



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



**Thomas S. Burack, Commissioner**

July 1, 2011

Daniel Carberry, VP/GM Power Cable  
Marmon Utility, LLC  
53 Old Wilton Road  
Milford, NH 03055

Re: Docket No. AF 11-030 - Administrative Fine by Consent Agreement

Dear Mr. Carberry:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above mentioned matter. We are in receipt of your payment pursuant to Section V, Paragraph 3 of the agreement.

On behalf of the Department of Environmental Services, thank you for your cooperation in this matter. This letter does not provide relief against any existing or future violations.

Sincerely,

**COPY**

Jane Murray  
Executive Secretary  
DES Legal Unit

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
DES Public Information Officer  
Robert Bishop, DES  
Milford Select Board

cc: DES Legal Unit



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



**Thomas S. Burack, Commissioner**

Marmon Utility, LLC  
53 Old Wilton Road  
Milford, NH 03055

Re: EPA ID# NHD001079334

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 11-030**

### **I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Marmon Utility, LLC pursuant to RSA 147-A. This Administrative Fine by Consent is effective upon signature by all parties.

### **II. PARTIES**

1. The Department of Environmental Services, Waste Management Division (“DES”) is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. Marmon Utility, LLC (“Marmon Utility”) is a limited liability company registered to do business in New Hampshire having a mailing address of 53 Old Wilton Road, Milford, NH 03055. Marmon Utility is currently described by the New Hampshire Secretary of State’s Office as “Not in Good Standing.”

### **III. BACKGROUND**

1. Pursuant to RSA 147-A, 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] (“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 previously adopted NH CODE ADMIN. RULES Env-C 612 to establish a schedule of fines for such violations. While the schedule of fines has expired, DES still uses the schedule as guidance when determining an appropriate fine amount.
3. Marmon Utility is a hazardous waste generator that notified the United States Environmental Protection Agency (“EPA”) of its activities through DES on July 25, 1980. EPA Identification Number NHD001079334 was assigned to Marmon’s site located at 53 Old Wilton Road in Milford, New Hampshire (the “Facility”).

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

4. On August 20, 2009, DES personnel inspected the Facility for compliance with RSA 147-A and its implementing regulations, the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued a Notice of Past Violation to Hendrix Wire & Cable, Inc. on December 22, 2009. Hendrix Wire & Cable, Inc. changed its name to Marmon Utility, LLC on January 1, 2010. Based on the violations observed during the inspection, the DES believes that an administrative fine is appropriate in this case for the Class I violations.

#### IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Marmon Utility failed to conduct an adequate hazardous waste determination, as required by Env-Hw 502.01, for the waste rags contaminated with spent solvent (i.e., F001 hazardous waste rags contaminated with spent Stoner A496 Degreaser, 60-75% Trichloroethylene) (“Violation 1”). For this violation, Env-C 612.05(a), which referenced Env-Wm 502.01 [now Env-Hw 502.01], authorized a fine of \$1,500 per determination not made.
2. Marmon Utility failed to close, as required by Env-Hw 507.01(a)(3), two (2) 55-gallon containers of hazardous waste stored in the 90-day Hazardous Waste Storage Area (“Violation 2”). For these violations, Env-C 612.06(c)(1), which referenced Env-Wm 507.01(a)(3) [now Env-Hw 507.01(a)(3)], authorized a fine of \$400 for each container that is 55-gallons or greater, for a potential fine of \$800.
3. Marmon Utility failed to provide annual reviews of hazardous waste training, as required by Env-Hw 509.02(a)(2), for two (2) employees, Jerry Trombly (2005, 2006, 2007, and 2009) and Kevin Boette (2009), who are both alternate emergency coordinators (“Violation 3”). For these violations, Env-C 612.07(b), which referenced Env-Wm 509.02(a)(2) [now Env-Hw 509.02(a)(2)], authorized a fine of \$1,000 per individual not trained for annual updates, for a potential fine of \$5,000.
4. Marmon Utility failed to post a complete emergency posting, as required by Env-Hw 509.02(b), at the telephone nearest to the 90-day Hazardous Waste Storage Area (“Violation 4”). For this violation, Env-C 612.07(h), which referenced Env-Wm 509.02(b) [now Env-Hw 509.02(b)], authorized a fine of \$1,000.
5. Marmon Utility failed to keep closed, as required by Env-Hw 509.03(d) and Env-Hw 507.01(a)(3), four (4) 1-pint satellite containers of hazardous waste solvent located at four of the five print station satellite storage areas (“Violation 5”). For these violations, Env-C 612.07(j), which referenced Env-Wm 509.03 [now Env-Hw 509.03], authorized a fine of \$1,000 per satellite storage area, for a potential fine of \$4,000.
6. Marmon Utility failed to mark, as required by Env-Hw 509.03(g), the four (4) 1-pint satellite storage containers of hazardous waste solvent located at four of the five print station satellite storage areas, with the words “hazardous waste” (“Violation 6”). For these violations, Env-C 612.07(j), which referenced Env-Wm 509.03 [now Env-Hw 509.03], authorized a fine of \$1,000 per satellite storage area, for a potential fine of \$4,000.
7. Marmon Utility failed to deliver, as required by Env-Hw 511.01(b), the F001 hazardous waste rags to a facility that was permitted for F001 hazardous waste (“Violation 7”). The F001

hazardous waste rags were mixed with an oily rag waste stream and delivered to Pine Grove Landfill located at 5131 Drinkle Road in Amanda, Ohio on a quarterly basis. Pine Grove Landfill is a solid waste landfill that is not permitted to handle F001 hazardous waste. For these violations, Env-C 612.04(d), which referenced Env-Wm 511.01(b) [now Env-Hw 511.01(b)], authorized a fine of \$2,000 per load delivered to an unauthorized facility. For settlement purposes, DES will seek a fine for four (4) shipments of the F001 hazardous waste rags to an unauthorized facility, for a potential fine of \$8,000 for these violations.

8. Marmon Utility failed to close, as required by Env-Hw 807.06(b)(5), one (1) 55-gallon container of used oil destined for recycling stored in the 90-day Hazardous Waste Storage Area (“Violation 8”). For this violation, Env-C 612.10(b)(1), which referenced Env-Wm 807.06(b)(3) [now Env-Hw 807.06(b)(5)], authorized a fine of \$200 for each container that is 55-gallons or greater.

#### V. PAYMENT, WAIVER OF HEARING

1. For settlement purposes only, DES agrees to waive fines associated with Violations 2 through 6, and Violation 8 because they are not Class I violations.

2. DES asserts that the following fines are appropriate for Violations 1 and 7:

a. Violation 1 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$1,500; and

b. Violation 7 is a Class I violation. DES has determined that the following reduction should be applied to the gravity portion of the penalty:

i. 20% due to Marmon Utility’s high level of cooperation in providing information and its effort to correct the violation.

[DES is thus seeking a fine of \$6,937 for this violation [\$2,683 (economic benefit) + \$4,254 (gravity)]. Gravity calculation: \$8,000 - \$2,683 (economic benefit) = \$5,317 (gravity) \* .80 (20% reduction) = \$4,254.]

3. Marmon Utility agrees to pay a total fine in the amount of \$8,400<sup>1</sup> upon execution of this Administrative Fine by Consent by an authorized representative of Marmon Utility.

4. Payment pursuant to the preceding paragraph shall be paid by certified or corporate check made payable to “Treasurer, State of New Hampshire” and mailed to: **DES Legal Unit, Attn: Compliance Attorney, PO Box 95, Concord, NH 03302-0095.**

5. 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.

6. By executing this Administrative Fine by Consent, Marmon Utility waives its right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent, and

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<sup>1</sup> Rounded from \$8,437 to the nearest unit of \$100 pursuant to the RCRA Civil Penalty Policy.

agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Marmon Utility, the Director of the Waste Management Division, and the Commissioner of DES.

8. No failure by DES to enforce any provision of this Administrative Fine by Consent 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 voluntarily accept the terms of this Agreement.

**Marmon Utility, LLC**

**COPY**  
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By: Daniel Carberry, VP/GM Power Cable  
Duly Authorized

6/22/11  
\_\_\_\_\_  
Date

**Department of Environmental Services**

**COPY**  
\_\_\_\_\_  
Michael J. Wimsatt, P.G., Director  
Waste Management Division

6/29/11  
\_\_\_\_\_  
Date

**COPY**  
\_\_\_\_\_  
Thomas S. Burack, Commissioner

6/29/2011  
\_\_\_\_\_  
Date

cc: DES Legal Unit  
RCRA/DB/AF

cc: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Robert Bishop, Enforcement Manager, HWMB/DES  
Milford Select Board