reinforced plastic double wall tank, but there is no monitoring equipment on site for the interstitial space. The tank is equipped with pressurized lines with mechanical line leak detectors. The lines are constructed of single wall flexible plastic pipe. Fire Island Holdings, Inc. is required to pressure test the single wall pressurized flexible plastic lines annually within one year of the last test. Fire Island Holdings, Inc. is required to test the mechanical line leak detectors for functionality annually within one year of the last test.

A compliance inspection was conducted August 24, 2007, for the purpose of insuring that Fire Island Holdings, Inc. personnel on site understood all of the requirements. During that inspection, there were no records available for any form of leak detection. An enforcement action was not done at that time because Fire Island Holdings, Inc. was a new owner of the facility.

The last line pressure test and functionality test of the mechanical line leak detectors was done August 8, 2007. The last Operator's Annual Inspection was conducted August 8, 2007. On June 25, 2008, Fire Island Holdings, Inc. was notified that these tests were due August 8 2008. None of the required tests were conducted.

Fire Island Holdings, Inc. purchases its fuel from Conrad and Bischoff, Inc., P.O. Box 12529 Jackson, WY 83002. The contact person for Conrad Bischoff is Kevin Lee.

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2. Fire Island Holdings, Inc. has failed to provide leak detection for the tanks or the lines located at 4125 South Highway 89, Jackson, Wyoming for more than a year. Fire Island Holdings, Inc. has also not conducted an operator's annual inspection for more than a year.
3. Wyoming Water Quality Rules and Regulations (WWQRR), Section 13 (e) (ii) states: "(e) *Operator's Annual Inspection*. Storage tank system owners and/or operators shall provide an annual report of inspection for the entire facility. An annual inspection is to be conducted either by the owner, the operator, or a qualified consultant. The inspector shall meet all of the qualifications as a CP tester if he or she inspects a CP system. This inspection shall: (ii) provide for pressure tests of pressurized piping or U.S. Suction piping in accordance with Section 14 (g)."

Wyoming Water Quality Rules and Regulations (WWQRR), Section 13 (e) (iii) states: "(iii) test all Automatic Line Leak Detectors as follows: (A) provide a simulated leak test for Mechanical Line Leak Detectors that will demonstrate that the leak detector meets the requirements of Section 14 (g)."

Wyoming Water Quality Rules and Regulations (WWQRR), Section 13 (e) (v) states: "(v) provide an annual summary for all inventory control calculations, statistical inventory reconciliation reports, or other leak detection methods which shows compliance for each month of the preceding year. Records of the operation of all leak detection systems for the past three (3) years are required to be kept."

Wyoming Water Quality Rules and Regulations (WWQRR), Section 13 (e) (vi) states: "(vi) include a physical inspection of all sumps, manholes, dispensers, and other openings provided on the storage tank system. Any leaks found shall be immediately eliminated."

WWQRR), Section 16 (a) states: "Section 16. **Petroleum UST Systems with a capacity of more than 2,000 gallons.** Petroleum USTs with a capacity of more than 2,000 gallons shall be monitored at least every thirty (30) days for releases using one or more of the following methods: (a) *Inventory control*. Inventory control is never acceptable as a leak detection method except when it is combined with another method. Product inventory control (or another test of equivalent performance) shall be conducted monthly to detect a release of at least 1.0 percent (1%) of throughput plus one hundred thirty (130) gallons in the following manner: (i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST shall be recorded each operating day; (ii) The equipment used shall be capable of measuring the depth of regulated substance over the full range of the USTs height to the nearest one-eighth (1/8) of an inch; (iii) The regulated substance inputs shall be reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery; (iv) Deliveries shall be made through a drop tube that extends to within six (6) inches of the Storage Tank bottom; (v) Dispensing of regulated substances shall be metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of regulated substance withdrawn; and (vi) Water in the bottom of the UST shall be measured to the nearest one-eighth (1/8) of an inch at least once a month. (vii) Owners and/or operators using inventory control may combine this method with tank tightness testing at least every five (5) years until December 22, 2008, or until ten (10) years after the UST itself first met the requirements of Section 6(a), whichever is sooner; (viii) Owners and/or operators using inventory control shall report a suspected release under Section 19(c) of this chapter whenever: (A) The inventory control fails to balance within 1.0 percent (1%) of total throughput plus one hundred thirty (130) gallons for the second consecutive month; (B) More than 20 daily readings are either positive or negative for the second consecutive month; or (C) A graph of the daily over/short readings shows a consistent non-zero trend for two (2) consecutive months. (ix) The following methods are methods of equivalent performance to inventory control: (A) Vapor Monitoring conducted in accordance with section 16(d) of this chapter; (B) Groundwater Monitoring conducted in accordance with section 16(e) of this

chapter; (C) Interstitial Monitoring conducted in accordance with Section 16(f) of this chapter; (D) Statistical Inventory Reconciliation conducted in accordance with Section 16(g) of this chapter; (E) Tracer Surveys conducted in accordance with Section 16(h) of this chapter; (F) Passive Acoustical Sensing conducted in accordance with Section 16(k) of this chapter; and (G) Other methods approved under Section 16(j) of this chapter, providing that the approval of the method specifically states that the method is of equivalent performance to inventory control.”

WWQRR), Section 16 (c) states: “(c) *Automatic tank gauging (ATG)*. Equipment for automatic tank gauging that tests for the loss of a regulated substance shall detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance. Owners and/or operators using automatic tank gauging shall also: (i) conduct inventory control in conformance with paragraph (a) of this section, unless: (A) the regulated substance is placed in the UST in batches of twenty-five (25) gallons or less; (B) the tank is used only to fuel an emergency power generator; (C) a passing result is obtained monthly from the Automatic Tank Gauge with the tank at least 85% full; (D) the automatic tank gauge itself reconciles the inventory to the same levels as required by paragraph (a)(i) of this section; or (E) a method of equivalent performance to inventory control is also used. (ii) report a suspected release and follow the requirements of Section 19(c) of this chapter whenever: (A) Any calendar month goes by when a passing result cannot be obtained from the ATG sometime during the month; or (B) A pattern becomes evident that the ATG produces a failing result whenever the level of a regulated substance in the tank is high, even if passing results can be obtained when the level is low. (C) Inventory control fails for the second consecutive month.”

WWQRR, Chapter 17, Section 44 (a) (i), states: “Section 44. **Prohibition of Deliveries** (a) *Reasons for Restricting Delivery*. Prohibition of delivery of regulated substances to a storage tank system shall be required when the department becomes aware that: (i) The owner and/or operator has not performed leak detection on the tanks as required in Part D of this chapter for any period exceeding sixty (60) days.”

WWQRR, Chapter 17, Section 44 (a) (iv), states: “(iv) The most recently required pressure test of the lines has not been done as required under Sections 14(g) (i) (B) or Section 14(g) (ii) of this chapter (as applicable) within sixty (60) days of the date due”

WWQRR, Chapter 17, Section 44 (a) (v), states: “(v) The most recently required functional test of automatic line leak detectors has not been done as required under Sections 14(g)(i)(B), Section 37 (a), or Section 37 (b) of this chapter within sixty (60) days of the date due.”

4. By failing to perform an Operator’s Annual Inspection when it was due, Fire Island Holdings, Inc. has violated WWQRR, Chapter 17, Section 13 (e) (ii) (iii), (v) and (vi). By failing to perform Inventory Control for more than one year, Fire Island Holdings, Inc. has violated WWQRR, Chapter 17, Section 16 (a). By failing to perform ATG for more than a year, Fire Island Holdings, Inc. has violated Chapter 17, Section 16 (c).
5. This Notice is being sent to you pursuant to W.S. 35-11-701(c)(i), which requires that in any case of the failure to correct or remedy an alleged violation, the director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

ORDER

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL-STATE OF WYOMING

WHEREFORE IT IS HEREBY ORDERED THAT:

1. This is a Red-Tagging Order. Immediately after receiving this Notice and Order, Fire Island Holdings, Inc. is prohibited from purchasing any fuel for delivery to the tank

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registered under facility 0-004299, located at 4125 South Highway 89, Jackson, Wyoming. Conrad and Bischoff, Inc. is ordered not to deliver any fuel to this location until notified in writing by the department that this order has been lifted.

2. When:

- a. Fire Island Holdings, Inc. provides notification to the department of the date when interstitial monitoring has been installed on the double wall tank,
- b. The department has inspected the installation of the interstitial monitoring equipment and has approved the work,
- c. Fire Island Holdings, Inc. provides documentation that all single wall lines have been pressure tested and all mechanical line leak detectors have been functionally tested, and
- d. All of the management personnel for Fire Island Holdings, Inc. in Jackson pass the Wyoming State Specific UST Operator's Test (W-6) offered by the International Code Council, the department will notify Ned Hurley in writing that the Red-Tag has been lifted and he may purchase fuel again. The department will also notify Conrad and Bischoff, Inc. in writing.

3. Within thirty (30) days of receipt of this Notice and Order, Fire Island Holdings, Inc. shall perform the operator's annual inspection on both tanks at 4125 South Highway 89 in Jackson or notify the department of a date when these tanks will be removed.

4. Within thirty (30) days of receipt of this Notice and Order, the recipient shall submit to this department a written description of actions that have or will be taken to implement the items above.

THIS ORDER is final unless, not later than ten (10) days after the date this notice is received; it is appealed by filing a written petition for a hearing before the Environmental Quality Council. If a hearing is requested, the petition shall be mailed to Thomas Dunn, Chairman, Wyoming Environmental Quality Council, Room 1714 Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. The second petition shall be mailed to the Director, Wyoming Department of Environmental Quality, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Both petitions must be sent by certified mail, return receipt requested.

NOTHING IN THIS ORDER shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this Order be interpreted as being a condition precedent to any other enforcement action.

ORDERED this 3rd day of MARCH, 2009.



John V. Corra
Director
Department of Environmental Quality
Division



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Management

xc: Kevin Lee, Conrad and Bischoff, Inc., P. O. Box 12529, Jackson, WY 83002

PLEASE DIRECT ALL INQUIRES TO: Robert Lucht, P.E. & P.G. Storage Tank Program Compliance Supervisor at 122 West 25th Street, Fourth Floor, West Wing, Cheyenne, WY 82002, (307) 777-7095 or (307) 777-5973 FAX for technical matters.

JVC/LCF/KH/RFL

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