

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

Rockingham Superior Court  
Rockingham Cty Courthouse/PO Box 1258  
Kingston NH 03848-1258

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<http://www.courts.state.nh.us>

**NOTICE OF DECISION**

**File Copy**

**Case Name: State of New Hampshire Department of Environmental Services v New  
England Dragway, Inc.**  
**Case Number: 218-2017-CV-00430**

Enclosed please find a copy of the court's order of May 01, 2017 relative to:

Consent Decree

May 11, 2017

Maureen F. O'Neil  
Clerk of Court

(595)

C: Christopher G. Aslin, ESQ; Anthony P. Estee, ESQ

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

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344  
2003  
SUPERIOR COURT  
03325 A 510

Docket No. \_\_\_\_\_

State of New Hampshire  
Department of Environmental Services  
29 Hazen Drive,  
P.O. Box 95  
Concord, New Hampshire 03302-0095

v.

New England Dragway, Inc.  
280 Exeter Road,  
Epping, New Hampshire 03042

**CONSENT DECREE**

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter the "State" or the "Department"), by and through its attorneys, the Office of the Attorney General, and the Respondent, New England Dragway, Inc. (hereinafter "NED" or "Respondent"), represented by their counsel, Anthony P. Estee, Esq., The Law Office of Anthony Estee, P.L.L.C., and hereby agree to the terms and conditions set forth in this Consent Decree ("Decree"), as ordered by the Superior Court for Rockingham County, in settlement of the wetlands and alteration of terrain violations alleged by the State in its Petition for Civil Penalties ("Petition") filed concurrently with this Decree.

**A. INTRODUCTION**

1. This Decree resolves all violations of New Hampshire statutes and rules for wetlands and alteration of terrain alleged in the State's Petition; in particular, certain violations of the New Hampshire Wetlands Act, under RSA Chapter 482-A and the administrative rules promulgated thereunder, and the New Hampshire Water Pollution and Waste Disposal Act,

under RSA Chapter 485-A and the administrative rules promulgated thereunder. The State's Petition alleges, among other things, that NED violated state law and regulation by disturbing approximately 400,000 square feet (9.18 acres) of land, including approximately 155,611 square feet (3.56 acres) of wetlands with required dredge and fill and alteration of terrain permits from the Department.

2. The Petition seeks civil penalties for the alleged violations of RSA 482-A:3 and RSA 485-A:17.

3. There has been no trial on any issue of fact or law in this matter and no judicial determination of liability. Instead, the State and the Respondent, wishing to avoid the expense of litigation, and in an effort to work cooperatively in resolving this matter, agree 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 the dispute, and the parties consent to the entry of this Decree as an Order of the Court.

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

**B. JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to RSA 491:7, RSA 498:1, RSA 482-A:14 and RSA 485-A:22. Venue is proper in this Court because the property where the alleged violations occurred is located in the Town of Epping, Rockingham County, New Hampshire.

5. For purposes of this Decree and the underlying Petition, including any further action to enforce the terms of this Decree, NED waives any and all objections it may have to the Court's subject matter or personal jurisdiction. NED also agrees that its undersigned counsel will accept service of the Petition.

### C. CIVIL PENALTIES

6. In complete settlement and resolution of the claims brought by the State against NED in the Petition, NED agrees to pay the State a civil penalty of two hundred fifty thousand dollars (\$250,000.00).

7. Of the two hundred fifty thousand dollar civil penalty, one hundred thousand dollars (\$100,000.00) shall be remitted to the State as set forth below in Paragraphs 9-11.

8. One hundred fifty thousand dollars (\$150,000) of the assessed civil penalty shall be suspended, but shall become immediately due if:

- a. The Respondent violates any provision of RSA chapter 482-A, RSA chapter 485-A, or the administrative rules promulgated pursuant to RSA chapter 482-A or RSA chapter 485-A, during the five-year period beginning on the date of the entry of this Consent Decree as an order of the Court, or;
- b. The Respondent violates any provision of this Consent Decree, including, but not limited to, the timely payment of the civil penalties.

9. The non-suspended civil penalty shall be paid by NED in five installments. The first installment of fifty thousand dollars (\$20,000.00) shall be remitted to the State not later than September 15, 2017.

10. The remaining four installments of twenty thousand dollars (\$20,000.00) each shall be remitted to the State annually no later than September 15 of each year beginning in 2018.

11. Payment of the civil penalties due under Paragraphs 6-10, above, shall be made by company check payable to "Treasurer, State of New Hampshire" and shall be mailed or delivered to undersigned counsel for the State at 33 Capitol Street, Concord, New Hampshire,

03301.

12. Any late payments under this Consent Decree shall be assessed interest at an annual rate of 10%, compounded daily, from the date the payment is due until the date the payment is received by the State (RSA 336:1).

**D. OTHER TERMS AND CONDITIONS**

13. This Consent Decree and all obligations assumed hereunder shall apply to and be binding upon the Respondent, its successors and assigns. Actions or inaction of the Respondent's agents, acting under or for the Respondent, shall be considered actions or inactions of the Respondent.

14. The State reserves any and all legal and equitable remedies, sanctions and penalties that might be available to enforce the provisions of this Consent Decree against the Respondent for failure to comply with the terms herein. The provisions of this Paragraph 14 shall survive beyond the termination of this Consent Decree.

15. If the civil penalties set forth in Paragraphs 6-11 of this Consent Decree are not paid in accordance with the schedule set forth therein, then, with respect to such penalty or penalties, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection statutes, court rules and other applicable authorities.

16. The parties acknowledge that NED and its successors and assigns have a continuing obligation to remain in compliance with RSA chapter 482-A and RSA chapter 485-A and all other applicable federal and state laws, rules and permits relating to its property. The State reserves the right to bring an administrative, civil, and/or criminal enforcement action for any violation of wetland or water pollution statutes, rules and permits 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.

17. 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. Upon entry of the order by the Court, NED acknowledges that any violation of the Decree or the agreements reflected herein may be cause for NED being adjudged in contempt of court and NED hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

18. 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.

19. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both NED and the State, acting through the Office of the Attorney General, and approved of by an order of 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.

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

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

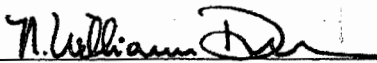
22. Each party shall bear its own costs and attorneys' fees.

23. Upon approval and entry of this Consent Decree, the Consent Decree shall constitute a final judgment under state and federal law, and in any proceeding under Title 11 of the United States Code, the civil forfeiture set forth in Paragraphs 6-11 shall constitute an allowed claim with the priority specified in 11 U.S.C. §726(a)(2).

The Court finds that this Decree is a reasonable and fair settlement and adequately protects the public interest in accordance with the Wetlands Act, RSA chapter 482-A and the Water Pollution and Waste Disposal Act, RSA chapter 485-A.

Dated and entered this 1<sup>st</sup> day of May, 2017.

SO ORDERED.

By:   
Presiding Justice of the Superior Court

**E. TERMINATION OF THE DECREE**

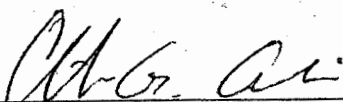
24. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder, as may be necessary or appropriate for the construction, execution or implementation of the Decree, and shall reopen the case upon motion by either party for enforcement of its terms. The Decree shall terminate after a determination by the State or the Court that NED has fulfilled all of its obligations under Section C of the Decree.

Respectfully submitted,

**THE STATE OF NEW HAMPSHIRE**

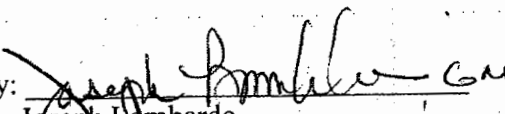
~~JOSEPH A. FOSTER~~ Gordon J. MacDonald  
**ATTORNEY GENERAL**

Dated: 4/21/17

By:   
Christopher G. Aslin (N.H. Bar # 18285)  
Assistant Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
Concord, New Hampshire 03301  
(603) 271-3679


**NEW ENGLAND DRAGWAY, INC.**

Dated: 4/11/17

By:   
Joseph Lombardo  
President General Manager  
New England Dragway, Inc.  
280 Exeter Road,  
Epping, New Hampshire 03042

**COUNSEL FOR NEW ENGLAND DRAGWAY, INC.**

Dated: 4/11/17

By:   
Anthony P. Estee, Esq. N.H. Bar # \_\_\_\_\_  
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Candia, NH 03034  
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