

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

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



Colebrook Village Fire Precinct
P.O. Box 273
Colebrook, NH 03576

Re: Balsams Grand Resort Hotel
1000 Cold Spring Road, Dixville, NH

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 13-017

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and the Colebrook Village Fire Precinct, pursuant to RSA 125-C:15. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources 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. Colebrook Village Fire Precinct is a duly-constituted village district of the State of New Hampshire, established pursuant to RSA 52:1(a), having a mailing address of P.O. Box 273, Colebrook, NH 03576.

III. BACKGROUND

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH CODE ADMIN. RULES Env-A 1000, *Prevention, Abatement, and Control of Open Air Pollution*.
2. RSA 125-C:15, I-b authorizes the Commissioner of DES to impose, on any person, administrative fines up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. The Balsams View, LLC is the owner of real property located at 1000 Cold Spring Road in Dixville, New Hampshire, formerly known as the Balsams Grand Resort Hotel, more particularly described on Coos County Tax Map 1626 as Lot 006.4 (the "Property").

www.des.nh.gov

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(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

4. On January 7, 2013, DES was made aware by various news reports published by media outlets, including the Colebrook Chronicle and the News and Sentinel, that a controlled burn of a building known as "the Inn" or "the girl's dormitory" and an adjacent building known as "the factory," had taken place on January 6, 2013, on the Property.
5. Pursuant to Env-A 1001.04, "Open burning in any part of the state shall be permissible only when the burning: [...] (c) Includes only materials allowed by law or rule to be burned in the open."
6. Env-A 1003.04 provides a limited exception to the restrictions on open burning contained in Env-A 1001 and allows for the open burning of a structure by a sponsoring fire service organization for the purpose of firefighter instruction and training, provided that it is conducted in accordance with Env-A 1003.
7. Env-A 1003.04(b) requires that a state certified fire instructor, as defined in Env-A 1003.03(g), or a specialty instructor, as defined in Env-A 1003.03(e), directly control and supervise the firefighter instruction and training activities that involve open burning.
8. Env-A 1003.05(a) requires the sponsoring fire organization to complete and submit to DES a Form ARD-1003, "Live Fire Instruction and Training Activities Notification" ("Notification"), as specified in Env-A 1003.06, at least 10 days prior to conducting the open burn for firefighter instruction and training purposes.
9. On October 4, 2012, DES received a Notification from Colebrook Village Fire Precinct 10 days in advance, for firefighter instruction and training activities, unrelated to those that occurred on the Property, that were scheduled for October 14, 2012. In the Notification, Colebrook Village Fire Precinct listed Nick Antonucci as the state certified fire instructor.
10. On January 7, 2013, DES personnel called Chief Brett Brooks of Colebrook Village Fire Precinct regarding the open burning on the Property. DES personnel informed Chief Brooks that DES had no record that a Notification was filed for a burn on the Property on that date and asked him if he had completed and filed a Notification with DES. Chief Brooks stated that he had not filed a Notification, that he had been very busy and that it had slipped his mind. Chief Brooks also told DES personnel there was not a state certified instructor present on the Property during the fire instructor and training activities. DES personnel requested that Chief Brooks submit an after-the-fact Notification for the burn on the Property.
11. On January 10, 2013, DES personnel met with Chief Brooks and Daniel Hebert, a member of Balsams View, LLC, at the Property to discuss the open burning. DES personnel observed and photographed the burned remains of the dormitory, the former factory building, and the resulting ash and debris from the burn.
12. During the meeting, Chief Brooks provided a signed after-the-fact Notification. Section "III.D." of the Notification, where the name, telephone number, and the type of instructor (state certified or specialty instructor) must be filled in was left blank. Section "II.C." of the Notification contained a description of the training activities and including the statement: "cold weather drafting and pumping; two evolutions of fire suppression; and observing fire behavior."

IV. ALLEGATIONS

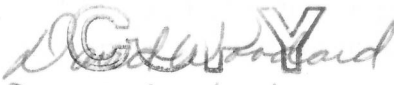
1. Colebrook Village Fire Precinct violated Env-A 1003.05 by failing to complete and submit to DES a Form ARD-1003, "Live Fire Instruction and Training Activities Notification," 10 or more days prior to conducting an open burn for firefighter instruction and training on the Property on January 6, 2013.
2. Colebrook Village Fire Precinct violated Env-A 1003.04(b) by conducting firefighter instruction and training activities on the Property on January 6, 2013, without having a state certified fire instructor or a specialty instructor directly control and supervise the instruction and training activities.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES determined the violation of Env-A 1003.05 to be a major deviation from the requirements with a minor potential for harm, for which RSA 125-C:15, I-b(b) specifies a fine range of \$851 to \$1,500. DES is proposing a fine of \$851 for this violation.
2. DES determined the violation of Env-A 1003.04(b) to be a major deviation from the requirements with a major potential for harm, for which RSA 125-C:15, I-b(b) specifies a fine range of \$1,501 to \$2,000. DES is proposing a fine of \$1,750 for this violation.
3. Colebrook Village Fire Precinct agrees to pay the proposed fine, in the amount of \$2,601, upon the execution of this Administrative Fine by Consent by authorized representatives of Colebrook Village Fire Precinct.
4. Payment pursuant to preceding paragraph shall be 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, 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.
6. By executing this Administrative Fine by Consent, Colebrook Village Fire Precinct waives its right to a hearing on or any appeal of the administrative fines identified herein, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
7. The effective date of this Administrative Fine by Consent will be the date on which it is signed by authorized representatives of Colebrook Village Fire Precinct, the Acting Director of the Air Resources Division, and the Commissioner of DES.
8. 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.

Colebrook Village Fire Precinct, New Hampshire




By: Philip Ducret, Fire Warden
Duly Authorized

Date: 5/16/13



By: Wayne Frizzel, Fire Warden
Duly Authorized

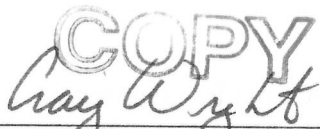
Date: 5/16/13



By: Earl Bunnell, II, Fire Warden
Duly Authorized

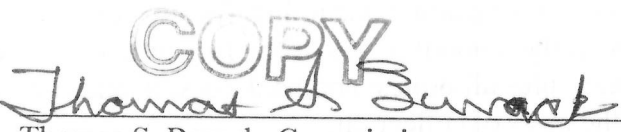
Date: 5-16-13

Department of Environmental Services



Craig Wright, Acting Director
Air Resources Division

Date: 5/20/13



Thomas S. Burack, Commissioner

Date: 5/20/2013

cc: DES Legal Unit
File AFS #3300797777 (Open Burning)

ec: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
E. Kudarauskas, EPA Region 1
Town of Colebrook, New Hampshire
Town of Columbia, New Hampshire
Town of Stewartstown, New Hampshire
Town of Bloomfield, Vermont
Town of Canaan, Vermont
Town of Lemington, Vermont