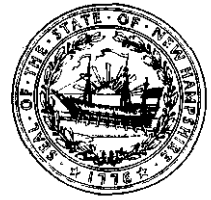




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

June 11, 2007

Richard L. Mailloux
59 Sandy Pond Parkway
Bedford, NH 03110

Re: Docket No. AF 05-065 – Akwa Vista / Akwa Waterfront / Atom Contracting

Dear Mr. Mailloux:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,
COPY
Michael P. Sclafani
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Harry T. Stewart, P.E., Director, Water Division
Richard Head, NH DOJ
James Soucy, DES Legal Unit
DES Public Information Officer
Rene Pelletier, DES WD
Collis Adams, DES WD
Ridgley Mauck, DES WD
Jocelyn Degler, DES WD
Tracy Boisvert, DES WD
Charles F. Cleary, Esq.
Laconia Planning Board
Laconia Conservation Commission

Akwa Vista, LLC
Attn: Richard L. Mailloux
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Akwa Waterfront, LLC
Attn: Richard L. Mailloux
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Atom Contracting Corp.
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Re: Akwa Vista, Laconia, NH
Alteration of Terrain Permit #WPS-6715
Wetlands Permit #2003-01476

ADMINISTRATIVE FINE
NO. AF 05-065

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Water Division of the NH Department of Environmental Services ("the Division"), Akwa Vista, LLC ("Akwa Vista"), and Atom Contracting Corp. ("Atom"), parties in the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner ("the Commissioner") of the Department of Environmental Services ("the Department") is authorized to impose fines of up to \$2,000 per violation for violations of RSA 482-A relative to dredge and fill in wetlands, rules adopted pursuant to the statute (Env-Wt 100-800), and any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish a schedule of fines for such violations.
2. 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 relative to alteration of terrain, rules adopted pursuant to the statute (Env-Ws 415), and any permit issued pursuant thereto. Pursuant to RSA 485-A:22, V, the Commissioner has adopted Env-C 603 to establish a schedule of fines for such violations.
3. Pursuant to RSA 485-A:13 and related sections, the Department regulates the discharge of various pollutants and wastes to surface waters through a permit program. As part of this program, the Commissioner has adopted Env-Ws 401 – 405 relating to permits and has adopted Env-Ws 1700, establishing water quality standards for the State's waters.
4. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of Env-Ws 1700 relative to water quality standards. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish a schedule of fines for such violations.
5. Akwa Vista, LLC ("Akwa Vista") is a New Hampshire limited liability company having a mailing address of 59 Sandy Pond Parkway, Bedford, NH 03110.

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6. Atom Contracting Corporation ("Atom") is a New Hampshire corporation having a mailing address of 59 Sandy Pond Parkway, Bedford, NH 03110.
7. During all times relevant to the facts, events, and violations set forth in the Notice, Akwa Vista was the owner of real property located in Laconia, NH, more particularly identified on City of Laconia Tax Maps as Map and Street # 110-234 Lots 1 and 2, Map and Street # 116-306 Lots 3,4,7, and 9, Map and Street # 116-234 Lot 8, Map and Street # 126-252 Lot 9, and Map and Street # 141-252 Lot 5 (collectively, "the Property").
8. During all times relevant to the facts, events, and violations set forth in the Notice, Atom Contracting Corp. ("Atom") was Akwa Vista's contractor on the Property.
9. On March 5, 2004, the Division issued Alteration of Terrain/Site Specific Permit # WPS-6715 ("the Alteration of Terrain Permit") to Charan Industries, Inc., in connection with activities to construct a gated, single-family residential development.
10. On March 29, 2004, the Division was notified that Akwa Vista, LLC had acquired the Property from Charan Industries, Inc.
11. On March 30, 2004, the Department issued Wetlands Permit # 2003-1476 ("the Wetlands Permit") to Akwa Vista, LLC to "dredge and fill 16,513 square feet of forested wetland for the construction of an access road and common driveway for 171 family residential lots [on the Property]."
12. The Division issued Notice of Proposed Administrative Fine AF 05-065 ("the Notice"), dated July 13, 2005, to Akwa Vista, Atom, and Akwa Vista Waterfront, LLC, stating certain facts and alleging violations of law, and proposing the imposition of administrative fines totaling \$18,250.
13. The Division, Akwa Vista, and Atom agree that Akwa Waterfront, LLC, as identified in the Notice, is not a "Responsible Party" with respect to the facts, events, and proposed administrative fines contained in the Notice.
14. The Division, Akwa Vista, and Atom agree that Akwa Vista and Atom are "Responsible Parties" with respect to the facts, events, and proposed administrative fines contained in the Notice.
15. The Notice cited the Responsible Parties for violating RSA 485-A:17 and Env Ws 415.09(i) by failing to install and maintain adequate erosion control measures on the Property. Pursuant to Env-C 603.02(b)(2) the Division sought a fine of \$1,250.
16. The Notice cited the Responsible Parties for violating RSA 485-A:17 and the Alteration of Terrain Permit by failing to follow the construction sequence contained in that permit. Pursuant to Env-C 603.02(b)(2), the Division sought a fine of \$1,250.
17. The Notice cited the Responsible Parties for violating RSA 485-A:17 and Condition #4 of the Alteration of Terrain Permit by failing to stabilize areas within the Property. Pursuant to Env-C 603.02(b)(2) the Division sought a fine of \$1,250.
18. The Notice cited the Responsible Parties for violating RSA 485-A:8 and Env-Ws 1700 on at least 6 occasions by discharging waste into surface waters of the state resulting in turbidity violations, without obtaining a permit from the Department. Pursuant to Env-C 603.08(c) the Division sought a fine of \$12,000.

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19. The Notice cited the Responsible Parties for violating RSA 482-A:3, I and Condition #16 of the Wetlands Permit, by placing fill in surface waters of the State without a permit from the Department. Pursuant to Env-C 614.05(b)(4) the Division sought a fine of \$2,000.
20. The Notice cited the Responsible Parties for violating RSA 482-A, Env-Wt 304.09(d), and Condition #6 of the Wetlands Permit, by failing to submit a copy of the registered Wetlands permit to the Division's Wetlands Bureau prior to construction. Pursuant to Env-C 614.07(c) the Division sought a fine of \$500.
21. In order to settle this matter, the Division and the Responsible Parties have agreed to the terms of this Settlement Agreement ("Agreement"), set forth herein.
22. Of the total proposed fine of \$18,250, the Responsible Parties agree to pay \$16,500, in 6 monthly payments of \$2,750 each, commencing no later than 6 months from the effective date of this Agreement.
23. The remaining \$1,750 of the proposed \$18,250 fine ("Suspended Fine") shall be suspended for a period of 24 consecutive months ("Suspension Period") from the effective date of this Agreement. The Suspended Fine shall be waived as long as the Responsible Parties do not violate any statute and/or administrative rule under the jurisdiction of the Department, and do not violate any permit issued by the Department or any condition set forth in any such permit during the Suspension Period, and make timely payment of each monthly payment, set forth above.
24. If either Responsible Party violates any statute and/or administrative rule under the jurisdiction of the Department, any permit issued by the Department or any condition set forth in any such permit during the Suspension Period, and/or fails to make any of the monthly payments, the Responsible Parties shall be jointly and severally liable for the full amount of the Suspended Fine.
25. Payments under Paragraph #22 and any payment that becomes due under Paragraph #24 shall be paid by certified check or money order, made payable to: "Treasurer, State of New Hampshire," and mailed to:

Michael P. Sclafani, Legal Assistant
Department of Environmental Services - Legal Unit
P.O. Box 95
Concord, NH 03302-0095
26. If any payment is made by check or money order and returned due to insufficient funds, pursuant to RSA 6:11-a, the Department 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. Any such amount shall be due and payable within 30 days.
27. By executing this Agreement, the Responsible Parties waive their right to a hearing on or any appeal of the administrative fines identified in the Notice, and agree that this Agreement may be entered into and enforced by a court of competent jurisdiction.
28. The effective date of this Agreement will be the date on which it is signed by authorized representatives of Akwa Vista and Atom, the Director of the Water Division, and accepted by the Commissioner of the Department. After that date, this Agreement can be amended only by written agreement signed by all parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

29. No failure by the Department 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.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

AKWA VISTA, LLC

5-30-07
Dated:

COPY
By: [Signature]
Duly Authorized Member
(Title)

ATOM CONTRACTING CORP.

5-30-07
Dated:

COPY
By: [Signature]
Duly Authorized [Signature]
(Title)

DEPT. OF ENVIRONMENTAL SERVICES,
WATER DIVISION

6/04/07
Dated:

COPY
By: [Signature]
Harry T. Stewart, P.E., Director

This Motion To Accept Settlement Agreement is granted this 6th day of June, 2007.

[Signature]
Thomas S. Burack, Commissioner
Department of Environmental Services

- cc: Richard W. Head, NHDOJ/EPB
Public Information Officer, DES PIP Office
DES Legal Unit
- Rene Pelletier, Administrator, DES Land Resources Management Program
- Collis Adams, Administrator, DES Wetlands Bureau
- Ridgely Mauck, Supervisor, Alteration of Terrain Program
- Jocelyn Degler, Wetlands Permitting Officer, DES Wetlands Program
- Tracey Boisvert, Senior Enforcement Officer, DES Wetlands Bureau
- cc: Charles F. Cleary Esq., 95 Market Street, Manchester, NH 03101 (registered agent/Atom only)
- Laconia Planning Board
- Laconia Conservation Commission