



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.*  
November 3, 2003

Wakefield Thermal Solutions, Inc.  
Attn: Tony Escobar, Operations Manager  
33 Bridge Street  
Pelham, NH 03076

Re: Docket No. AF 03-021 - Administrative Fine by Consent Agreement

Dear Mr. Escobar:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Frederick J. McGarry, P.E., Waste Management Division Acting Director, and accepted by Commissioner Michael P. Nolin on October 31, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

  
Michael Sclafani,  
Legal Assistant

cc: Frederick J. McGarry, P.E., Acting Director, Waste Management Division  
Gretchen Rule, DES Legal Unit  
Susan Weiss Alexant, Hearings and Rules Attorney  
Mark R. Harbaugh, DES Legal Unit  
Linda Birmingham, DES WMD



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

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

(603) 271-1370 FAX (603) 271-1381



Wakefield Thermal Solutions, Inc.  
33 Bridge Street  
Pelham, NH 03076

RE: Wakefield Engineering  
33 Bridge Street, Pelham, NH

ADMINISTRATIVE FINE  
BY CONSENT

No. AF 03-021

### I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Wakefield Engineering, 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 29 Hazen Drive, Concord, NH.
2. Wakefield Thermal Solutions, Inc. d/b/a Wakefield Engineering ("Wakefield") is a New Hampshire corporation that registered with the New Hampshire Secretary of State's Office on August 16, 2001. Wakefield has a mailing address of 33 Bridge Street, Pelham, 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 of DES 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. Wakefield is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on June 25, 2001, stating an effective

date of February 1, 2001. EPA Identification Number NHD500003587 was assigned to Wakefield's site located at 33 Bridge Street, Pelham, NH.

4. On December 12, 2002, DES personnel inspected Wakefield for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Administrative Order No. WMD 03-09 ("Order") to Wakefield on April 17, 2003. 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, the Order cited Wakefield for failing to conduct a hazardous waste determination on waste lamps, as required by Env-Wm 502.01 ("Violation 1"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination.
2. Specifically, the Order cited Wakefield for failing to close four (4) 55-gallon containers of hazardous waste located on the "Chemical Pad, as required by Env-Wm 507.01(a)(3) ("Violation 2"). Env-C 612.06(c)(1) authorizes a fine of \$400 for each container that is 55-gallons or greater, for a potential fine of \$1,600.
3. Specifically, the Order cited Wakefield for failing to ship two (2) 55-gallon containers marked "Hazardous waste – caustic solution", eleven (11) 55-gallon containers located on the "Chemical Pad", and the two (2) "former dip tanks" located in the "Caustic Room" 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 3"). Env-C 612.06(j) authorizes a fine of \$500 for each container not shipped within 90 days, for a potential fine of \$7,500.
4. Specifically, the Order cited Wakefield for failing to mark eleven (11) 55-gallon containers of hazardous waste located on the "Chemical Pad" and one (1) 55-gallon container of hazardous waste located in the "Extrusion Room" with the beginning accumulation date, as required by Env-Wm 507.03(a)(1)a. ("Violation 4"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is greater than 55-gallons, for a potential fine of \$3,000.
5. Specifically, the Order cited Wakefield for failing to mark eleven (11) 55-gallon containers of hazardous waste located on the "Chemical Pad" and one (1) 55-gallon container of hazardous waste located in the "Extrusion Room" with the words "hazardous waste", words that identify the contents of the container, and the EPA or state waste number, as required by Env-Wm 507.03(a)(1)b.,c., and d. ("Violation 5"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater, for a potential fine of \$7,200.
6. Specifically, the Order cited Wakefield for failing to have one (1) 55-gallon container with a label that was visible (*i.e.*, label not hidden by wall or other container), as required by Env-Wm

507.03(a)(2) ("Violation 6"). Env-C 612.06(m) authorizes a fine of \$100 per container whose label is not visible.

7. Specifically, the Order cited Wakefield for failing to conduct inspections of the hazardous waste storage area ("Chemical Pad") for ninety-seven (97) weeks (*i.e.*, February 1, 2001 to December 12, 2002), as required by Env-Wm 509.02(a)(1) ("Violation 7"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area per week, for a potential fine of \$97,000.

8. Specifically, the Order cited Wakefield for failing to perform initial hazardous waste training for seven (7) employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2) ("Violation 8"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training, for a potential fine of \$12,250.

9. Specifically, the Order cited Wakefield for failing to maintain an adequate contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 9"). Env-C 612.07(e) authorizes a fine of \$2,000.

10. Specifically, the Order cited Wakefield for failing to post emergency postings at the nearest telephone to the hazardous waste storage area, as required by Env-Wm 509.02(b) ("Violation 10"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.

11. Specifically, the Order cited Wakefield for failing to forward eight (8) copies of hazardous waste manifests, with signatures, to DES within five (5) days, as required by Env-Wm 510.02 ("Violation 11"). Pursuant to Env-C 610, which references Env-Wm 510.02(d), DES proposes a fine of \$500 per shipment, for a potential fine of \$4,000.

12. Specifically, the Order cited Wakefield for failing to mark one (1) 55-gallon container of used oil observed in the "Fabrication Room" with the words "Used Oil for Recycle", as required by 807.06(b)(4) ("Violation 12"). Env-C 612.10 (a)(1), 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.

13. Specifically, the Order cited Wakefield for failing to ensure that one (1) 55-gallon container of used oil observed in the "Fabrication Room" is closed at all times, unless oil is being added to or removed from the container, as required by Env-Wm 807.06(b)(5) ("Violation 13"). 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.

14. Specifically, the Order cited Wakefield for failing to conduct a used oil determination on two (2) used oil waste streams including; used "oil-based coolant" and used oil generated from the press, as required by Env-Wm 807.06(b)(7) ("Violation 14"). 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 \$1,500.

## V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 1, 6, 9, and 11 through 14 because they are not Class I violations.
2. For purposes of settlement, DES agrees to the following:
  - a. Violation 2 is a Class I violation. DES has determined that due to Wakefield's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$1,200.
  - b. Violation 3 is a Class I violation. DES has determined that because thirteen (13) containers (*i.e.*, eleven (11) 55-gallon containers located on the "Chemical Pad" and the two "former dip tanks" located in the "Caustic Room") were not marked with an accumulation date, the number of days the containers were stored on-site cannot be established. DES is thus seeking a fine of \$1,000 for failing to ship one (1) 55-gallon container marked "Hazardous waste – caustic solution" (marked date of accumulation of "12/3/01", and one (1) 55-gallon container marked "Hazardous waste – caustic solution" (marked date of accumulation of "2/1/02") within 90-days of the date when accumulation first began.
  - c. Violation 4 is a Class I violation. DES has determined that due to Wakefield's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$2,250.
  - d. Violation 5 is a Class I violation. DES has determined that due to Wakefield's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$5,400.
  - e. Violation 7 is a Class I violation. Wakefield failed to conduct inspections of the hazardous waste storage area for ninety-seven (97) weeks. DES is seeking a fine for failing to conduct inspections at one (1) hazardous waste storage area for twenty-five (25) weeks. DES is thus seeking a penalty of \$25,000 (*i.e.*, twenty-five (25) inspections at \$1,000 each). DES has determined that due to Wakefield's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$18,750.
  - f. Violation 8 is a Class I violation. Wakefield provided information that one (1) employee Lionel Ortiz, Lead Packer, had received Hazard Communication Training and also was no longer employed at Wakefield. DES is thus seeking a penalty for failing to perform six (6) initial trainings for a proposed penalty of \$10,500. DES has determined that due to Wakefield's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$7,875.

- g. Violation 10 is a Class I violation. DES has determined that due to Wakefield's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$750.
3. In view of the corrective actions undertaken by Wakefield, that this is a first time inspection for Wakefield, and in order to settle this matter, DES has determined that an additional penalty reduction of \$7,225 should be applied.
4. Wakefield agrees to pay the \$30,000 within the next six (6) months as follows:
- a. \$5,000 shall be due and payable upon execution of this Agreement by Wakefield.
  - b. \$25,000 shall be paid in five equal payments of \$5,000 due on the first of each month beginning December 1, 2003 and ending with the last payment due on April 1, 2004.
5. Payment under Section V. Paragraph 4 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:
- DES Legal Unit  
Attn: Michael Sciafani, Legal Assistant  
PO Box 95  
Concord, New Hampshire 03302-0095
6. 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.
7. By executing this Agreement, Wakefield waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
8. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Wakefield, and the Director of the Waste Management Division, and the Commissioner of DES.
9. 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.

WAKEFIELD ENGINEERING

**COPY**

By: Robert Streiner, President  
Duly Authorized

10/21/03  
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

**COPY**

Frederick J. McGarry, P.E., DEE  
Acting Director  
Waste Management Division

10/23/03  
Date

**COPY**

Michael P. Nolin, Commissioner

10/31/03  
Date