

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

Natural Resources Board,
Petitioner

ADMINISTRATIVE ORDER

v.

Howard and Sandi Marcell, and Marcell Oil Company, Inc.,
Respondents

Having found that Howard and Sandi Marcell, and Marcell Oil Company, Inc., (Respondents) 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 Permit Conditions 5 and 6 of Land Use Permit 1R0691;

Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. The Respondents own lands¹ located at 740 US Route 7 in the Town of Pittsford, Vermont (the "Project Tract") which is subject to Act 250 Land Use Permit Series 1R0691 (collectively, the "Permit"). The Project Tract is identified by School Property Account Number (SPAN) 480-151-10842 and furthermore identified in Book 75, pages 560 - 561, of the land records of the Town of Pittsford.
2. On May 24, 1990, the District 1 Environmental Commission issued Land Use Permit #1R0691 to the Respondents, which authorized the construction of a golf driving range at the Project Tract.

¹ The applicable 2021 grand list indicates that the parcel is approximately 49.2 acres. Land Use Permit #1R0691 describes the Project Tract as a 61-acre parcel of land.

3. Condition 5 of the Permit states: *“This project shall be completed in accordance with the Findings of Fact, Conclusions of Law, and Order 1R0691, and in accordance with plans and exhibits stamped “Approved” and on file with the District Environmental Commission. In the event of any conflict, the terms and conditions of this permit and the facts relied upon in the Findings of Fact and Conclusions of Law shall supersede the approved plans and exhibits.”*
4. Condition 6 of the Permit states: *“No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.”*
5. On March 4, 2013, Marcell Oil Company, Inc. was registered with the Vermont Secretary of State with Howard and Sandi Marcell as Directors.
6. Sometime between 2013 and 2015, the Respondents began using the golf driving range parking lot to store commercial vehicles.
7. On July 30, 2020, a Project Review Sheet (PRS) was initiated by the Respondents for the installation of a 30,000-gallon propane storage tank at the Project Tract. The Jurisdictional Opinion on the PRS was issued the same day stating that the proposed activity was a material change to the permitted golf driving range and required a Permit amendment. The PRS was not appealed, and the Respondents did not request reconsideration.
8. Act 250 Rule 2(C)(6) defines “material change” as: *“any cognizable change to a development or subdivision subject to a permit under Act 250 or findings and conclusions under 10 V.S.A. § 6086b, which has a significant impact on any finding, conclusion, term or condition of the project’s permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).”*
9. Act 250 Rule 34(A) states, in relevant part: *“A permit amendment shall be required for any material change to a permitted development or subdivision, or administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.”*
10. On July 30, 2020, the District 1 Coordinator contacted the Respondents via

- email about the requirement to submit an electronic application to amend the Permit. The Respondents had previously stated an intention to submit a handwritten application. The email contained additional instruction on the application requirements.
11. On October 20, 2020, the District 1 Coordinator notified the Respondents via email that a full and complete application for amendment to the Permit had not been submitted.
 12. On November 5, 2020, the District 1 Coordinator contacted the Respondents via email to follow up on the October 20, 2020 communication restating the need for a complete Permit amendment application and detailing the deficiencies in the materials previously submitted. The District 1 Coordinator also noted that the propane tank had been installed prior to the issuance of the Permit amendment and informed the Respondents that the matter would be referred for investigation and possible enforcement action.
 13. On March 11, 2021, the Board issued the Respondents a Notice of Alleged Violation (NOAV) related to Conditions 5 and 6 of the Permit. The NOAV included a directive for the Respondents to submit a complete Permit amendment application by no later than April 9, 2021. This deadline was later extended to April 23, 2021.
 14. On May 13, 2021, Respondents submitted an application to the District 1 Environmental Commission for an amendment to the Permit.
 15. On May 23, 2021, the District 1 Coordinator sent the Respondents a letter stating the application was substantially incomplete, including 29 specific application deficiencies to be addressed. The decision was not appealed, and the Respondents did not request reconsideration.
 16. On May 20, 2021, the Board received an anonymous complaint about storage of heating oil in multiple trucks, installation of a propane tank, and employee/customer parking at the Project Tract.
 17. On April 14, 2022, a Board Enforcement Officer notified the Respondents via email that a revised Permit amendment application had not yet been

filed with District 1 (since issuance of the May 23, 2021 incomplete letter), thereby representing a violation of Condition 6 of the Permit. This email imposed a deadline of May 27, 2022 for the Respondents to file the revised application. This deadline passed with no further application amendment filings from the Respondents. To date, none have been received.

18. The Respondents have violated Conditions 5 and 6 of the Permit as well as Act 250 Rule 34(A) by making a material change to the project (change of use from a golf driving range to a fuel storage / delivery operation) and commencing construction on said material change without first obtaining a Permit amendment, and furthermore continuing to operate in violation.

ORDER

- A. The Respondents shall comply with Permit series #1R0691.
- B. No later than **60 days** following the receipt of this Administrative Order, the Respondents shall file a complete application for a Permit amendment with the District 1 Environmental Commission for the material change in use and continuing operation of Marcell Oil Company, Inc. as a commercial enterprise.
- C. No later than **30 days** following the receipt of this Administrative Order, the Respondents shall pay, by separate checks, the following:
 - a. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Four Thousand Four Hundred (\$4,400.00) Dollars (U.S.)**, for the violations noted herein, by check made payable to the "State of Vermont."
 - b. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **Four Hundred Ninety Two (\$492.00) Dollars (U.S.)**, to reimburse the Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 - c. The amount of **Fifteen dollars and 00 cents (\$15.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Administrative Order in the Town of Pittsford records, by check made payable to the "Town of Pittsford, Vermont."

Payments shall be sent to:

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

- D. The Board reserves the right to augment the above stated penalties through evidence presented at hearing. 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.
- E. 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, any Respondent has the right to a hearing before the Superior Court, Environmental Division concerning this Administrative Order, if such Respondent files a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondent receives this Administrative Order. The Notice of Request for Hearing must be filed with both the Board and the Environmental Division at the following addresses:

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

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

If a hearing is requested, the 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 a Respondent on the date it is received by such Respondent. However, if such 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 such Respondent, pending a hearing by the Environmental Division. Unless a Respondent files a timely Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order as to such 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 a Respondent fails or refuses to comply with the conditions of that Judicial Order, the 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.

Dated: March 15, 2024

Sabina Haskell

Sabina Haskell
Natural Resources Board