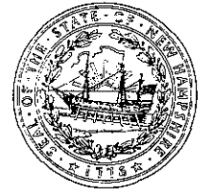




State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

December 3, 2003

Dependable Environmental Services, Inc.  
Attn: Greg Bruett  
PO Box 134  
Swampscott, MA 01907

**NOTICE OF DECISION  
ADMINISTRATIVE FINE AND HEARING  
NO. AF 01-029 (WASTE  
MANAGEMENT)**

Dear Mr. Bruett:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 01-029 issued April 27, 2001, the Waste Management Division sought administrative fines totaling \$33,475 against Dependable Environmental Services, Inc. ("Dependable") for alleged violations of RSA 147-A, the state hazardous waste management statute, and the rules adopted pursuant thereto, arising from activities on property located at 48 Lowell Road, Windham, NH ("the Site").

A hearing on this matter was held on May 20, 2002. As you know, following the hearing, Acting Commissioner George Dana Bisbee determined that an administrative fine was "fully supportable". By letter dated July 22, 2002, he withheld imposing a fine in order to provide Dependable with an opportunity to show an inability to pay by providing the Division with Dependable's tax returns for 2000 and 2001. Dependable had until August 31, 2002 to report to him on whether it succeeded in reaching a settlement on the amount of the fine and any payment terms based on the tax information submitted.

When Dependable failed to submit the tax information by August 31, Division staff contacted you on September 6, 2002. You told staff that you were out of town for a month and did not pick up the July 22 letter. By letter dated September 10, 2002, Acting Commissioner Bisbee extended the deadline to September 30, 2002. At your request, the Division resent the July 22 letter and sent the September 10 letter to your post office box in Swampscott, MA. However, Dependable again failed to submit the requested information and there has been no contact from you or other Dependable employees since then.

RSA 147-A and the hazardous waste rules set forth the standards, procedures, and reporting requirements for hazardous waste. These are important rules, and it is important that there be meaningful enforcement of the rules to protect public health and the environment, and to provide a credible deterrent to future violations. Thus, the proper management of hazardous waste benefits public health and the environment of our state. Dependable violated RSA 147-A by failing to comply with the statutes and rules for managing hazardous waste.

Pursuant to RSA 147-A:17-a and based upon my review of the evidence presented at the hearing held on this matter, I have concluded that a fine of \$33,475 is appropriate as set forth below:

- ▶ A fine in the amount of \$1,500 is imposed against Dependable for failing to manage as hazardous waste used oil that has not meet the standards for off-specification used oil

- ▶ A fine in the amount of \$2,000 is imposed against Dependable for failing to implement a training program for vehicle operators which ensures vehicle operators can provide effective responses to emergencies.
- ▶ A fine in the amount of \$500 is imposed against Dependable for failing to ensure that training reviews are conducted for all vehicle operators.
- ▶ A fine in the amount of \$925 is imposed against Dependable for failing to ensure that all vehicle operators' training records are complete.
- ▶ A fine in the amount of \$2,700 is imposed against Dependable for failing to clearly label containers of hazardous waste with the beginning accumulation date, the words "hazardous waste", words identifying the contents, and the EPA or state waste number.
- ▶ A fine in the amount of \$925 is imposed against Dependable for failing to include the generator's name and site address on all bills of lading.
- ▶ A fine in the amount of \$925 is imposed against Dependable for failing to obtain the generator's signature on all bills of lading.
- ▶ A fine in the amount of \$24,000 is imposed against Dependable for failing to comply with an administrative order issued pursuant to RSA 147-A:14.

The \$33,475 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

**This decision is based on the following findings and conclusions:**

1. Dependable Environmental Services, Inc. ("Dependable") is located at 48 Lowell Road, Windham, NH and is more particularly described in the Rockingham County Registry of Deeds at Book 3239, Page 2922 and identified on Windham Tax Map 20E, Lot 252 ("the Site"). 48 Lowell Road LLC is the record owner of the Site.
2. Gregory Bruett is the President, Treasurer, and sole Director of Dependable.
3. RSA 147-A authorizes DES to regulate the management, transportation, and disposal of hazardous waste in New Hampshire.
4. On May 4, 1982, Dependable was first issued a hazardous waste transporter registration.
5. On September 22, 1988, Dependable notified DES and the Environmental Protection Agency ("EPA") that it was a New Hampshire-based hazardous waste transporter. Shortly thereafter, Dependable was assigned EPA Identification Number NHD982747073 for the Site.
6. Dependable filed a subsequent notification of hazardous waste activity with DES in 1992 indicating that it was acting as a hazardous waste generator and transporter.


7. On November 19, 1993, Dependable filed its most recent a hazardous waste activity notification with DES which described its activities with respect to hazardous waste generating and transporting.
8. On April 19, 2000, DES staff inspected the Site to determine Dependable's compliance with RSA 147-A and the hazardous waste rules. During the inspection, staff discovered that Dependable did not have a training plan or current contingency plan; the label on one drum of gas solids was torn; and the bills of lading were incomplete.
9. During the inspection, a review of Dependable's waste oil inventory log ("Log") for January 5, 2000 for the aboveground storage tanks located on the Site showed that four of the 17 tanks contained halogen in excess of 1,000 parts per million ("ppm"). Specifically, Tank 3 contained 1,200 ppm of halogen; Tank 4 contained 1,900 ppm of halogen; Tank 12 contained 4,400 ppm of halogen; and Tank 17 contained 1,100 ppm of halogen.
10. On April 20, 2000, Dependable faxed a copy of the Log dated April 20, 2000 to DES which showed that the same four tanks failed for halogen. Specifically, Tank 3 contained 1,200 ppm of halogen; Tank 4 contained 1,900 ppm of halogen; Tank 12 contained high halogen; and Tank 17 contained 1,100 ppm halogen.
11. On April 20, 2000, Dependable faxed a copy of its personnel training program to DES. Dependable failed to conduct annual reviews for its vehicle operators, to ensure that its vehicle operators were trained to respond to emergencies, and have training records for 1998.
12. On August 10, 2000, DES issued Administrative Order No. WMD 00-21 to Dependable ("the Order"). Dependable failed to comply with the Order.
13. Env-Wm 807.04(c) identifies used oil containing more than 1,000 parts per million of total halogens as a hazardous waste.
14. Under Env-Wm 807.04(c), the used oil with halogens greater than 1,000 ppm contained in Tanks 3,4,12, and 17 is considered hazardous waste.
15. Env-Wm 807.04(a)(3) requires used oil classified as a hazardous waste to be managed in accordance with the hazardous waste rules if it does not meet the standards for off-specification used oil specified in Env-Wm 807.03.
16. Under Env-Wm 807.04(a)(3), the used oil with halogens greater than 1,000 ppm contained in Tanks 3,4,12, and 17 is required to be managed in accordance with the hazardous waste rules.
17. Dependable violated Env-Wm 807.04(a)(3) by failing to manage as hazardous waste used oil that has not met the standards for off-specification used oil.
18. For a violation of Env-Wm 807.04(a)(3), Env-C 610 authorizes a fine of \$1,500.
19. Env-Wm 603.09 requires a training program for vehicle operators which ensures vehicle operators can provide effective responses to emergencies.
20. Dependable violated Env-Wm 603.09 by failing to implement a training program for vehicle

- operators which ensures vehicle operators can provide effective responses to emergencies.
21. For a violation of Env-Wm 603.09, Env-C 612.02(a) authorizes a fine of \$2,000 per driver not trained for a total fine of \$2,000.
  22. Env-Wm 603.09 requires training reviews to be conducted for all vehicle operators.
  23. Dependable violated Env-Wm 603.09 by failing to ensure training reviews for its vehicle operators.
  24. For a violation of Env-Wm 603.09, Env-C 612.02(b) authorizes a fine of \$500 per individual whose training is not updated for a total fine of \$500.
  25. Env-Wm 603.09 requires all vehicle operators' training records to be complete.
  26. Dependable violated Env-Wm 603.09 by failing to ensure that all vehicle operators' training records are complete.
  27. For a violation of Env-Wm 603.09, Env-C 610 authorizes a fine of \$925.
  28. Env-Wm 507.03(a)(1) requires that all containers used for storing hazardous waste be clearly marked with the beginning accumulation date, the words "hazardous waste", words that identify the contents of the container, and the EPA/state waste number.
  29. Dependable violated Env-Wm 507.03(a)(1) by failing to clearly label containers of hazardous waste with the beginning accumulation date, the words "hazardous waste", words identifying the contents, and the EPA or state waste number.
  30. For a violation of Env-Wm 507.03(a)(1), Env-C 612.06(1) authorizes a fine of \$600 for each container that is 55 gallons or greater and \$300 for each container that is 55 gallons or less. For the four containers that are greater than 55 gallons and the one container that is less than 55 gallons, the total fine is \$2,700.
  31. Env-Wm 807.06(b)(13)b requires the generator's name and site address on all bills of lading.
  32. Dependable violated Env-Wm 807.06(b)(13)b by failing to include the generator's name and site address on all bills of lading.
  33. For a violation of Env-Wm 807.06(b)(13)b, Env-C 610 authorizes a fine of \$925.
  34. Env-Wm 807.06(b)(13)f requires the generator to sign all bills of lading.
  35. Dependable violated Env-Wm 807.06(b)(13)f by failing to obtain the generator's signature on all bills of lading.
  36. For a violation of Env-Wm 807.06(b)(13)f, Env-C 610 authorizes a fine of \$925.
  37. Under RSA 147- A:14, DES may issue an order for a violation of RSA 147-A and the applicable rules.

38. Dependable failed to comply with an administrative order issued pursuant to RSA 147-A:14.
39. For failing to comply with an administrative order issued pursuant to RSA 147-A:14, Env-C 612.03(f)(2) authorizes a fine of \$2,000 per calendar month or portion thereof that compliance is not achieved after the deadline specified in the Order for each provision of the Order that is not complied with. Dependable failed to comply with E.6 of the Order for eight months, and failed to comply with E.7 of the Order for four months for a total fine of \$24,000.
40. Under Env-C 601.09(c), the imposed fine must be reduced by 10 percent if the Respondent proves certain mitigating factors by a preponderance of the evidence.
41. Dependable did not show any mitigating factors to reduce the amount of the fine.

Dependable violated RSA 147-A and the rules adopted pursuant thereto, by failing to manage hazardous waste properly. Thus, for the reasons discussed above, I have concluded that the \$33,475 fine imposed against Dependable is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,  
  
Michael P. Nolin  
Commissioner

Enclosure

cc: Fred McGarry, Acting Director, Waste Management Division  
Cheryl McGary, DES/WMD/SIS  
Mark Harbaugh, DES Compliance Attorney  
Gretchen Rule, DES Legal Unit  
Susan Weiss Alexant, DES Hearings and Rules Attorney  
Board of Selectmen, Windham, NH

## PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99