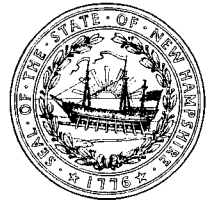




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



Thomas S. Burack, Commissioner

December 10, 2010

**Hand-Delivered**

Almorinda (Amy) Samson, Appeals Clerk  
Department of Environmental Services  
P.O. Box 95  
Concord, NH 03302-0095

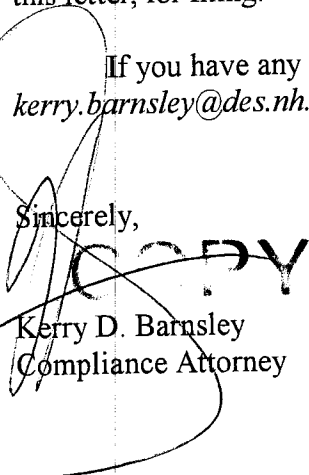
Re: **Administrative Fine, Docket No. AF 09-055**  
**Wakefield Thermal Solutions, Inc.**

Dear Ms. Samson:

The parties have reached an agreement in this matter. A hearing on the merits will not be necessary. A fully-executed original Motion to Accept Settlement Agreement is submitted with this letter, for filing.

If you have any questions, please do not hesitate to call me at 271-7509, or by email at *kerry.barnsley@des.nh.gov*.

Sincerely,

  
Kerry D. Barnsley  
Compliance Attorney

cc: Wayne Frerichs, President, Wakefield Thermal Solutions, Inc.  
File

ec: DES Waste Management Division/ distribution list  
DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095  
Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

Wakefield Thermal Solutions, Inc.  
33 Bridge Street  
Pelham, NH 03076

RE: EPA ID No. NHD500003587

**ADMINISTRATIVE FINE  
No. AF 09-055**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division (the "Division") and Wakefield Thermal Solutions, Inc. ("Wakefield Thermal"), parties to the above-captioned matter, and request the Commissioner to accept the following proposed settlement in this matter. In support of this motion, the parties state as follows:

1. Pursuant to RSA 147-A, the 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 [was Env-Wm 100-1100] (the "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 violation for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 612 to establish the schedule of fines for such violations.
3. Wakefield Thermal is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on June 25, 2001. Wakefield Thermal manufactures heat sinks and cooling fans for the electronics industry. EPA Identification Number NHD500003587 was assigned to Wakefield Thermal's site located at 33 Bridge Street in Pelham, New Hampshire (the "Facility").
4. On August 24, 2009 the Division issued Notice of Proposed Administrative Fine No. AF 09-055 (the "Notice") to Wakefield Thermal seeking fines totaling \$74,570 for violations of RSA 147-A and the Hazardous Waste Rules noted during an inspection of the Facility conducted on May 15, 2008.
5. Specifically, the Notice cited Wakefield Thermal for violating Env-Hw 502.01 by failing to conduct adequate hazardous waste determinations (Violation 1). Pursuant to Env-C 612.05(a), which references Env-Wm 502.01 [now Env-Hw 502.01], the Division sought a fine of \$6,000 for four (4) determinations not made.
6. The Notice further cited Wakefield Thermal for violating Env-Hw 504.02(e) by failing to notify DES in writing of a change in ownership within 30 days of the effective date of the change

(Violation 2). Pursuant to Env-C 612.08(e), which references Env-Wm 504.02(e) [now Env-Hw 504.02(e)], the Division sought a fine of \$500 for this violation.

7. The Notice further cited Wakefield Thermal for violating Env-Hw 507.03(a)(1)a., by failing to mark one (1) 1-cubic yard box containing waste paints, polyurethane, and 5-gallon pails of waste oils with the beginning accumulation date (Violation 3). Pursuant to Env-C 612.06(k), which references Env-Wm 507.03(a)(1)a. [now Env-Hw 507.03(a)(1)a.], the Division sought a fine of \$250 for this violation.

8. The Notice further cited Wakefield Thermal for violating Env-Hw 507.03(a)(1)b., c., and d., by failing to mark the one (1) 1-cubic yard box containing waste paints, polyurethane, and 5-gallon pails of waste oils with the words "hazardous waste," words identifying the contents, or the EPA or state waste number (Violation 4). Pursuant to Env-C 612.06(l), which references Env-Wm 507.03(a)(1)b., c., and d. [now Env-Hw 507.03(a)(1)b., c., and d.], the Division sought a fine of \$600 for this violation.

9. The Notice further cited Wakefield Thermal for violating Env-Hw 509.02(a)(1), by failing to document inspections of the facility's Hazardous Waste Storage Area ("HWSA") for a total of 37 out of the 52 weeks immediately prior to the inspection. Wakefield Thermal's inspection checklist also did not include, the full name of the individual conducting the inspections, the time of the inspections, the year of the inspections, an area to note any observations made, and the date and nature of any repairs or remedial actions taken (Violation 5). Pursuant to Env-C 612.07(a), which references Env-Wm 509.02(a)(1) [now Env-Hw 509.02(a)(1)], the Division sought a fine of \$37,000; \$1,000 per inspection required for the 37 weeks of non-compliance.

10. The Notice further cited Wakefield Thermal for violating Env-Hw 509.02(a)(2) by failing to maintain a personnel training program and provide hazardous waste training for nine employees with hazardous waste duties (Violation 6). Pursuant to Env-C 612.07(b), which references Env-Wm 509.02(a)(2) [now Env-Hw 509.02(a)(2)], the Division sought a fine of \$21,000, at \$1,750 per individual not trained for initial training and \$1,000 per individual not trained for annual updates.

11. The Notice further cited Wakefield Thermal for violating Env-Hw 509.02(a)(3) by failing to post "No Smoking" signs near the HWSA where ignitable hazardous waste containers were stored (Violation 7). Pursuant to Env-C 612.07(c), which references Env-Wm 509.02(a)(3) [now Env-Hw 509.02(a)(3)], the Division sought a fine of \$2,000 for this violation.

12. The Notice further cited Wakefield Thermal for violating Env-Hw 509.02(a)(4) by failing to have adequate aisle space for one (1) 55-gallon container labeled "Hazardous Waste, Waste Caustic Alkalai Liquids NOS, (Sodium Hydroxide), D002, 5/14/08"; and three (3) 55-gallon containers labeled "Hazardous Waste, Waste Caustic Alkalai Liquids NOS, (Sodium Hydroxide), D002, 4/29/08" (Violation 8). Pursuant to Env-C 612.07(d), which references Env-Wm 509.02(a)(4) [now Env-Hw 509.02(a)(4)], the Division sought a fine of \$1,250 for this violation.

13. The Notice further cited Wakefield Thermal for violating Env-Hw 509.02(a)(5) by failing to maintain a complete contingency plan at the Facility (Violation 9). Pursuant to Env-C 612.07(e),

which references Env-Wm 509.02(a)(5) [now Env-Hw 509.02(a)(5)], the Division sought a fine of \$2,000 for this violation.

14. The Notice further cited Wakefield Thermal for violating Env-Hw 509.02(b) by failing to post adequate emergency information at the nearest telephone to the HWSA (Violation 10). Pursuant to Env-C 612.07(h), which references Env-Wm 509.02(b) [now Env-Hw 509.02(b)], the Division sought a fine of \$1,000 for this violation.

15. The Notice further cited Wakefield Thermal for violating Env-Hw 509.03(d) and Env-Hw 507.01(a)(3) by failing to keep closed two (2) containers located in the satellite storage area (Violation 11). Pursuant to Env-C 612.07(j), which references Env-Wm 509.03(d) and Env-Wm 507.01(a)(3) [was Env-Hw 509.03(d) and Env-Hw 507.01(a)(3)], the Division sought a fine of \$1,000 for this violation.

16. The Notice further cited Wakefield Thermal for violating Env-Hw 509.03(h) by failing to conduct and document monthly inspections of the Facility's satellite hazardous waste storage area during eight (8) of the twelve (12) months immediately prior to the inspection (Violation 12). Pursuant to Env-C 612.07(j), which references Env-Wm 509.03(h) [now Env-Hw 509.03(h)], the Division sought a fine of \$1,000 for this violation.

17. The Notice further cited Wakefield Thermal for violating Env-Hw 510.02(d)(2) by failing to forward one copy of a manifest to DES within 5 days of shipment (Violation 13). The Division determined this violation to be a minor deviation from the requirements with a minor potential for harm, and pursuant to Env-C 610, sought a fine of \$500 for this violation.

18. The Notice further cited Wakefield Thermal for violating Env-Hw 512.01(a)(1) by failing to have on file copies of nine (9) hazardous waste manifests certified by the designated facility for three (3) years from the date of signature by the generator (Violation 14). Pursuant to Env-C 612.08(a), which references Env-Wm 512.01(a)(1) [now Env-Hw 512.01(a)(1)], the Division sought a fine of \$300 for this violation.

19. Finally, the Notice cited Wakefield Thermal for violating Env-Hw 1102.03 and Env-Hw 1113.04 by failing to properly mark seventeen (17) waste cathode ray tubes (Violation 15). The Division determined this violation to be a minor deviation from the requirement with a minor potential for harm, and pursuant to Env-C 610, sought a fine of \$170 for this violation.

20. On June 12, 2009, DES conducted a focused compliance inspection of the Facility. As a result of that inspection, it was determined that Wakefield Thermal failed to obtain a Limited Permit for the Facility for the evaporation of hazardous waste, as required by RSA 147-A:4, I and Env-Hw 304.01 (Violation 16). Pursuant to Env-C 612.03(a) a fine of \$2,000 has been calculated by the Division. This proposed fine was not included in the Notice.

21. In order to settle this matter, the Division and Wakefield Thermal have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

22. Wakefield Thermal agrees to include settlement of the proposed fine of \$2,000 for Violation 16 in this Agreement, although Violation 16 is not set out in the Notice.

23. Wakefield Thermal provided information showing that the waste streams were found to be non-hazardous following determinations made after the inspection on May 15, 2008. Based on this information, the Division agrees to not seek the proposed fine for Violation 1.
24. Wakefield Thermal provided information showing that annual training was not required for employees Brian Comosa, Dan Bellrose, and John Goglia in 2008. Based on this information, the Division agrees to reduce the proposed fine for Violation 6 from \$21,000 to \$18,000.
25. Wakefield Thermal provided information showing that satellite storage containers typically did not remain in the satellite storage area for longer than one month. Based on this information, the Division agrees to not seek the proposed fine for Violation 12.
26. For settlement purposes only, the Division agrees to not seek the proposed fines for Violations 2, 7 and 15 because they are non-repeat, Class II violations.
27. For settlement purposes only, the Division agrees to apply a 5% reduction to the proposed fines sought for Violations 3 - 6, 8 - 11, 13, 14, and 16 due to other circumstances. The proposed fines for the violations noted in this paragraph total \$63,900. The proposed reduction as calculated at 5% of that total is \$3,195.
28. Wakefield Thermal agrees to pay to DES administrative fines in the amount of \$60,705 for the violations of 147-A and the Hazardous Waste Rules noted by DES during the inspections of the Facility on May 15, 2008 and June 12, 2009 as set out in this Agreement.
29. Of the administrative fine agreed upon in the amount of \$60,705, Wakefield Thermal agrees to pay the amount of \$49,205 in cash to DES according to the following schedule:
  - a. Wakefield Thermal will pay the amount of \$8,205 upon execution of this Agreement by an authorized representative of Wakefield Thermal; and
  - b. Wakefield Thermal will pay the amount of \$41,000 in five (5) equal monthly payments of \$8,200 each due 30, 60, 90, 120 and 150 days from the date of this agreement.
30. Wakefield Thermal may receive credit of up to the remaining amount of the fine due, \$11,500, by undertaking the Supplemental Environmental Project ("SEP") described as follows: Wakefield Thermal agrees to undertake a series of third-party hazardous waste audits of the Facility over the course of three (3) years following the date of this Agreement. Wakefield will contract with a qualified third-party hazardous waste consulting firm (*i.e.*, auditors that are DES Certified Hazardous Waste Coordinators) to perform two (2) audits in the first year and one (1) additional audit each of the following years for a total of four (4) audits over the course of three (3) years, commencing within sixty (60) days from the date of this Agreement. The SEP shall be credited at a 1:1 ratio (*i.e.*, for every one dollar spent on the SEP up to \$11,500, one dollar is credited towards payment of the remaining fine in the amount of \$11,500). The SEP is not otherwise required by any local, state, or federal statute, regulation, order, consent decree, permit or other agreement. The audits will assess compliance with all applicable hazardous waste management requirements and will include completion of the DES Hazardous Waste Generator RCRA Inspection Checklist and associated modules ("RCRA Checklist"). All results and reports

generated by the audits, including completed copies of the RCRA Checklist, shall be submitted to DES within 30 days of the date the audit was conducted. The audit reports must be submitted to DES by any qualified third-party hazardous waste consulting firm prior to or simultaneously with the submission of audit results to Wakefield Thermal. Wakefield shall submit to DES copies of purchase orders and receipts or cancelled checks documenting amounts expended on the SEP. If the final cost of the SEP does not reach the \$11,500 commitment, then any difference will be due and payable in cash to the State of New Hampshire Hazardous Waste Cleanup Fund, within sixty (60) days of the three (3) year anniversary of the Agreement.

31. All audit results, reports and payment documentation pursuant to the preceding paragraph shall be sent to:

Robert Bishop, Enforcement Manager  
Hazardous Waste Management Bureau  
NHDES, Waste Management Division  
P.O. Box 95  
Concord, NH 03302-0095

32. Payments due under paragraphs #28 and #29, and any payment that becomes due pursuant to paragraph #30 shall be paid by certified check made payable to "Treasurer, State of New Hampshire" and mailed to:

NH DES, Legal Unit  
Attn: Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

33. 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.

34. By executing this Agreement, Wakefield Thermal waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

35. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Wakefield Thermal, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

36. 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.

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

Respectfully submitted,  
**Wakefield Thermal Solutions, Inc.**

11/12/2010  
Date

**COPY**  
By: Wayne Frericks, President  
Duly Authorized

**DES Waste Management Division**

11/23/10  
Date

**COPY**  
Michael J. Wimsatt, P.G., Director

This Motion to Accept Settlement agreement is granted this 23rd day of Nov, 2010.

**COPY**  
for Thomas S. Burack, Ass't Comm  
Thomas S. Burack, Commissioner  
Department of Environmental Services