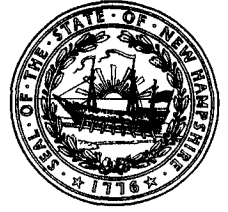




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 7, 2006

Dawngela Minton, Esq.
Bernstein Shur
PO Box 1120
Manchester, NH 03105-1120

Re: Docket No. AF 06-018 - Administrative Fine by Consent Agreement

Dear Attorney Minton:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent 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
Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Jennifer J. Patterson, NH DOJ
Paul L. Heirtzler, DES WMD
Linda Birmingham, DES WMD
DES Public Information Officer
Daniel Hill

Wal-Mart Stores East, LP
702 SW 8th Street
Bentonville, AR 72712-0505

Re: Wal-Mart Store #2681
Littleton, NH
EPA ID No. NHD510005911

**ADMINISTRATIVE FINE
BY CONSENT**

NO. AF 06-018

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the New Hampshire Department of Environmental Services, Waste Management Division, and Wal-Mart Stores East LP, pursuant to RSA 147-A and the New Hampshire Administrative Rule Env-C 601. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The New Hampshire Department of Environmental Services, Waste Management Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.

2. Wal-Mart Stores East LP ("Wal-Mart") is a limited partnership which is organized and exists under the laws of Delaware and which at all times relevant to this matter was authorized to conduct business in New Hampshire. Wal-Mart's headquarters are located at 702 SW 8th Street, Bentonville, Arkansas. Wal-Mart owns and operates retail facilities in various locations throughout the State of New Hampshire under the name "Wal-Mart." Wal-Mart's Littleton New Hampshire facility has a mailing address of 615 Meadow Street, Littleton, NH 03887.

III. BACKGROUND

1. Pursuant to RSA 147-A, the New Hampshire Department of Environmental Services 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 offense 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. Wal-Mart is a hazardous waste generator that notified the United States Environmental

Protection Agency ("EPA") of its activities through DES on September 30, 1998. EPA Identification Number NHD510005911 was assigned to Wal-Mart's Littleton, NH store located at 615 Meadow Street in Littleton, New Hampshire.

4. On August 4, 2005, DES personnel inspected Wal-Mart's Littleton, NH store for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. The inspection was conducted following a report by Wal-Mart that a hazardous waste discharge had occurred at Wal-Mart's Littleton, NH store on February 26, 2005. Based on the hazardous waste discharge events documented during the inspection listed above, DES believes that an administrative fine is appropriate in this case.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Wal-Mart failed to obtain a permit for the disposal of nine (9) twelve ounce cans of STP fuel cleaner ("STP"), which is an ignitable characteristic hazardous waste with an EPA hazardous waste number of D001, to the Littleton Publicly Owned Treatment Works, as required by RSA 147-A:4, I/Env-Wm 353.01 ("Violation 1"). Env-C 612.03(b) authorizes a fine of \$2,000 per disposal event.

2. Wal-Mart failed to conduct a formal hazardous waste determination on the nine (9) twelve ounce cans of STP, as required by Env-Wm 502.01 ("Violation 2"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination.

3. Wal-Mart failed to immediately report a discharge of a hazardous waste (*i.e.*, the nine (9) twelve ounce cans of STP) to DES, as required by Env-Wm 513.01(a) ("Violation 3"). Env-C 612.09(a) authorizes a fine of \$2,000 per discharge.

4. Wal-Mart failed to immediately contain and clean-up the discharge of hazardous waste (*i.e.*, the nine (9) twelve ounce cans of STP), as required by Env-Wm 513.02 ("Violation 4"). Env-C 612.09(b) authorizes a fine of \$2,000 per discharge per calendar day or portion thereof that the discharge is not cleaned up.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive the fine associated with Violation 4 because it is not a Class I violation.

2. To resolve the violations alleged in this Agreement, Wal-Mart agrees to pay, upon execution of this Agreement, an Administrative Fine in the sum of \$5,500 as follows:

- a. \$2,000 for Violation 1;
- b. \$1,500 for Violation 2; and
- c. \$2,000 for Violation 3.

3. Payment under Section V. Paragraph 2 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

4. 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.
5. By executing this Agreement, Wal-Mart 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.
6. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Wal-Mart, and the Director of the Waste Management Division, and the Commissioner of DES.
7. 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.
8. The parties have entered into this Agreement to avoid the time and costs of litigation. Except as described in this paragraph, this Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Wal-Mart, (ii) an admission by Wal-Mart or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Wal-Mart might raise in any third party proceeding.
9. Wal-Mart agrees not to challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Wal-Mart and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.
10. DES hereby grants Wal-Mart a release of any and all causes of action arising out of the allegations contained herein and identified in the Letter of Deficiency to Wal-Mart concerning this store and dated January 12, 2006.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

WAL-MART STORES EAST LP

COPY
[Handwritten Signature]
Signature
COPY
[Handwritten Signature]

6/22/06
Date

Printed Name

COPY
[Handwritten Signature]
Title, Duly Authorized
REGIONAL GENERAL MANAGER, VP

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY
[Handwritten Signature]
Anthony P. Giunta, P.G., Director
Waste Management Division

6/30/06
Date

COPY
[Handwritten Signature]
Michael P. Nolin, Commissioner

07 06 06
Date

- cc:
- RCRA/DB/AF
 - Paul L. Heirtzler, P.E., Esq., Administrator, WMD
 - Gretchen Hamel, Administrator, DES Legal Unit
 - Public Information Officer, DES PIP Office
 - Jennifer Patterson, NH DOJ
 - Daniel Hill, Store Manager, Wal-Mart # 2681, Littleton, NH
 - Dawnangela Minton, Bernstein Shur, P.O. Box 1120, Manchester, NH 03105-1120