



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



March 4, 2003

David Bonisteel, General Manager
Lewis & Saunders, Inc.
93 Lexington Drive
Laconia, NH 03247

Re: Docket No. AF 02-041 - Administrative Fine by Consent Agreement

Dear Mr. Bonisteel:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Phillip J. O'Brien, Ph.D., Director of the Waste Management Division, and accepted by Acting Commissioner Robert Monaco on March 3, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael Lafani, Legal Assistant

cc: Phillip J. O'Brien, Ph.D., Director, Waste Management Division
Gretchen Rule, DES Legal Unit
Linda Birmingham, DES SWP



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Lewis & Saunders, Inc.
93 Lexington Drive
Laconia, NH 03247

ADMINISTRATIVE FINE
BY CONSENT

No. AF 02-041

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Lewis & Saunders, Inc., pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH.
2. Lewis & Saunders, Inc. ("Lewis & Saunders") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on August 25, 1982. Lewis & Saunders has a mailing address of P.O. Box 678 Laconia, NH.

III. BACKGROUND

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Lewis & Saunders is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on July 7, 1981. EPA Identification Number NHD001083609 was assigned to Lewis & Saunders' site located at 93 Lexington Drive, Laconia, NH.

4. On February 28, 2002, DES personnel inspected Lewis & Saunders for compliance with RSA 147-A and its implementing regulations, the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency No. WMD 02-26 ("LOD") to Lewis & Saunders on October 31, 2002. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Specifically, as stated in the LOD, Lewis & Saunders failed to submit a request for the renewal of permit #HW-PBR-92-028 within 90 days prior to the limited permit expiration date as required by Env-Wm 353.04(r)(1) ("Violation 1"). Pursuant to Env-C 610, which references Env-Wm 353.04(r)(1), DES proposes a fine of \$900 per violation, for a potential fine of \$900.
2. Specifically, as stated in the LOD, Lewis & Saunders failed to conduct adequate waste determinations on thirteen (13) waste streams, as required by Env-Wm 502.01 ("Violation 2"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination, for a potential fine of \$19,500.
3. Specifically, as stated in the LOD, Lewis & Saunders failed to close one (1) 10-gallon container of Waste Arsenic Containing Material, one (1) 2-quart container of waste in the Bench Top pH Test Area, and one (1) 55-gallon container of isopropyl alcohol in the Clean Room, as required by Env-Wm 507.01(a)(3) ("Violation 3"). Env-C 612.06(c)(1), (2) and (3) authorizes a fine of \$400 for each container that is 55-gallons or greater, a fine of \$200 for each container that is greater than 5 gallons but less than 55 gallons, and \$100 for each container that is 5 gallons or less, for a potential fine of \$700.
4. Specifically, as stated in the LOD, Lewis & Saunders failed to ship one (1) 55-gallon container of "Spent Alcohol" off-site within 90-days of the date when accumulation first began, except as provided in Env-Wm 508.02, Env-Wm 508.03, and Env-Wm 509.03, as required by Env-Wm 507.02(a) ("Violation 4"). Env-C 612.06(j) authorizes a fine of \$500 for each container not shipped within 90 days, for a potential fine of \$500.
5. Specifically, as stated in the LOD, Lewis & Saunders failed to mark one (1) 20-gallon container of acetone and the cart in the Main Storage Area (25 containers or 47± gallons), with the beginning accumulation date, as required by Env-Wm 507.03(a)(1)a. ("Violation 5"). Env-C 612.06(k) authorizes a fine of \$125 for each container that is less than 55-gallons, for a potential fine of \$250.
6. Specifically, as stated in the LOD, Lewis & Saunders failed to mark one (1) 20-gallon container of acetone, the cart in the Main Storage Area (25 containers or 47± gallons), one (1) 2-quart container of waste in the Bench Top pH Test Area, one (1) 55-gallon container of isopropyl alcohol in the Clean Room, and (1) 55-gallon container of "Shred Flamm" with the words "Hazardous Waste", words to identify contents of the container, and the EPA or state waste number, as required by Env-Wm 507.03(a)(1)b., d. ("Violation 6"). Env-C 612.06(l)

authorizes a fine of \$600 for each container that is 55-gallons or greater and \$300 for each container that is less than 55-gallons, for a potential fine of \$2,100.

7. Specifically, as stated in the LOD, Lewis & Saunders failed to have one (1) container with a label that was not hidden by a wall or other containers as required by Env-Wm 507.03(a)(2) ("Violation 7"). Env-C 612.06(m) authorizes a fine of \$100 per container whose label is not visible, for a potential fine of \$100.

8. Specifically, as stated in the LOD, Lewis & Saunders failed to perform annual hazardous waste training for the following employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2): in 2000-2001 no annual training for one (1) person (spill response coordinator); and no initial training for three (3) personnel, two (2) primary emergency coordinators and one (1) secondary emergency coordinator ("Violation 8"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training and \$1,000 per individual not trained for annual updates, for a potential fine of \$7,250.

9. Specifically, as stated in the LOD, Lewis & Saunders failed to have an alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel, as required by Env-Wm 509.02(a)(4) ("Violation 9"). Env-C 612.07(d) authorizes a fine of \$1,250 per requirement not met per storage area, for a potential fine of \$1,250.

10. Specifically, as stated in the LOD, Lewis & Saunders failed to maintain an adequate contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 10"). Env-C 612.07(e) authorizes a fine of \$2,000, for a potential fine of \$2,000.

11. Specifically, as stated in the LOD, Lewis & Saunders failed to ensure that incompatible wastes are separated from other wastes by means of a dike, berm, wall, or other device, as required by Env-Wm 509.02 (a)(6) ("Violation 11"). Env-C 612.07(f) authorizes a fine of \$1,500 per container (*i.e.*, flammables and oxidizers on cart), for a potential fine of \$3,000.

12. Specifically, as stated in the LOD, Lewis & Saunders failed to post complete emergency postings at the nearest telephone to four (4) hazardous waste storage areas, as required by Env-Wm 509.02(b) ("Violation 12"). Env-C 612.07(h) authorizes a fine of \$1,000 per area, for a potential fine of \$4,000.

13. Specifically, as stated in the LOD, Lewis & Saunders failed to locate satellite storage hazardous waste containers, at two (2) satellite storage areas (*i.e.*, Alcohol Storage Area and the Fuel Oil Storage Vault), under the control of the operator of the process generating the waste, as required by Env-Wm 509.03(a) ("Violation 13"). Env-C 612.07(j) authorizes a fine of \$1,000 per area, for a potential fine of \$2,000.

14. Specifically, as stated in the LOD, Lewis & Saunders failed to close one (1) 10-gallon container and one (1) 2-quart container in the Bench Top pH Test Area, and one (1) 55-gallon container in the Clean Room, as required by Env-Wm 509.03(d) ("Violation 14"). Env-C 612.07(j) authorizes a fine of \$1,000 per area, for violating any of the satellite storage provisions, for a potential fine of \$2,000.

15. Specifically, as stated in the LOD, Lewis & Saunders failed to mark one (1) 2-quart container in the Bench Top pH test satellite storage area and one (1) 55-gallon container in the Clean Room with the words "Hazardous Waste" or words to describe contents, as required by Env-Wm 509.03(g) ("Violation 15"). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area. Potential fine is combined with the fine in Violation 14.

16. Specifically, as stated in the LOD, Lewis & Saunders failed to forward one copy of manifest #NHH0043487, with signatures, to the department within 5 days of shipment, as required by Env-Wm 510.02(d)(2) ("Violation 16"). Pursuant to Env-C 610, which references Env-Wm 510.02(d)(2), DES proposes a fine of \$450 per manifest, for a potential fine of \$450.

17. Specifically, as stated in the LOD, Lewis & Saunders failed to mark one (1) 20-gallon container and two (2) 55-gallon containers of used oil destined for recycled with the words "Used Oil for Recycle" as required by 807.06(b)(4) ("Violation 17"). Env-C 612.10 (a)(1), (2) and (3), which references Env-Wm 807.06(b)(2), modified in August 2000 to Env-Wm 807.06(b)(4), authorizes a fine of \$100 for each container that is 55-gallons or greater, and a fine of \$50 for each container that is less than 55-gallons, for a potential fine of \$250.

18. Specifically, as stated in the LOD, Lewis & Saunders failed to ensure that two (2) 55-gallon containers of used oil destined for recycle are sealed at all times, unless oil is being added to or removed from the container ("Violation 18"). Env-C 612.10(b)(1), which references Env-Wm 807.06(b)(3) modified in August 2000 to Env-Wm 807.06(b)(5), authorizes a fine of \$200 for each container that is 55-gallons or greater, for a potential fine of \$400.

19. Specifically, as stated in the LOD, Lewis & Saunders failed to conduct a used oil determination on four (4) used oil waste streams, as required by Env-Wm 807.06(b)(7) ("Violation 19"). Env-C 612.10(c) which references Env-Wm 807.06(b)(4), modified in August 2000 to Env-Wm 807.06(b)(7), authorizes a fine of \$750 per determination not made, for a potential fine of \$3,000.

20. Specifically, as stated in the LOD, Lewis & Saunders failed to label/mark six (6) boxes of fluorescent bulbs with any of the following markings: "Universal Waste – Lamps(s)", "Waste Lamp(s)", or "Used Lamp(s)", as required by Env-Wm 1112.04 ("Violation 20"). Pursuant to Env-C 610, which references Env-Wm 1102.04, DES proposes a fine of \$100 for each container, for a potential fine of \$600.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 3-7, 9-10, and 13-20, because they are not Class I violations.
2. Lewis & Saunders agrees to pay \$15,525 as itemized below for Violations 1, 2, 8, 11 and 12, which are Class I violations, upon execution of this Agreement by Lewis & Saunders.
 - a. Violation 1 is a Class I violation. DES has determined based on a review of Lewis and Saunders' limited permit renewal application that a limited permit is not required

- to treat the industrial wastewaters listed in the application. DES is thus not seeking a fine for this violation.
- b. Violation 2 is a Class I violation. However, Lewis & Saunders documented that three (3) waste streams were analyzed and determined to be non-hazardous. DES further believes that the baghouse dust should be grouped as one waste stream, thus the potential penalty is reduced to failing to perform two (2) hazardous waste determinations (*i.e.* baghouse dust and Brulin/EMC wastewater at \$1,500 each for a potential penalty of \$3,000). DES has determined that due to Lewis & Saunders' high level of cooperation and its effort to correct the violation, that an additional 10% reduction should be applied. DES is thus seeking a fine of \$2,700.
 - c. Violation 8 is a Class I violation. DES has determined that due to Lewis & Saunders' high level of cooperation in providing information and its effort to correct the violation, that a 10% reduction should be applied. DES is thus seeking a fine of \$6,525
 - d. Violation 11 is a Class I violation. DES has determined that due to Lewis & Saunders' high level of cooperation in providing information and its effort to correct the violation, that a 10% reduction should be applied. DES is thus seeking a fine of \$2,700
 - e. Violation 12 is a Class I violation. DES has determined that due to Lewis & Saunders' high level of cooperation in providing information and its effort to correct the violation, that a 10% reduction should be applied. DES is thus seeking a fine of \$3,600
3. Lewis & Saunders agrees to pay the \$15,525 within the next six (6) months as follows:
- a. \$2,590 of the fine shall be due and payable upon execution of this Agreement by Lewis & Saunders.
 - b. \$12,935 shall be paid in monthly payments due on the first of each month for an additional five (5) \$2,587 payments.
4. Payment under Section V. Paragraph 3 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani
PO Box 95
Concord, NH 03302-0095

5. 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.
6. By executing this Agreement, Lewis & Saunders waives its right to a hearing on or any appeal of the administrative fines identified in Section IV Paragraphs 1 through 20, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
7. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Lewis & Saunders, and the Director of the Waste Management Division, and the Commissioner of DES.
8. 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.

LEWIS & SAUNDERS COMPANY, INC.

COPY

David Bonsteel, General Manager
Duly Authorized

3-FEB-03
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Philip O'Brien, Ph.D., P.E.
Director
Waste Management Division

2/28/03
Date

COPY

Robert Monaco, Acting Commissioner
Department of Environmental Services

3-3-03
Date