



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



Claridge Construction LLC  
29 Woodman Road  
Sanbornton, NH 03269

Re: Gardner's Grove Road & Silver Lake

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
NO. AF 02-016**

**June 14, 2002**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Claridge Construction, LLC, pursuant to RSA 483-B and Env-C 611 and Env-C 614. The Division is proposing that fines totaling \$10,000 be imposed against Claridge Construction, LLC 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, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Claridge Construction, LLC is a New Hampshire Corporation having a mailing address of 29 Woodman Road, Sanbornton, NH 03269.

**III. Summary of Facts and Law Supporting Claim(s)**

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.
2. Pursuant to RSA 483-B:18, the Commissioner is authorized to impose fines of up to \$5,000 per violation for violations of the CSPA. Pursuant to RSA 483-B:17, the Commissioner has adopted Env-C 611 and certain provisions within Env-C 603 to establish the schedule of fines for such violations.
3. RSA 483-B:9,V(a)(2)(A) requires that "[n]ot more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level."
4. RSA 483-B:9,V(a)(2)(E) requires that "stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically

approved by [DES], pursuant to RSA 482-A.”

5. RSA 483-B:9, V(c)(1) requires that “All new structures within protected shoreland shall be designed and constructed in accordance with rules adopted by [DES] pursuant to [RSA] 541-A, relative to terrain alteration under RSA 485-A:17, for controlling erosion and siltation of public waters, during and after construction.”

6. Pursuant to RSA 482-A, the Department of Environmental Services (“DES”) regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

7. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.

8. Kelley Robinson and Katie Cyr are owners of land on Silver Lake in Belmont, New Hampshire, more specifically identified on Belmont Tax Map 120 as Lot 19 (“the Property”).

10. Kelley Robinson and Katie Cyr hired Claridge Construction LLC for the demolition and removal of an existing house on the Property, and construction of a new house on the Property. Kelley Robinson and Katie Cyr stated this on a building permit application submitted to the Town of Belmont on February 19, 2002.

11. On February 19, 2002, DES received a complaint alleging that large pine trees were being cut, and stumps were being pulled on the Property within 50 feet of the reference line of Silver Lake.

12. On February 22, 2002, Division personnel conducted an inspection of the Property. During the inspection, Division personnel observed the following:

a. Within the natural woodland buffer of the protected shoreland, a healthy, well-distributed stand of trees, saplings, shrubs and ground covers had not been left in place.

b. Slash and other tree cutting debris was observed on the ice of Silver Lake.

c. Stumps had been removed within 50 feet of the Silver Lake reference line, resulting in a disturbed area of the bank within wetland jurisdiction, measuring 46 linear feet along the shoreline by 20 feet deep.

d. Erosion control measures had been installed after the disturbance in the bank and disturbed soils and slash materials were observed lakeward of the silt fence. Erosion control measures were insufficient to adequately protect the water quality of Silver Lake.

13. The Division later determined, through the use of a photograph of the Property before the trees were cut, that at least 4 stumps had been removed within 50 feet of the reference line of Silver Lake.

#### IV. Violations Alleged and Proposed Administrative Fines

1. Claridge Construction LLC violated RSA 483-B:9, V(a)(2)(A) by not leaving a healthy, well-distributed stand of trees, saplings, shrubs and ground covers in place, and for which the Division is seeking a fine of \$4,000 pursuant to Env-C 611.06(c).
2. Claridge Construction LLC violated RSA 483-B:9, V(a)(2)(E) by not leaving stumps and their root systems located within 50 feet of the reference line intact in the ground, and for which the Division is seeking a fine of \$4,000 pursuant to Env-C 611.06(b).
3. Claridge Construction LLC violated RSA 483-B:9, V(2)(c)(1) by failing to control erosion and siltation into public waters, and for which the Division is seeking a fine of \$1,000 pursuant to Env-C 603.02(i)(1).
4. Claridge Construction LLC violated RSA 482-A:3, I by conducting unauthorized alteration and disturbance of less than 100 linear feet of shoreline adjacent to a public water, and for which the Division is seeking a fine of \$1,000 pursuant to Env-C 614.03(c).

**The total fine being sought is \$ 10,000**

#### V. Required Response, Opportunity for Hearing

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than July 3, 2002 using the enclosed colored form.**

1. If Claridge Construction, LLC would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Claridge Construction, LLC chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If Claridge Construction, LLC wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Claridge Construction, LLC's interest in settling.

Claridge Construction, LLC is not required to be represented by an attorney. If Claridge Construction, LLC chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

#### 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 Claridge Construction, LLC 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 Claridge Construction, LLC 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 the following:

- \* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Claridge Construction, LLC proves, by a preponderance of the evidence, applies in this case:**
  - 1 The violation was a one-time or non-continuing violation, **and** Claridge Construction, LLC did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Claridge Construction, LLC did not benefit financially, whether directly or indirectly, from the violation.
  2. At the time the violation was committed, Claridge Construction, LLC was making a good faith effort to comply with the requirement that was violated.
  3. Claridge Construction, LLC has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
  4. Other information exists which is favorable to Claridge Construction, LLC's case which was not known to the Division at the time the fine was proposed.

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

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Claridge Construction, LLC committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Claridge Construction, LLC's opportunity to present testimony and evidence that Claridge Construction, LLC 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 Claridge Construction, LLC has any evidence, such as photographs, business records or other documents, that Claridge Construction, LLC believes show that Claridge Construction, LLC did not commit the violation(s) or that otherwise support Claridge Construction, LLC's position, Claridge Construction, LLC should bring the evidence to the hearing. Claridge Construction, LLC may also bring witnesses (other people) to the hearing to testify

on Claridge Construction, LLC's behalf.

**If Claridge Construction, LLC wishes to have an informal meeting to discuss the issues, Claridge Construction, LLC must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

\*\*\*\*\*

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If Claridge Construction, LLC has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.



Harry Stewart, P.E., Director  
Water Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

cc: Gretchen Rule, DES Legal Unit  
Susan Alexant, DES Hearings and Rules Attorney  
Mark Harbaugh, DES Enforcement Attorney  
Allyson Gourley, WD/WMB/CSP