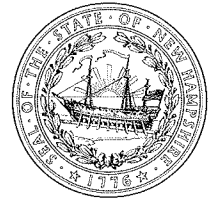




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Shawn Grant
d/b/a Grant's Logging and Firewood
151 Cypress Street
Manchester, NH 03103-3761

RE: 128 West Road, Londonderry, NH
Wetland Bureau File No. 2010-00551

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 11-003**

JANUARY 25, 2010

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Shawn Grant pursuant to RSA 482-A and Env-C 601. The Water Division is proposing that fines **totaling \$6,000** be imposed against Shawn Grant for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division (the "Division"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive in Concord, New Hampshire.
2. Shawn Grant is an individual having a mailing address of 15 Cypress Street, Manchester, NH 03103.

III. STATEMENT OF FACT AND LAW SUPPORTING CLAIM

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 NH CODE ADMIN. RULES Env-Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A: 13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$5,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute.¹ Pursuant to RSA 482-A:11, I, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 614 to establish the schedule of fines for such violations.
3. Wayne and Mary Stuck are the owners of real property located at 128 West Road in

¹ The Commissioner's administrative fine authority for violations of RSA 482-A increased from \$2,000 to \$5,000 per violation on September 11, 2010.

Londonderry, New Hampshire, more specifically identified on Town of Londonderry Tax Map 5 as Lot 60-1 (the "Property").

4. On March 11, 2010, DES received a complaint of unpermitted work in wetlands on the Property.
5. On March 12, 2010, DES staff inspected the Property and observed the following:
 - a. Two pole fords had been constructed and partially removed from within an intermittent stream;
 - b. Slash material and associated timber harvest debris were observed within the banks of an intermittent stream and adjacent wetland areas; and
 - c. Erosion control measures on the Property were insufficient resulting in a high potential for erosion and sediment accumulation within an intermittent stream channel.
6. During the inspection of the Property on March 12, 2010, DES met Shawn Grant, d/b/a Grant's Logging and Firewood, who had been retained by Wayne and Mary Stuck to clean up damage and debris on the Property from recent winter storm activity.
7. During the inspection of the Property on March 12, 2010, DES personnel issued a Land Resources Management Compliance Inspection Report to Mr. Grant and Mary Stuck requesting the immediate installation of erosion control measures on the Property. Shawn Grant signed the report in his capacity as "project representative."
8. 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]."
9. RSA 482-A:14, III, provides that "[f]ailure, 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."
10. DES has no record of a permit issued for the work observed on the Property.
11. On April 1, 2010, DES issued Letter of Deficiency ("LOD") No. WET 10-021 to Shawn Grant, and to Wayne and Mary Stuck. In LOD No. WET 10-021 DES noted the violations observed on the Property and requested restoration of the Property by June 1, 2010.
12. On June 14, 2010, DES staff inspected the Property and observed the following:
 - a. some slash and rutted areas remained; and
 - b. Exposed soils remained evident.
13. Following the inspection of the Property on June 14, 2010, DES personnel issued a Land Resources Management Compliance Inspection Report to Mr. & Mrs. Stuck outlining the

remaining restoration required to achieve compliance with LOD No. WET 10-021.

14. On June 16, 2010, DES staff outlined the remaining restoration required to achieve compliance with LOD No. WET 10-021 in a telephone conversation with Shawn Grant. Mr. Grant agreed to complete the remaining restoration required on the Property by July 15, 2010.

15. On August 13, 2010 DES staff inspected the Property. During the inspection of the Property on August 13, 2010, DES staff learned that Shawn Grant had not returned to the Property after March 12, 2010. Wayne and Mary Stuck completed the restoration of the Property in compliance with LOD No. WET 10-021.

16. DES issued a Letter of Compliance for LOD No. WET 10-021 on August 23, 2010.

IV. VIOLATIONS ALLEGED; PROPOSED ADMINISTRATIVE FINES

1. Shawn Grant violated RSA 482-A:3, I, by failing to comply with notification, filing, or other specific permit conditions on the Property. For this violation, Env-C 614.05(m) specifies a fine of \$2,000.
2. Shawn Grant violated Env-Wt 304.06, by failing to properly install and maintain appropriate siltation and erosion control devices on the Property. For this violation, Env-C 614.05(h) specifies a fine of \$2,000.
3. Shawn Grant violated Env-Wt 304.05(b) and (c) by failing to minimize wetland crossings in accordance with *Best Management Practices for Erosion Control on Timber Harvest Operations in New Hampshire*. For this violation, Env-C 614.06(f) specifies a fine of \$2,000.

The total fine being sought is \$6,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Shawn Grant is required to respond to this notice no later than February 18, 2010, using the enclosed colored form as follows:

1. If Shawn Grant wishes to have a hearing, an authorized representative must check the appropriate line (first section of the form) and return it to the DES Legal Unit as noted on the form. **If Shawn Grant requests a hearing, Shawn Grant may still discuss a possible settlement of the case with Division personnel.**
2. If Shawn Grant chooses to waive the hearing and pay the proposed fine, an authorized representative must check the appropriate line (second section of the form) and return it **with a certified check or money order in the amount of \$6,000** to the DES Legal Unit, as noted on the form.

Shawn Grant is not required to be represented by an attorney. NH RSA 541-A:31, III(e) provides that Shawn Grant has the right to be represented by an attorney, at his own expense. If Shawn Grant chooses to be represented by an attorney, the attorney must file an

appearance in accordance with Env-C 204.07 and otherwise comply with NH CODE ADMIN. RULE Env-C 200 relative to representatives.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Shawn Grant committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Shawn Grant committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to any reductions under Env-C 601.10.

*****IMPORTANT NOTICE*****

An administrative fine hearing is a formal hearing. All hearings are recorded, and all witnesses testify under oath or affirmation. At a hearing, the Division presents testimony and evidence to try to prove that Shawn Grant committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is an opportunity for Shawn Grant to present testimony and evidence that Shawn Grant did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Shawn Grant has any evidence, such as photographs, business records, or other documents that may show that Shawn Grant did not commit the violation or that otherwise support Shawn Grant's position, Shawn Grant should bring the evidence to the hearing. Shawn Grant may also bring witnesses to the hearing to testify on his behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Compliance Attorney at (603) 271-7509.

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

cc: DES Legal Unit

cc: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Peter Demas, DES Hearings Officer

***** RETURN THIS PAGE ONLY *****

**SHAWN GRANT IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE NO LATER THAN FEBRUARY 18, 2010.**

Please check the appropriate line and fill in the requested information below.

APPEARANCE

_____ On behalf of Shawn Grant, I request to have a **formal hearing** scheduled in this matter. (If you request a hearing, you may still discuss a possible settlement of the case with Division personnel.)

Signature

Date

WAIVER OF HEARING:

_____ On behalf of Shawn Grant, I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of **\$6,000** paid to "Treasurer, State of New Hampshire" is enclosed.**

*** If payment is made by check, draft, 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 original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Pursuant to Env-C 203.03, you must provide the following information:

Name: _____ Title: _____
(please print or type) (please print or type)

Complete Mailing Address: _____
(please print or type)

Phone: _____ Fax:*** _____ E-mail:*** _____

*** if available

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

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

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes and any rules adopted or permits issued pursuant to those statutes. In order to implement this authority, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 600 to specify the procedures for notifying people that a fine is being proposed and the fine amount for any given violation. An administrative fine proceeding is an adjudicative proceeding, which is governed by RSA 541-A and NH CODE ADMIN. RULES Env-C 200. These rules are available on-line at http://www.des.state.nh.us/rules/desadmin_list.htm#cross.

Administrative fine proceedings follow a defined path. The first step is for a division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a **final decision** as to whether to impose the fine **has not been made** – the Notice simply **initiates** the proceeding. The Notice also will inform you that you have an opportunity to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will include a colored form on which you can indicate whether you will attend a hearing or whether you are waiving your opportunity for a hearing and paying the fine that has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules that have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspension of some portion of the fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the hearing process will be governed by Env-C 204. Those rules contain requirements for filing documents and serving them on the other parties to the proceeding, and also require you to submit certain information in advance of the hearing, including a list of witnesses you expect to call, a list of exhibits you expect to present, and any requests for changes to or waivers of the standard procedures as specified in the rules or other matters concerning the conduct of the hearing.

The Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will know about the case only as a result of reading the same Notice you received, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

After the hearing is over, the hearing officer will compile the record (i.e., all of the notices that were sent to you and all information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.10. These include that you have not previously violated a law or rule implemented by DES, or that the violation(s) occurred despite your good faith efforts to comply with the applicable requirements. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such cases, DES has been willing to craft a settlement agreement which specifically recites that any admission of liability cannot be used in a third-party case.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the statutes and rules regarding administrative fines or adjudicative proceedings, but merely to provide a summary of some of the pertinent issues.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072; appeals@des.state.nh.us.

* Please note the website to view NH CODE
ADMIN.RULES Env-C 200 has changed to
<http://des.nh.gov/organization/commissioner/legal/rules/documents/env-c200.pdf>. The e-mail address to contact the DES
Legal Unit has also changed to appeals@des.nh.gov.

<http://www.des.state.nh.us>