

IN THE MATTER OF KEITH BRYAN REAGAN

*Respondent*

NEW HAMPSHIRE DEPARTMENT OF  
ENVIRONMENTAL SERVICES

ADMINISTRATIVE FINE  
NO. AF 09-042

**DECISION**

**Presiding Officer:** Peter Demas, Commissioner's Designee

**Appearances:** Kerry D. Barnsley, Compliance Attorney, appearing on behalf of the New Hampshire Department of Environmental Services, Waste Management Division

No appearance by Respondent

**I. INTRODUCTION**

By Notice of Proposed Administrative Fine No. AF 09-042, issued on January July 13, 2009, ("NPF") the New Hampshire Department of Environmental Services, Waste Management Division ("Division"), initially sought to impose administrative fines against Keith Bryan Reagan in the amount of \$9,500 for alleged violations of RSA 147-A:6, I Env-Hw 604.01(a) (formerly Env-Wm 604.01(b)). Specifically, the Division alleges that Mr. Reagan violated the statute and rule respectively by transporting hazardous waste without registering to do so and by accepting hazardous waste without an accompanying manifest.

The Division entered an appearance and request for a hearing on August 17, 2009. Mr. Reagan did not respond to the NPF or enter an appearance. In accordance with the New Hampshire Administrative Procedures Act, RSA 541-A, a formal adjudicatory hearing was held on March 7, 2011. Mr. Reagan failed to appear at the hearing or to advise the hearings clerk of its non-appearance in advance. Therefore, a record hearing was held in Mr. Reagan's absence pursuant to Env-C 204.19 and Env-C 204.11. The written testimony and exhibits offered by the Division were supported by an affidavit signed by the Division's only witnesses, Ms. Cheryl McGary and Ms. Christie Faro, both of whom are employed by the Division. Mr. Reagan did not file a motion to reconvene the hearing within 10 days thereof, pursuant to Env-C 204.20.

Based on the undisputed evidence and testimony presented at the hearing, the Department concludes that a fine of \$10,200 is justified for the reasons set forth below in the Findings of Fact and Conclusions of Law.

## **II. APPLICABLE STATUTES AND RULES**

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 NH CODE ADMIN. RULES Env-Hw 100-1100 ("Hazardous Waste Rules") [previously Env-Wm 100-1100] 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 previously adopted NH CODE ADMIN. RULES Env-C 612 to establish the schedule of fines for such violations. NH CODE ADMIN. RULES Env-C 612 are currently expired.
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. Pursuant to Env-Hw 604.01(a) [previously Env-Wm 604.01(b)] a "transporter shall not accept hazardous waste without an accompanied manifest signed and completed by the generator in accordance with Env-Hw 510.01, Env-Hw 510.02, and Env-Hw 510.03."
6. Pursuant to Env-Hw 403.06, silver, EPA waste code D011, is a toxic hazardous waste above 5 milligrams per liter.

## **III. BACKGROUND AND FACTUAL ALLEGATIONS**

The Division asserts the following allegations which are undisputed:

1. Keith Bryan Reagan is an individual having a mailing address of 42R Scenic Drive, Derry, NH 03038.
2. DES issued New Hampshire Hazardous Waste Transporter Registration No. TNH-0373 to Keith Reagan/KB Imaging Services, Inc. on September 27, 2005 authorizing Mr. Reagan to transport hazardous waste in New Hampshire.
3. Keith Reagan/KB Imaging Services, Inc. renewed Registration No. TNH-0373 in 2006 and in 2007.
4. On June 30, 2008, Registration No. TNH-0373 expired.
5. Keith Reagan/KB Imaging Services, Inc. did not renew Registration No. TNH-0373 after June 30, 2008



6. Keith Reagan transported a load of hazardous waste in New Hampshire, specifically RQ Hazardous Waste Liquid N.O.S. (silver ammonium thiosulfate), EPA waste code D011, on July 31, 2008, from Middleton Chiropractic Office in Dover, New Hampshire pursuant to hazardous waste transportation manifest #000140179.
7. Keith Reagan transported a load of hazardous waste in New Hampshire, specifically RQ Hazardous Waste Liquid N.O.S. (silver ammonium thiosulfate), EPA waste code D011, on September 8, 2008, from Allenstown Animal Hospital in Allenstown, New Hampshire pursuant to hazardous waste transportation manifest #000140175.
8. Keith Reagan transported a load of hazardous waste in New Hampshire, specifically RQ Hazardous Waste Liquid N.O.S. (silver ammonium thiosulfate), EPA waste code D011, on October 31, 2008, from Hooksett Chiropractic Office in Hooksett, New Hampshire without using a hazardous waste transportation manifest.
9. Keith Reagan transported hazardous waste from Hooksett Chiropractic located in Hooksett, New Hampshire on the following 7 dates without a manifest: June 23, 2006; December 6, 2006; May 16, 2007; August 15, 2007; February 20, 2008; May 28, 2008 and October 31, 2008.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the foregoing and the uncontested evidence presented at the hearing, the Department finds that the facts as alleged by the Division in the NPF are not in dispute and that the Division has proven, by a preponderance of the evidence that Keith Bryan Reagan violated RSA 147-A:6, I, by failing to obtain a New Hampshire Hazardous Waste Transporter Registration prior to transporting three loads of hazardous waste within the State of New Hampshire after June 30, 2008. The Department also finds that the Division has proven, by a preponderance of the evidence, that Keith Bryan Reagan violated Env-Hw 604.01(a) [previously Env-Wm 604.01(b)] by accepting seven loads hazardous waste for transport within the State of New Hampshire without an accompanying manifest completed and signed by the generator.

Pursuant 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. The Commissioner has previously adopted Env-C 602-616 which rules set forth a schedule of administrative fines applicable to various categories of violations. Env-C 602-616 are currently expired, however, the Division is seeking fines of \$2,000 per load hauled without a registration, which is consistent with 612.02(d) and within the statutory limit; and \$500 per load accepted without a manifest, which is consistent with Env-C 612.04(e) and also within the statutory fine limit. Although the fine schedule rules are expired, there is nothing to prevent the Division from relying on the schedule as guidance in determining the appropriate fine within the statutory limit.

For the foregoing reasons, the Department finds that the fines sought by the Division are justified. Therefore, the Department hereby imposes a fine of **\$6,000** against Keith Bryan Reagan for violating RSA 147-A:6, I by failing to obtain a New Hampshire Hazardous Waste Transporter Registration prior to transporting three loads of hazardous waste within the State of New Hampshire after June 30, 2008. The Department further imposes a fine of **\$3,500** against Keith

Bryan Reagan for violating Env-Hw 604.01(a) [previously Env-Wm 604.01(b)] by accepting seven loads hazardous waste for transport within the State of New Hampshire without an accompanying manifest completed and signed by the generator.

In addition to the foregoing, the Division argued at the hearing and requested in its Proposed Findings of Fact and Rulings of Law that the total fine be increased by 10% for each aggravating factor proven, pursuant to Env-C 601.11. Because the fine imposed for violating RSA 147-A:6, I is already at the statutory maximum, it cannot be further increased based on aggravating factors. However, the fine for violating Env-Hw 604.01(a) is subject to increase if aggravating factors are proven.

The evidence submitted by the Division in support of its affidavits demonstrates that Mr. Reagan was has previously registered as a hazardous waste transporter since September 27, 2005. By letter dated August 2, 2007, the Division informed Mr. Reagan that 1) his registration had been accepted, 2) by registering Mr. Reagan agreed to comply with regulations governing the transportation of hazardous wastes, and 3) the registration would expire on June 30, 2008. By letter dated July 1, 2008, the Division informed Mr. Reagan that his registration had expired and that he was, therefore, prohibited from transporting any hazardous waste.

Based on the foregoing, the Department finds that the Division has proven by a preponderance of the evidence that Keith Bryan Reagan was aware of the requirements applicable to the activities that formed the basis of the Division's allegations and that he did not act in good faith to remedy the violations. Because of these aggravating factors, the fine of \$3,500 hereby imposed for violating Env-Hw 604.01(a) is increased by 10% pursuant to Env-C 601.11(a)(1) and by another 10% pursuant to Env-C 601.11(a)(4) for a total increase of \$700.

Accordingly, a total fine of \$10,200 is hereby imposed and shall be paid within 60 days of the date of this decision. Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with RSA 541-A and Env-C 206.

COMMISSIONER OF  
ENVIRONMENTAL SERVICES

**COPY**

Date: July 18, 2012

By:

Peter Demas, Legal Coordinator  
Presiding Officer