



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 14, 2004

Portable Privies, Inc.
Attn: Mr. Laurent Boisvert
54 Johnson Corner Road, PO Box 135
Lyndeborough, NH 03242

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 02-007
(WATER DIVISION)**

Dear Mr. Boisvert:

As you are aware, by Notice of Proposed Administrative Fine No. AF 02-007 issued March 19, 2002, the New Hampshire Department of Environmental Services Water Division ("DES") sought administrative fines totaling \$10,000 against Portable Privies, Inc. ("PPI") for alleged violations of Env-Ws 1604.02 relating to failing to obtaining a facility permit prior to disposing Septage following a fourth inspection on property located on Johnson Corner Road, Lyndeborough, NH ("the property"), and for alleged violations of Administrative Order No. WD 01-20 ("the Order").

Pursuant to RSA 485-A:22, V, and based on my review of the evidence presented at the hearing held on this matter on March 1, 2004, I have concluded that a fine of \$6,000 is appropriate as set forth below:

- ▶ A fine in the amount of \$2,000 is imposed against PPI for failing to obtaining a facility permit prior to disposing Septage on the Property as required by Env-Ws 1604.02.
- ▶ A fine in the amount of \$2,000 is imposed against PPI for failing to comply with the provision of the Order relative to properly disposing of the stockpiled Septage solids from the Property.
- ▶ A fine in the amount of \$2,000 is imposed against PPI for failing to comply with the provision of the Order relative to submitting records to DES.

The \$6,000 fine shall be paid within 30 days of the date of the decision. Fine payments shall be by certified 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. Pursuant to RSA 485-A:4, XVI-a, DES regulates the removal, transportation, and disposal of septage through a permit system. Pursuant to RSA 485-A:6, X-a, the Commissioner of DES has adopted Env-Ws 1600 to implement this 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. Laurent Boisvert is an individual having a mailing address of PO Box 135, Lyndeborough, NH 03082.
4. Portable Privies Inc ("PPI") is a corporation registered to do business in New Hampshire having a mailing address of PO Box 135, Lyndeborough, NH 03082
5. Mr. Boisvert is a permitted septage hauler in New Hampshire, No. NHS491. Mr. Boisvert is the principal of Portable Privies, Inc. ("PPI"), a portable toilet business operated from Mr. Boisvert's home on Johnson Corner Road, Lyndeborough, New Hampshire ("the Property").
6. Env-Ws 1605.10(b) requires each holder of a septage hauler permit to maintain records of each load of septage hauled, including the date the load was received or picked up; the name and address of the client(s); the volume of the septage transported, in gallons; the site, facility, or wastewater treatment facility at which the load was discharged; and the date on which the load was discharged.
7. Env-Ws 1604.02(a) prohibits any person from managing septage at any place that does not have a site or facility permit issued in accordance with Env-Ws 800 or Env-Ws 1600, a wastewater treatment facility permit or groundwater permit issued under RSA 485-A:13, or a solid waste facility permit issued under RSA 149-M.
8. The Property is not a permitted septage disposal site or facility under Env-Ws 800, Env-Ws 1600, RSA 485-A:13, or RSA 149-M.
9. An inspection by DES personnel of the Property on March 3, 2000 confirmed that Mr. Boisvert was disposing septage into a septage lagoon ("the lagoon") on the Property.
10. The Division issued Letter of Deficiency #WD WEB 00-15 ("the LOD") on April 14, 2000 requesting PPI and Mr. Boisvert to immediately cease disposal of septage on the Property and to remove and properly dispose all septage located on the Property. The LOD also requested PPI and Mr. Boisvert to submit a closure plan indicating how the site was to be remediated and to notify DES when the remediation was complete.
11. Neither PPI nor Mr. Boisvert submitted a report indicating the remediation was complete.

12. An inspection by DES personnel of the Property on January 11, 2001 confirmed that Mr. Boisvert had closed the lagoon on the Property. However, on April 30, 2001, DES personnel observed that Mr. Boisvert was disposing the septage at a new location on the Property (not the former lagoon which had been closed). At that time, DES personnel also confirmed that neither PPI nor Mr. Boisvert were maintaining the records required by Env-Ws 1605.10(b).

13. On May 23, 2001, DES issued Administrative Order No. WD 01-20 (“the Order”) to PPI and Mr. Boisvert, requiring them to immediately cease and desist all septage disposal activities on the Property by June 1, 2001, clean up all areas on the Property where illegal disposal of septage had occurred, and notify DES that the remediation action has been completed, and by June 1, 2001, submit the following to DES:

- a. Copies of signed agreements with septage facilities/sites and wastewater treatment facilities accepting septage for disposal from PPI; and
- b. Copies of signed agreements with all septage haulers who may be hauling septage from PPI to an appropriate septage disposal site/facility, in the event PPI cannot find a DES approved septage disposal facility willing to take PPI waste for disposal.

14. The Order also required PPI to submit septage hauling records as they relate to pumping and hauling septage from PPI on a biweekly basis beginning Friday, June 1, 2001 and ending December 31, 2001 and to include all information required by Env-Ws 1605.10(b).

15. DES personnel again inspected the Property on June 20, 2001.

16. During the June 20, 2001 inspection, DES personnel noted that disposal activities had ceased, but that the previously disposed septage solids had not been removed, but had been raked into a pile consisting of approximately 3 cubic yards of material. DES personnel instructed PPI through Mr. Boisvert to continue to rake up the solids and to place the material on a tarp and cover it until an adequate disposal solution could be found.

17. Division personnel again inspected the Property on June 25, 2001.

18. During the June 25, 2001 inspection, DES personnel confirmed that the material was placed on a tarp and covered. Further, DES personnel took soil samples from the original disposal area to determine that the area had been remediated to acceptable levels. At that time PPI, through Mr. Boisvert, was reminded of the requirement in the Order to submit bi-weekly hauling records.

19. PPI and Mr. Boisvert did not comply with the Order within its required deadlines. Nor did PPI or Mr. Boisvert appeal the Order.

20. Clean up of the septage solids did not occur until October 8, 2002 but could not be verified by DES personnel until Mr. Boisvert permitted DES personnel on site on May 30, 2003. This represents at least 16 months of non-compliance with the Order.

21. The agreements required by Paragraph E.3. of the Order, pertaining to septage facilities and waste water treatment facilities, were not submitted until July 15, 17, and 25, 2002. This represents 16 months of non-compliance with the Order.

22. The hauling records required by Paragraph E.4 of the Order were not submitted until July 25, 2002. This represents 16 months of non-compliance with the Order.

23. Pursuant to Env-C 603.08(a), DES could have sought administrative fines totaling \$86,000 for violating the Order.

24. On March 19, 2002, the Division issued a Notice of Proposed Administrative Fine No. AF 02-007 ("the Notice") to PPI, seeking fines totaling \$10,000 for violations of statutes and rules governing the disposal of septage and for not complying with the Order.

25. Specifically, the Notice cited PPI for violating Env-Ws 1604.02 by not obtaining a facility permit prior to disposing septage on the Property. Pursuant to Env-C 603.06(d), the Division sought a fine of \$2,000.

26. Specifically, the Notice cited PPI for violating Administrative Order No. WD 02-10 by not properly disposing of the stockpiled septage solids from the Property. Pursuant to Env-C 603.08(a), the Division sought a fine of \$4,000, representing only two months of non-compliance with the Order.

27. Specifically, the Notice cited PPI for violating Administrative Order No. WD 02-10 by not submitting records to the Division. Pursuant to Env-C 603.08(a), the Division sought a fine of \$4,000, representing only two months of non-compliance with the Order.

28. The Division proved by a preponderance of the evidence presented at the hearing on March 1, 2004 that:

a) PPI, through its principal, Mr. Boisvert, violated Env-Ws 1604.02 by not obtaining a facility permit prior to disposing septage on the Property.

b) PPI and Mr. Boisvert violated Administrative Order No. WD 02-10 by not properly disposing of the stockpiled septage solids from the Property.

c) PPI and Mr. Boisvert violated Administrative Order No. WD 02-10 by not submitting the required records to the Division .

29. The factual evidence presented by the Division at the hearing was undisputed by Mr. Boisvert. The testimony presented by Mr. Boisvert at the hearing, and his follow-up letter dated March 2, 2004 addressed issues legally unrelated to PPI's liability for the environmental violations alleged in the Notice, such as the origin of the original complaint to the Department, the difficulty of properly disposing of septage and alleged harm to the company from press reports.

30. Based on the evidence presented at hearing on March 31, 2003 DES has proved by a preponderance of evidence that PPI and Mr. Boisvert have committed the violations alleged in the Notice.

31. In bring this matter forward, the Division exercised its discretion to treat violations that continued over many months as one or two month violations for purposes of calculating a reasonable fine for each offense. Based on the evidence of PPI's eventual compliance with the Administrative Order (See Exhibits 19 and 22) and Mr. Boisvert's testimony about the unprofitable nature of his business, I conclude that it is reasonable and appropriate to treat each continuing violation as a one month violation for purposes of assessing the fines.

32. Accordingly, I find that fines of \$2,000 shall be assessed against PPI for each of the three septage management violations specified above, for a total of \$6,000.

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).

COMMISSIONER OF ENVIRONMENT SERVICES

By: 
Michael J. Walls, Presiding Officer

cc: Michael P. Nolin, Commissioner
Harry T. Stewart, P.E., Director, DES Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Rob Tardif, DES WD
Dick Flanders, DES WD
Michael Rainey, DES WD
Alexis Rastorguyeff, DES WD

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