



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 6, 2004

Alexander G. Taft
Director of Environmental Operations N.E.
KeySpan Energy Delivery
52 Second Avenue
Waltham, MA 02451

Re: Docket No. AF 04-044 – KeySpan Energy Delivery

Dear Mr. Taft:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on May 5, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael Sclafani
Legal Assistant

cc: Harry T. Stewart, P.E., Director, DES Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Collis Adams, Administrator, DES WET
Mary Ann Tilton, DES WET
James Martin, DES Public Information Officer
Jennifer J. Patterson, NH DOJ

EnergyNorth Natural Gas, Inc.
d/b/a KeySpan Energy Delivery
1260 Elm Street
Manchester, NH 03105

Re: DES Wetlands File No. 01-2480

ADMINISTRATIVE FINE

BY CONSENT

No. AF 04-044

RECEIVED

APR 26 2004

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery, pursuant to RSA 482-A:13. This Administrative Fine by Consent is effective upon signature by all parties.

ENVIRONMENTAL SERVICES
WETLANDS BUREAU

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 office at 29 Hazen Drive, Concord, NH 03302-0095.
2. EnergyNorth Natural Gas, Inc. is a New Hampshire corporation d/b/a as KeySpan Energy Delivery ("KED"). EnergyNorth has a mailing address of 1260 Elm Street, PO Box 329, Manchester, NH 03105-0329. KED has a mailing address of 1 Metrocenter, Brooklyn, NY 11201.

III. BACKGROUND

1. Pursuant to RSA 482-A, 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 Wetland Rules Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13, the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under that statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
4. RSA 482-A:14, III provides that "failure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

5. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.

6. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of *inter alia*, RSA 485-A:17, Env-Ws 415, or any permit issued pursuant thereto. Pursuant to RSA 485-A:22, V, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.

7. On July 23, 2003, the DES Wetlands Bureau issued Wetlands and Non Site-specific Permit No. 2003-759 ("the Wetlands Permit") with 56 conditions allowing KED to temporarily impact a maximum of 23,000 square feet of emergent, forested, and scrub-shrub wetlands, the bed and banks of seasonal streams, a perennial stream and the Soucook River ("the River") for the installation of a gas distribution line. The work was authorized to be performed through an easement held either by PSNH ("PSNH ROW") or held or assigned to KED ("KED ROW").

8. The Wetlands Permit was issued for the installation of a 5.0 mile 12-inch diameter natural gas distribution line located between Broken Bridge Road in Pembroke to Josiah Bartlett Road in Concord. Work Site # 1 is more described on the Concord City maps as Map 110, Block 1, Lot 8 and located between Stations 75+00 and Station 77+00 as shown on plans received by DES on July 23, 2003, identified as KED-NH-ALN - 02 and authored by Coler and Colantonio, Inc. ("C&C") last revised June, 2003 ("Work Site # 1").

9. Red Rock Investments, LLC is the owner of land located on Route 106 and more particularly described on the Pembroke Tax Maps as Tax Map 632 Lot 8 ("Work Site # 2").

10. Condition # 9 of the Wetlands Permit states: "Work shall be done during annual low flow conditions and work within cold water fisheries shall occur during the months of May through September. No in-stream work in cold water fisheries shall occur after October 1 unless a waiver of this condition is issued by the DES Wetlands Bureau in consultation with the NH Department of Fish and Game."

11. Condition # 10 of the Wetlands Permit states: "All work within a flowing stream shall be conducted in the dry using a dam and flume."

12. Condition # 11 of the Wetlands Permit states: "Construction equipment shall not be located within surface waters."

13. Condition # 12 of the Wetlands Permit states: "The equipment crossing of the Soucook River shall be in place for no more than 7 days."

14. Condition # 15 of the Wetlands Permit states: "All in-stream work shall be conducted during low flow conditions and in a manner so as to minimize turbidity."

15. Condition # 18 of the Wetlands Permit states: "The Permittee shall monitor the weather and will not commence work within flowing water, including the installation of cofferdams, when rain is in the forecast."

16. Condition # 24 of the Wetlands Permit states: "Construction workspace shall be limited to the construction right-of-way as depicted on the approved plans."

17. Condition # 30 of the Wetlands Permit states: "Extreme precautions to be taken within riparian areas to limit unnecessary removal of vegetation during pipeline construction and areas cleared of vegetation to be revegetated as quickly as possible."

18. Condition # 31 of the Wetlands Permit states: "The only stumps to be removed within the 150 foot forested buffer, as defined by the Comprehensive Shoreland Protection Act, RSA 483-B, shall be those in the permanent 10-foot right-of-way. The construction right-of-way shall have vegetation cut to grade and protected with geotextile fabric or similar."

19. Condition # 33 of the Wetlands Permit states: "Dewatering of work areas shall be discharged to sediment basins located in uplands and lined with hay bales or other acceptable sediment trapping liners. Dewatering water shall be discharged away from water bodies, on stable surfaces, in a non erosive manner. Additionally, all turbid trench dewatering discharged within one-hundred (100) feet of any water body shall be discharged through a filter bag." Condition 1 of the Site Specific Permit states that water quality degradation shall not occur as a result of the project.

20. Condition # 45 of the Wetlands Permit states: "Banks shall be restored to their original grades and to a stable condition within three days of completion of construction."

21. Condition # 49 of the Wetlands Permit states: "Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning."

22. On July 31, 2003, DES issued Site Specific Permit WPS-6541 ("the Site Specific Permit") to install approximately 5 miles of 12-inch diameter steel natural gas distribution line.

23. Condition #1 of the Site Specific Permit states: "All work shall be in accordance with plans by C&C Entitled: 'Plan Set 1-Preferred Alignment Route 393 Corridor' dated June 2003, and revised through July 2003 as received by the Department on July 23, 2003; or plans by C&C Entitled: 'Plan Set 2-Alternate Alignment Old Loudon Road' dated July 2003, as received by the Department on July 23, 2003."

24. Condition 4 of the Site Specific Permit states: "The approved plans and supporting documentation in the permit file are a part of this approval."

25. The "Environmental Construction Plan: Concord Tilton Reinforcement Project, Phase I" received by DES on April 29, 2003 from KED (the "Narrative") states on page 8: "Water bars/terraces shall be installed diagonally across the [KED] ROW when slopes are approximately 2-8%, except in cultivated areas and lawns."

26. The Narrative further states on Page 8: "Temporary erosion control barriers shall be installed prior to initial disturbance of soil and maintained as described below:

- In the [KED] ROW at boundaries between wetlands and adjacent disturbed upland areas.

- As necessary to prevent siltation of ponds, wetlands, or other waterbodies adjacent to / downslope of the [KED] ROW [emphasis added].
- At the edge of the construction [KED] ROW as needed to contain soil and sediment.”

27. The Narrative states on Page 9: “Trench Plugs are intended to slow the flow of subsurface water along the trench. Trench plugs will be constructed with sand bags. On severe slopes greater than 30%, Sakrete or an equivalent may be used at the discretion of the Chief Inspector.”

28. The Narrative states on Page 13: “Matting or netting will be applied to sensitive areas (i.e., steep slopes, banks of waterbodies, road ditches, etc), in accordance with permit requirements.”

29. The Narrative states on Page 15: “ In the event that inadvertent off-[KED] ROW disturbance occurs, the ... operator or foreman will immediately report the occurrence to a KED inspector, who will notify the CI [Chief Inspector] and EI [Environmental Inspector]. KED will notify the landowner and appropriate agencies of the disturbance.”

30. The Narrative states on Page 28:

" ... • Install sediment barriers immediately after initial disturbance of the waterbody or adjacent upland. Sediment barriers must be properly maintained throughout construction and reinstalled as necessary (such as after backfilling of the trench), until replacement by permanent erosion controls or restoration of adjacent upland areas is complete.”

31. On September 22, 2003, Division personnel spoke with KED agent James Hall in reference to Wetlands Permit Condition # 18 and informed him that construction work could not start at Work Site # 1 because of a predicted storm forecasted for September 23, 2003.

32. On September 25, 2003, although no work was observed to be ongoing at the time, Division personnel inspected Work Site # 1 and observed the following:

- a. The turbidity curtain as installed was not sufficient for heavy river flows on that date;
- b. The flows in the River were significantly higher than observed July 7, 2003; and
- c. Four 24” culvert flumes were installed that were inadequate to handle river flows.

33. On September 25, 2003, Division personnel advised KED representatives on-site of necessary corrective measures for Wetlands Permit compliance including proper installation and maintenance of the turbidity curtain as required by the Wetlands Permit.

34. On September 28, 2003, Division personnel were contacted regarding ongoing problems regarding the control of water through the construction site.

35. On September 29, 2003, Division personnel inspected Work Site # 1 and observed the following:

- a. There were 2 cofferdams in place that were ineffective and leaking;
- b. The River was flowing over, under, and around the culverts through the construction/work area; and,
- c. The work area was inundated to a depth of approximately 2’ to 3’ of water and not dry as required by Permit Condition # 10.

36. During the September 29, 2003 inspection, KED representatives indicated that the construction project would not be completed by September 30 as required by Permit Condition #9. Division personnel requested that KED representatives submit a complete construction sequence and narrative of work to be done including a timing schedule for review by the NH Fish and Game Department and DES.

37. On September 29, 2003, Division personnel noted that the pumps for dewatering the cofferdam had been placed in a secondary containment area measuring approximately 100' x 100' and located approximately 20' to 25' from the reference line along the southern bank of the River in violation of Permit Conditions #24.

38. On September 30, 2003, the DES received a request from KED to waive Permit Condition #9.

39. On September 30, 2003, DES sent a letter to KED indicating that after consultation with NH Fish and Game, DES had determined that the timeframe for work within the River may be extended through October 4, 2003. DES also advised that all other permit conditions remain as originally issued.

40. The September 30, 2003 KED letter included a new construction sequence to address containing and treating sediment-laden water.

41. On September 30, 2003, KED turbidity monitoring results were reported to be 72.30 NTUs at 5:15 pm. The upstream background turbidity was reported to be 1.40 NTUs.

42. On October 1, 2003, KED turbidity monitoring results were reported to be 41.30 NTUs at 12:30 p.m. The upstream background turbidity was reported to be 1.50 NTUs.

43. On October 2, 2003, Division personnel inspected Work Site # 1 in response to a call from KED indicating that some turbidity had been escaping from the work site. Division personnel observed the following:

- a. Work had temporarily ceased due to equipment failure;
- b. Four pumps on site were not operating as work had halted;
- c. The River was currently overtopping the middle cofferdam and the diversion pumps were not running; and,

44. On October 2, 2003, Division personnel were informed by KED representatives that the hydraulic hammer of the excavator seized up and leaked about a quart of hydraulic fluid into the River during the course of the previous evening.

45. On October 2, 2003 at 5:30 pm, Division personnel reinspected Work Site # 1 and observed the following:

- a. Work did not commence until 6:15 pm;
- b. Turbidity sampling; and,
- c. Work ceased because the excavator's hydraulic hammer bit was too short.

46. On October 2, 2003, KED turbidity monitoring results reported 182.00 NTUs at 5:30 p.m. (Comments noted "excavation of ditch with excavator"). The upstream background turbidity was reported to be 1.39 NTUs.
47. On October 3, 2003, Division personnel inspected Work Site # 1 and observed the following:
- a. Equipment was working in water 6-8 feet deep and turbidity was escaping from the leaking cofferdam, around the downstream flumes, and the turbid water was being pumped from both cofferdam cells to an area approximately 100 feet downstream directly into the River;
 - b. An oil sheen was observed over the water of the "clean cell" of the cofferdam and the oil sheen was being drawn into the pumps that were directly discharging into the River;
 - c. The pumps were drawing water from the sediment entrained cell and discharging the sediment entrained water directly back into the River rather than to an upland location as required by Permit Condition # 33; and
 - e. A filter bag was not observed in the construction work area as required by Permit Condition # 33.
48. On October 3, 2003, DES personnel spoke with KED representative Alexander Taft and requested that KED cease work until water control issues could be addressed.
49. On October 3, 2003, KED turbidity monitoring results reported 175 NTUs at 6:00 p.m. and 1.23 NTUs from background upstream sample, (Comments noted 'Ditch excavation with hydraulic ram') 143.00 NTUs at 8:30 p.m. and 1.21 NTUs from background upstream sample (Comments noted 'Excavation of ditch with excavator'), 115.20 NTUs at 11:00 pm and 1.58 NTUs from background upstream sample (Comments noted 'Ditch Excavation with hydraulic ram').
50. On October 4, 2003, KED turbidity monitoring results reported 54.90 NTUs at 2:00 a.m. and 1.46 NTUs from upstream background sample (Comments noted 'Ditch excavation with hydraulic ram'), 44.80 NTUs at 5:00 a.m. and 1.34 NTUs from upstream background sample (Comments noted 'Excavation of ditch with excavator'), 32.20 NTUs at 7:00 a.m. and 1.43 NTUs from upstream background sample (Comments noted 'Excavation of ditch with excavator'), 56 NTUs at 9:30 a.m. and 1.33 NTUs from upstream background sample (Comments noted 'Ditch excavation with hydraulic ram'), 159 NTUs at 12:00 p.m. and 1.55 NTUs from upstream background sample (Comments noted 'Excavation of ditch with excavator'), 38.20 NTUs at 2:30 p.m. and 1.46 NTUs from the upstream background sample (comments noted 'Ditch excavation with hydraulic ram'), 159 NTUs at 5:00 p.m. and 1.45 NTUs from the upstream background sample (comments noted 'Excavation of ditch with excavator'), 155 NTUs at 9:30 p.m. and 1.29 NTUs from the upstream background turbidity sample (Comments noted 'Backfill trench with excavator').
51. On October 6, 2003, Division personnel inspected Work Site # 1 and observed the following:
- a. The contractor was in the process of removing stray sandbags (which were previously part of the cofferdam) from the River;
 - b. Each time a sandbag was removed by hand from the River an associated turbidity plume was discharged into the River;
 - c. The southern and northern banks had been reconstructed but had not been stabilized;

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 - c. The pumps were drawing water from the sediment entrained cell and discharging the sediment entrained water directly back into the River rather than to an upland location as required by Permit Condition # 33; and
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- a. The contractor was in the process of removing stray sandbags (which were previously part of the cofferdam) from the River;
 - b. Each time a sandbag was removed by hand from the River an associated turbidity plume was discharged into the River;
 - c. The southern and northern banks had been reconstructed but had not been stabilized;

- d. No erosion controls were in place at the toe of the bank or within the new bank slope itself and active erosion into the River was ongoing; and
- e. Turbidity associated with the unstable banks was observed in the River.

52. On October 6, 2003 Division personnel requested that KED stabilize the banks as required by Permit Condition # 45, install permanent siltation and erosion controls on the southern bank and repair erosion controls on the northern bank as required by Permit Condition # 26.

53. On October 7, 2003, Division personnel inspected Work Site # 1 and observed the following:

- a. At the northern bank, the installed siltation fence was in need of repair;
- b. The northern bank was not stabilized and not restored as requested previously;
- c. The southern bank was not stabilized and hay bales were placed along the toe of the bank;
- d. Stabilization measures requested by DES the day before (seeding, matting and coir log installation) had not been undertaken; and
- e. Turbid water was observed seeping through the newly created bank into the River.

54. On October 7, 2003, Division personnel informed KED representatives that:

- a. Repairs to siltation controls on the northern bank were necessary;
- b. Restoration and stabilization of the northern bank was necessary pursuant to Permit Condition # 45 which required bank restoration to original grades within 3 days of completion of construction;
- c. Riprap was not an alternative for stabilization without amending the Permit;
- d. Southern banks needed to be seeded and stabilized with jute matting and coir logs;
- e. Trench plugs must be installed along the pipeline running south of the south bank of the River;
- f. The water at the termination of the trench must be pumped into a vegetated upland location; and
- g. The hay bales placed along the southern bank must be double staked in place.

55. On October 10, 2003, Division personnel inspected Work Site # 1 and observed the following:

- a. Temporary erosion controls were not in place;
- b. No coir logs, jute, or mulching and seeding was installed as requested by DES; and
- c. Bank slopes were not stabilized.

56. On October 10, 2003, Division personnel requested that KED representatives stabilize bank slopes immediately.

57. On October 13, 2003, Division personnel inspected Work Site # 1 and observed the following:

- a. The south bank had still not been stabilized;
- b. Siltation and erosion controls were still inadequate; and
- c. Previous corrective measures requested by Division personnel on October 6, 7 and,

10 had still not been implemented.

58. On October 15, 2003, Division personnel inspected Work Site # 1 and observed the following:

- a. The north bank had been stabilized and coconut matting was installed; and
- b. The south bank had straw matting laid but not stapled, and coir logs or permanent measures were not implemented.

59. On October 23, 2003, Division personnel inspected Work Site # 1 and observed the following:

- a. Both banks were stabilized;
- b. Jute matting and coir logs had been installed, and silt fence was properly installed; and
- c. The northern side had been jute matted, and hay bales were staked around the small excavated area.

60. On November 20, 2003, Division personnel inspected Work Site # 2 and observed the following:

- a. A large area had been excavated [“the Cut”] through (Stations 20+00 – 22+00) “the Slope” for installation of the pipeline.
- b. Temporary slope breakers had been constructed in the Slope to prevent sedimentation of the adjacent wetland.
- c. Runoff from a recent rain event had flowed down the Cut in the Slope;
- d. The slope breakers constructed to prevent sedimentation were overtopped, and runoff had flowed into the adjacent wetland; and,
- e. A wetland area measuring approximately 240 square feet was filled with sediment to a depth of a few inches.

61. During the November 20, 2003 Division inspection, KED representatives agreed to remove the sediment deposited in wetlands by hand and agreed to monitor the siltation fence located adjacent to the KED ROW (located at approximately Station 21+00 at the Work Site property). Jay Hall, of C&C, stated that the Slope would be backfilled and stabilized within a week.

62. On December 4, 2003, DES received an inspection report from C&C explaining that the Slope had remained open in order to complete testing of the pipeline. The report also stated “Restoration on the steep slope between the Dirt Doctor gravel operation and Wetland #4 (Approximate Sta. #20+00 – 22+00) will be completed during the week of December 7, 2003 following the hydrostatic test and final tie-in. Slope stabilization will include permanent slope breakers and installation of coconut / coir jute netting (C-125).”

63. On December 17, 2003, KED backfilled the Slope and created a dirt berm along the top of the Slope. Photographs provided to DES by C&C indicate that:

- a. No slope stabilization measures were in place at the toe of the Slope;
- b. No slope breakers were constructed on the Slope;
- c. The grade of the Slope was steeper than 3:1;

- d. No stabilization measures such as slope breakers were in place on the PSNH ROW (approximate stations 24+00 – 27+00);
- e. The existing culvert that carried drainage from the parking lot to the east that had been cut during installation of the pipeline had been replaced. There was no protection at the outlet of the culvert. The culvert had been set lower than the original culvert, and the outlet was almost buried; and,
- f. The stone lined swale that had carried runoff to a detention basin at the southwest corner of Work Site #2 had not been rebuilt at the top of the Slope.

64. On December 18, 2003, following a rainstorm, DES received a complaint from a Town of Pembroke Water Works Superintendent that a major erosion event had occurred at the Work Site. DES personnel inspected Work Site # 2 and found the following:

- a. A large portion of the Slope that had been recently backfilled had collapsed and eroded into the adjacent wetland. The area that collapsed was approximately 30 feet across x 10 feet deep x 80 feet long, or approximately 24, 000 cubic feet, or 888 cubic yards;
- b. The fill encompassed an area of approximately 20,000 square feet, and follows the stream channel to the Soucook River;
- c. South of the culvert outlet, the drainage from the culvert and the hillside to the north under the power lines had created erosion gullies measuring approximately six feet deep and four feet wide that led directly to the area of slope failure. At the time of the inspection, the outlet had been blocked and marked with a large boulder; and,
- d. Sheet flow from the area to the east as well as runoff from the northerly upper plateau also contributed to the volume of water that caused the Slope to fail.

65. On January 7, 2004 Division personnel conducted a follow-up inspection to measure stream channel impacts from the recent filling that occurred on December 17, 2003. DES found the following:

- a. Fill was deposited within approximately 710 linear feet in stream ("Stream # 1") from a point approximately 160' north of Station 20+49 to a point 250' north of Station 16+00.
- b. Fill was deposited within approximately 125 linear feet of a second stream (Stream # 2), from the base of the Slope at Station 20+49 to 21+17) in the ROW, to the confluence with the northern stream located at approximately 75' north of Station 19+25.

66. RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES.

67. Sediment-laden water constitutes waste as defined under RSA 485-A.

68. Env-Ws 1703.11 (b) states that turbidity in class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.

69. Env-C 614(m) defines a class IV violation of RSA 482-A, for which the specified fine is \$2,000, as including "[f]ailing to comply with notification, filing or other specific permit

conditions that do not fall into any of the above-listed criteria.”

70. Env- C 603.08 defines fines relating to Protection of Water Quality, for which the specified fine is \$2,000 for each parameter violated for violating any surface water quality standard specified in RSA 485-A:8, Env- Ws 430, or Env-Ws 1700.

71. During the course of construction-related activities, KED conducted the following activities and implemented the following measures that provided protection of wetland resource areas which in some instances was in excess of the Wetlands and Site-specific permit requirements:

- a. Made three separate attempts to install the pipeline via horizontal directional drill (HDD) under both the Soucook River and Wetland # 4. Successfully installed the pipeline under the Soucook River via HDD with no impact to the riparian zone or water quality;
- b. Conducted turbidity monitoring and reporting frequency in excess of 401 Water quality Certificate requirements and increased the frequency at the request of DES personnel once turbidity problems were observed; and
- c. Provided rapid response to an erosion event at Wetland # 4 and successful implementation of a restoration plan developed in consultation with DES at expense to KED.

IV. ALLEGATIONS AND ADMINISTRATIVE FINES

WETLANDS

1. KED has violated Wetlands Permit Condition #1 by failing to follow erosion control procedures outlined in plans. This constitutes a class IV violation, for which Env-C 614.06(b) and Env-C 614.06(f) specify a fine of \$2,000 .
2. KED has violated Wetlands Permit Condition # 10 by carrying out work within a flowing stream and was not conducted in the dry. This constitutes a class IV violation, for which Env C- 614.05(a)(1) specifies a fine of \$2,000.
3. KED has violated Wetlands Permit Condition # 15 by carrying out the work during high flow conditions so as to cause significant turbidity events in the River. This constitutes a class IV violation, for which the Division is not seeking a fine.
4. KED has violated Wetlands Permit Condition # 24 by not carrying out work within the construction workspace as depicted on the approved plans. This constitutes a class IV violation, for which Env C- 614.05(a)(1) specifies a fine of \$2,000.
5. KED has violated Wetlands Permit Condition # 30 by failing to revegetate the cleared areas as quickly as possible. This constitutes a class IV violation, for which Env C- 614.04(c) specifies a fine of \$1,500.
6. KED has violated Wetlands Permit Condition # 31 by failing to discharge turbid water into sediment basins located in uplands. This constitutes a class IV violation, for which Env C- 614.05(a)(1) specifies a fine of \$2,000.

7. KED has violated Wetlands Permit Condition # 45 by failing to restore the banks within three days. This constitutes a class IV violation, for which Env C- 614.05(a)(1) specifies a fine of \$2,000.
8. KED has violated Wetlands Permit Condition # 49 by failing to stabilize exposed soils within 14 days, and for failing to stabilize slopes greater than 3 to 1 by matting and pinning. For this violation Env C 614.06 (f) specifies a fine of \$2,000.
9. KED has violated RSA 482-A:3-1 by filling approximately 18,854 square feet of wetlands without a permit from DES. This constitutes a class III violation, for which Env C- 614.04(a) (1) specifies a fine of \$1,500.

WATER QUALITY

10. KED has violated RSA 485-A:13 on September 30, 2003, on October 1, 2003, on October 2, 2003, with three events on October 3, 2003 and with 8 events on October 4, 2003 by discharging waste into the River without a permit from DES resulting in turbidity violations. For these violations, Env-C 603.08(c) specifies a fine of \$2,000 per event, for a total fine of \$28,000.

SITE SPECIFIC

11. KED has violated Condition # 1 of the Site Specific Permit by causing water quality degradation as a result of the project. For this violation, Env-C 603.02(b)(2) specifies a fine of \$1,250
12. KED has violated Condition # 2 by failing to submit a permit amendment prior to any changes in construction details or sequences. For this violation, Env-C 603.02(b)(1) specifies a fine of \$750.
13. KED has violated Condition # 4 of the Site Specific Permit by not performing all work in accordance with the plans and supporting material. These violations specifically include:
 - a. Water bars were not installed between Station 24+00 and Station 27+00 in the PSNH ROW;
 - b. Temporary erosion control barriers were not installed between wetland and adjacent disturbed upland areas in the KED ROW at Station 21+00;
 - c. Temporary erosion control barriers were not installed to protect wetlands located outside the KED ROW;
 - d. Temporary erosion control barriers were not installed at the edge of the construction KED ROW as needed;
 - e. Trench plugs were not constructed in the Cut in the Slope;
 - f. The sensitive areas were not matted or netted as required;
 - g. Appropriate agencies were not notified of the off-KED ROW disturbance,

For these violations, Env-C 603.02(b)(2) specifies a fine of \$750 per violation, for a total fine of \$5,250.

V. PAYMENT, WAIVER OF HEARING

1. In order to settle the violations alleged in Section IV, above, KED agrees to pay \$44,650 upon execution of this Agreement by an authorized representative of KED.
2. Payment under Paragraph V.1 shall be made payable to: "Treasurer, State of New Hampshire" and to be deposited in the Wetlands Account mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095
3. 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, 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.
4. The effective date of this Administrative Fine by Consent will be the date on which it is signed by KED, the Director of the Water Division, and the Commissioner of DES. This Agreement represents a complete settlement of all claims made by DES or all claims that could have been made by DES based upon the inspection of KED's performance by DES representatives to monitor compliance with the wetlands permit and Site Specific permit.
5. By executing this Administrative Fine by Consent, KED waives its right to a hearing or on any appeal of the administrative fines identified in Section IV, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Also, in any future proceeding by DES assessing the compliance history of KED and alleging violations of the New Hampshire Code of Admin. Rules or statutes identical to the gravamen of the violations alleged in Section IV of this Administrative Fine by Consent, KED agrees, without admission of fact or law, that DES may assert that such violation(s) constitute a repeat violation.
6. The parties have entered into this Administrative Fine by Consent in order to avoid the time and cost of litigation. Except as described in Paragraph V. 5 above, this Administrative Fine by Consent shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by KED; (ii) an admission by KED or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense KED might raise in any third party proceeding.
7. 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 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.

EnergyNorth Natural Gas, Inc.
d/b/a KeySpan Energy Delivery

COPY

George Jorgeling Date 4/23/04

By:
Duly Authorized
George Jorgeling
VP of Operations
Department of Environmental Services

COPY

Harry T. Stewart Date 5/5/04

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

COPY

Michael P. Nolin Date 5/5/04
for Michael P. Nolin, Commissioner

- cc: Gretchen Rule, Administrator, DES Legal Unit
- Harry T. Stewart, P.E., Director, DES WD
- Public Information Officer, DES PIP Office
- Jennifer Patterson, Sr. Asst. Attorney General, EPB, N.H. Dept. of Justice