

The Wash Well Company, LLC
P.O. Box 10312
Swanzey, NH 03446

Robert P. Tupper
112 Christian Hill Road
Swanzey, NH 03446

RE: NH Water Well Contractor License No. 1464

**ADMINISTRATIVE FINE
NO. AF 19-050**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division (the “Division”), Robert Tupper, and the Wash Well Company, LLC, 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. RSA 482-B regulates water well contractors and pump installers and establishes the New Hampshire Water Well Board (the “Water Well Board”). The Water Well Board has adopted administrative rules to implement this regulatory program, NH CODE ADMIN. RULES We 100 to 1000 (the “Water Well Board Rules”) in accordance with the rulemaking authority conferred by RSA 482-B:4.
2. RSA 482-B:8, II, authorizes the New Hampshire Department of Environmental Services (“DES”) concurrent authority with the Water Well Board to enforce RSA 482-B, and the Water Well Board Rules.
3. New Hampshire Water Well Contractor license #1464 (the “License”) is held by the Wash Well Company, with Robert Tupper as the qualified individual. The License authorizes the Wash Well Company to construct water wells in New Hampshire under the supervision of Robert Tupper.
4. Robert Tupper and the Wash Well Company are collectively referred to, at times, hereinafter as “the Responsible Parties.”
5. On October 21, 2019, the Division issued Notice of Proposed Administrative Fine No. AF 19-050 (the “Notice”) to the Responsible Parties, seeking fines totaling \$7,350 for violations of RSA 482-B:10, and We 801.03, specifically by failing to submit well completion reports to the Water Well Board, within 90 days of completion of each well, for 49 water wells constructed in New Hampshire by the Wash Well Company between January 1, 2016, and December 31, 2018.
6. RSA 482-B:16, II, authorizes a fine of up to \$2,000 for each well completion report not timely filed. For each of the 49 well completion reports not timely filed, the Division proposed a fine of \$150, for a total proposed fine of \$7,350 for these violations.

7. In order to settle this matter, the Division and the Responsible Parties have agreed to the terms of this Settlement Agreement (“Agreement”), as set forth herein.

8. The Responsible Parties agree to pay the proposed fine in the amount of \$7,350, subject to the following terms:

a. Of the total proposed fine in the amount of \$7,350, the amount of \$1,837.50 (25%) will be suspended, provided that the Responsible Parties remain in compliance with this Agreement, RSA 482-B, and the Water Well Board Rules for a period of two years from the effective date of this Agreement. If the Responsible Parties fail to maintain compliance during the two-year period, or fail to fully comply with the terms of this Agreement the amount suspended, \$1,837.50, and any other amounts due under the terms of this Agreement, shall become immediately due and payable in full. If the Responsible Parties maintain compliance with the terms of this Agreement, RSA 482-B, and the Water Well Board Rules for the prescribed two-year period, the suspended portion of the fine shall be waived.

b. The Responsible Parties agrees to pay the remaining amount of the fine due, \$5,512.50, as follows: (1) the Responsible Parties shall pay to DES the amount of \$1,162.50 upon execution of this Agreement by the Responsible Parties; and (2) the Responsible Parties shall pay to DES \$725 monthly for six months commencing 30 days from the date of this Agreement.

9. Payments under the preceding paragraph and any payment that becomes due under the terms of this Agreement shall be paid by certified check made payable to *Treasurer, State of New Hampshire* and mailed to: **NH DES, Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095.**

10. If any payment is made by check or money order that is returned due to insufficient funds, per 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.

11. By executing this Agreement, the Responsible Parties waive any rights to a hearing on or any appeal of the administrative fines identified in the Notice, and agree that this Agreement may be entered into and enforced by a court of competent jurisdiction.

12. The effective date of this Agreement will be the date on which it is signed by the Responsible Parties, the Director of the Water 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.

13. 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,

3-6-2020
Date


COPY
By: Robert P. Tupper, Qualified Individual


The Wash Well Company, LLC

3-6-2020
Date


COPY
By: Robert P. Tupper, Manager
Duly Authorized

DES Water Division

9 MAR 20
Date


COPY
Thomas E. O'Donovan, P.E., Director
Water Division

This Motion to Accept Settlement Agreement is granted this 10th day of March, 2020


COPY
Robert R. Scott, Commissioner
Department of Environmental Services

- cc: DES Legal Unit
- cc: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
New Hampshire Water Well Board