



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



**Robert R. Scott, Commissioner**

Lyophilization Services of New England, Inc.  
23 Commerce Drive  
Bedford, NH 03110

RE: 19 Harvey Road, Bedford, NH  
EPA ID #NHD510191737  
25 Commerce Drive, Bedford, NH  
EPA ID #NHD510205925

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 20-002**

**COPY**

### **I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Lyophilization Services of New England, Inc. in accordance with RSA 147-A:17-a. This Administrative Fine by Consent is effective upon signature by the parties.

### **II. PARTIES**

1. The New Hampshire Department of Environmental Services, Waste Management Division 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. Lyophilization Services of New England, Inc. ("LSNE") is a New Hampshire limited liability company having a mailing address of 23 Commerce Drive, Bedford, NH 03110.

### **III. BACKGROUND**

1. RSA 147-A authorizes the Department of Environmental Services ("DES") to regulate the management and disposal of hazardous waste. The Commissioner of DES has adopted NH CODE ADMIN RULES Env-Hw 100-1200 (the "Hazardous Waste Rules") to implement this program in accordance with RSA 147-A:3.
2. RSA 147-A:17-a authorizes the Commissioner of DES to impose fines of up to \$2,000 per offense for violations of RSA 147-A, or rules adopted in accordance with RSA 147-A:3.
3. LSNE is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its status as a New Hampshire Full Quantity Generator ("FQG") of hazardous waste at its facility on Harvey Road in Bedford, New Hampshire through DES on January 26, 2017. DES assigned EPA Identification No. NHD510191737 to the LSNE site located at 19 Harvey Road in Bedford, New Hampshire (the "Harvey Road Facility").
4. On July 27, 2017, LSNE notified the EPA, through DES, of its status as a New Hampshire FQG of hazardous waste at its facility on Commerce Drive in Bedford, New Hampshire. DES

[www.des.nh.gov](http://www.des.nh.gov)

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assigned EPA Identification No. NHD510205925 to the LSNE site located at 25 Commerce Drive in Bedford, New Hampshire (the "Commerce Drive Facility").

5. On January 29, 2019, DES personnel inspected the Harvey Road Facility for compliance with RSA 147-A and the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency ("LOD") No. WMD 19-064 to LSNE on April 1, 2019. On February 1, 2019, DES personnel inspected the Commerce Drive Facility for compliance with RSA 147-A and the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued LOD No. WMD 19-063 to LSNE on April 1, 2019. LSNE cooperated by providing DES with information describing the actions taken to remedy the violations noted in both LODs for the facilities. Compliance with the requests set out in both LODs was achieved by June 14, 2019. Based on the violations observed during the inspections, and the information provided to DES by LSNE after the inspections and in response to the LODs, DES believes that administrative fines are appropriate for the Class I violations observed at the LSNE facilities.

#### **IV. ALLEGATIONS, ADMINISTRATIVE FINES**

##### Harvey Road Facility Violations:

1. LSNE has violated RSA 147-A:5, III, and Env-Hw 509.04(a), by failing to have at least one hazardous waste coordinator certified by DES physically at the Harvey Road Facility for an average, calculated on an annual basis, of no less than 30 hours per week in 2017 and 2018 ("Violation 1"). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only, DES proposes a fine of \$2,000 for each of the two years that LSNE did not have a certified coordinator at the Harvey Road Facility for the requisite average time, for a total proposed fine of \$4,000 for this violation.
2. LSNE has violated Env-Hw 509.02(a)(1), by failing to document a total of 13 weekly inspections of the central accumulation areas ("CAA"s) at the Harvey Road Facility during the one-year period immediately preceding the inspection of the Harvey Road Facility ("Violation 2"). For settlement purposes only, DES is not proposing a fine for this violation.
3. LSNE has violated Env-Hw 509.02(a)(2), by failing to provide annual reviews in 2017 and 2018 of the hazardous waste training to one employee with hazardous waste duties at the Harvey Road Facility ("Violation 3"). For settlement purposes only, DES is not proposing a fine for this violation.
4. LSNE has violated Env-Hw 509.02(a)(3), by failing to post "No Smoking" signs in five areas used to store ignitable hazardous wastes at the Harvey Road Facility ("Violation 4"). For settlement purposes only, DES is not proposing a fine for these violations.
5. LSNE has violated Env-Hw 509.02(a)(4), subject to Env-Hw 509.02(k), by failing to equip the 1-7 CAA with the following required equipment not more than 100 feet away and accessible along a path unobstructed by any obstacles: an internal communications or alarm system, a device capable of summoning emergency assistance, fire control equipment; and failing to equip the 1-7 CAA, and the 16-17 CAA, with water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems at the Harvey Road Facility ("Violation 5"). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only,

DES proposes a fine of \$1,250 for the violations observed in each of the two CAAs for a total of \$2,500 for these violations.

6. LSNE has violated Env-Hw 509.02(a)(4), by failing to make arrangements with local hospitals appropriate for the type of waste handled at the Harvey Road Facility, and the potential need for the services of those organizations (“Violation 6”). For settlement purposes only, DES is not proposing a fine for this violation.

7. LSNE has violated Env-Hw 509.02(a)(5), by failing to include all the required information in the copy of the contingency plan for the Harvey Road Facility at the Harvey Road Facility (“Violation 7”). For settlement purposes only, DES is not proposing a fine for this violation.

8. LSNE has violated Env-Hw 509.02(b), by failing to include all of the required information on the two emergency postings at the Harvey Road Facility (“Violation 8”). For settlement purposes only, DES is not proposing a fine for these violations.

9. LSNE has violated Env-Hw 509.02(d)(1), (2), (3), and (4), by failing to mark seven containers used for the accumulation of hazardous wastes at the Harvey Road Facility, at the time the containers were first used to accumulate waste, with either or any or all of the following information: with the beginning accumulation date, the words “hazardous waste”, and the EPA or state waste number (“Violation 9”). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only, DES proposes a fine of \$250 for the improperly marked 55-gallon container, \$125 for each of three improperly marked containers that are greater than five gallons but less than 55 gallons, and \$50 for one tote containing three improperly marked containers that are five gallons or less, for a total proposed fine of \$675 for these violations.

10. LSNE has violated the satellite accumulation provisions of Env-Hw 509.03, by failing to mark five satellite accumulation containers at the time they were first used to accumulate hazardous wastes at the Harvey Road Facility with one or both of the words “hazardous waste” and words that identify the contents of the containers, as specified in Env-Hw 509.03(f) and required under Env-Hw 509.02(d)(2) and (3) (“Violation 10”). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only, DES proposes a fine of \$50 for each container, for a total proposed fine of \$250 for these violations.

11. LSNE has violated Env-Hw 512.01(a)(1), by failing to maintain at the Harvey Road Facility a copy of hazardous waste manifest #018299413JJK certified by the designated facility for three years from the date of the signature of the generator (“Violation 11”). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only, DES proposes a fine of \$750 for this violation.

#### Commerce Drive Facility Violations:

12. LSNE has violated Env-Hw 502.01(a), by failing to make an accurate hazardous waste determination on waste expired sodium hydroxide pellets generated at the Commerce Drive Facility (also cited as “Violation 1”). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. DES proposes a fine of \$2,000 for this violation.

13. LSNE has violated Env-Hw 509.02(a)(3), by failing to post "No Smoking" signs in an area used to store ignitable hazardous wastes at the Commerce Drive Facility (also cited as "Violation 2"). For settlement purposes only, DES is not proposing a fine for this violation.

14. LSNE has violated Env-Hw 509.02(a)(4), by failing to make arrangements with local hospitals appropriate for the type of waste handled at the Commerce Drive Facility, and the potential need for the services of those organizations (also cited as "Violation 3"). For settlement purposes only, DES is not proposing a fine for this violation.

15. LSNE has violated Env-Hw 509.02(a)(5), by failing to include all the required information in the copy of the contingency plan for the Commerce Drive Facility at the Commerce Drive Facility (also cited as "Violation 4"). For settlement purposes only, DES is not proposing a fine for this violation.

16. LSNE has violated Env-Hw 509.02(b), by failing to include all of the required information on the emergency posting at the Commerce Drive Facility (also cited as "Violation 5"). For settlement purposes only, DES is not proposing a fine for this violation.

17. LSNE has violated Env-Hw 509.02(d)(4), by failing to mark three containers used for the accumulation of hazardous wastes at the Commerce Drive Facility, at the time the containers were first used to accumulate waste, with the EPA or state waste number (also cited as "Violation 6"). For settlement purposes only, DES is not proposing a fine for this violation.

18. LSNE has violated Env-Hw 512.01(a)(1), by failing to maintain at the Commerce Drive Facility a copy of hazardous waste manifest #018299415JJK certified by the designated facility for three years from the date of the signature of the generator (also cited as "Violation 7"). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only, DES proposes a fine of \$750 for this violation.

#### V. PAYMENT, WAIVER OF HEARING

1. For settlement purposes only, DES agrees not to pursue fines associated with Harvey Road Facility Violations 2, 3, 4, and 6 through 8, because they are not Class I violations. For settlement purposes only, DES agrees not to pursue fines associated with Commerce Drive Facility Violations 2 through 6, because they are not Class I violations.

2. For settlement purposes, DES will apply a 20% reduction to the gravity portion of the revised proposed fines for Harvey Road Facility Violations 1, 5, and 9 through 11; and Commerce Drive Facility Violations 1, and 7; which are Class I violations, based on LSNE's cooperation in correcting violations and providing information during and after the inspection of the Facility. For settlement purposes, DES will apply an additional 10% reduction to the gravity portion of the revised proposed fines for the Class I violations because this was the first inspection of the Harvey Road and Commerce Drive Facilities. DES calculates the economic benefit of Harvey Road Violation 1 to be \$600. DES calculates a gravity penalty of \$10,325 for the Class I violations. [ $\$7,827.50 = (\$10,325 \text{ (gravity penalty)} \times .70 \text{ (20\% reduction for cooperation, plus 10\% reduction for other circumstances)}) + \$600 \text{ (economic benefit)} = \$7,827.50$ ].

3. LSNE agrees to pay the revised proposed fine in the total amount of \$7,827.50 for the Class I violations for the Class I violations as follows:

a. LSNE may receive credit of up to \$300 of the amount of the fine due and payable by undertaking the Supplemental Environmental Project ("SEP") described as follows: LSNE shall have one employee with management duties (Shawn Cain) trained and certified through the DES Hazardous Waste Coordinator Certification program. The LSNE employee must attend the training and pass the test for certification within six-months of the date of this Administrative Fine by Consent ("Agreement");

b. If the final cost of the SEP does not reach the \$300 SEP commitment, then any difference will become immediately due and payable to DES as described in the following paragraph; and

c. LSNE agrees to pay the remaining portion of the fine in the amount of \$7,527.50 to DES upon execution of this Agreement by an authorized representative of LSNE.

4. Payment shall be paid by certified check 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.

5. If any payment is made by check or money order that is returned due to insufficient funds, per 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 Agreement, LSNE waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Agreement will be the date on which it is signed by an authorized representative of LSNE, the Director of the Waste Management Division, and the Commissioner of DES.

8. 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 voluntarily accept the terms of this Agreement.

**Lyophilization Services of New England, Inc.**

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By: Matthew J. Halvorsen, President  
Duly Authorized

5/13/2020  
Date

**Department of Environmental Services**

**COPY**

Michael J. Wimsatt, P.G., Director  
Waste Management Division

6/1/20  
Date

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Robert R. Scott, Commissioner

6-1-20  
Date

cc: DES Legal Unit  
RCRA/DB/AF

cc: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Bedford Select Board and Health Officer  
E. Molly Stark, P.G., HWMB/WMD/DES