

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

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NOTICE OF DECISION

**MARY E. MALONEY, ESQ
NH ATTORNEY GENERALS OFFICE
33 CAPITOL STREET
CONCORD NH 03301-6397**

Case Name: **State of NH, Dept of Environmental Services v JMD Industries, Inc**
Case Number: **226-2015-CV-00206**

Please be advised that on May 01, 2015 Judge Garfunkel made the following orders relative to:

Assented to Motion to Enter Consent Decree

"After review, motion granted."

And

Proposed Consent Decree

"I hereby enter this Consent Decree as an Order of the Court."

May 05, 2015

Marshall A. Buttrick
Clerk of Court

(574)

C: George Dana Bisbee, ESQ

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire
Department of Environmental Services

v.

JMD Industries, Inc.

Docket No.: _____

CONSENT DECREE

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter "State" or "Department"), by and through its attorneys, the Office of the Attorney General, and the Respondent, JMD Industries, Inc. ("JMD"), by and through its attorneys, Devine, Millimet & Branch, P.A. and hereby agree to the following settlement of claims asserted by the State in this case.

A. INTRODUCTION

1. The Department, located at 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire, 03301-0095, is the State agency responsible for the administration and enforcement of New Hampshire's Hazardous Waste Management Act, RSA chapter 147-A, and the administrative rules adopted thereunder.

2. RSA 147-A:17, I, authorizes the State to seek a civil forfeiture of up to fifty thousand dollars (\$50,000.00) against a person for each day of each continuing violation of any provision of RSA 147-A or any rules adopted relative to RSA 147-A.

3. Respondent, JMD Industries, Inc. is a Massachusetts corporation with its principal office and mailing address at One Park Avenue, Hudson, New Hampshire 03051.

JMD conducts metal finishing operations at two facilities in Hudson, New Hampshire. One facility is located at One Park Avenue, and the other facility is located at 4 Industrial Drive in Hudson, New Hampshire.

4. Concurrently with the submittal of this Consent Decree, the State is filing with the Hillsborough County Superior Court, Southern District, a Petition for Civil Penalties against JMD, alleging specific violations of RSA chapter 147-A and the rules adopted thereunder.

5. The State and JMD, wishing to avoid the expense of litigation, agree, without adjudication of the facts or law, that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve any dispute.

6. The State and JMD consent to entry of this Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

B. JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties and this action pursuant to RSA 147-A:4, RSA 147-A:9 and RSA 147-A:17 (2005). Venue is proper in this county because the JMD is located in Hudson, New Hampshire.

C. CIVIL FORFEITURE

8. JMD shall be assessed a total civil forfeiture of two hundred ninety-two thousand five hundred dollars (\$292,500.00), in exchange for a release and full settlement of the specific violations alleged in the Petition relating to hazardous waste statutes, rules, and permits committed at the JMD facilities located at One Park Avenue, and 4 Industrial Drive in Hudson, New Hampshire.

9. The total civil forfeiture provided by this Decree shall be satisfied through a combination of cash payments totaling two hundred and thirty-seven thousand dollars (\$237,000.00), the performance of third-party hazardous waste audits, at a cost of twenty-four

thousand five hundred (\$24,500), and one (1) pollution prevention and conservation project, at a total cost of thirty-one thousand dollars (\$31,000).

10. The cash payment portion of the total civil forfeiture of two hundred thousand dollars (\$237,000) shall be deposited into the State's Hazardous Waste Cleanup Fund, established by RSA 147-B, in the following manner. JMD shall pay four installments of fifty-nine thousand and two hundred and fifty dollars (\$59,250.00) over four years beginning on June 1, 2015 and each June 1 thereafter with the final payment to be made on June 1, 2018.

11. The cash payment due to the State under this Decree shall be due and payable without any demand from the State. The payment shall be delivered by hand or certified mail to the Office of the Attorney General, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire, 03301, Attn: Mary E. Maloney, Assistant Attorney General. JMD shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1, I.

12. In addition, JMD agrees to undertake series of five (5) third-party hazardous waste audits over the course of three (3) years, at a minimum cost to JMD of \$24,500.00. JMD will contract a qualified third-party hazardous waste consulting firm (*i.e.*, auditors are DES Certified Hazardous Waste Coordinators) to perform two (2) audits in the first year with submittal dates of June 30 and December 31, 2015; two (2) audits in the second year with submittal dates of June 30 and December 31, 2016 and one (1) audit in 2017 with a submittal date of June 30, 2017 for a total of five (5) audits over the course of three (3) years, commencing within sixty (60) days of the Court Approval of the Consent Decree.

13. The audits will assess compliance with all applicable hazardous waste management requirements and will include completion of the Department's Hazardous Waste

Generator RCRA Inspection Checklist and associated modules. All reports generated by the audits, including completed copies of the Hazardous Waste Generator RCRA Inspection Checklist and associated modules, shall be submitted to the Department within 30 days of the date the audit was conducted. The audit reports must be submitted by the third-party hazardous waste consulting firm to the Department simultaneously with the submission of audit results to JMD. Failure to complete the audits will result in the payment of the remaining audit costs to the State's Hazardous Waste Cleanup Fund. JMD shall submit copies of purchase orders and receipts or cancelled checks to demonstrate the expenses incurred. If the final cost of the audits does not reach the \$24,500.00 commitment, then any difference will be paid to the State of New Hampshire Hazardous Waste Cleanup Fund, sixty (60) days after the deadline for completion of the audits, by the same method outlined under paragraph #11.

14. Audit results and reports pursuant to paragraph #12 shall be mailed to NH DES, Waste Management Division, Attn. Robert Bishop, Enforcement Manager, Hazardous Waste Management Bureau, P.O. Box 95, Concord, NH 03302-0095.

15. Further, JMD will commit to invest additional funds over the next eighteen months totaling approximately thirty-one thousand dollars (\$31,000.00) in a pollution prevention and conservation project, that being, a Sulfuric Acid Recovery System to be installed at the One Park Avenue facility at a cost of thirty-one thousand dollars (\$31,000.00). See Appendix A.

16. This project must be completed with eighteen months of the approval of the Consent Decree by the Court. JMD will submit written compliance verification to DES within 5 days of installation of the Sulfuric Acid Recovery System. Failure to complete this project will result in the payment of the remaining costs to the State. JMD shall submit copies of purchase orders and receipts or cancelled checks for these projects to demonstrate the expenses incurred. If the final cost of the project does not reach the \$31,000.00 commitment, then any difference will be paid to the State of New Hampshire Hazardous Waste Cleanup Fund, sixty (60) days after

the deadline for completion of the projects as indicated above, by the same method outlined under paragraph #11.

D. OTHER TERMS AND CONDITIONS

17. The Department, by and through the Attorney General, releases and covenants not to sue or take any administrative action against JMD and its successors and assigns for the violations alleged in the Petition or for violations that might have been alleged based on specific material facts alleged in the Petition, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative actions against JMD and its successors and assigns with regard to claims or liability for violations not alleged in the State's Petition and JMD reserves any and all defenses with regard to such State claims. The State and JMD each also reserves the right to bring an action to enforce the terms of this Decree.

18. The parties acknowledge that JMD and its successors and assigns have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to its facility. The State reserves the right to bring any administrative, civil, or criminal action for any hazardous waste, solid waste, or other environmental violation arising after the effective date of this Decree. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree. JMD reserves any and all defenses with regard to such State claims.

19. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. JMD acknowledges that any violation of the Decree or the agreements reflected herein may be cause for JMD being adjudged in contempt of court and hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

20. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

21. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both JMD and the State, acting through the Attorney General's Office, and filed with the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules established by this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

22. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

23. This Decree shall be construed in accordance with the laws of New Hampshire.

24. Each party shall bear its own costs and attorneys' fees.

25. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall act upon the case upon motion by either party for enforcement of its terms.

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THE STATE OF NEW HAMPSHIRE

By its attorney,
JOSEPH A. FOSTER
ATTORNEY GENERAL

Dated: April 28, 2015

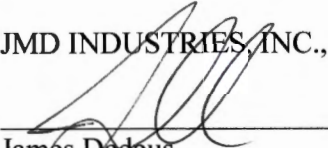
By: 

Mary E. Maloney, N.H. Bar # 1603
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3679

Dated: April __, 2015

JMD INDUSTRIES, INC.,

By:


James Dedeus
President
JMD Industries, Inc.
One Park Ave.
Hudson, New Hampshire 03051

Dated: April 24, 2015

COUNSEL FOR JMD Industries, Inc.

George ~~Dana~~ Bisbee

By:


George Dana Bisbee, N.H. Bar #557
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester NH 03101
(603) 695-8626

I hereby enter this Consent Decree as an Order of the Court.

Dated and entered this _____ day of _____, 2015. _____

Justice of the Superior Court