The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

October 17, 2003

Mr. Chris Brissette
P.O. Box 221
Antrim, NH 03440

NOTICE OF DECISION
ADMINISTRATIVE FINE
NO. AF 2000-070 (WETLANDS)

Re: North Elmwood Road, Hancock

Dear Mr. Brissette:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 2000-070 issued October 26, 2000, the Water Division sought administrative fines totaling $6,000 against you for alleged violations of RSA 482-A, the state wetlands statute, arising from unauthorized work conducted on property located on North Elmwood Road, Hancock, NH ("the Property"). Pursuant to RSA 482-A:13, and based upon my review of the evidence presented at the hearing held on this matter on August 18, 2003, I have concluded that a fine of $6,000 is appropriate as set forth below:

- A fine in the amount of $2,000 is imposed against you for placing fill in a river without first obtaining a permit from DES.
- A fine in the amount of $2,000 is imposed against you for disturbing more than 200 linear feet of a river channel and its banks without first obtaining a permit from DES.
- A fine in the amount of $2,000 is imposed against you for rutting through wetlands on the Property without proper crossing devices, and leaving slash in wetlands. These actions constitute a complete disregard for proper forestry practices as set forth in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April, 1996.

The $6,000 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by certified check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Wetlands are regulated under RSA 482-A. The purpose of this statute is to protect wetlands from unregulated alteration because the state recognizes that these areas are a valuable resource that provide wildlife habitats, storm water retention, water supplies, and nutrient and pollutant filtering. There are many types of wetlands in New Hampshire: swamps, bogs, wet meadows, rivers, and lakes. Under the statute, specific areas of the Property are considered wetlands and are under wetlands jurisdiction. You are liable for unauthorized work in wetlands on the Property, hence, negatively impacting the wetlands and the environment.

This decision is based on the following findings and conclusions:

1. Arthur Cernota is the owner of the Property located on North Elmwood Road, Hancock, NH, and more particularly described in the Town of Hancock tax maps as Map R-9, Lot 82.

2. RSA 482-A:3, I prohibits the excavation, removal, fill, dredge, or construction of any structures in or on any bank, flat, marsh, or swamp in or adjacent to any waters of the state without first obtaining a permit from DES.

3. On November 1, 1999, Mr. Cernota entered into an agreement with Chris Brissette in which he was to log the Property for Mr. Cernota. The work was to be completed by November 1, 2000.

4. On November 1, 1999, Mr. Brissette filed a Notice of Intent to Cut Wood or Timber ("the Notice") with the Town of Hancock, NH.

5. On December 21, 1999, a forester from the NH Department of Resources and Economic Development ("DRED") issued a cease and desist order ("the Order") to Mr. Brissette for wetlands violations. The Order directed Mr. Brissette to obtain proper permits and to install a proper stream crossing.

6. On January 4, 2000, DES staff inspected the Property with two foresters from DRED. Staff observed a logging road crossing Moose Brook in which large logs were piled 5'-6' deep in an attempt to establish a crossing. There was evidence that a skidder crossed the brook at this point, causing siltation in the brook and extending several hundred feet downstream. The skidder crossed a second smaller brook with no crossing devices and rutted in the brook and on the banks of the brook. Staff observed more than 200 feet of wetlands that had been rutted with heavy equipment and had no crossing devices, slash in wetlands, skidder ruts in standing water, and siltation in a stream in the wetlands.

7. By letter dated January 11, 2000, DES informed Mr. Brissette of the violations and asked him to install proper erosion controls but to refrain from conducting further work in the wetlands until he received authorization. Enclosed with the letter was a *"Notification of Forest Management Activities Having Minimum Wetlands Impact"* form ("Forestry Notification form")

8. By letter dated February 8, 2000, Mr. Brissette informed DES that he stopped all logging on the Property on December 21, 1999. With the letter he included a restoration plan for the Property and a completed Forestry Notification form and a dredge and fill application.

9. By letter dated February 14, 2000, DES informed Mr. Brissette that the restoration plan he proposed in his February 8th letter did not adequately address the wetland violations. Staff suggested that Mr. Brissette contact DES to schedule a meeting to discuss the violations and the type of restoration needed for the Property.

10. Mr. Brissette failed to contact DES to schedule a meeting. By letter dated April 21, 2000,

Mr. Brissette submitted a second restoration plan. This plan failed to adequately address the wetlands violations.

11. By letter to Mr. Brissette dated May 8, 2000, DES identified its concerns with the second restoration plan and asked Mr. Brissette to contact DES if he had questions. Mr. Brissette failed to contact DES.

12. By letter dated October 15, 2000, Mr. Brissette submitted a third restoration plan. This plan failed to adequately address the wetlands violations.

13. On November 27, 2000, DES staff inspected the Property with Mr. Brissette. In the inspection report from this inspection, staff noted the wetlands violations and identified what needed to be done to restore the Property. The work was to be completed by November 29, 2000 and Mr. Brissette was to submit documentation that the work was done. At the inspection, staff gave Mr. Brissette a copy of the inspection report and a copy of the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April, 1996 ("the Manual") and discussed them with him.

14. Wt 304.05(b) requires that skid trails and truck roads on logging operations be laid out using appropriate erosion control devices, pursuant to the Manual.

15. Wt 304.05(c) requires culverts, bridges, pole fords, or other crossings devices be installed on skid trails and temporary truck roads at all stream crossings pursuant to the Manual.

16. Mr. Brissette violated RSA 482-A by placing fill in a river without first obtaining a permit from DES.

17. For a violation of RSA 482-A, Env-C 614.05 (b)(4) authorizes a fine of $2,000.

18. Mr. Brissette violated RSA 482-A by disturbing more than 200 linear feet of a river channel and its banks without first obtaining a permit from DES.

19. For a violation of RSA 482-A, Env-C 614.05(c) authorizes a fine of $2,000.

20. Mr. Brissette violated RSA 482-A by rutting through wetlands on the Property without proper crossing devices and left slash in wetlands. These actions constitute a complete disregard for proper forestry practices as set forth in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April, 1996.

21. For a violation of RSA 482-A, Env-C 614.06(f) authorizes a fine of $2,000.

22. None of the factors identified in Env-C 601.06(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in #16, 18, and 20 above, because the burden of proof for these factors is on Mr. Brissette and he did not attend or present evidence at the hearing.

You violated RSA 482-A by conducting unauthorized work in wetlands on the Property

without first obtaining a permit from DES. Thus, for the reasons discussed above, I have concluded that the $6,000 fine imposed against you is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with RSA 541 and Env-C 206.

Very truly yours,

COPY

Asst. Comm.

for Michael P. Nolin
Commissioner

Enclosure

cc: Board of Selectmen, Town of Hancock
Conservation Commission, Town of Hancock
Harry T. Stewart, P.E., Director, Water Division
Jennifer Patterson, DOJ/EPB
Mark Harbaugh, DES Compliance Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney
Marjory Swope, NHACC

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

(a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;

(b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;

(c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;

(d) A clear and concise statement of the specific relief or ruling requested;

(e) A copy of the decision which is the subject of the motion; and

(f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99