

FINAL DRAFT
for COMMENT
STATE OF VERMONT
PERIOD

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

Natural Resources Board,
Petitioner

ADMINISTRATIVE ORDER

v.

Curran-Birge Real Estate Partnership,
Respondent

Having found that Curran-Birge Real Estate Partnership (Respondent) committed a violation as defined in 10 V.S.A. § 8002(9), the Natural Resources Board ("the Board"), pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATION

Failure to comply with Land Use Permit 2S1314 (Altered), condition 12

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns approximately 8.25 +/- acres identified in Book 495, Page 51 of the land records of Springfield Vermont ("the Project Tract").
2. The Project Tract includes the Vermont Packinghouse facility and is subject to Land Use Permit 2S1314 (Altered) ("the Permit").
3. The Permit specifically authorized the construction of a 3,200-square foot hoop barn to hold livestock for a short duration (6-36 hours) before processing as well as internal renovations to the 43,000-square foot warehouse to accommodate the new food processing activities ("the Project").
4. Respondent held animals on the Project Tract on Saturday April 22, 2017 and Sunday, April 23, 2017. See **Exhibit A- email**.
5. Condition 12 ("Condition 12") of the Permit states:

Slaughter will occur five days a week at peak production rates.
There will not be animals on the premises on the weekends.
The Commission shall retain jurisdiction over Criterion 8 Aesthetics and will allow the Permittee to file an amendment request for

additional operating times after November 1, 2016. The Commission's decision whether to grant additional operating times shall be largely dependent on whether the operation has been successful at not causing significant aesthetic problems for the residential neighbors. (Emphasis added).

See **Exhibit B- Permit (Altered) and FOF**.

6. Significant concern over aesthetic impacts (including noise) from the Project warranted the District Commission's inclusion of Permit Condition 12.
7. During the Permit proceedings, Respondent unsuccessfully petitioned the District Commission to alter Condition 12 and Respondent did not appeal the Permit. See **Exhibit C- Decision on Motion to Alter**.
8. Respondent's record of compliance includes the following adjudicated violations as defined in 10 V.S.A. § 8002:
 - a. Court Order issued December 5, 2016 for violation of Condition 10 of the Permit regarding idling of trucks. **Exhibit D- Order and Citation 12-5-2016**.
 - b. Court Order (Amended) issued January 20, 2017 for violation of Condition 14 of the Permit related to unlawful offal (animal remains) storage. **Exhibit E- Order and Citation 1-20-2017**.
9. Beyond adjudicated violations, the following history informs the Board's decision to issue an Administrative Order:
 - a. Respondent held animals on the Project Tract on the weekend of January 20, 2017. **Exhibit F- Email**.
 - b. In response to the above, the Board issued a Notice of Alleged Violation on January 31, 2017 for failure to comply with Condition 12 of the Permit. **Exhibit G- NOAV**.
 - c. On Friday, April 7, 2017 Respondent's representative, Arion Thiboumery, informed the Board that livestock would be held over the weekend. **Exhibit H- Email**.
 - d. At 11:59 PM, on Friday, April 21, 2017 Respondent's representative, Arion Thiboumery, informed the Board that livestock were going to be held onsite over that weekend. **Exhibit A- email**.

10. Based on 10 V.S.A. § 8010 and the Environmental Administrative Penalty Rules, the Board has assessed an initial penalty of \$ 4,400.00 exclusive of any economic benefit. The Board reserves its right to present evidence of economic benefit and request an addition to the penalty in accordance with 10 V.S.A. § 8010 (c)(2) and evidence presented at hearing, should a hearing be held. **Exhibit I- Penalty Calculation.**
11. By holding animals on the premises on the weekend of April 22-23, 2017, Respondent violated Condition 12 of Land Use Permit 2S1314 (Altered).

Subsequent Events:

12. District Environmental Commission issued a Land Use Permit Amendment to Respondent dated August 1, 2017 and issued a Ruling on Motion to Alter the -1 Permit Amendment dated September 7, 2017. **Exhibit J- Decision on Motion to Alter -1.**
13. The Land Use Permit Amendment and Ruling on Motion to Alter still provides that “No animals are allowed on site on Saturdays or Sunday mornings unless a bona fide emergency exists”, which is limited to “circumstance clearly beyond the control of the delivering facility and their driver.”

ORDER

- A. Respondent shall comply with Land Use Permit series 2S1314 (altered) (the “Permit series”).
- B. The Respondent shall cease any and all operations at the Project Tract no later than **March 30, 2018**, unless and until an Emergency Action Plan (“the Plan”) has been filed and approved by the Vermont Agency of Agriculture, Food and Markets (VAAFAM).
- C. The Plan shall provide, at minimum, a series of steps and alternatives that must be implemented to avoid a violation of the Permit series (specifically, condition 12 as revised by Land Use Permit Amendment 2S1314-1, Condition 3.) and any relevant state and federal laws when an unanticipated processing or operational emergency would prohibit Respondent from processing the animals in accordance with the Permit series. The Plan shall include the following:
 1. The circumstances that are likely to arise that have the potential to result in animals being held on the premises on the weekend in violation of the Permit Series,

2. The actions that the Respondent will take to manage each of these circumstances in order to avoid animals being held on the premises on the weekend, and
 3. Contact information for all persons whom the Respondent may depend upon to fully execute the Plan.
- D. **Within 30 days** of the Plan's approval by the VAAF, Respondent shall file the Plan with the District 2 Environmental Commission for incorporation into the Permit series. Incorporation of the Plan may be accomplished as an Administrative Amendment pursuant to Act 250 Rule 34(D), unless the District Commission determines an Amendment application is required.
- E. No later than **30 days** following the receipt of this Order, Respondent shall pay the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$4,400.00** for the violations noted herein, by check made payable to the "State of Vermont".
 2. pursuant to 10 V.S.A. § 8010(e)(2), the amount of **\$ 476.58** to reimburse the Natural Resources Board for the costs of this enforcement action, by check made payable to the "State of Vermont."
 3. the amount of **\$ 10.00** to pay the recording fee for the filing of a notice of this Administrative Order in the Town of Springfield land records, by check made payable to the "Town of Springfield, Vermont."
- F. All payments under this Order shall be sent to:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- G. The Board reserves the right to augment the above stated penalties through evidence presented at hearing, if such a hearing is held. In accordance with 10 V.S.A. §8010, the penalties may be increased by the costs incurred by the Board for the enforcement of the described violation, the amount of economic benefit gained by the Respondents from the violation, the need for deterrence, and any and all other penalty factors

enumerated in 10 V.S.A. § 8010(b), each according to proof at the hearing.

- H. Any payment by the Respondent pursuant to this Administrative Order is made to resolve the violations set forth in this Administrative Order and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Administrative Order from Respondent's state or federal taxes.

RESPONDENT'S RIGHT TO A HEARING BEFORE THE SUPERIOR COURT, ENVIRONMENTAL DIVISION

Pursuant to 10 V.S.A. §8012, Respondent has the right to a hearing before the Superior Court, Environmental Division concerning this Administrative Order, if Respondent files a Notice of Request for Hearing within 15 days of the date Respondent receives this Administrative Order. The Notice of Request for Hearing must be filed with both the Natural Resources Board and the Environmental Division at the following addresses:

Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201

Superior Court
Environmental Division
32 Cherry Street, 2nd Floor, Suite 303
Burlington, VT 05401

If a hearing is requested, the Natural Resources Board reserves the right to seek additional penalties for additional costs of enforcement and other relevant penalty factors. 10 V.S.A. § 8010(b).

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order is effective as to Respondent on the date it is received by Respondent pursuant to 10 V.S.A. § 8008 (a). However, if Respondent files a Notice of Request for Hearing within **fifteen (15) days** of the date such Respondent receives this Administrative Order, such filing shall stay all of the provisions of this Administrative Order as to Respondent, pending a hearing by the Environmental Division. 10 V.S.A. § 8012 (d). Unless Respondent files a timely Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order as to Respondent when this Administrative Order is filed with and signed by the Environmental Division.

COMPLIANCE WITH A JUDICIAL ORDER

If this Administrative Order becomes a Judicial Order and Respondent fails or refuses to comply with the conditions of that Judicial Order, the Natural Resources Board shall have cause to initiate an enforcement action against such Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211 and assess penalties separately.

Dated this 3 day of January, 2018

**FINAL DRAFT for
COMMENT PERIOD**



Diane B. Snelling, Chair
Natural Resources Board

Exhibit A

From: Arion Thiboumery
To: [Gill, Peter](#); [Brondyke, Aaron](#)
Cc: [Nate Stearns](#); [Mark Curran](#)
Subject: Re: Livestock Movement
Date: Friday, April 21, 2017 11:59:30 PM

Hello Pete and Aaron,

Sorry for the late notice. We are again in a situation where we are down with livestock on site due to an equipment installation delay. We have been undergoing major renovations during the evenings and weekends and not everything always goes quite as smoothly as one would like it.

We have been in contact with the State Veterinarian's office, they are aware of the situation, and strongly recommended not removing the livestock.

Wanted to make you aware of the situation.

Now that the ground has thawed, we anticipate having all information in to the District Commission for our permit revision application within 2 weeks.

Please let me know if you have any questions.

Thanks,
Arion

On Apr 7, 2017, at 3:48 PM, Arion Thiboumery <arion@vermontpackinghouse.com> wrote:

Pete and Aaron,

We find ourselves in a similar situation again to this past January with regards to livestock being in the barn and us unable to process them yet today. We are working as quickly as possible to resolve the issue. Per below, we have been in touch with the State Veterinarian's office and they have strongly advised against transport.

Wanted to make you aware of the situation.

Please let me know if you have any questions.

Arion

Begin forwarded message:

From: "Mehlenbacher, Shelley" <Shelley.Mehlenbacher@vermont.gov>
Subject: Livestock Movement

Date: April 7, 2017 at 2:06:08 PM EDT

To: "ARION@VERMONTPACKINGHOUSE.COM"

<ARION@VERMONTPACKINGHOUSE.COM>

Cc: "Mehlenbacher, Shelley" <Shelley.Mehlenbacher@vermont.gov>

To Whom It May Concern,

I have been contacted by Vermont Packinghouse regarding a group livestock located at the facility that are unable to be slaughtered today.

Per state and federal regulations, removal of animals from a slaughter facility to return to the farm of origin can only happen with a movement permit issued by the State Veterinarian. This permitting process is due to the disease risk that these animals pose from being comingled. The permitting process requires visual examination of the animals by a State Animal Health Official prior to the movement. All of the cattle originated in New York and would require additional permission from the NY State Veterinarian to return to the farm of origin. To protect animal health and safety and prevent disease transmission, the Office of the VT State Veterinarian strongly recommends that these animals be allowed to remain at the slaughter facility. Additionally, the requirements needed to issue such a movement permit are not logistically possible at this time.

Thank you,

Shelley

Shelley Mehlenbacher, DVM, MPH, Dipl. ACVPM
Assistant State Veterinarian
Vermont Agency of Agriculture, Food, and Markets
116 State Street
Montpelier, VT 05620
Office: 802-828-2421
Fax: 802-828-5983
shelley.mehlenbacher@vermont.gov
http://agriculture.vermont.gov/animal_health
agr.animalhealth@vermont.gov

The Vermont Agency of Agriculture's mission is to facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment.

Exhibit B



State of Vermont

LAND USE PERMIT

CASE NO: 2S1314(Altered)
Curran-Birge Real Estate Partnership
P.O. Box 489
North Springfield, VT 05150

LAWS/REGULATIONS INVOLVED
10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #2 hereby issues Land Use Permit #2S1314(Altered), pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 495, Page 51, of the land records of Springfield, Vermont, as the subject of a deed to Curran-Birge Real Estate Partnership.

This permit specifically authorizes the construction of a 3,200-square foot hoop barn to hold livestock for a short duration (6-36 hours) before processing as well as internal renovations to the 43,000-square foot warehouse to accommodate the new food processing activities.

The project is located on Fairbanks Road in Springfield, Vermont.

As determined in a jurisdictional opinion issued on September 30, 2013, jurisdiction attaches because the Project constitutes a substantial change to a pre-existing development and requires a permit pursuant to 10 V.S.A. § 6081.

1. The Permittee, and assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District Commission in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 2S1314, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.
3. The shall comply with all of the conditions of the Wastewater System and Potable Water Supply Permit #WW-2-0120-4 issued on March 5, 2014, by the ANR Wastewater Management Division. Any nonmaterial changes shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. A copy of this permit and plans shall be on the site at all times throughout the construction process.

6. No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
7. No further alteration or development on the tract of land approved herein shall be permitted without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. Pursuant to 10 V.S.A. § 8005(c), the District Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
9. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and its successors and assigns.
10. The Permittee shall implement a no idling policy, provide signage to that effect, and if necessary, install an electric hookup for trucks to plug into to prevent idling during cold weather.
11. Proper waste management practices shall be practiced. The conditions set forth in the Town of Springfield's letter shall be followed. The Town's Water Department shall assist with sizing the proper meter for the determined flow. The grease trap shall be regularly and properly cleaned. Solids over $\frac{3}{4}$ inch are prohibited from entering the wastewater collection system. Sampling and reporting to the Town is required for liquid waste and shall occur bi-annually at a minimum. Exhibit 15.
12. Slaughter will occur five days a week at peak production rates. There will not be animals on the premises on the weekends. The Commission shall retain jurisdiction over Criterion 8 Aesthetics and will allow the Permittee to file an amendment request for additional operating times after November 1, 2016. The Commission's decision whether to grant additional operating times shall be largely dependent on whether the operation has been successful at not causing significant aesthetic problems for the residential neighbors.
13. The maximum capacity for the delivery and slaughter of animals within a 24 hour period shall be: 80 cows, 150 hogs, or 120 sheep/goats.
14. Offal shall be refrigerated inside the warehouse at all times until it is picked up and removed from the premises.
15. Manure shall be collected and removed from the site a minimum of once a week during the weeks when the sides of the hoop barn are open.
16. The Permittee shall follow Accepted Agricultural Practices and the Manure Management Plan. Exhibit 13.

17. The Permittee and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
18. At a minimum, the Permittee shall comply with the Department of Environmental Conservation's *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006).
19. The installation of exterior light fixtures is limited to those approved in Exhibit 3, and shall be mounted no higher than 20 feet above grade level. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
20. The Permittee shall not erect additional exterior signage without prior written approval from the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
21. Pursuant to 21 V.S.A. § 268, energy design and construction shall, at a minimum, comply the *2011 Vermont Commercial Building Energy Standards*. (More information on this update can be found at http://publicservice.vermont.gov/topics/energy_efficiency/cbes).
22. The installation or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
23. The Commission reserves the right to evaluate and impose additional conditions with respect to Criterion 8 as it relates to odor and noise.
24. Pursuant to 10 V.S.A. § 6090(b)(1) this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittee has not commenced construction and made substantial progress toward completion within the three year period in accordance with 10 V.S.A. § 6091(b).
25. All site work and construction shall be completed in accordance with the approved plans by October 15, 2016, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.

26. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, National Life Records Center Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.
27. Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A. § 6027(g).

Dated at Springfield, Vermont, this 7th day of May, 2014.



By _____
Michael Bernhardt, Chair
District #2 Environmental Commission
Natural Resources Board

Members participating in this decision: Leslie Hanafin and Deborah Hallett
Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k). For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.

**State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #2 ENVIRONMENTAL COMMISSION
100 Mineral Street, Springfield, VT 05156**

Re: Curran-Birge Real Estate Partnership P.O. Box 489 North Springfield, VT 05150	Application #2S1314(Altered) Findings of Fact Conclusions of Law, and Order 10 V.S.A. §§ 6001-6093 (Act 250)
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I. INTRODUCTION

On November 5, 2013, Curran-Birge Real Estate Partnership filed an application for an Act 250 permit for a project generally described as the construction of a 3,200-square foot hoop barn to hold livestock for a short duration (6-36 hours) before processing as well as internal renovations to the 43,000-square foot warehouse to accommodate the new food processing activities. The tract of land consists of 8.5 acres with over 10 acres involved within a five-mile radius. The Applicant's legal interest is ownership in fee simple described in a deed recorded on April 14, 2012, in the land records of Springfield, Vermont.

The application, first submitted on November 5, 2012, was determined to be incomplete under Act 250 Rule 10(D) for reasons stated in a letter from the District Coordinator to the Applicant dated November 14, 2013. The application was deemed complete on November 14, 2013, upon receipt of the required supplemental information.

The Commission held a hearing on this application on December 30, 2013. The Commission also conducted a site visit on December 30, 2013. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information. The Commission adjourned the hearing on March 24, 2014, after receipt of the additional information, an opportunity for parties to respond to that information, and the completion of Commission deliberations. On April 9, 2014, the Applicant, by its attorney, filed a Motion to Alter.

As set forth below, the Commission finds that the Project complies with 10 V.S.A. § 6086(a) (Act 250).

II. JURISDICTION

As determined in a project review sheet issued on September 30, 2013, jurisdiction attaches because the Project constitutes development involving more than 10 acres of land within a five-mile radius pursuant to 10 V.S.A. §6001(3)(A)(i).

III. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A. § 6085(c)(1)(A)-(D) who attended the hearing are:

The Applicant, by Mark Curran, Steve Birge, Sean Buchanan, Todd Hindinger, Arion Thibonmery, and Ted Chivers.
The Municipality of Springfield, not represented.
The Springfield Planning Commission, not represented

The Southern Windsor County Regional Planning Commission, by Jason Rasmussen
The State of Vermont, Agency of Natural Resources (“ANR”), through an entry of
appearance by Jen Mojo, ANR Regulatory Review Analyst, dated December 29, 2013.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by
an act or decision of the Commission is also entitled to party status. 10 V.S.A. §
6085(c)(1)(E).

i. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the District Environmental Commission made preliminary
determinations concerning party status at the commencement of the hearing on this
application. The following persons requested party status pursuant to 10 V.S.A. §
6085(c)(1)(E), and were either admitted as parties or denied party status, as indicated
below:

Fred Burns, owner of a neighboring property: Admitted: Criteria 1 Air Pollution, 5
Traffic, and 8 Aesthetics.

ii. Final Party Status Determinations

Prior to the close of hearings, the District Environmental Commission re-examined the
preliminary party status determinations in accordance with 10 V.S.A. § 6086(c)(6) and Act
250 Rule 14(E) and found no reason to change its preliminary determinations.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant has met the burden of proving compliance with the following criteria through
submittal of the application:

- | | |
|---------------------------------------|--|
| 1 - Water Pollution | 8(A) - Wildlife Habitat & Endangered Species |
| 1(A) - Headwaters | 9(A) - Impact of Growth |
| 1(C) - Water Conservation | 9(B) - Agricultural Soils |
| 1(D) - Floodways | 9(C) - Productive Forest Soils |
| 1(E) - Streams | 9(D) - Earth Resources |
| 1(F) - Shorelines | 9(E) - Extraction of Earth Resources |
| 1(G) - Wetlands | 9(F) - Energy Conservation |
| 2 - Water Supply | 9(G) - Private Utility Services |
| 3 - Impact on Existing Water Supplies | 9(H) - Costs of Scattered Development |
| 4 - Soil Erosion | 9(J) - Public Utility Services |
| 6 - Educational Services | 9(K) - Effects on Public Investments |
| 7 - Municipal Services | 9(L) - Rural Growth Areas |
| 8 – Natural Areas | 10 - Local and Regional Plans |
| 8 – Historic Sites | |

Therefore, the application shall serve as the Findings of Fact on these criteria.

The findings of fact are based on the application, Exhibits # 1 - 19, and other evidence in
the record. Findings made in this decision are not limited to the specific criterion in which

they appear, and may apply to other sections of the decision. To the extent that any proposed findings of fact are included in this decision, they are granted; otherwise, they are denied.

Under Act 250, projects are reviewed for compliance with the ten criteria of Act 250, 10 V.S.A. § 6086(a)(1)-(10). Before granting a permit, the District Commission must find that the Project complies with these criteria and, therefore, is not detrimental to the public health, safety or general welfare. The burden of proof under Criteria 1 through 4 and 9 and 10 is on the applicant, and on the opponent under Criteria 5 through 8, and 9A if the municipality does not have a duly adopted capital improvement program.

Criterion 1 - Air Pollution:

Findings of Fact

1. Mr. Burns has experienced trucks at Black River Produce idling and the exhaust was detectable in his house. Testimony.
2. The Applicant submitted a vehicle idling plan which would limit vehicle idling to five minutes. They proposed posting signs and enforcing it through the plant management staff. Exhibit 14.

Conclusions of Law

The Commission will condition the permit so that idling is prohibited, the Applicant will be required to put up signs to that effect, and, if necessary, the Commission will allow the Applicant to create a place for trucks to plug in so that idling is unnecessary in the winter. The Commission concludes that, as conditioned, the project will prevent undue air pollution and complies with Criterion 1 (air).

Criterion 1(B) - Waste Disposal:

Findings of Fact

3. Animal manure is a waste generated by the Project. Testimony.
4. The project is served by municipal water and wastewater treatment system. No Underground Injection Permit is required. Exhibit 19.
5. While a State Pretreatment Discharge Permit is not required, ANR, through its Entry of Appearance, states that there is the potential for high concentrations of oil and grease in the discharge from this Project if proper waste management practices are not routinely implemented. If proper waste management practices are not followed or the volume and/or strength of the wastewater changes, the Program's determination may no longer be valid and a Pretreatment Discharge Permit may be required. Exhibits 12 and 18.
6. The Town of Springfield will accept the waste from the operation of the project but has outlined the conditions under which it will do so. The Springfield Water Department will assist with sizing the proper meter for the determined flow. The grease trap must be regularly and properly cleaned. No solids over 3/4 inches in diameter are allowed to enter

the wastewater collection system. Bi-annual sampling and reporting for liquid waste is required and is the minimum frequency allowed. Exhibit 15.

7. The ANR-DEC Drinking Water and Groundwater Protection Division issued Wastewater System and Potable Water Supply Permit #WW-2-0120-4 on March 5, 2014. Exhibit 16.

8. The livestock pen will have floor drains. The manure will be pushed to a collection location in the pen and the cement floors will be sprayed with water every couple of weeks producing approximately 300 gallons of diluted manure each time. Exhibit 18.

9. The Applicant has determined that it qualifies for a conditional exclusion from the Multi-Sector General Permit 3-9003. Exhibit 17.

Conclusions of Law

The ANR permits create a presumption, pursuant to Act 250 Rule 19, that the disposal of wastes, through the installation of wastewater and waste collection, treatment and disposal systems authorized by the permits, will not result in undue water pollution. Technical determinations made by ANR in issuing the permits are entitled to substantial deference. 10 V.S.A. § 6086(d).

The Project will meet all applicable Department of Environmental Conservation (DEC) regulations on waste disposal and the Town of Springfield has agreed to accept the waste with conditions. We will incorporate the town's conditions into this permit. We find that the Project will not cause undue water pollution and complies with Criterion 1(B).

Criterion 5 - Traffic:

Findings of Fact

10. The trailers containing the animals would typically be 24 feet to begin with, but could be larger as the business expands. Testimony.

11. There will be a maximum of 120 one-way vehicle trips per day including employees. There could potentially be up to 65 employees. There would be an estimated maximum of five animal deliveries per day. Testimony.

12. The trailers will be backed up and the animals will be unloaded into the livestock pen. Animals will be delivered between 7 a.m. and 5 p.m.. Testimony.

13. Black River Produce trucks have a two-minute idling governor which shuts the truck off after two minutes of idling. The Applicant could put up signs that prohibits idling. Trucks do not need to idle while the animals are unloaded. Testimony.

14. The Applicant submitted a vehicle idling plan which would limit vehicle idling to five minutes. They proposed posting signs and enforcing it through the plant management staff. Exhibit 14.

Conclusions of Law

Prior to granting a permit, the Commission must find that the Project “will not cause unreasonable congestion or unsafe conditions with respect to use of the highways ...” See 10 V.S.A. § 6086(a)(5). Notwithstanding the requirement for a positive finding, the Commission may not deny a permit solely on the reasons set forth under Criterion 5. See 10 V.S.A. § 6087(b). The Commission may, however, attach reasonable conditions to alleviate traffic burdens. *Id.*

The Commission concludes that the Project will not cause unreasonable congestion or unsafe conditions with respect to use of roads, highways, waterways, railways, airports, and other existing or proposed means of transportation. Vehicle idling was addressed in Criterion 1. The Project complies with Criterion 5.

Criterion 8 - Aesthetics:

Findings of Fact

15. The animals are given about three hours to calm down in the livestock pen. Then they proceed single file and are pushed through a ramp. The animals proceed into the shoot and then proceed into the warehouse building. The Applicant will apply to be a humane slaughter approved facility. Testimony.

16. The Applicant originally testified that slaughter would occur five days a week at peak production rates and that there would not be animals on the premises, on the weekends. The Applicant requested in a Motion to Alter that animals be allowed on the premises, as necessary, on the weekends. The Commission will allow the Applicant to file an amendment request for additional operating times after November 1, 2016.

17. The animals can be segregated, if necessary. There are five separate areas within the livestock pen. If there was an animal that is unfit for slaughter, then it is euthanized and taken away. Testimony.

18. Manure will be created in the livestock pen. There will be a cement floor that is graded so the animals don't slip. There will be a bobcat skid steer that will push and collect the manure into one of the five separate areas/cells in the undercover pen. As necessary, the manure will be collected by farmers to take away to their farms. This will happen once a week or once every three days, depending on quantity. There has to be enough manure for a truck to come and drive away with a full truck. The farmers will be required to sign an affidavit stating that they will follow State Accepted Agricultural Practices. Testimony.

19. The livestock pen is a hoop barn that can be opened in warm weather for ventilation. Both ends can be opened. Testimony.

20. The Applicant proposed a Manure Management Plan that requires them to follow Accepted Agricultural Practices. Exhibit 13.

21. Rain will not be able to reach the manure because the sides will be closed during inclement weather. Testimony.

22. Animals will be delivered and processed within 24 hours. During projected periods of normal production rates, the anticipated production is 40 cows, or 75 hogs, or 60 sheep/goats. During limited periods of high demand, the maximum production rate is limited to 80 cows, or 150 hogs, or 120 sheep/goats.

23. There will be a refrigerated rendering room. All of the offal will be refrigerated and will never be outside of the building. A rendering company will pick up the rendering. Anticipated pickup will be between one week and one day. Testimony.

24. As far as the noise that the livestock will make while in the livestock pen, there is anticipated to be very little noise. Well-handled livestock do not make noise. When operations such as these are audited by humane handling experts, the operation is only allowed "one provoked moo." Testimony.

25. When the animals are unloaded from the trailers, they may be unsettled and will be allowed hay and water. Testimony.

26. Mr. Burns is concerned about the odors from truck exhaust. Testimony.

27. Vermont Packing House is a new LLC that will be the fee for service processor managing the livestock and slaughter operation at Black River Produce. The operators have had former experience in Minnesota. Black River Produce will own the animals. Testimony.

28. The Commission will retain jurisdiction on noise and odors.

Conclusions of Law

Prior to granting a permit, the Commission must find that the subdivision or development under Criterion 8 "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas." 10 V.S.A. § 6086(a)(8). This Project involves concerns under Criterion 8 related to noise and odors.

AESTHETICS and NATURAL AND SCENIC BEAUTY

The Commission uses a two-part test to determine whether a Project meets the portion of Criterion 8 relating to aesthetics and natural and scenic beauty. First, it determines whether the Project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. *In re Rinkers, Inc.*, No. 302-12-08 Vtec, Decision and Order at 12 (Vt. Envtl. Ct. May 17, 2010)(citations omitted); see also, *Re: Quechee Lakes Corporation*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 18-20 (Vt. Envtl. Bd. Nov. 4, 1985); *In re Halnon*, 174 Vt. 514 (mem.)(applying Quechee test in Section 248 context).

The burden of proof under Criterion 8 is on any party opposing the Project, 10 V.S.A. § 6088(b), but the applicant must provide sufficient information for the Commission to make affirmative findings. *In re Rinkers*, No. 302-12-08 Vtec, Decision and Order at 10-11 (Vt. Envtl. Ct. May 17, 2010)(citing *Re: Susan Dollenmaier*, #3W0125-5-EB, Findings, Conclusions and Order at 8 (Vt. Envtl. Bd. Feb. 7, 2005); *In re Eastview at Middlebury, Inc.*, No. 256-11-06 Vtec, slip op. at 5 (Vt. Envtl. Ct. Feb. 15, 2008), *aff'd*, 2009 VT 98. "Either party's burden, however, may be satisfied by evidence introduced by any of the parties or

witnesses" *In re McShinsky*, 153 Vt. 586, 589 (1990) (quoting *In re Quechee Lakes Corp.*, 154 Vt. 543, 553–54 (1990)).

1. Adverse Effect

To determine whether the Project will have an adverse aesthetic effect, the Commission looks to whether the Project will "fit" the context in which it will be located. In making this evaluation, the Commission examines a number of specific factors, including: the nature of the project's surroundings; the compatibility of the project's design with those surroundings; the suitability of the colors and materials selected for the project; the locations from which the project can be viewed; and the potential impact of the project on open space. *Quechee Lakes Corp et al.* #3W0411-EB and #3W0439-EB Findings of Fact, Conclusions of Law and Order at 18 (Vt. Envtl. Bd., Nov. 4, 1985)(cited in *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 12-13).

The Project is in an area that is part residential and part industrial. The closest properties are residences and the Project will emit both animal noises and the odor of diesel fumes and manure. Particularly in the summer when the sides of the hoop barn are open, neighbors will be able to smell manure. We conclude that the Project will have an adverse aesthetic impact. Accordingly, we must determine whether that impact is undue.

2. Undue Adverse Effect

An adverse aesthetic impact is undue if any of the following is true: (1) the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) the Project offends the sensibilities of the average person, or is offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area; or (3) the Applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings. *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 15 (May 22, 2010)(citing *In re: Times & Seasons, LLC*, 2008 VT 7, ¶ 8; *In re McShinsky*, 153 Vt. at 592).

(a) Clear, Written Community Standard

In evaluating whether a project violates a clear written community standard, the Commission looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists to be applied in review of aesthetic impacts of a project. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 18 (Vt. Envtl. Bd. 4/9/02). A clear, written community standard must be "intended to preserve the aesthetics or scenic beauty of the area" where the project is located." *Re: Green Meadows Center, LLC, The Community Alliance and Southeastern Vermont Community Action*, #2W0694-I-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Vt. Envtl. Bd. 12/21/00).

A plan which states "consideration should be made . . ." is not a clear, written community standard. *Barre Granite Quarries, LLC and William and Margaret Dyott*, #7C1079(Revised)-EB, Findings of Fact, Conclusions of Law, and Order at 81 (Vt. Envtl. Bd. Dec. 8, 2000). Although the proposed Project does not meet the specific goals or objectives cited above there are no clear community standards relevant to the proposed Project's impacts on aesthetics.

The Commission has reviewed relevant portions of the municipal and regional plan and there is no specific standard relating to the aesthetics of the area in which the Project is located.

Therefore, the proposed Project does not violate a clear community standard.

(b) Offensive or Shocking Character

Criterion 8 "was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from their property will remain the same forever." *Re: Okemo Mountain, Inc. #2S0351-S-EB* Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1986). Criterion 8 was intended to ensure that as development occurs, reasonable consideration will be given to visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont. *Rinkers*, No. 302-12-08 Vtec, Decision and Order at 11-12; *Horizon Development Corp., #4C0841-EB*, Findings of Fact, Conclusions of Law, and Order (Vt. Env'tl. Bd. Aug. 21, 1992).

While the Project is a slaughterhouse, it will have a very similar impact on the surrounding area as a farm would because of its operation practice of keeping the offal refrigerated inside the warehouse building. Given this close similarity, we find that the Project is not offensive or shocking.

(c) Generally Available Mitigating steps

The question under this factor of the aesthetics analysis is whether the Applicant has "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In re Times & Seasons*, 2008 VT 7, ¶ 8. If a project does have an adverse aesthetic effect, the applicant must "take generally available mitigating steps to reduce the negative aesthetic impact of a particular project," otherwise, "[f]ailure to take advantage of available alternatives may render an aesthetic impact unduly adverse." *In re Stokes Communications Corp.*, 164 Vt. 30, 39 (1995)(quoted in *In re Rinkers*, 302-12-08 Vtec, Decision and Order at 19 (May 22, 2010). A generally available mitigating step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."

To mitigate the aesthetic impacts of the Project, the Applicant has proposed keeping the offal in a refrigerated rendering room inside of the warehouse. This will greatly limit the foul odors associated with slaughtering operations. The Applicant will be keeping the livestock in a hoop barn structure that will be ventilated by opening the sides of it. This is where the manure will be produced by the animals, as well as stored until pickup. While the Applicant did submit a Manure Management Plan, it lacks specificity about how frequently the manure will be removed from the premises. The Plan states that "once a sufficient amount of manure has accumulated on-site to make hauling practical, livestock manure will be hauled to an approved local farm." The Commission will condition the permit so that manure will not be picked up less frequently than once every week in the weeks when the hoop barn is being ventilated by opening the sides. Additionally, the Commission will retain jurisdiction over the Criterion. The Commission has concerns about the noise from the animals when they are being unloaded from the trailers into the livestock pen but are satisfied that retaining jurisdiction will be adequate to mitigate noise issues if they arise.

Given all of these considerations, we find that the Applicants have taken the available mitigating steps to minimize the adverse odor and noise impacts of the proposed Project and conclude that the Project will not have an undue adverse effect on the aesthetics of the area.

V. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with in the findings and conclusions of this decision and the conditions of Land Use Permit #2S1314(Altered), will comply with the Act 250 criteria. 10 V.S.A. § 6086(a).

VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, Land Use Permit #2S1314(Altered) is hereby issued.

Dated at Springfield, Vermont, this 7th day of May, 2014.



By _____
Michael Bernhardt, Chair
District #2 Environmental Commission
Natural Resources Board

Commissioners participating in this decision:

Leslie Hanafin
Deborah Hallett

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal. See 10 V.S.A. § 8504(k). For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.

Exhibit C

State of Vermont
Natural Resources Board
District 2 Environmental Commission
100 Mineral Street, Suite 305, Springfield VT 05156

Curran-Birge Real Estate Partnership)
P.O. Box 489)
North Springfield, VT 05150)

Memorandum of Decision
Motion to Alter
Land Use Permit #2S1314

Introduction:

On March 25, 2014, Land Use Permit #2S1314 was issued authorizing Curran-Birge Real Estate Partnership to construct a 3,200-square foot hoop barn to hold livestock for a short duration (6-36 hours) before processing, as well as perform internal renovations to the 43,000-square foot warehouse to accommodate the new food processing activities.

The Project is located on Fairbanks Road in Springfield, Vermont.

This decision is in response to a request for a Motion to Alter the Permit and related Findings filed on April 9, 2014, by Attorney Peter Van Oot on behalf of Curran-Birge Real Estate Partnership.

Decision:

Finding of Fact #16 reads as follows:

16. Slaughter will occur five days a week at peak production rates. There will not be animals on the premises on the weekends.

The Permittee requests the language be modified to read:

Slaughter will generally occur five days a week at projected production rates. Slaughter may occur, as necessary, on weekends during periods of high demand. During periods of projected production rates and periods of high demand, animals will be on the premises in preparation for slaughter on the immediately following day.

The Commission will modify this finding as follows:

The Applicant originally testified that slaughter would occur five days a week at peak production rates and that there would not be animals on the premises on the weekends. The Applicant requested in a Motion to Alter that animals be allowed on the premises, as necessary, on the weekends. The Commission will allow the Applicant to file an amendment request for additional operating times after November 1, 2016.

Finding of Fact #22 reads as follows:

22. Animals will be delivered and processed within 24 hours. The maximum capacity is 40 cows, or 75 hogs, or 60 sheep/goats.

The Permittee requests the language be modified to read:

Animals will be delivered and processed within 24 hours. During projected periods of normal production rates, the anticipated production is 40 cows, or 75 hogs, or 60 sheep/goats. During limited periods of high demand, the maximum production rate is limited to 80 cows, or 150 hogs, or 120 sheep/goats.

The Commission will modify Finding of Fact #22 as requested.

Conclusions of Law under Criterion 8 (Aesthetics and Scenic and Natural Beauty), in part, reads:

The Commission has reviewed relevant portions of the municipal and regional plan and there is no specific standard relating to the aesthetics of the area in which the Project is located.

Therefore, the proposed Project does violate a clear community standard.

The Permittee requests the language be modified to read:

The Commission has reviewed relevant portions of the municipal and regional plan and there is no specific standard relating to the aesthetics of the area in which the Project is located.

Therefore, the proposed Project does not violate a clear community standard.

The Commission will modify the Conclusions of Law under Criterion 8 as requested.

Condition #12 reads as follows:

12. Animal delivery and slaughter shall only occur on weekdays. There shall be no animals on the premises on weekends.

The Permittee requests the language be modified to read:

Animal delivery shall occur no more than one day before slaughter. During periods of projected production rates slaughter occur five days a week. During periods of high demand slaughter may, as necessary, occur on weekends.

The Commission will modify this finding as follows:

Slaughter will occur five days a week at peak production rates. There will not be animals on the premises on the weekends. The Commission shall retain jurisdiction over Criterion 8 Aesthetics and will allow the Permittee to file an amendment request for additional operating times after November 1, 2016. The Commission's decision whether to grant additional operating times shall

be largely dependent on whether the operation has been successful at not causing significant aesthetic problems for the residential neighbors.

Condition #13 reads as follows:

13. The maximum capacity for the delivery and slaughter of animals within a 24 hour period shall be: 40 cows, or 75 hogs, or 60 sheep/goats.

The Permittee requests the language be modified to read:

The maximum capacity for the delivery and slaughter of animals within a 24 hour period shall be: 80 cows, 150 hogs, or 120 sheep/goats.

The Commission will modify permit condition #13 as requested.

The Permittee requested a modification to Condition #14 in the Motion to Alter but later withdrew that request. See April 29, 2014-email from Mark Curran to Stephanie Gile (Exhibit 3Altered).

Order:

The Motion to Alter is granted, in part, and denied, in part.

The Commission approves the following changes:

Finding of Fact #22 will be changed to read as follows:

Animals will be delivered and processed within 24 hours. During projected periods of normal production rates, the anticipated production is 40 cows, or 75 hogs, or 60 sheep/goats. During limited periods of high demand, the maximum production rate is limited to 80 cows, or 150 hogs, or 120 sheep/goats.

Conclusions of Law under Criterion 8 will be changed to read as follows:

Therefore, the proposed Project does not violate a clear community standard.

Condition #13 will be changed to read as follows

The maximum capacity for the delivery and slaughter of animals within a 24-hour period shall be: 80 cows, 150 hogs, or 120 sheep/goats.

The Commission denies the Permittee's requested changes to Finding #16 and Condition #12. However, the Commission modifies Finding #16 as follows:

The Applicant originally testified that slaughter would occur five days a week at peak production rates and that there would not be animals on the premises on the weekends. The Applicant requested in a Motion to Alter that animals be

allowed on the premises, as necessary, on the weekends. The Commission will allow the Applicant to file an amendment request for additional operating times after November 1, 2016.

The Commission modifies Condition #12 as follows:

Slaughter will occur five days a week at peak production rates. There will not be animals on the premises on the weekends. The Commission shall retain jurisdiction over Criterion 8 Aesthetics and will allow the Permittee to file an amendment request for additional operating times after November 1, 2016. The Commission's decision whether to grant additional operating times shall be largely dependent on whether the operation has been successful at not causing significant aesthetic problems for the residential neighbors.

Dated at Springfield, Vermont on May 7th, 2014.



By _____
Michael Bernhardt, Chair
District 2 Environmental Commission
Natural Resources Board

Other Commissioners participating:

Leslie Hanafin
Deborah Hallett

Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must include all information required by Rule 5(b)(3) of the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Drawer 20, Montpelier, VT 05620-3201, in accordance with Rule 5(b)(4)(B) of the VRECP. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)

E-Notification CERTIFICATE OF SERVICE #2S1314(Altered)

I hereby certify that I sent a copy of the foregoing Memorandum of Decision, Altered Land Use Permit, Altered Findings of Fact and Conclusions of Law and Order, Altered Exhibit List and survey on May 7, 2014, by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail, to the following with email addresses: **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.** All email replies should be sent to nrb-act250springfield@state.vt.us

Curran-Birge Real Estate Partnership
P.O. Box 489
North Springfield, VT 05150
mcurran@blackriverproduce.com
sbirge@blackriverproduce.com

Springfield Selectboard
Kristi Morris, Chair
96 Main Street, Springfield, VT 05156
Kcmorrisvt@hotmail.com

Peter D. Van Oot
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pvanoot@drm.com

Springfield Town Planning
Donald Barrett, Chair
1811 CT River Rd, Springfield, VT 05156
donbar@vermontel.net

So. Windsor County Regional
Planning Commission
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FOR INFORMATION ONLY

District 2 Environmental Commission
100 Mineral Street, Suite 305
Springfield, VT 05156
NRB-Act250Springfield@state.vt.us

Springfield Town Clerk
96 Main Street
Springfield, VT 05156

Springfield Town Manager
Robert Forguites
96 Main Street, Springfield, VT 05156
tosmanager@vermontel.net

William Kearns, Zoning Administrator
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toszoning@vermontel.net

Barry Murphy, Public Service Department
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craig.keller@state.vt.us
Kristin.driscoll@state.vt.us

Louise Waterman, Policy Analyst
Dept. of Agriculture, Food & Markets
louise.waterman@state.vt.us



By: Terry Ranney
NRB Technician

Exhibit D

JUDGMENT ORDER

Natural Resources Board,)
 Petitioner)
)
 v.)
)
 Curran-Birge Real Estate Ptnrship,)
 Respondent)

Citation # 16EC01039

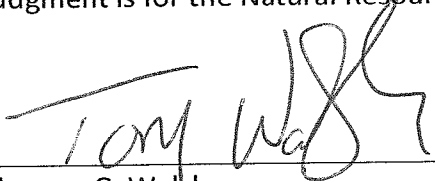
FINDINGS

A civil citation was filed on: November 10, 2016

The Environmental Division did not receive the respondent's answer to the citation within 15 days after service upon the defendant.

ORDER

Judgment is for the Natural Resources Board in the amount of \$2000.00



 Thomas G. Walsh
 Judge Superior Court
 Environmental Division

December 5, 2016

Right to Appeal

All parties to this proceeding have the right to appeal this Decision. Any such appeal must be filed with the Vermont Supreme Court by delivering a NOTICE OF APPEAL and \$100.00 FILING FEE to the Superior Court, Environmental Division within 30 days of the date of the entry of the judgment or order appealed from. You must also serve a copy of the notice to the clerk of the Supreme Court and upon each of the parties to the appeal. For additional information on the appeals process, see the Vermont Rules of Appellate Procedure (V.R.A.P.) and the Vermont Rules of Environmental Court Proceedings (V.R.E.C.P.).



Natural Resources Board
Civil Citation - 10 V.S.A. §8019

Respondent Full Name or Organization Name: Curran-Birge Real Estate Partnership Citation Number: 16EC01039

Respondent Current Mailing Address: PO Box 489 VC: NR117

City/Town: Springfield State: VT Zip Code: 05150

Home Phone: - - Business Phone: 802-886-6217 Date of Birth: / / M F

Respondent did commit the following acts in violation of Vermont Law, Statute, Rule, or Permit:

Violation Citation: Minor violation of Act 250, an Act 250 Rule, or an Act 250 Land Use Permit

Violation Description: Violation of Condition 10 of Land Use Permit 2S1314 (Altered). Respondent violated the prohibition on truck idling, and failed to correct the problem after receiving verbal and written warnings from the Board.

Location of Violation: 25 Fairbanks Road, North Springfield, VT Date Violation Observed/Occurred: 8/31/2016

Penalties: If you plead ADMITTED or NO CONTEST, you may pay the waiver amount instead of appearing in court. If you plead DENIED and the State proves the violation, the penalty must be within the penalty range plus any court costs.

Penalty Amounts: Minimum \$450 Maximum \$ 2,000
Assessed \$1,700 Waiver Amount \$1,275

Delivered to (Resp., Reg. Agent, or Corp. Officer): Mark Curran

Date Served: 11/14/16 By Hand U.S. Mail Investigator's Dept.: ANR NRB

Issuing Investigator Printed Name: Aaron J. Brondyke Investigator's Signature: [Signature]

Public Notice & Opportunity to Comment:

I certify that a draft of this civil citation has been posted for public notice and written comment for a period of 30 days
Comments were received and are attached No comments were received

Service Members Civil Relief Act Affidavit: Under oath, I state Respondent is NOT on active duty in the U.S. armed forces because: Respondent is under 17 years of age Respondent is a Business

Respondent said he/she is not on active duty in the U.S. armed forces Other:
Issuing Investigator Printed Name: Aaron J. Brondyke Investigator's Signature: [Signature]

Subscribed and sworn before me, Notary: Kimberley L. Ashwood Date: 11/10/16

State of Vermont, County Washington My Commission Expires: 2/10/2019

Respondent's Plea to this Civil Citation

Mark ("X") your plea: Admitted No Contest Denied

Respondent or Corporate Officer Signature: Date:

Current Mailing Address:

City/Town: State: Zip Code:

Home Phone Business Phone

Deliver your plea in person or by mail to the Vermont Superior Court at:
Environmental Division
32 Cherry Street, 2nd Floor, Ste. 303
Burlington, VT 05401

GENERAL INFORMATION
KEEP THIS PAGE FOR REFERENCE

BACKGROUND

You are charged with a civil violation within the jurisdiction of the Superior Court Environmental Division of Vermont pursuant to 10 V.S.A. Section 8019. The Environmental Division is designed to allow you to speak for yourself without an attorney, but you may hire an attorney at your own expense. The Environmental Division will not provide an attorney to you, and its staff will not provide legal advice to you.

If you plead "ADMITTED" or "NO CONTEST" to the alleged violation, then you may waive your right to appear in Court and pay the waiver amount.

If you plead "DENIED" to the alleged violation, then you will be scheduled to appear in court at least once. A corporation must have an attorney or corporate officer (i.e. president, vice president) appear in court. A minor should be accompanied by a parent or legal guardian.

The trial is a summary hearing without a jury. You and the State may offer testimony and exhibits into evidence. All witnesses must appear in person and testify truthfully under oath. Written statements usually are excluded from evidence.

The issuer of the citation will serve as the prosecutor unless an attorney for the state is present to prosecute the case. The judge will not discuss the case with you or the prosecutor, except in Court at a hearing. The judge does not have authority to issue a 'warning,' even when leniency is appropriate. The decision to issue a warning, rather than file a citation, rests with the prosecutor.

The burden of proof is on the State to prove the violation by a preponderance of the evidence, which is defined as the violation is more likely to have occurred than not. If the State satisfies the burden of proof, then judgment will be entered against you. If the State fails to meet the burden of proof, the case will be dismissed.

Most decisions are delivered orally in Court at the end of the hearing, but some decisions are issued in writing and mailed to the parties. Occasionally, more than one hearing is required for the judge to reach a decision.

PLEADING

If you plead "ADMITTED" or "NO CONTEST": Mark your plea and sign at the bottom of the Citation. Deliver your plea to the Environmental Division within 15 days with payment of the WAIVER AMOUNT shown on the citation. Pay by check or money order in U.S. funds (make checks payable to SUPERIOR COURT ENVIRONMENTAL DIVISION). Judgment will then be entered against you.

If you plead "DENIED": Mark your plea and sign at the bottom of the citation. Deliver your plea to the Environmental Division within 15 days. You will then be scheduled to appear in court.

YOU MUST DELIVER A PLEA WITHIN 15 DAYS: otherwise, judgment will be entered against you by default, and you will be liable for the ASSESSED AMOUNT.

COPYING ALL PARTIES

Any other pleading, letter, motion, or other correspondence sent to the Environmental Division related to a civil citation must also be sent to the Natural Resources Board. The Environmental Division intends to digitally scan

all written correspondence. Thus, letters and motions should be typed on white letter-size paper (8 1/2 in. by 11 in.) and signed in black or dark blue ink.

FAILURE TO PAY AND/OR CORRECT THE VIOLATION

If judgment is entered against you and you fail to pay the penalty amount, and/or fail to correct the subject violation, your ability to obtain or operate under any Agency of Natural Resources or Natural Resources Board permit may be affected.

APPEARANCE BY THIRD PARTIES

Under state law (10 V.S.A. Section 8020), a third party may file a request with the Environmental Division to be heard on the sufficiency of the civil citation. If a request is filed, and the Environmental Division decides to allow the third party to appear, you will be notified and given the opportunity to respond.

ADDITIONAL ENFORCEMENT ACTION

By issuing a civil citation, the issuing entity will not be able to seek an additional penalty for the violation specified in the citation if the waiver penalty is paid, judgment is entered after trial or appeal, or a default judgment is entered. However, the issuing entity may issue additional civil citations or take other enforcement action authorized by law when a violation is continuing or is repeated. It may also bring an enforcement action to obtain injunctive relief or remediation, and may recover the costs of bringing that action and any economic benefit obtained as a result of the underlying violation as authorized by law.

Environmental Division

The Vermont Superior Court is open Monday through Friday, except holidays, between 8:00 a.m. and 4:30 p.m.

Superior Court- Environmental Division
32 Cherry Street, 2nd Floor, Ste. 303
Burlington, VT 05401
(802) 951-1740
www.vermontjudiciary.org

Natural Resources Board

Natural Resources Board is open Monday through Friday, except holidays, between 8:00 a.m. and 4:30 p.m.

Natural Resources Board
1 National Life Drive, Dewey Building
Montpelier, VT 05620-3201
(802) 828-3309
<http://www.nrb.state.vt.us/lup/enforcement.htm>



Exhibit E

JUDGMENT ORDER

Natural Resources Board,)
 Petitioner)
)
 v.)
)
 Curran-Birge Real Estate)
 Partnership,)
 Respondent)

Ameneded
 Citation # 16EC01180

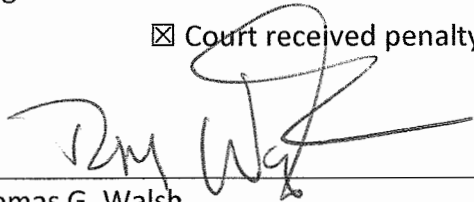
FINDINGS

A civil citation was filed on: January 10, 2017

- Respondent filed a response of
 - Admitted or
 - No contest

ORDER

Judgment is for the Natural Resources Board in the amount of \$300.00
 Court received penalty payment of \$300.00 on 1/13/2017



 Thomas G. Walsh
 Environmental Judge

January 20, 2017



Natural Resources Board
Civil Citation - 10 V.S.A. §8019

Amended

Respondent Full Name or Organization Name: Curran-Birge Real Estate Partnership Citation Number: 16EC01180
Respondent Current Mailing Address: PO Box 489 VC: NR117
City/Town: Springfield State: VT Zip Code: 05150
Home Phone: - - Business Phone: 802-886-6217 Date of Birth: / / M F

Respondent did commit the following acts in violation of Vermont Law, Statute, Rule, or Permit:

Violation Citation: ~~Minor violation of Act 250, an Act 250 Rule, or an Act 250 Land Use Permit~~
De minimis

Violation Description: Violation of Condition 14 of Land Use Permit 2S1314 (Altered). Respondent violated the requirement that offal be refrigerated inside the warehouse at all times until it is picked up and removed from the premises, and failed to correct the problem after receiving an NOAV from the Agency of Natural Resources on 10/7/16.

Location of Violation: 25 Fairbanks Road, North Springfield, VT Date Violation Observed/Occurred: numerous occurrences between 10/6/16 and 10/14/2016

Penalties: If you plead ~~ADMITTED~~ or ~~NO CONTEST~~, you may pay the waiver amount instead of appearing in court. If you plead ~~DENIED~~ and the State proves the violation, the penalty must be within the penalty range plus any court costs.

Penalty Amounts: Minimum \$450 Maximum \$2,000
Assessed \$2,000 Waiver Amount \$1,500
Amended by agreement
Waiver amount: \$300.00
Assessed amount: \$428.57

Delivered to (Resp., Reg. Agent, or Corp. Officer): Mark Curran
Date Served: 12/15/16 By Hand U.S. Mail Investigator's Dept.: ANR NRB

Issuing Investigator Printed Name: Aaron J. Brondyke Investigator's Signature: *A. J. Brondyke*

Public Notice & Opportunity to Comment:

I certify that a draft of this civil citation has been posted for public notice and written comment for a period of 30 days

Comments were received and are attached No comments were received

Service Members Civil Relief Act Affidavit: Under oath, I state Respondent is NOT on active duty in the U.S. armed forces because: Respondent is under 17 years of age Respondent is a Business

Respondent said he/she is not on active duty in the U.S. armed forces Other:

Issuing Investigator Printed Name: Aaron J. Brondyke Investigator's Signature: *A. J. Brondyke*

Subscribed and sworn before me, Notary: *[Signature]* Date: 12/14/16

State of Vermont, County Washington My Commission Expires 2/10/2019

Respondent's Plea to this Civil Citation

- Amended Plea 1/10/17

Mark ("X") your plea:

Admitted No Contest Denied

Respondent or Corporate Officer Signature: *Mark Curran* on behalf of Curran-Birge Real Estate Date: 1/10/17

Current Mailing Address: 25 Fairbanks Rd.

City/Town: N. Springfield State: VT Zip Code: 05150

Home Phone: _____ Business Phone: 802-886-8688

Deliver your plea in person or by mail to the Vermont Superior Court at:
Environmental Division
32 Cherry Street, 2nd Floor, Ste. 303
Burlington, VT 05401

Autherized by: Diane B. Snelling / NRB Chair, Date 1.10.17

Pages 21.

Exhibit F

From: Nate Stearns
To: [Gill, Peter](#); [Brondyke, Aaron](#)
Cc: [Gile, Stephanie](#); [Burke, William](#); [Arion Thiboumery](#); MCurran@blackriverproduce.com
Subject: LUP #2S1314(Altered) livestock movement
Date: Friday, January 20, 2017 5:21:59 PM

Dear Pete and Aaron,

Per our phone conversation, I was contacted late this afternoon by Arion Thiboumery, at the Vermont Packinghouse. Their production line broke down today, and there are 25 head of cattle at the facility that they could not process before the end of the day. The applicable Act 250 Land Use Permit, #2S1314(Altered), provides in Condition 12 that "There will not be animals on the premises on the weekends." As a USDA-inspected facility, however, the operator also has to comply with federal regulations. Specifically, 9 CFR 309.13 requires that animals delivered to a slaughterhouse may not be removed without the inspection and approval by a State or Federal livestock sanitary official.

My client contacted the State Veterinarian to get permission to remove the animals for the weekend. The State Vet, however, is not logistically able to do the inspections required to issue permission to remove the animals prior to the weekend, and has recommended that the animals stay at the facility over the weekend. The email from the State Vet is included below.

My client has submitted an application to amend its Act 250 permit, which specifically includes a request to amend Condition 12 to address the exact issue that has presented itself here. We decided to seek that amendment in part due to conversations with the State Department of Agriculture that identified this potential conflict. Unfortunately, the current situation has arisen before the amendment application could be considered.

I wanted to make sure you have this information in the event that any complaints are received. We request that this situation not be treated as an enforcement action. I believe the facts present extenuating circumstances.

Please let me know if you would like to discuss or if you need more information.

Thank you.

Nate Stearns

Nathan H. Stearns
Hershenson, Carter, Scott and McGee, P.C.
P.O. Box 909
Norwich, VT 05055-0909
Phone: (802) 295-2800
Fax: (802) 295-3344

nate@hcsmlaw.com

* * * C O N F I D E N T I A L I T Y N O T I C E * * *

IMPORTANT: THIS E-MAIL TRANSMISSION IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY AT 802-295-2800.

From: Arion Thiboumery [mailto:arion@vermontpackinghouse.com]
Sent: Friday, January 20, 2017 4:35 PM
To: Nate Stearns
Subject: Fwd: livestock movement

Begin forwarded message:

From: "Mehlenbacher, Shelley" <Shelley.Mehlenbacher@vermont.gov>
Subject: livestock movement
Date: January 20, 2017 at 4:30:34 PM EST
To: "ARION@VERMONTPACKINGHOUSE.COM"
<ARION@VERMONTPACKINGHOUSE.COM>

To Whom It May Concern,

I have been contacted by Vermont Packinghouse regarding a group livestock located at the facility that are unable to be slaughtered today.

Per state and federal regulations, removal of animals from a slaughter facility to return to the farm of origin can only happen with a movement permit issued by the State Veterinarian. This permitting process is due to the disease risk that these animals pose from being comingled. The permitting process requires visual examination of the animals by a State Animal Health Official prior to the movement. A number of these animals originated in New York and would require additional permission from the NY State Veterinarian to return to the farm of origin. To protect animal health and safety and prevent disease transmission, the Office of the VT State Veterinarian strongly recommends that these animals be allowed to remain at the slaughter facility. Additionally, the requirements needed to issue such a movement permit are not logistically possible at this time.

Thank you,

Shelley

Shelley Mehlenbacher DVM, MPH, Dipl. ACVPM
Assistant State Veterinarian

Vermont Agency of Agriculture, Food, and Market
116 State Street
Montpelier VT 05602
Office: (802) 828-2421
Fax: (802) 828-5983
shelley.mehlenbacher@vermont.gov

The Vermont Agency of Agriculture's mission is to facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment.

Exhibit G



Natural Resources Board
Dewey Building
National Life Drive
Montpelier, VT 05620-3201

NOTICE OF ALLEGED VIOLATION (NOAV)
10 V.S.A. § 8006(b)

Alleged Violator ("Respondents")	Curran-Birge Real Estate Partnership, LLC c/o Mark Curran PO Box 489 North Springfield, VT 05150	Vermont Packinghouse, LLC c/o Nathan H. Stearns Hershenson, Carter, Scott and McGee, P.C. PO Box 909 Norwich, VT 05055-0909
-------------------------------------	---	--

You are hereby put on notice that the Natural Resources Board (Board) believes that you are in violation of the Vermont Statutes, Regulations, Act 250 Rules, and/or Permits noted below:

Land Use Permit 2S1314(Altered), Condition 12

Background:

Respondent owns a total of 8.25+/- acres, including the Vermont Packinghouse Facility, in the town of Springfield, Vermont (the "Project Tract"). On May 7, 2014, the District 2 Environmental Commission issued Land Use Permit 2S1314(Altered), specifically authorizing the construction of a 3,200-square foot hoop barn to hold livestock for a short duration (6-36 hours) before processing as well as internal renovations to the 43,000-square foot warehouse to accommodate the new food processing activities on the Project Tract.

Act 250 Land Use Permit Conditions Violated:

Condition 12 of Land Use Permit 2S1314(Altered) states, *"Slaughter will occur five days a week at peak production rates. There will not be animals on the premises on the weekends. The Commission shall retain jurisdiction over Criterion 8 Aesthetics and will allow the Permittee to file an amendment request for additional operating times after November 1, 2016. The Commission's decision whether to grant additional operating times shall be largely dependent on whether the operation has been successful at not causing significant aesthetic problems for the residential neighbors."*

On Friday January 20, 2017, the production line at the Vermont Packinghouse Facility (VPH) broke down, and 25 head of cattle remained at the facility that VPH could not process before the end of the day. Under 9 CFR 309.13, these animals could not be removed without an inspection and approval by a state or federal livestock sanitary official. The State Veterinarian was not logistically able to do the inspections required to remove the animals prior to the weekend, and recommended that the animals stay at the facility over the weekend. The animals were fed and watered at the VPH facility over the weekend, and were processed the following week.

On January 24, 2017, Respondents submitted an application to amend their Land Use Permit, specifically including a request to amend Condition 12 to allow animals to be kept on the premises

over the weekend. That amendment application is currently under consideration by the District 2 Commission.

By keeping animals on the premises over the weekend, the Respondents violated Condition 12 of Land Use Permit 2S1314(Altered). Given the circumstances of this particular event, the Respondents' efforts to promptly notify the Board and the District Commission of this situation, and the fact that the Respondents are actively pursuing a Land Use Permit amendment, the Board does not intend to pursue further enforcement or penalties against the Respondents for this particular incident. However, the Board retains its discretion to initiate an enforcement action based on this violation or any future similarly situated violation.

Compliance Directive:

1. Respondents shall comply with the terms and conditions of Land Use Permit series 2S1314 and take all precautions necessary to ensure that future violations are avoided.

If you have any questions, please contact the Board's Enforcement Officer Aaron Brondyke at aaron.brondyke@vermont.gov or 802-595-2735.

This NOAV was served on the above-designated Respondents by Certified Mail.

Dated: February 1, 2017



Aaron J. Brondyke
Enforcement Officer
Natural Resources Board

cc (via email): Stephanie Gile, Act 250 District 2 Coordinator

Exhibit H

From: Arion Thiboumery
To: [Gill, Peter](#); [Brondyke, Aaron](#)
Cc: [Nate Stearns](#); [Mark Curran](#)
Subject: Fwd: Livestock Movement
Date: Friday, April 07, 2017 3:48:30 PM

Pete and Aaron,

We find ourselves in a similar situation again to this past January with regards to livestock being in the barn and us unable to process them yet today. We are working as quickly as possible to resolve the issue. Per below, we have been in touch with the State Veterinarian's office and they have strongly advised against transport.

Wanted to make you aware of the situation.

Please let me know if you have any questions.

Arion

Begin forwarded message:

From: "Mehlenbacher, Shelley" <Shelley.Mehlenbacher@vermont.gov>
Subject: Livestock Movement
Date: April 7, 2017 at 2:06:08 PM EDT
To: "ARION@VERMONTPACKINGHOUSE.COM"
<ARION@VERMONTPACKINGHOUSE.COM>
Cc: "Mehlenbacher, Shelley" <Shelley.Mehlenbacher@vermont.gov>

To Whom It May Concern,

I have been contacted by Vermont Packinghouse regarding a group livestock located at the facility that are unable to be slaughtered today.

Per state and federal regulations, removal of animals from a slaughter facility to return to the farm of origin can only happen with a movement permit issued by the State Veterinarian. This permitting process is due to the disease risk that these animals pose from being comingled. The permitting process requires visual examination of the animals by a State Animal Health Official prior to the movement. All of the cattle originated in New York and would require additional permission from the NY State Veterinarian to return to the farm of origin. To protect animal health and safety and prevent disease transmission, the Office of the VT State Veterinarian strongly recommends that these animals be allowed to remain at the slaughter facility. Additionally, the requirements needed to issue such a movement permit are not logistically possible at this time.

Thank you,

Shelley

Shelley Mehlenbacher, DVM, MPH, Dipl. ACVPM
Assistant State Veterinarian
Vermont Agency of Agriculture, Food, and Markets
116 State Street
Montpelier, VT 05620
Office: 802-828-2421
Fax: 802-828-5983
shelley.mehlenbacher@vermont.gov
http://agriculture.vermont.gov/animal_health
agr.animalhealth@vermont.gov

The Vermont Agency of Agriculture's mission is to facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment.

Exhibit I

NRB ADMINISTRATIVE PENALTY FORM

CASE NAME:

Curran-Birge Real Estate Partnership, Springfield: Cows over Weekend 4/21-4/23/17

VIOLATION(S):

Failure to comply with Permit Condition 12 of Land Use Permit 2S1314 (Altered)

CLASSIFICATION OF VIOLATION

Write the number corresponding to the penalty classification in the blue box below.

Class I. A Class I violation is one which meets one or more of the following criteria:

1. More than a minor violation of:
 - A. an assurance of discontinuance; or
 - B. an order issued pursuant to 10 V.S.A. chapter 201; or
 - C. an order issued pursuant to any statute listed in 10 V.S.A. Section 8003(a); or
2. Presents a threat of substantial harm to the public health, safety, or welfare or to the environment or has caused substantial harm to the public health, safety, or welfare or to the environment.

Class II. A Class II violation is one which meets one or more of the following criteria:

1. Constitutes a minor violation of:
 - A. an assurance of discontinuance; or
 - B. an order issued pursuant to 10 V.S.A. Chapter 201; or
 - C. an order issued pursuant to any statute listed in 10 V.S.A. Section 8003(a), OR
2. More than a minor violation of a statute listed in 10 V.S.A. Section 8003(a), a rule promulgated under a statute listed in 10 V.S.A. Section § 8003 (a), or a related permit. An activity or construction initiated before the issuance of all necessary environmental permits shall be at least a Class II violation, and may, if warranted under subsection (a)(2) of this Section, be a Class I violation.

Class III. A Class III violation is a minor violation of a statute listed in 10 V.S.A.

Section 8003(a), a rule promulgated under a statute listed in 10 V.S.A.

Section 8003(a), or a related permit.

Class IV. A Class IV violation is a de minimis violation of a statute listed in 10 V.S.A.

Section 8003(a), a rule promulgated under a statute listed in Section 8003

(a), or a related permit.

Class of Violation (1, 2, 3, 4, 5, 6, or 7):

3

NOTE: Under the New Penalty Calculations: Class I = 1, Class II = 2, etc.

INITIAL PENALTY SCORE CALCULATION

Select the appropriate point value next to each category and type the corresponding number in the blue box provided.

1. The degree of actual or potential impact on public health, safety, and welfare:	
	<u>Points</u>
A. No actual impact or minor potential impact	(0)
B. Minor actual impact or moderate potential impact	(1)
C. Moderate actual impact or major potential impact	(2)
D. Major actual impact	(3)

1

Comments:

Cows in holding pen over weekend causes minor actual impacts on neighbors, including noise.

2. The degree of actual or potential impact on the environment:	
	<u>Points</u>
A. No actual impact or minor potential impact	(0)
B. Minor actual impact or moderate potential impact	(1)
C. Moderate actual impact or major potential impact	(2)
D. Major actual impact	(3)

0

Comments:

3. Whether the respondent knew or had reason to know the violation existed

	<u>Points</u>	
A. Knowledge of legal requirements:		
i) new requirement	(0)	
ii) had reason to know about violated requirement	(1)	
iii) had a permit or permit by rule	(2)	
iv) repeated the violation after notice	(3)	3
B. Knowledge of the facts of the violation:		
i) the respondent could not have reasonably known that the violation existed	(0)	
ii) the respondent should have known that the violation existed	(1)	
iii) some evidence that the respondent knew that the violation existed	(2)	
iv) clear evidence that the respondent knew that the violation existed.	(3)	3
C. Lower number of 3A or 3B (<i>Automatic Calculation</i>)		3

Comments:

On 1/31/2017, and 2/1/2017, EO warned Respondent and VPH by NOAV. Respondent emailed the Board on Fri 4/21/2017 at 11:59 PM, and informed the Board that the cows would be there over the weekend.

4. The respondent's record of compliance with the statutes specified in 10 V.S.A. Section 8003 or related rules, permits, orders, or assurances of discontinuance:

	<u>Points</u>	
A. No prior violations	(0)	
B. One prior violation	(1)	
C. Two prior violations	(2)	
D. Three or more prior violations	(3)	2

Comments:

idling citation, Dec. 2016 and offal citation, January 2017

5. The length of time the violation existed:

A. Immediate correction

Points

(0)

B. Very short duration

(1)

C. Moderate duration

(2)

D. Long duration

(3)

1

Comments:

--

Initial Penalty Score:

(Total of sections 1, 2, 3C, 4, and 5)

7

PERCENTAGE OF MAXIMUM PENALTY CALCULATION

To determine the Initial Penalty chose the number from the column that corresponds to the class of the violation (I, II, III, IV) and the row that corresponds to the Initial Penalty Score.

- A. A Class I violation shall be subject to penalties ranging from \$0 to \$42,500 for the initial violation and \$0 to \$17,000 for each day that the violation continues.
- B. A Class II violation shall be subject to penalties ranging from \$0 to \$30,000 for the initial violation and \$0 to \$12,000 for each day that the violation continues.
- C. A Class III violation shall be subject to penalties ranging from \$0 to \$10,000 for the initial violation and \$0 to \$4,000 for each day that the violation continues.
- D. A Class IV violation shall be subject to penalties ranging from \$0 to \$3,000 for the initial violation and \$0 to \$1,200 for each day that the violation continues.

Penalty Grid:

<u>Initial Penalty Score</u>	<u>%</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>
1-2	10%	\$4,250	\$3,000	\$1,000	\$300
3-4	20%	\$8,500	\$6,000	\$2,000	\$600
5-6	30%	\$12,750	\$9,000	\$3,000	\$900
7-8	40%	\$17,000	\$12,000	\$4,000	\$1,200
9-10	50%	\$21,250	\$15,000	\$5,000	\$1,500
11	60%	\$25,500	\$18,000	\$6,000	\$1,800
12	70%	\$29,750	\$21,000	\$7,000	\$2,100
13	80%	\$34,000	\$24,000	\$8,000	\$2,400
14	90%	\$38,250	\$27,000	\$9,000	\$2,700
15	100%	\$42,500	\$30,000	\$10,000	\$3,000

Percentage of Max. Penalty: 0.4

Initial Penalty: \$ 4,000.00

PENALTY ADJUSTMENTS

1. *Continuing violation:*

The Board may consider any violation of a statute listed in 10 V.S.A. §8003(a) or a rule promulgated under such statute or a condition of a related permit, order, or assurance of discontinuance that continues longer than one day as a continuing violation subject to additional penalties for each day of continuance of the violation. The continuing violation amount shall be determined by taking the per-day maximum continuing violation penalty for the class of violation involved and multiplying it by the applicable percentage based on the initial score. The following table lists the applicable percentage and resulting calculation for each class:

<u>Score</u>	<u>%</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>
1-2	10%	\$1,700	\$1,200	\$400	\$120
3-4	20%	\$3,400	\$2,400	\$800	\$240
5-6	30%	\$5,100	\$3,600	\$1,200	\$360
7-8	40%	\$6,800	\$4,800	\$1,600	\$480
9-10	50%	\$8,500	\$6,000	\$2,000	\$600
11	60%	\$10,200	\$7,200	\$2,400	\$720
12	70%	\$11,900	\$8,400	\$2,800	\$840
13	80%	\$13,600	\$9,600	\$3,200	\$960
14	90%	\$15,300	\$10,800	\$3,600	\$1,080
15	100%	\$17,000	\$12,000	\$4,000	\$1,200

a) Per-day penalty amount of the continuing violation \$ -

b) Number of days constituting continuance of the violation \$ -

2. If a rating of 3 is listed in sections 1 or 2, the initial penalty amount shall be adjusted to the maximum allowed for the class of violation:

Section 1: **1** Amount to Maximum
 Section 2: **0**

3. If a rating of 3 is listed in two or more of 3c, 4 or 5, the initial penalty amount shall be adjusted to at least 70% of the maximum allowed for the class of violation:

Section 3c: **3** Section 5: **1** Amount to 70% of Max. \$ -
 Section 4: **2**

4. *Mitigating circumstances :*

If any mitigating circumstances exist the penalty may be reduced. Unreasonable delay by the Secretary in seeking enforcement shall be considered a mitigating circumstance.

Place number in parentheses.

Comments: Adjustment:

5. *Deterrent effect :*

The Secretary may increase the penalty amount up to the maximum allowed in the class of the violation if he or she determines that a larger penalty is reasonably necessary to deter the respondent and the regulated community from committing this violation, or similar violations, in the future.

Comments: 	Adjustment:	\$ 400.00
	Final Penalty:	\$ 4,400.00

6. *AOD adjustment at NRB Chair's discretion:*

Reduce the penalty amount by 25% if Respondent signs an AOD as discretion necessitates.
(Automatic Calculation)

Comments:

 	AOD Adjustment:	\$ -
	Total Final Penalty (Final penalty minus AOD adjustment)	
	Total Final Penalty (\$):	\$ 4,400.00

The final penalty amount for any single violation, or group of violations, which are treated as a single violation, shall not exceed the maximum for the class of the violation involved. If higher penalties are calculated, the violations may be referred to the Attorney general for civil enforcement pursuant to 10 V.S.A. Section 8221. § 302 (f).

ECONOMIC BENEFIT & COST OF ENFORCEMENT

1. Economic Benefit (10 V.S.A. §§8010(c)(2)):

Calculations:

Reserved

2. Cost of Enforcement:

Calculations :

\$476.58

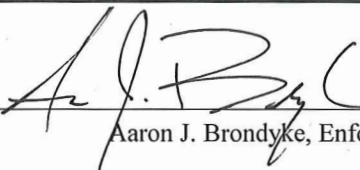
Hours:	9.75	× \$48.88 per hour	\$476.58
Mileage:	0	× \$0.54 per mile =	\$0.00
Mileage:	0	× \$0.19 per mile =	\$0.00
Fleet Car Rental (days)	0	× \$40 per day	\$0.00
+ Distance over 100 miles (miles)	0	× \$0.40 per mile	\$0.00

**Total NRB
Enforceme
nt Officer
Cost of
Enforceme
nt:**


\$476.58

PENALTY AND COST SUMMARY

Final Penalty:	\$ 4,400.00
Total Final Penalty (with AOD discount):	\$ 4,400.00
Economic Benefit:	\$ -
Cost of Enforcement:	\$ 476.58
Recording Fee:	\$ 10.00
GRAND TOTAL:	\$ 4,886.58

Prepared by: 
Aaron J. Brondyke, Enforcement Officer

Date: 12/1/17

Chair approval: 
Diane B. Snelling, Chair

Date: 1.3.18

Exhibit J

**State of Vermont
NATURAL RESOURCES BOARD
DISTRICT #2 ENVIRONMENTAL COMMISSION
88 Merchants Row, Rutland, VT 05701**

RE: Vermont Packing House, LLC	Application #2S1314-1
25 Fairbanks Road	Ruling on Motion to Alter
North Springfield, VT 05150	10 V.S.A. §§ 6001-6092 (Act 250)

I. Introduction

On August 7, 2017, the District Commission received a Motion to Alter from the permittee (“the motion”). The motion was timely filed pursuant to Act 250 Rule 31. Following the filing, the Commission received a reply from party Burns, also timely filed. The Commission’s ruling on the motion is set forth below.

II. The Motion and Rulings

The motion seeks to modify conditions 3.a., 3.b. and 4. Those requested alterations are reiterated below, followed by the permittee’s response, followed by the Commission’s rulings.

Condition 3.a. currently reads as follows:

Slaughter may occur five days per week, Monday through Friday. Non-slaughter operations may continue to occur inside the facility consistent with past operations by Black River Produce and Vermont Packerhouse.

Permittee’s Proposed Alteration:

Slaughter may occur five days per week, Monday through Friday for pigs, cows, or sheep. Slaughter may also occur a sixth day, as long as no pigs are slaughtered, other than pigs that are on the premises as a result of a bona fide emergency.¹

Commission Ruling:

Granted, in part. The Commission hereby alters condition 3a. to read as follows:

Slaughter may occur five days a week, Monday through Friday. Slaughter may occur on Saturday in the event of a bona fide emergency resulting from a circumstance not within the control of the Permittee. Non-slaughter operations may continue to occur inside the facility consistent with past operations by Black River Produce and Vermont

¹ The Applicants request that if a bona fide emergency has resulted in the presence of pigs on the weekend that Applicants be allowed to slaughter the pigs as soon as the conditions that created the emergency can be rectified. Given that slaughter occurs indoors, no additional noise would be generated by the slaughter. In addition, slaughtering at the soonest possible time would reduce the number of pigs remaining on the premises and, once finished, would eliminate further pig noise over the weekend.

Packinghouse. The Commission shall retain jurisdiction over Criterion 8 Aesthetics and will allow the Permittee to file an amendment request for additional operating times after 1 June 2018. The Commission's decision whether to grant additional operating times shall be largely dependent on whether the operation has been successful at not causing significant aesthetic problems for the residential neighbors.

Condition 3.b. currently reads as follows:

Deliveries may occur on Sunday 12-6 p.m., 6 a.m. to 6 p.m. Monday through Thursday, and 6 a.m. to Noon on Friday. No animals are allowed on site on Saturdays or Sunday mornings unless a bona fide emergency exists. With regard to emergencies, the only allowable exception to the condition above, is a circumstance clearly beyond the control of the delivering facility and their driver. All deliveries should be scheduled to arrive within the allowable time frames above, that drivers shall communicate with the receiving facility to ensure that arrival times are coordinated to be within the allowable window.

Permittee's Proposed Alteration:

Deliveries may occur on Sunday 12-6 p.m., 6 a.m. to 6 p.m. Monday through Friday, provided that no pigs may be delivered after 12:00 Noon on Friday. No pigs are allowed on site on Saturdays or Sunday mornings unless a bona fide emergency exists. With regard to emergencies, the only allowable exception to the condition above, is a circumstance clearly beyond the control of the delivering facility and their driver. All deliveries should be scheduled to arrive within the allowable time frames above, that drivers shall communicate with the receiving facility to ensure that arrival times are coordinated to be within the allowable window.

Commission Ruling:

The Commission elected not to invoke Rule 30 (B) (Stay of permit issuance due to non-compliance) and will, for the time being impose more restrictive hours for delivery on weekends in consideration of rights of quiet enjoyment on weekends by the neighbors. Moving forward, the Commission may consider the enlargement of hours after a significant period of demonstrated compliance.

The Condition is hereby altered as follows:

Deliveries may occur on Sunday 12-6 p.m., 6 a.m. to 6 p.m. Monday through Friday. No animals are allowed on site on Saturdays or Sunday mornings unless a bona fide emergency exists. With regard to emergencies, the only allowable exception to the condition above, is a circumstance clearly beyond the control of the delivering facility and their driver. All deliveries should be scheduled to arrive within the allowable time frames above, that drivers shall communicate with the receiving facility to ensure that arrival times are coordinated to be within the allowable window.

Condition 4 currently reads as follows:

Except as noted below, idling of trucks onsite is prohibited between 6 p.m. to 6 a.m. To minimize noise and fumes from truck idling at other times, permittees shall post signage at all driveway entrances to the project site and at all loading docks to inform truck drivers that trucks may not idle longer than 5 minutes. Trucks that fall under the exceptions in 23 V.S.A. §1110 shall not be subject to the 5-minute limitation, provided that permittees shall provide assistance to unload such trucks to minimize the amount of time that such trucks must remain idling on the property.

Permittee's Proposed Alteration:

Applicants request that the District Commission clarify that the idling restriction in condition 4 does not apply to the pre-existing operations of Black River Produce.

Commission Ruling:

Denied. The condition is consistent with existing state law.

III. Appeal

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date of this decision, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the \$265.00 entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Dewey Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B).

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

Dated at Rutland, Vermont, this 7th of September 2017.

/s/ James Olivier
James Olivier, Acting Chairman
District Environmental Commission #2

Members participating:
Julie Schmitz
Cheryl Cox