



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

Kevin Price  
d/b/a "Ossipee Lake Marina"  
65 Marina Road  
Freedom, NH 03836

Re: Wetlands File Nos. 1988-01437/ 2007-01922

**ADMINISTRATIVE ORDER  
No. 08-050 WD**

December 9, 2008

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Kevin Price pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Kevin Price is an individual having a mailing address of 65 Marina Road, Freedom, NH 03836. Kevin Price is apparently doing business as "Ossipee Lake Marina," a trade name that was forfeited in 2002 according to records maintained by the New Hampshire Secretary of State.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III, provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. Pursuant to Env-Wt 101.28, "dock" as a noun means "a structure intended for securing of watercraft and/or to discharge and load passengers, freight, and other goods whether the structure is in the water or not."

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

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

5. Pursuant to Env-Wt 101.79, "seasonal dock or seasonal structure" means a "dock and any associated supports designed to be completely removed from the water during the non-boating season and includes pipe docks or floating docks."

6. Pursuant to Env-Wt 402.02(a)(2), "dimensions" means "in lakes and ponds of less than 1,000 acres, for all docks a deck width of 6 feet and a deck length of 30 feet, measured from the normal high water mark."

7. Pursuant to Env-Wt 101.55 "Marina" means "a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft."

8. Pursuant to Env-Wt 402.15(a) "Any new docking facility or additional docking or similar improvement, excluding repairs or replacements without expansion, that has any portion under commercial use shall comply with all local landuse controls for marinas, or appropriate non-residential land-use classification."

9. Pursuant to Env-Wt 402.15(b) "The applicant shall submit a copy of the local permit or approval, or a letter from the applicable local land use board or local governing body indicating that a permit or approval is not required under local regulations, to the department with the application or otherwise prior to the department making a decision on the application."

10. Pursuant to Env-Wt 402.21 "Modification of Existing Structures" means "The department shall not approve any change in size, location, or configuration of an existing structure unless the applicant demonstrates, and the department finds, that the modification is less environmentally-impacting or provides for fewer boat slips and less construction surface area over public submerged lands than the current configuration."

11. Pursuant to Env-Wt 101.53 "Major docking system" means "a large and complex docking facility that requires utilization of more than 100 feet of waterfront or provides a total of 5 or more boat slips, including those previously existing and proposed."

12. Kevin Price is the owner of property more particularly described on the Town of Freedom Tax Map 31 as Lot 41 (the "Property") The Property was previously identified on Freedom Tax Map 31 as Lots 41, 41-1, 41-2, 41-3, and 42. The identified lots were merged on October 17, 2002 as approved by the Town of Freedom Planning Board and recorded in Carroll County Registry of Deeds on November 6, 2002, at Book 2080, Page 159 under the name of Ossipee Realty Corp. with the signature of the landowner identified as Kevin Price.

13. DES records show that on July 12, 1988, Mr. and Mrs. Barnickel, d/b/a Bayview Marina submitted to the Wetlands Board a petition requesting a declaratory judgment pertaining to 66 boat slips located on the Property. Wetlands File #1988-01437 was assigned to the matter. DES approved Wetlands Permit #1988-01437 (the "Permit") on December 27, 1988, to retain 66 seasonal boat slips and a fuel dock on the Property per plans labeled "Plan of Dock I" and "Plan of Dock II & III" prepared by Horst Barnickel as received by DES on October 25, 1988.

14. The Permit approved the following dimensions and configurations for docks on the Property:
  - a. Dock I measured approximately 127 feet 6 inches long by 28 inches wide with twenty five 14 foot long by 1 foot wide finger piers providing 25 boat slips.
  - b. Dock II measured approximately 80 feet long by 28 inches wide with seventeen 14 foot long by 1 foot wide finger piers providing 18 boat slips.
  - c. Dock III measured approximately 94 feet long by 28 inches wide with twenty one 14 foot long by 1 foot wide finger piers providing 22 boat slips.
  - d. The fueling dock measured approximately 14 feet wide over the water on the southern end, 17 feet over the water on the north side and 39 feet along the eastern, lakeside.
  
15. On July 31, 2007, DES received a complaint alleging that the docking structures on the Property did not conform to the Permit.
  
16. On August 24, 2007, DES received a Wetlands Bureau application from Kevin Price d/b/a Ossipee Realty Corp. (the "Applicant") requesting to construct retaining walls along the shoreline integrated with planting vegetation to manage stormwater runoff. Wetlands File #2007-02038 was assigned to the matter. According to records obtained from the New Hampshire Secretary of State's Office, Ossipee Realty Corp. was administratively dissolved on September 1, 2006.
  
17. On October 25, 2007, DES issued a Request for More Information to the Applicant requesting among other things, accurate plans of the docking structures on the Property.
  
18. On February 15, 2008, Zachery Berger Associates, Inc. submitted information to the Wetlands Bureau to address DES' Request for More Information on behalf of the Applicant. This information included a stamped survey plan of the Property prepared by White Mountain Survey Company dated June 14, 2002 which documented three existing wooden docks and one fueling dock with the following dimensions:
  - a. Dock I measured approximately 159 feet long by 3 feet wide with fourteen 12 foot long by 1 foot wide finger piers in a modified "t" configuration providing 28 boat slips.
  - b. Dock II measured approximately 108 feet long by 3 feet wide with ten 12 foot long by 1 foot wide finger piers in a modified "t" configuration providing 20 boat slips.
  - c. Dock III measured approximately 118 feet long by 3 feet wide with twelve 12 foot long by 1 foot wide finger piers in a modified "t" configuration providing 22 boat slips.
  - d. The fueling dock measured approximately 15 feet over the water on the south side, 21 feet over the water on the north side and 46 feet along the eastern side.

The three wooden docks and fueling dock documented by White Mountain Survey Co. did not match the Permit and the approved plans.

19. On March 21, 2008, DES denied Wetlands Permit application #2007-02038 for failing to document that the docking structures were legally constructed on the Property.
20. On April 2, 2008, Kevin Price submitted a letter to DES, in which he demonstrates knowledge of the Permit and the approval for 66 boat slips and a fueling dock.
21. On June 5, 2008, DES personnel inspected the Property and documented the following:
  - a. Dock I measured approximately 159 feet long by 4 feet wide with fourteen 14 foot long by 1 foot wide finger piers in a modified "t" configuration providing 28 boat slips; and
  - b. Dock II measured approximately 105 feet 6 inches long by 4 feet wide with ten 14 foot long by 1 foot wide finger piers in a modified "t" configuration providing 20 boat slips; and
  - c. Dock III measured approximately 118 feet long by 4 feet wide with twelve 14 foot long by 1 foot wide finger piers in a modified "t" configuration providing 22 boat slips; and
  - d. The fueling dock measured approximately 21 feet 8 inches on the south end, 22 feet on the north end with a width of 46 feet 3 inches along the eastern, lake side; and
  - e. Along the southeasterly shoreline on the Property, DES documented 8 boats secured to the shoreline. There were two docks, one measuring approximately 3 feet 4 inches wide by 30 feet long and the second measuring approximately 3 feet wide by 12 feet long with a 16 foot by 7 foot 8 inch wide platform on the lakeward end providing four boat slips. Four additional boats were anchored or otherwise secured to the shoreline at the time of the inspection.
22. DES has no record of an application or approved permit for the alterations to the seasonal docks, the fueling dock or the addition of boat slips on the Property.

#### **D. DETERMINATION OF VIOLATIONS**

1. Kevin Price violated RSA 482-A:3, I, by expanding a major docking facility to provide for 78 boat slips without a permit from DES.
2. Kevin Price violated RSA 482-A:3, I, by modifying a major docking facility by changing the location and configuration of seasonal docks without a permit from DES.
3. Kevin Price violated RSA 482-A:3, I, by modifying a major docking facility by changing the configuration of the permanent fueling dock without a permit from DES.

#### **E. ORDER**

Based on the above findings and determinations, DES hereby orders Kevin Price as follows:

1. **Within 10 days of the date of this Order** Kevin Price shall remove all seasonal docking structures and their supports from Ossipee Lake and the lakebed on the Property.

2. **Within 15 days of the date of this Order** Kevin Price shall provide photographic documentation to DES which shows that all seasonal docking structures and supports have been removed.
3. Prior to installing any docking structures or securing any boats in and on Ossipee Lake at a future date on the Property, Kevin Price shall **submit**:
  - a. documentation to DES verifying that the installation of docking structures on the Property will conform to the Permit; or
  - b. a completed Wetlands Bureau application requesting to alter the location and configuration of the docking structures pursuant to Env-Wt 400.
4. Kevin Price shall **install** all docking structures in conformance with Wetlands Permit #1988-01437, **only**, unless amended or superseded.
5. Kevin Price shall send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Jeffrey D. Blecharczyk, Shoreland Compliance Coordinator  
DES Water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: Jeffrey.Blecharczyk@des.nh.gov


#### F. APPEAL

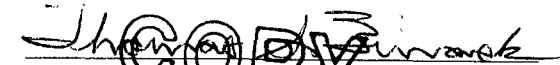
Any person aggrieved by this Order may appeal the Order to the Wetlands Council by filing an appeal that meets the requirements specified in NH CODE ADMIN. RULES Env-WtC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://des.nh.gov/organization/commissioner/legal/rules/index.htm> (scroll to end of page). Appealing the Order does not automatically relieve Kevin Price of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Kevin Price remains obligated to comply with all applicable requirements. DES will continue to monitor his compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.

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

  
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Thomas S. Barack, Commissioner  
Department of Environmental Services

CERT: 7007 3020 0000 5320 6814

cc: DES Legal Unit ✓  
Freedom Select Board and Conservation Commission  
Freedom Planning Board and Building Department

ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau