

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. 68-5-10V/acc.

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
)
 v.)
)
BIG ROCK GRAVEL, LLC,)
CULLEN HOWE,)
SETH HOWE, and)
A. SCOTT HOWE,)
 Respondents)
)

ADMINISTRATIVE ORDER

Having found that Big Rock Gravel, LLC, Cullen Howe, Seth Howe and A. Scott Howe (collectively "Respondents") committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel, pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATIONS

- I. Commencing development without an Act 250 Permit, in violation of 10 V.S.A. § 6081(a).
- II. Failure to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit for discharges associated with industrial activity before operating and discharging from a source of industrial stormwater in violation of Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263.
- III. Failure to obtain an Air Pollution Control Permit as required by 10 V.S.A. § 556 and Vermont Air Pollution Control Regulations § 5-501.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- 1. Respondent Big Rock Gravel, LLC owns a sand and gravel pit on a 10± acre tract of land on Rowe Road in South Londonderry, Vermont (the Project tract).
- 2. Respondent A. Scott Howe purchased the Project tract on December 14, 2000.
- 3. Respondent A. Scott Howe conveyed the Project tract to his sons, Respondents

Cullen Howe and Seth Howe, on or about February 6, 2007.

4. On or about March 6, 2007, Respondents Cullen Howe and Seth Howe conveyed the Project tract to Respondent Big Rock Gravel, LLC. Big Rock Gravel, LLC is managed by Respondents Cullen and Seth Howe.
5. Londonderry has not adopted permanent subdivision bylaws.

I.

6. Respondents have operated a gravel pit on the Project tract since 2001 and continue to extract material from the Project tract for a commercial purpose. Since purchasing the property in 2000, the Respondents have extracted up to approximately 12,300 cubic yards of material per year from the Project tract and continue to extract material to date.
7. Improvements have been constructed on the project tract to facilitate the extraction of material.
8. Respondents violated 10 V.S.A. § 6081(a) by commencing development without first obtaining an Act 250 Land Use Permit.

II.

9. Respondent Big Rock Gravel, LLC has operated the gravel pit with the intent to discharge stormwater associated with industrial activity to waters of the State, and such discharge has in fact resulted.
10. Respondent Big Rock Gravel, LLC operated the gravel pit without a stormwater permit until receiving coverage under the Multi-Sector General Permit on April 29, 2009.
11. Respondent Big Rock Gravel, LLC violated Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263 by operating and discharging from a source of industrial stormwater without first obtaining a NPDES stormwater permit for discharges associated with industrial activity.

III.

12. Respondent Big Rock Gravel, LLC operated, or allowed operation of, a stone crusher with a maximum rated capacity greater than one hundred and fifty tons per hour on the project tract.
13. Respondent Big Rock Gravel, LLC operated, or allowed operation of, said crusher without an Air Pollution Control Permit until obtaining an Air Pollution Control Permit on March 16, 2009.

14. Respondent Big Rock Gravel, LLC violated 10 V.S.A. § 556 and Vermont Pollution Control Regulations § 5-501 by operating, or allowing operation of, an air contamination source without an Air Pollution Control Permit.

ORDER

- A. The Respondents shall pay a penalty of Twenty-Three Thousand Five Hundred Dollars (\$23,500.00) within thirty (30) calendar days of the receipt of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:
- Denise Wheeler, Business Manager
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- B. Any payment by the Respondents pursuant to this paragraph is made to resolve the violations set forth in this Order and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondents' state or federal taxes.
- C. The Respondents shall cease and desist all operation of the gravel pit on the project tract until all necessary permits from Act 250 and the Department of Environmental Conservation (DEC) are obtained.
- D. The Respondents shall file a complete Act 250 Land Use Permit application and shall be diligently pursuing the same no later than May 21, 2010.
- E. The above penalty amounts do not include the costs incurred by the Natural Resources Board, Land Use Panel (Panel) for the enforcement of the above described violations, or the amount of economic benefit gained by the Respondents from the violations. The Panel 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 Panel for the enforcement of the described violations, the amount of economic benefit gained by the Respondents from the violations, 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.

RESPONDENTS' RIGHT TO A HEARING BEFORE THE ENVIRONMENTAL COURT

Pursuant to 10 V.S.A. § 8012, any Respondent has the right to request a hearing before the Environmental Court 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 Land Use Panel and the Environmental Court at the following addresses:

Natural Resources Board, Land Use Panel
c/o Ken Smith, Associate General Counsel
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Clerk
Environmental Court
2418 Airport Road
Barre, VT 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

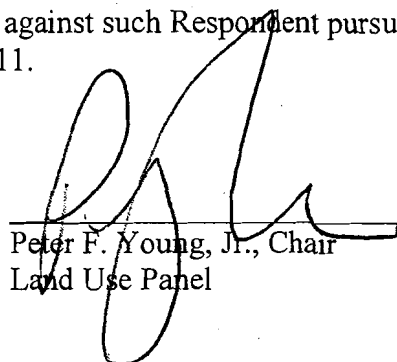
This Administrative Order shall become effective as to a Respondent on the date it is received by such Respondent unless that Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by such Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order as to that Respondent pending a hearing by the Environmental Court. If a Respondent does not timely file a Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order when filed with and signed by the Environmental Court. 10 V.S.A. § 8008(d).

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 Land Use Panel 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: _____

9/7/10


Peter F. Young, Jr., Chair
Land Use Panel