
)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)

Petitioner)

v.)

A. SCOTT HOWE, and)
JENNIFER C. HOWE)

Respondents)

ADMINISTRATIVE ORDER

Having found that A. Scott Howe and Jennifer C. Howe (collectively "Respondents") committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel of the Natural Resources Board (the Panel), pursuant to the authority set forth in 10 V.S.A. § 8008, hereby issues the following Administrative Order:

VIOLATIONS

- I. Failure to maintain sand pit floor at a negative grade and failure to maintain sediment ponds in violation of Land Use Permit Amendment #1R0809-1, Condition No. 10.
- 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.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- 1. On November 23, 1999, the District 1 Environmental Commission issued Land Use Permit Amendment #1R0809-1 (the Permit) to William and Shirley Bishop, which specifically authorized the extraction of "gravel and sand at a rate not to exceed a combined 10,000 cubic yards per year for 20 years."
- 2. The Permit applies to a parcel of land located on the River Road in West Haven identified in Book 26, Pages 41 - 42, of the land records of the Town of West Haven, Vermont.
- 3. On June 30, 2008, the Bishops conveyed to A. Scott Howe and Jennifer C. Howe a 20± acre portion of the parcel subject to the Permit. (the Project tract)
- 4. The Project tract includes two separate extraction areas referred to as the so-called "sand

pit” and the “gravel pit.”

5. A. Scott Howe operates the sand and gravel pits on the Project tract.

I.

6. Condition No. 10 of the Permit states:

“The floor of the sand pit area shall be maintained with a negative grade such that stormwater does not drain out of the floor area and carry sediment to the river. The Permittees shall regularly clean out the two silt ponds at the base of the haul road and ensure that stormwater is directed to these silt ponds for detention prior to discharge to the River Road culvert. The haul road shall be routinely graded to ensure runoff is directed to these silt ponds.”

7. On or about August 12, 2009, District Coordinator Warren Foster conducted a site visit to the Project tract. During that site visit, Coordinator Foster observed that the floor of the sand pit was not maintained with a negative grade. In fact, the sand pit floor was maintained at a positive grade which would direct stormwater out of the pit and into River Road.
8. On or about October 16, 2009, the Panel’s Permit Compliance Officer (PCO) John Wakefield conducted a site visit to the Project tract. During that site visit, PCO Wakefield observed that the floor of the sand pit was not maintained with a negative grade. In fact, the sand pit floor was maintained at a positive grade which would direct stormwater out of the pit and into River Road.
9. PCO Wakefield observed that both silt ponds were inundated with silt and had not been maintained.
10. On or about March 29, 2010, PCO Wakefield conducted a site visit to the Project tract. During that site visit, PCO Wakefield observed that both silt ponds were inundated with silt and had not been maintained.
11. During that March 29, 2010 site visit, PCO Wakefield also observed that someone had regraded the sand pit floor to give it a negative grade.
12. Respondents violated Condition No. 10 of Land Use Permit Amendment #1R0809-1 by failing to maintain the proper floor grade in the so-called sand pit, and by failing to maintain the silt ponds associated with the project.

II.

13. Respondents have 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.

14. On or about March 29, 2010, PCO Wakefield observed stormwater runoff leaving the Project tract and discharging into the Hubbardton River.
15. Respondents 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.

ORDER

Having found that Respondents have committed violations as defined in 10 V.S.A. § 8002(9), **it is hereby ORDERED:**

- A) The Respondents shall, within 21 days of this order, clean out the silt ponds on the Project tract and make all necessary repairs to ensure the ponds remain in good working order.
- B) No later than May 24, 2010, the Respondents shall file a complete Multi-Sector General Permit (MSGP) Notice of Intent and Stormwater Pollution Prevention Plan with the VT Department of Environmental Conservation's Water Quality Division for coverage of the Project tract under the MSGP, and shall diligently pursue the same.
- C) The Respondents shall immediately cease all earth extraction activities on the Project tract until they have cleaned out the silt ponds on the Project tract, made all necessary repairs to those ponds to ensure they operate properly, and obtained the necessary coverage under the Multi-Sector General Permit.
- D) The Respondents shall comply with Land Use Permit #1R0809-1 as amended.
- E) The Respondents shall pay a penalty of Twenty Five Thousand Dollars (\$25,000.00) 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

- F) 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.

G) The above penalty amounts do not include the costs incurred by the Panel for the enforcement of the above described violation, or the amount of economic benefit gained by the Respondents from the violation. 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 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.

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	Clerk
c/o Ken Smith, Associate General Counsel	Environmental Court
National Life Records Center Building	2418 Airport Road
National Life Drive	Barre, VT 05641
Montpelier, VT 05620-3201	

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

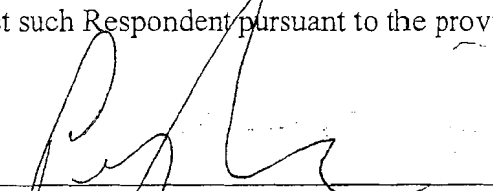
This Administrative Order shall become effective as to a Respondent on the date it is received by such Respondent unless that Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request 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: _____

5/4/10


Peter Young, Jr., Chair
Land Use Panel

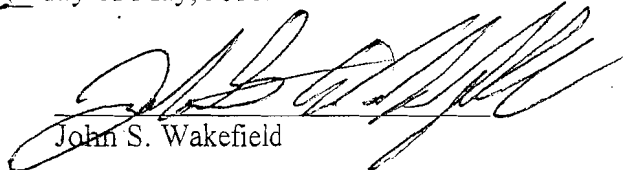
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LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
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)
A. SCOTT HOWE, and)
JENNIFER C. HOWE)
)
 Respondents)
 _____)

**AFFIDAVIT OF
JOHN WAKEFIELD**

John Wakefield, being duly sworn, hereby deposes and states the following:

- 1) I am of legal age and competent to testify to the facts stated herein.
- 2) I am employed as the Permit Compliance Officer for the Vermont Natural Resources Board and was so at all times relevant hereto.
- 3) I make this Affidavit based upon personal knowledge, and my review of the Natural Resources Board files regarding this matter. As to those facts alleged upon information and belief, I believe them to be true.
- 4) I make this Affidavit in support of the Land Use Panel's Administrative Order in the above captioned matter.
- 5) On October 16, 2009, I visited the Project tract described in the above captioned Administrative Order. During that visit, I observed that the sand pit floor on the project tract was maintained at a positive slope so as to direct stormwater runoff off the site towards the road. I also observed that the silt ponds on the Project tract were inundated with silt and had not been maintained.
- 6) On March 29, 2010, I visited the Project tract and observed that both silt ponds were inundated with silt and had not been maintained. I also observed stormwater leaving the site and discharging into the Hubbardton River.

DATED at Montpelier, Vermont, this 3 day of May, 2010.



John S. Wakefield

Subscribed and sworn to before me this 3 day of May, 2010.

Denise Wheeler

Notary Public

My Commission Expires: 2/10/2011

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

LAND USE PANEL of the
NATURAL RESOURCES BOARD,)

Petitioner)

v.)

A. SCOTT HOWE, and
JENNIFER C. HOWE)

Respondents)

AFFIDAVIT OF
WARREN FOSTER

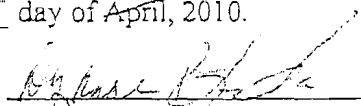
Warren Foster, being duly sworn, hereby deposes and states the following:

- 1) I am of legal age and competent to testify to the facts stated herein.
- 2) I am employed as the Coordinator for the District 8 Environmental Commission, and was so at all times relevant hereto.
- 3) I make this Affidavit based upon personal knowledge and my review of the Natural Resources Board files regarding this matter. As to those facts alleged upon information and belief, I believe them to be true.
- 4) I make this Affidavit in support of the Land Use Panel's Administrative Order in the above captioned matter. I have reviewed the Administrative Order in this matter, and I believe the "Statement of Facts and Description of Violations," to be true.
- 5) Respondents own the pit in question on River Road in West Haven, VT. The property is subject to Land Use Permit #1R0809-1, for which I was the acting Coordinator.
- 6) On August 12, 2009, I visited the Project tract described in the above captioned Administrative Order. During that visit, I observed that the sand pit floor on the project tract was maintained at a positive slope so as to direct stormwater runoff off the site towards the road.

DATED at Rutland, Vermont, this 3rd day of May, 2010.

Warren Foster
Warren Foster

Subscribed and sworn to before me this 3rd day of ^{MAJ} April, 2010.



Notary Public

My Commission Expires: 2/10/11