The State of New Hampshire

Department of Environmental Services

Michael P. Nolin
Commissioner

Scott M. Costa
d/b/a Comac Pump & Well
13 New Boston Road
Kingston, NH 03848

Re: Well constructed at 176 Stevens Hill Road
Nottingham, NH 03290

NOTICE OF PROPOSED ADMINISTRATIVE FINE

NO. AF 05-091

November 7, 2005

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Scott M. Costa, pursuant to RSA 482-B and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling $500.00 be imposed against Scott M. Costa for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.

2. Scott M. Costa is an individual d/b/a Comac Pump & Well, having a mailing address of 13 New Boston Road, Kingston, NH 03848.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.

2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to $2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.

3. RSA 482-B requires a person to obtain a water well contractor license from the NH Water Well Board ("Board") prior to engaging in the business of constructing a well.

4. Scott M. Costa, apparently doing business as Comac Pump & Well is a licensed water well contractor in the state of New Hampshire, holding license No. 253.

5. On May 19, 2005 DES received a written complaint from Paul Comeau regarding the bedrock well constructed by Mr. Costa at his residence located at 176 Stevens Hill Road in Nottingham, New Hampshire.

6. On July 20th, DES personnel conducted an onsite inspection of the well constructed at the residence of Paul Comeau. Mr. Comeau complained that his water had been dirty with sediment since the well had first been put into use.

7. DES staff also reviewed a video tape of a down-hole camera survey which was submitted with the complaint. The video tape was initially reviewed on July 12, 2005 and again on September 13, 2005. The down-hole camera survey revealed an approximate one foot void between the driveshoe at the end of the casing and the bottom of the 8 inch pilot hole. No impression was observed in the bedrock at the bottom of the 8 inch pilot hole which suggests that the driveshoe was never seated into the bedrock.

8. The void between the driveshoe and the bottom of the 8 inch pilot hole constitutes a violation of We 602.06 (e)(3), which requires well casings to be sealed to bedrock, in bedrock well construction.

IV. Violations Alleged and Proposed Administrative Fine

1. Scott M. Costa has violated We 602.06(e)(3) by constructing a bedrock well and failing to seal the well casing to the bedrock. For this violation, Env-C 616.03(e)(1) specifies a fine of $500 for the first violation.

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, Scott M. Costa is required to respond to this notice. Please respond no later than December 15, 2005 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.

2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.

3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence,** applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.

3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*****IMPORTANT NOTICE*****

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

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Information regarding this proposed fine may be made available to the public via the DES Web page (*www.des.nh.gov*). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

COPY

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

Enclosure *(NHDES Fact Sheet #CO-2002)*

ec: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Esq., NHDOJ/EPB
Anne Edwards, Esq., NHDOJ
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Sarah Pillsbury, Administrator, WSEB
cc: Water Well Board

***** RETURN THIS PAGE ONLY *****

SCOTT M. COSTA IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN December 15, 2005

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of Scott M. Costa:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Scott M. Costa:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of $500 paid to "Treasurer, State of New Hampshire" is enclosed.*

* *If payment is made by a check, draft, 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 original check draft, or money order or $25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

_____ _____
Signature Date

Name (please print or type):_____

Title:_____

Phone:_____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:
DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

ENVIRONMENTAL
Fact Sheet

NEW HAMPSHIRE DEPARTMENT OF Environmental Services

29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2 2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. YOU MUST COMPLETE AND RETURN THIS FORM. The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.