

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

**Thomas S. Burack, Commissioner**

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



Balsams View, LLC  
12 Pleasant Street  
Colebrook, NH 03576

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

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 13-018**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Balsams View, LLC, 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. Balsams View, LLC ("Balsams View") is a New Hampshire limited liability company, having a mailing address of 12 Pleasant Street, 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. Balsams View 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").
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

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

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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 1003.05(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.
7. Env-A 1001.05 sets forth certain types of open burning that are permissible, including untreated wood only in specific circumstances; and the on-site burning, by the property owner, of brush or leaves, provided the material originates on-site.
8. Pursuant to Env-A 1001.03(j), “untreated wood” means any timber, board or sawn dimensional lumber which has not been treated, coated or preserved. The term does not include any manufactured building material, such as plywood or waferboard.
9. From March 2007 through March 2011, DES received written notification forms for asbestos abatement work to be conducted on the Property by GEM Environmental, Inc, a licensed asbestos abatement entity.
10. On October 19, 2007, March 5, 2009, and October 3, 2012, DES personnel conducted inspections of the Property and determined that the asbestos abatement activities on the Property were in compliance with Env-A 1800.
11. 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.
12. On January 10, 2013, DES personnel met with Chief Brooks and Daniel Hebert, a member of Balsams View, 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.
13. During the meeting, Chief Brooks provided an asbestos abatement project report for the Property that was completed by e-Tech Consulting Services for Balsams View. The report included an asbestos containing materials (“ACM”) survey and air clearance sampling results that were conducted after the abatement projects were completed in the various buildings on the Property, including the factory.

#### **IV. ALLEGATIONS**


Balsams View, LLC violated Env-A 1001.04 by burning non-conforming materials on the Property.

**V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. DES determined the violation of Env-A 1001.04 to be a moderate deviation from the requirements with a minor potential for harm, for which RSA 125-C:15, I-b(b) specifies a fine range of \$601 to \$1,250. DES is proposing a fine of \$1,000 for this violation.
2. Balsams View agrees to pay the proposed fine, in the amount of \$1,000, upon the execution of this Administrative Fine by Consent by an authorized representative of Balsams View.
3. 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.**
4. 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.
5. By executing this Administrative Fine by Consent, Balsams View 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.
6. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Balsams View, the Acting Director of the Air Resources Division, and the Commissioner of DES.
7. 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.

**Balsams View, LLC**

  
By: Daniel Hebert, Member  
Duly Authorized

  
Date:

**Department of Environmental Services**

**COPY**  
*Craig Wright*  
\_\_\_\_\_  
Craig Wright, Acting Director  
Air Resources Division

*5/8/13*  
\_\_\_\_\_  
Date

**COPY**  
*Thomas S. Burack*  
\_\_\_\_\_  
Thomas S. Burack, Commissioner

*5/9/2013*  
\_\_\_\_\_  
Date

cc: DES Legal Unit  
File AFS #330079777  
(Open Burning)

ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
E. Kudarauskas, EPA Region 1  
Colebrook Select Board c/o Becky Merrow, Town Manager  
Colebrook Village Fire Precinct