



The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**

*Celebrating 25 Years of Protecting  
New Hampshire's Environment*



Northern Timber, Inc.  
Attn: Arthur Stout, President  
P.O. Box 1207  
Lebanon, NH 03766

Re: 85 King Road, Hill, NH  
LRM File No. 2011-01657

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 12-026**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, James Cole and Northern Timber, Inc. pursuant to RSA 482-A:13 and RSA 485-A:22. This Administrative Fine by Consent is effective upon signature by all parties.

**II. PARTIES**

1. The Department of Environmental Services, Water 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. Northern Timber, Inc. ("Northern Timber") is a New Hampshire corporation having a mailing address of P.O. Box 1207, Lebanon, NH 03766. Arthur Stout is the President of Northern Timber.

**III. BACKGROUND**

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.* (the "Wetlands Rules") 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.<sup>1</sup>
3. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wq 1500 to implement this program.

<sup>1</sup> 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.

4. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose administrative fines of up to 2,000 for each offense upon any person who violates any provision of this subdivision or, RSA 485-A:4-6, any rule adopted under this subdivision or RSA 485-A:4-6, or any permit issued under the authority of this subdivision or RSA 485-A:4-6.

5. James Cole is the owner of property located at 85 King Road in Hill, New Hampshire, more particularly described on Town of Hill Tax Map R12 as Lot 47 (the "Property").

6. On July 13, 2011, the Division received a *Notification of Forest Management or Timber Harvest Activities Having Minimum Wetlands Impact* for the Property. The *Notification of Forest Management* lists James Cole as the Property owner and Arthur Stout as the logger responsible for logging. James Cole signed the *Notification of Forest Management* as the Property owner. The *Notification of Forest Management* states that the Property owner's signature certifies that ". . . all logging contractors have been directed to conform to the Best Management Practices ("BMPs") for *Erosion Control on Timber Harvesting Operations in New Hampshire* and have been instructed to install crossings only as indicated on the attached map and sketches."

7. On July 19, 2011, DES issued a "Complete Forestry Notification" letter to Mr. Cole for the Property. In the Complete Forestry Notification, DES authorized three (3) proposed stream crossings (poled fords) on the Property. In the Complete Forestry Notification, DES stated that,

"YOUR NOTICE IS SUFFICIENT TO START WORK PROVIDED:

[Permit Condition #]3. You follow the 'Best Management Practices for Erosion Control of Timber Harvesting Operations in New Hampshire,' published by the NH Department of Resources & Economic Development. [..]

[Permit Condition #]4. You have avoided wetlands and stream crossings where possible; all crossings have been located to minimize impact; and all crossings qualify as 'minimum impact' by [the Wetlands Rules]; and [..]"

8. On November 4, 2011, DES received a complaint from the New Hampshire Division of Forest & Lands alleging that a failure to comply with timber harvesting BMPs on the Property had caused siltation entering into wetlands and Needle Shop Brook.

9. On November 4, 2011, the Division of Forest & Lands issued Official Notice Nos. 12-11-40 & 12-11-41 to Northern Timber, ordering it to cease and desist timber harvesting activities on the Property. In the Notices, the Division of Forest & Lands ordered Northern Timber to implement emergency siltation and erosion control measures to mitigate water quality issues, specifically, siltation entering wetlands and tributaries to Needle Shop Brook.

10. On November 7, 2011, DES staff conducted an inspection of the Property and observed the following deficiencies:

- a. At least six (6) insufficiently installed and unstable stream crossings were noted. The skid trails approaching the crossings appeared unstable with exposed soils resulting in sedimentation to downstream areas. Turbid water was observed within the stream flows at the time of inspection;

- b. Skid trails had not been properly laid out in accordance with BMPs on the Property. The skid trails were located through and adjacent to stream channels and climbed steep unstable slopes. Inadequate planning and failure to employ erosion control measures impeded the natural runoff and resulted in concentrated surface water flow transporting waterborne soil particles to wetland and water resource areas;
- c. At least two (2) separate occurrences of the rutting were observed within forested wetland areas on the Property. One forested wetland was associated with a stream channel that had been disrupted and diverted. Sediment accumulation was observed as far as 600 feet downstream of the impact areas;
- d. No water diversion devices or measures were observed on the Property; and
- e. Erosion and sediment control measures were insufficient resulting in siltation of downstream wetland and stream areas.

11. At the conclusion of the inspection on November 7, 2011, DES issued a Land Resources Management Compliance Inspection Report to a representative of Northern Timber. In the report, DES requested the retention of a qualified environmental consultant, to oversee the stabilization activities required on the Property and to submit monitoring reports, by November 11, 2011. DES requested the stabilization of all skid trails, installation of water diversion devices, and removal and restoration of all stream and wetland crossings be completed by November 25, 2011, and the initial monitoring report documenting the stabilization completion be submitted to DES by December 1, 2011. In the report, DES also put the Responsible Parties on notice that further enforcement action would follow.

12. On November 7, 2011, DES also spoke telephonically with Arthur Stout regarding the findings of the inspection of the Property. DES staff explained the magnitude of the deficiencies observed on the Property and reiterated the request that the Property be stabilized immediately, before snow fell. DES recommended that Mr. Stout retain a qualified environmental consultant to oversee the stabilization and restoration activities on the Property. Mr. Stout stated his intent to contact and retain Earle Chase, Certified Wetland Scientist and Environmental Consultant.

13. On November 7, 2011, DES spoke telephonically with Earle Chase, Certified Wetland Scientist and Environmental Consultant. Mr. Chase confirmed that he had been retained to oversee the restoration and stabilization of the Property. Mr. Chase stated he would be meeting with representatives from Northern Timber on Wednesday, November 9, 2011, and intended to start work on the Property on Friday, November 11, 2011.

14. On November 14, 2011, DES issued a Notice of Violation to Northern Timber documenting the deficiencies observed on the Property and actions requested in the Land Resources Management Compliance Inspection Report dated November 7, 2011.

15. By e-mail correspondence from November 14, 2011 through December 7, 2011, Earle Chase provided DES with updates regarding the stabilization and restoration activities on the Property.

16. On December 9, 2011, DES conducted a follow-up inspection of the Property and observed the following:

- a. The Property appeared secure and temporarily stabilized. Skid trails and ruts had been back-dragged/smoothed and exposed areas (concentration focused on steep slopes) had been seeded and mulched;
- b. Water bars had been constructed within the stabilized areas and upslope of freed stream crossings to divert surface water flows, reduce flow velocity, and prevent further erosion and sedimentation to water resource areas on the Property;
- c. A culvert crossing located west of the log landing had been repaired and stabilized. A segment of culvert had been removed to match the pre-existing footprint. Headwalls had been properly constructed at the culvert outlet and the downstream banks and slopes, regraded, seeded and mulched. The inlet had been stabilized with erosion stone and the drainage swale and adjacent cut slope had been graded, seeded, and mulched;
- d. The log landing appeared exposed and covered with a light snow cover. The agent for Northern Timber stated that the landing would be seeded and stabilized in the spring of 2012;
- e. At least 9 stream crossings had been freed and stabilized by removing crossing devices (i.e. poled fords, corduroy, etc) and grading, seeding and mulching the banks and approaching slopes; f. Water bars were observed upslope from most restored/freed streams to divert surface water flows, reduce flow velocity, and prevent further erosion and sedimentation to water resource areas;
- f. A culvert was observed remaining within one stream channel where a poled ford had been removed. The culvert appeared to be buried beneath soils mimicking the stream bed and may be the result of a previous timber harvesting operation. The agent for Northern Timber stated that the culvert would be removed in the spring of 2012; and
- g. At least three (3) separate occurrences of wetland impacts were observed throughout the timber harvest area. Impacts included diverted stream channels, rutting, and slash within wetland areas. The agent for Northern Timber stated that wetland restoration would occur in the spring of 2012. Restoration of the Property would include stream channel restoration, removal of slash material, and grading, seeding and mulching activities.

17. On December 14, 2011, DES sent a letter to Northern Timber documenting the observations made during the inspection of the Property on December 9, 2011. In the letter, DES requested the submission of a restoration and monitoring plan for the Property prepared by a qualified environmental consultant by February 1, 2012. DES stated in the letter that the restoration plan should summarize the actions taken, the activities to be completed in the spring of 2012, and include a monitoring schedule. DES noted that the plan must not be implemented until receiving written approval from DES.

18. On January 30, 2012, DES received and approved a request for an extension through February 16, 2012 to submit the restoration and monitoring plan.

19. On February 9, 2012, DES met with Arthur Stout to review the DES file associated with the violations observed on the Property and discuss the DES enforcement process.

20. On February 13, 2012, DES received the restoration and monitoring plan for the Property prepared by Earle Chase.
21. On February 23, 2012, DES issued a Restoration Plan Approval authorizing the remaining stabilization activities and monitoring schedule for restoration of the Property.
22. 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].”
23. 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.”
24. RSA 227-J:7, *Timber Harvesting, Alteration of Terrain*, states that “[P]ursuant to RSA 485-A:17, any person proposing to dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the border of surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create unnatural runoff shall comply with the provisions of RSA 485-A. Failure to comply with these requirements may result in penalties under RSA 485-A.”
25. RSA 227-J:6, III, *Timber Harvesting, Operations in Wetlands*, provides that “Pursuant to the rules of [DES], skid trails, truck roads and culverts, bridges, pole fords, or other crossings on the skid trails or truck roads shall be constructed in accordance with procedures as currently cited in the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, published by DES.”
26. Pursuant to Env-Wt 304.05, *Logging Operations*, (a) Impacts to surface waters and wetlands shall be avoided or minimized in accordance with Env-Wt 302.04(b) and (c); (b) All skid trails, truck roads, and log landings shall be located far enough from surface waters and wetlands so that waterborne soil particles will settle out before reaching the surface waters or wetlands; (c) All skid trails, truck roads, and log landings shall be laid out using appropriate erosion control devices, as outlined in the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, department of resources and economic development, 2004, so that the grade approaching a surface water or wetland is broken, and surface run-off is dispersed; (d) Culverts, bridges, pole fords, or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, department of resources and economic development, 2004, except when road and stream banks are sufficiently frozen to avoid rutting or destabilization. Said crossings shall be removed when logging is completed in the area serviced by the crossing. Corduroy crossings at locations where there is no defined channel may be left in place. Corduroy crossings means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels; and (e) [..].

27. Env-Wt 304.06(a), provides that “Erosion and siltation control measures shall be installed prior to start of work, shall be maintained, and shall remain in place during construction until all disturbed surfaces are stabilized.”

#### IV. ALLEGATIONS

1. Northern Timber violated RSA 482-A:3 by installing 7 unauthorized stream crossings and dredging and filling 3 wetland areas on the Property without a Permit from DES.
2. Northern Timber violated RSA 227-J:7 and RSA 485-A:17 by impeding the natural runoff and creating unnatural runoff on the Property that adversely affected water quality in surface waters of the state.
3. Northern Timber violated RSA 482-A, Env-Wt 304 and permit conditions of the Complete Forestry Notification dated July 19, 2011 by failing to comply with *BMPs for Erosion Control on Timber Harvesting Operations in New Hampshire*, and failing to minimize impacts to wetlands and stream crossings on the Property.

#### V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. For violating RSA 482-A:3 by installing 7 unauthorized stream crossings and dredging and filling 3 wetland areas on the Property without a Permit from DES, RSA 482-A:13 specifies a fine of \$5,000.
2. For violating RSA 485-A:17 by impeding the natural runoff and creating unnatural runoff on the Property that adversely affected water quality in surface waters of the state, RSA 482-A:22 specifies a fine of \$2,000.
3. For violating RSA 482-A, Env-Wt 304 and permit conditions of the Complete Forestry Notification dated July 19, 2011 by failing to comply with *BMPs for Erosion Control on Timber Harvesting Operations in New Hampshire*, and failing to minimize impacts to wetlands and stream crossings on the Property, RSA 482-A:13 specifies a fine of \$5,000.
4. Northern Timber agrees to pay the proposed fine in the amount of \$12,000, subject to the following terms:
  - a. Of the proposed fine in the amount of \$12,000, DES agrees to suspend the amount of \$4,000, provided that Northern Timber remains in compliance with the provisions of this agreement and with the statutes, rules, and permits under the purview of DES for a period of two years from the date of this Administrative Fine by Consent. If Northern Timber fails to maintain compliance during the two-year period, or fails to fully comply with the terms of this Agreement the amount suspended, \$4,000, shall become immediately due and payable in full. If Northern Timber maintains compliance with the terms of this Agreement and with the statutes, rules, and permits under the purview of DES for the prescribed two-year period, the suspended portion of the fine shall be waived;
  - b. Northern Timber agrees to pay the amount of \$1,400 upon the execution of this agreement by an authorized representative of Northern Timber; and

c. Northern Timber agrees to pay the remaining amount due and payable, \$6,600, in 6 equal monthly installment payments in the amount of \$1,100 each, due 30, 60, 90, 120, 150 and 180 days from the date of this Agreement, respectively.

5. Any payments due and payable, or that become due and payable, pursuant to the preceding paragraph shall be paid by certified check or money order made payable to "Treasurer, State of New Hampshire" and mailed to: DES Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095.

6. 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.

7. By executing this Administrative Fine by Consent, the Responsible Parties waive any right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent, and agree that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

8. The effective date of this Administrative Fine by Consent will be the date on which it is signed by James Cole, an authorized representative of Northern Timber, the Director of the Water Division, and the Commissioner of DES.

9. 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.

Northern Timber, Inc.

**COPY**

By: Arthur Stout, President  
Duly Authorized

6.6.2012  
Date

Department of Environmental Services

**COPY**

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

8/14/12  
Date

**COPY**  
  
Thomas S. Burack, Commissioner

9/19/2012  
Date

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Hill Select Board & Conservation Commission