



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.

Tyree Organization, Ltd.
208 Route 109
Farmingdale, NY 11735

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
NO. AF 03-037**

October 3, 2003

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Tyree Organization, Ltd. pursuant to RSA 147-a:17-a and Env-C 601.05. The Division is proposing that a fine of \$6,350 be imposed against Tyree 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, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Tyree Organization, Ltd., is a corporation registered to do business in New Hampshire having a mailing address of 208 Route 109, Farmingdale, NY 11735.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 147-A, Department of Environmental Services ("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. RSA 147-A:6, I, states "Any transporter of hazardous waste within the state shall annually register with [DES] using forms provided by [DES] before engaging in the transportation of hazardous wastes."
4. RSA 147-A:6, III, states "The registration period shall be from July 1, of a given year, to June 30, of the following year."

5. The Division first issued New Hampshire Hazardous Waste Transporter Registration Number TNH-0199 (the "Registration") dated November 30, 1994, to Tyree Organization, Ltd. ("Tyree") to transport hazardous waste in New Hampshire. Tyree has renewed its registration as required in subsequent years.

6. On April 8, 2002, the Division issued Tyree its most recent Registration to transport hazardous waste in New Hampshire. This Registration expired June 30, 2003.

7. On February 28, 2003, the Division mailed a hazardous waste transporter renewal application package ("Renewal") to Tyree.

8. On March 7, 2003, the Division received Tyree's Renewal.

9. By letter dated March 10, 2003, the Division requested additional information from Tyree in order to complete Tyree's Renewal.

10. On June 30, 2003, Tyree's Registration expired without having received the requested information from Tyree.

11. On July 1, 2003, the Division sent a certified letter to Tyree stating "Your current registration expired on June 30, 2003. The transportation of hazardous waste within the State of New Hampshire without a valid registration is prohibited. Any violation of the State's Hazardous Waste Rules is subject to the enforcement authority under RSA 147-A."

12. A representative from Tyree signed for the July 1, 2003 letter from the Division acknowledging receipt on July 7, 2003.

13. After its Registration had expired Tyree transported hazardous waste from New Hampshire generators as follows:

<u>Manifest #</u>	<u>Date</u>	<u>Quantity</u>
NHH0056666	July 21, 2003	150 gallons
NHH0056667	July 22, 2003	50 gallons

14. At the time the hazardous waste was transported, Tyree was not a registered hazardous waste transporter in New Hampshire.

15. On July 14, 2003, a representative from Tyree contacted the Division acknowledging receipt of the Division's letter dated July 1, 2003. The Tyree representative informed Division personnel that the required additional information would be submitted to the Division.

16. Tyree submitted the additional information to the Division on July 21, 2003.

17. Following receipt of the requested information, Tyree was issued its current Registration on July 24, 2003.

18. Env-Wm 606.01(c) states "The transporter shall deliver hazardous waste to a destination as described in Env-Wm 606.01(a) within 10 days of the time the hazardous waste is leaves the generator's facility."

19. On manifest number NHH0056666, Tyree picked up hazardous waste from the generator on July 21, 2003, and delivered it to the destination facility on August 5, 2003; greater than 10 days after the hazardous waste left the generator facility.

20. On manifest number NHH0056667 Tyree picked up hazardous waste from the generator on July 22, 2003, and delivered it to the destination facility on August 5, 2003; greater than 10 days after the hazardous waste left the generator facility.

IV. VIOLATIONS ALLEGED

1. Tyree has violated RSA 147-A:6, I by failing to obtain a New Hampshire Hazardous Waste Transporter Registration prior to transporting hazardous waste within the State of New Hampshire.

2. Tyree has violated Env-Wm 606.01(c) by failing to deliver hazardous waste to a destination facility within 10 days of picking up the hazardous waste from the generator's facility.

V. PROPOSED ADMINISTRATIVE FINES

1. For the violation identified in IV.1, above, Env-C 612.02(d) specifies a fine of \$2,000 per load transported without being registered. For the violation noted above, the Division is seeking a total fine of \$4,000.

2. For the violation identified in IV.2, above, a fine in the amount of \$1,175 per violation has been calculated pursuant to Env-C 610. For the two violations noted above, the Division is seeking a total fine of \$2,350.

The total fine being sought is \$6,350.

VI. HEARING, REQUIRED RESPONSE

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, December 8, 2003 at 10:30 a.m.** in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than November 8, 2003**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.

2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate your interest in settling.

Tyree Organization, Ltd., is not required to be represented by an attorney. If Tyree 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.

If you wish to have a hearing but are unable to attend as scheduled, you must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env C 204.09.

VII. 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 you committed the violation(s) alleged and that the total amount of fine(s) 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 you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) 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 you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** you 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** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You do not have a 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 your 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 you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you 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 you have any evidence, such as photographs, business records or other documents, that you believe shows that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us.des). If you have any questions about this matter, please contact DES Legal Unit at (603) 271-6330.

COPY

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

Enclosure (NHDES Fact Sheet #CO-2000)
Manifests NHH056666 and NHH0056667

cc: Gretchen Rule, DES Legal Unit
Susan Alexant, DES Hearings and Rules Attorney
Philip J. O'Brien, Ph.D., P.G., Director, WMD
Tammy Calligandes