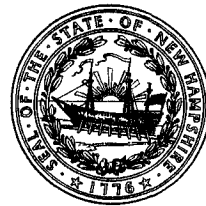




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 29, 2005

Stephen A. Cherry, Esq.
Stephen A. Cherry & Associates, PLLC
PO Box 951
Henniker, NH 03242-0951

Re: Docket No. AF 01-088 – Norman Frink d/b/a New London Septic Service

Dear Attorney Cherry:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Director of the Water Division, and accepted by Commissioner Michael P. Nolin on July 29, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Alexis Rastorguyeff, DES WD

Norman Frink
d/b/a New London Septic Service
21 Foster Hill Road
Henniker, NH 03242

**ADMINISTRATIVE FINE
No. AF 01-088**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division ("the Division") and Norman Frink, parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 485-A:4, XVI-a, and related sections, DES regulates the removal, transportation and disposal of septage under a permit system. As part of this program, pursuant to RSA 485-A:6, X-a, the Commissioner of DES has adopted Env-Ws 1600 to establish rules for the septage management program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to the septage management program. Pursuant to this section, the Commissioner has adopted Env-C 603.06 to establish the schedule of fines for such violations.
3. New London Septic Service is owned and operated by Norman and Lynil Frink and their son Robert Frink, with a principal office and mailing address of 21 Foster Hill Road, Henniker, NH.
4. On October 19, 2001, the Division issued Notice of Proposed Administrative Fine and Hearing No. AF 01-088 ("the Notice") to Norman Frink, d/b/a New London Septic Service, seeking fines totaling \$68,500 for violations of RSA 485-A:22, Env-Ws 1604.01(a) and Env-Ws 1605.10(b).
5. Specifically, the Notice cited Norman Frink, d/b/a New London Septic Service for violating Env-Ws 1604.01(a) by transporting septage on public roads in a 4,000-gallon vehicle without first obtaining a septage hauler permit for the vehicle from DES. Pursuant to Env-C 603.06(c), the Division sought a fine of \$1,000 per load hauled without a permit. For the 49 violations alleged, the Division sought fines in the amount of \$49,000.
6. The Notice also cited Norman Frink, d/b/a New London Septic Service for violating Env-Ws 1605.10(b) by not maintaining the required records for each of the 118 loads of septage documented on the 39 septage discharge receipts identified in the Notice. Pursuant to Env-C 603.06(l), the Division sought a fine of \$500 per load for which records were not maintained. For the 39 violations alleged in the Notice, the Division sought fines in the amount of \$19,500.

7. In order to settle this matter, the Division and Norman Frink have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

8. Of the proposed fine, \$33,500 will be waived due to a history of compliance for more than two years since the date of the Notice.

9. Norman Frink agrees to satisfy a Supplemental Environmental Project (SEP) by offering free septic pump outs to charitable organizations, community organizations and services, and low income individuals (e.g. Habitat for Humanity homes, churches, municipal services, welfare recipients, other community organizations and services, and non-profit organizations, etc.).

To satisfy this SEP, Norman Frink will provide 5 free septic pump outs per month to charities, community services and non-profit organizations in New London, Grantham, Croydon, Newport, Newbury, Sunapee, Wilmot or Andover, New Hampshire for a period of two years commencing on the 1st full month after this agreement is fully executed. The retail value of these 120 septic pump outs is approximately \$30,000.

Norman Frink agrees to submit quarterly reports, within 30 days of the end of each quarter year, which shall include the name of each individual, organization or charity to which services are donated, their address, phone number, the date of the free septic service, the amount of material removed and the treatment facility where it was disposed. If Norman Frink fails to complete the SEP or file the required documentation the Division may request an administrative hearing on the issues of the failure to complete the SEP and imposition of monetary fines in the amount of the retail services not donated.

10. Norman Frink agrees to pay the remaining \$5,000 in monthly installments, without interest. The amount of \$1,000 is due upon execution of this agreement by Norman Frink. The remaining 4 payments of \$1,000 each shall be due every 30 days, commencing 30 days after the date that this agreement is fully executed.

11. Payments under Paragraph 10 and any payment that becomes due pursuant to Paragraph 9 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

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

12. If any payment is made by check 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 check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

13. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in this paragraph, this Agreement shall not constitute, be construed as, or operate as:

(i) an admission of liability by Norman Frink; (ii) an admission by Norman Frink or evidence that he violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Norman Frink might raise in any third party proceeding.

By executing this Agreement, Norman Frink waives his right to a hearing on, or any appeal of, the administrative fines identified above, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. Norman Frink shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Norman Frink and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.

14. The effective date of this Agreement will be the date on which it is signed by Norman Frink, the Director of the Water Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

15. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

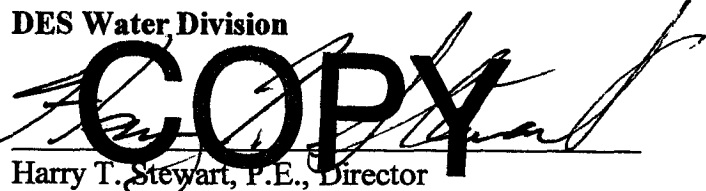
7-19-05
Date

Respectfully submitted,

COPY

Norman Frink
d/b/a New London Septic Service

7/29/05
Date

DES Water Division
COPY

Harry T. Stewart, P.E., Director

This Motion to Accept Settlement agreement is granted this 29th day of July, 2005.

COPY

Michael P. Nolan, Commissioner
Department of Environmental Services