



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.
August 26, 2003

Timco, Incorporated
Attn: Richard K. Schmidt, Chairman & CEO
PO Box 27
Center Barnstead, NH 03225

Re: Docket No. AF 03-030 - Administrative Fine by Consent Agreement

Dear Mr. Schmidt:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on August 25, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

Michael Scifani,
Legal Assistant

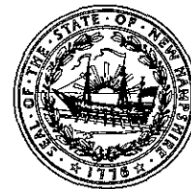
cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
John R. Bush, P.E., Administrator, DES/WD/WWEB
Sharon L. Ducharme, P.E., Supervisor, DES/WD/WWEB
Mitch Locker, DES/WD/WSEB
Joy Hilton, USAEPA, Region I
Alex Driessen, Calx Environmental, Inc.



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DEPARTMENT OF ENVIRONMENTAL SERVICES

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

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Timco, Incorporated
Attn: Mr. Wellington P. Bartels III,
President & General Manager
P.O. Box 27
Center Barnstead, NH 03225

ADMINISTRATIVE FINE
BY CONSENT

No. AF 03-030

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Timco, Incorporated pursuant to RSA 485-A:22, V. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main offices at 6 Hazen Drive, Concord, NH.
2. Timco, Incorporated ("Timco") is a commercial forest product business having a mailing address of P.O. Box 27, Center Barnstead, NH 03225. Timco is a subsidiary of the Aquarion Company, Bridgeport, CT.

III. BACKGROUND

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401 – 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
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 this program. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. Timco's operation is permitted under the terms of federal National Pollutant Discharge Elimination System ("NPDES") Permit No. NH 00021547 ("the Permit") issued by the United States Environmental Protection Agency ("EPA") to Timco. The Permit became effective on October 29, 1987 as a State discharge permit as well, under RSA 485-A:13, I (a) and New Hampshire Code of Administrative Rules Env-Ws 401 and 402.
4. The Permit authorizes Timco to discharge wastewater from the facility to the Suncook River, subject to specified effluent limitations, monitoring requirements, and other conditions.

5. The Suncook River is a Class B surface water as defined in RSA 485-A:8, II.
6. The Permit Part I authorizes Timco to discharge from the following outfall series:
 - # 001A - Recirculated cooling water discharged from spray ponds.
 - # 001B - Low volume wastes from boiler blowdown and filter backwash.
 - # 001 - Low volume wastes from boiler blowdown and filter backwash and cooling water from the spray pond.
 - # 002 - Log Spray water (wet storage).
 - # 003 - Log Spray water (wet storage).
7. The current status of each of the authorized outfalls listed above is as follows:
 - # 001A and # 001B – The discharge from both of these outfalls is housed in a small wood frame building, hereinafter referred to as “the vault”. Discharge from both outfalls originally combined in a sump area outside the vault, and then flowed to the Suncook River via outfall # 001. In July 2001, Timco constructed a dry well in the sump area and diverted the discharge from # 001A and # 001B to the drywell.
 - # 001-Outfall is a corrugated metal pipe whose inlet end is located outside the vault and whose outlet end is along the bank of the Suncook River. The inlet end of the Outfall # 001 was not capped in July 2001 when the dry well was constructed outside the vault.
 - # 002-Outfall discharges to a grassy lagoon area set back from the bank of the Suncook River.
 - # 003- Outfall discharges to a series of stepped open channels. A removable wooden gate at the outlet of the channel impounds the discharge within the channel.
8. Prior to expiration of the Permit on September 30, 1992, Timco initiated several discussions with EPA regarding the need for continuous flow measurement as a condition of any new permit, and the applicability of a Multi Sector General Permit (MSGP) for Timco’s operations.
9. On April 2, 2003, DES conducted an NPDES Compliance Sampling Inspection (CSI) at Timco.
10. During the April 2, 2003 CSI, DES observed a dry well that had been constructed at the location of Outfalls # 001A and # 001B. The dry well failed prior to this CSI causing boiler blowdown and filter backwash water to be discharged through Outfall # 001 to the Suncook River.
11. During the April 2, 2003 CSI, DES sampled the discharge at Outfall # 001. The on-site pH analysis indicated the waste stream discharging from Outfall # 001 had a pH value of 11.91 su.
12. The maximum Permit limit for pH is 8.0 su.
13. During the April 2, 2003 inspection, DES notified Timco verbally to immediately cease the discharge and to report the discharge on the monthly Discharge Monitoring Report (“DMR”).
14. On April 11, 2003, DES personnel visited the Timco site to check the status of the discharge and observed boiler blowdown continuing to discharge to Outfall # 001 due to the failed dry well. DES personnel again told Mr. Rog, of Timco, that the discharge must be stopped immediately.

15. During the April 2, 2003 inspection and during the April 11, 2003 site visit, Mr. Rog indicated that the pH of the boiler blowdown is always maintained at a high pH (>10 su) and the pH is not adjusted prior to discharge.

16. Mr. Rog indicated he planned to cap the inlet end of the culvert pipe of Outfall # 001.

17. On April 14, 2003, DES personnel returned to Timco, collected a boiler blowdown sample for pH analysis, and checked on Timco's progress to cap the inlet end of the culvert pipe of Outfall # 001.

18. On April 14, 2003, the boiler blowdown was no longer overflowing the dry well and discharging to Outfall # 001. The on-site pH analysis indicated a value of 11.32 su for the effluent at Outfall # 001B.

19. The inlet cap for Outfall # 001 was not completed as of April 14, 2003.

20. On April 16, 2003, DES personnel returned to the site to photograph the newly capped inlet end of the culvert pipe of Outlet # 001 near the vault at Outfall # 001B.

21. On April 16, 2003, Timco contacted EPA. EPA determined the Permit conditions apply to all outfalls identified in the 1987 Permit, until such time the Permit is withdrawn, or reissued. EPA confirmed the conditions of an MSGP do not apply to Timco at this time.

22. On May 5, 2003, DES received Timco's corrective action response prepared by Calnex Environmental Consulting ("Calnex") for the items identified in the NPDES Inspection Worksheet.

23. On May 14, 2003, DES received Timco's NPDES DMR for April 2003. Despite the documented discharge and instruction by DES personnel to report the discharge, Timco failed to report any discharge from Outfall # 001 or # 001B for the month of April 2003 on the April 2003 DMR.

24. On June 4, 2003, DES personnel contacted Calnex and requested a copy of Calnex's letter prepared in response to DES' letter from Mitch Locker dated April 17, 2003. The attachment was referenced, but omitted from Timco's May 5, 2003 submittal, as received by DES.

25. Review of Timco's May 5, 2003 submittal, the attachments, and the site investigations indicates that Calnex designed and constructed the dry well and directed the boiler blowdown to the dry well in July 2001.

26. At the time of the dry well construction and as yet to date, Timco has not notified EPA or DES of the discontinuation of Outfall # 001/ 001A and 001B.

IV. ALLEGATIONS

1. Since Outfall # 001 was not permanently capped or removed at the time of the dry well construction, Outfall # 001 continues to be a permitted discharge point that must be monitored in accordance with Timco's Permit.
2. Timco's Permit requires that discharges to Outfall # 001 be limited and monitored by the permittee as indicated in the Permit for flow quantity on a continuous basis; temperature on a daily basis; and oil and grease concentration, total copper concentration, pH and total toxic organics (TTO) once per month.
3. Timco failed to report the quantity of flow discharged from Outfall # 001. Timco also failed to report the temperature, oil and grease concentration, total copper concentration, pH and TTO for the discharge on the April 2003 DMR.
4. Timco's Permit requires that discharges to Outfall # 001B be limited and monitored by the permittee as indicated in the Permit to report flow quantity on a continuous basis and Total Suspended Solids (TSS) concentration, oil and grease concentration, pH and total copper concentration once per month.
5. Timco failed to report the quantity of flow discharged from Outfall # 001B; TSS concentration; oil and grease concentration; pH; and total copper concentration of the effluent on the April 2003 DMR.
6. The April 2, 2003 pH analysis by DES indicates a violation of the pH Permit limit for Outfall #001 by exceeding the maximum pH limit of 8.0 su by 3.91 su.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. Env-C 603.05(c) specifies a fine of \$2,000 per report for knowingly submitting false, incomplete, or inaccurate discharge monitoring reports. Based on the April 2003 discharge monitoring report, DES is seeking a fine of \$2,000.
2. Env-C 603.05(e) specifies a fine of \$1,000 per calendar month or portion thereof for failing to comply with the conditions and requirements of a state surface water discharge permit, for each condition or requirement not met. For this violation, DES is seeking a fine of \$10,000. This includes 5 parameters (temperature, oil and grease, total copper, pH and TTO) missed at Outfall # 001, 4 parameters (TSS, oil and grease, pH and total copper) missed at Outfall # 001 B, and 1 pH violation documented by DES on April 2, 2003.
3. For the violations noted above, DES is seeking a total administrative fine of \$12,000.
4. Of the proposed \$12,000 fine, DES agrees to waive \$2,400.
5. Of the remaining \$9,600, DES agrees to suspend \$1,800 contingent upon no further violations by Timco of environmental laws administered by DES for a period of two years from the effective date of this Agreement. Following any documented noncompliance by Timco during

this period Timco shall remit \$1,800 to DES as outlined in Paragraph 7 without further notice by DES.

6. Timco agrees to pay the remaining \$7,800 as follows:

a. \$2,800 due upon execution of this Agreement by a duly authorized representative of Timco, Inc.; and

b. \$5,000 in performance of a Supplemental Environmental Project ("SEP") to NH Project Learning Tree. NH Project Learning Tree is a non-profit youth conservation education program that uses New Hampshire's forests to enhance student understanding and appreciation of the ecological, social, and economic values of our natural resources; to stimulate critical and creative thinking; to develop the ability to make informed decisions on environmental issues; and to take responsible action on behalf of the environment. Timco shall complete its SEP obligation by remitting a check payable to "NH Project Learning Tree" within 30 days of the date of execution of this Agreement by an authorized representative of Timco, Inc to the following address:

NH Project Learning Tree
54 Portsmouth Street
Concord, NH 03301

c. In order to confirm performance of the SEP, Timco shall mail a copy of the check and receipt from NH Project Learning Tree to the DES Legal Unit at the address listed in Paragraph 7.

7. Payment made under Paragraph V.6.a. and any payment that becomes due pursuant to Paragraph V. 5 shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

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

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

9. By executing this Administrative Fine by Consent, Timco waives its rights to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.8, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

10. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Timco, the Director of the Water Division, and the Commissioner of DES.

11. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of DES' 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.

~~UNRECORDED~~
COPY

By: Wellington Bartels, III Richard K. Schmidt
Duly authorized Chairman + CEO

Date 8/15/03

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Harry T. Stewart, P.E. Director
Water Division

Date 8/21/03

COPY

Michael P. Nolin
For Michael P. Nolin, Commissioner

Date 8/25/03

CERTIFIED MAIL: 7000 1670 0000 0585 6366

- cc: Mark Harbaugh - DES Legal Unit
- John R. Bush, P.E.-Administrator, DES/WD/WWEB
- Sharon L. Ducharme, P.E.-Supervisor, DES/WD/WWEB
- Mitch Locker- DES/WD/WSEB
- Joy Hilton-USEPA, Region I
- Alex Driessen- Calex Environmental, Inc.