

FILED

JUL 9 2010

STATE OF VERMONT

SUPERIOR COURT

VERMONT SUPERIOR COURT ENVIRONMENTAL DIVISION

Re: Vermont Compost Company
Jurisdictional Opinion 5-08-1

Docket No. 103-6-08 Vtec

and

Land Use Panel of the
Natural Resources Board,
Petitioner

Docket No. 145-7-08 Vtec

v.

Vermont Compost Company, Inc.
and Karl Hammer,
Respondents

Amended Consent Order

WHEREAS, the Vermont Legislature adopted Act 130, effective May 12, 2008, in which it declared "until July 1, 2010, no composting facility holding a permit under 10 V.S.A. chapter 159 issued after January 1, 2001 shall be required to obtain a permit or a permit amendment under 10 V.S.A. chapter 151;" and

WHEREAS, the Jurisdictional Opinion at issue in this appeal has asserted jurisdiction over commercial uses but not "exempt farming uses" and has acknowledged the need to discern the lines of demarcation between "exempt farming uses" and commercial composting uses on site;

WHEREAS, the parties recognize that Vermont Compost Company, Inc.'s composting operations at Vincent Flats Road in East Montpelier, Vermont and at 1996 Main Street in Montpelier, Vermont impact the handling and disposition of certain wastes in the Central Vermont Solid Waste District and the handling and disposition of manure generated by Fairmont Farm in East Montpelier; and

WHEREAS, Vermont Compost Company, Inc. has agreed to file an application for a land use permit under 10 V.S.A. Ch. 151 (Act 250) and has agreed to diligently pursue obtaining a Land Use Permit with the District 5 Environmental Commission;

NOW THEREFORE COME the Natural Resources Board Land Use Panel (Panel), by and through its General Counsel, John H. Hasen, and Vermont Compost Company, Inc. and Karl Hammer (collectively, VCC), by and through their attorney, Gerald R. Tarrant, Esq., and, stipulate and agree that the Court may enter the following Amended Consent Order, amending the Consent Order filed on August 28, 2008:

1. VCC shall file with the District 5 Environmental Commission (Commission) a complete application for a Land Use Permit under 10 V.S.A. Ch. 151 (Act 250) by August 15, 2010.
2. VCC shall diligently pursue said application and all other necessary state or local permits or approvals. "Diligently pursue" shall mean that VCC shall (a) discern the lines of demarcation between exempt farming and commercial composting uses on site; (b) respond to any and all requests for information from the Commission, or the Coordinator for the Commission, or other state or local agency by the date set by the Commission or Coordinator or agency; and (c) in good faith meet the above schedule and comply with all scheduling or other orders or memoranda issued by the Commission or other state or local agency. VCC shall not be responsible for delays outside its control, including those caused by the Commission or state or local agency or by any other parties to its application(s).
3. Should VCC fail to diligently pursue said application(s), the Panel may, with notice to VCC, issue an order requiring VCC to cease its composting operations on Vincent Flats Road in East Montpelier and at 1996 Main Street in Montpelier.
4. VCC may continue its existing composting operations on Vincent Flats Road in East Montpelier and at 1996 Main Street in Montpelier. VCC may engage in normal repair and maintenance at these existing facilities in East Montpelier and Montpelier, but VCC shall not significantly change its composting operations or construct any further improvement for its composting operations at those sites during the pendency of its application before the Commission without the written approval of the Commission or Coordinator. Should the Commission deny its application, VCC shall immediately cease its said composting operations at these sites, unless this Court orders otherwise should there be an appeal. Should the Commission grant its application, VCC may continue its said composting operations at these sites, in accordance with the terms of the permit granted by the Commission, even if a party takes an appeal or seeks review in this Court or any other Court. Notwithstanding this paragraph, VCC shall abide by any order of a court of competent jurisdiction.
5. During the application process before the Commission, VCC shall continue to comply with the terms of Paragraph 3(a) – (e) of the Consent Order filed August 28, 2008 in this matter. The Agreement between the City of Montpelier and VCC, dated February 5, 2010 (City Agreement), governing covered feeding areas shall supersede the other controls and requirements set forth in Paragraph 3(f) of the Consent Order. VCC shall comply with the operations set forth in the City Agreement during all times of the year, such that crows or other wild birds or animals are prevented from accessing said food residuals. Nothing shall prevent VCC from constructing additional covered feeding areas for VCC poultry or for VCC poultry housing.
6. VCC shall comply with any applicable state or local permits, orders or rules, including the Accepted Composting Practices, when issued by the Agency of Natural Resources.

7. Proceedings in this consolidated action shall be stayed unless and until VCC or the Panel moves to recommence them, or until 31 days after a final decision by the Commission on the merits of VCC's Act 250 application, whichever comes first.

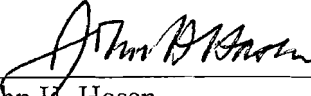
8. By entering into this Consent Order, VCC does not concede that any of its operations or activities at Vincent Flats Road in East Montpelier, Vermont or at 1996 Main Street, Montpelier, Vermont are subject to jurisdiction under 10 V.S.A. Ch. 151. VCC does not waive its rights to pursue a ruling from this Court that its operations and activities are exempt from such jurisdiction.

9. By entering into this Consent Order, neither the Panel nor VCC concede or waive any claims, rights, duties, arguments, obligations or defenses that they may have in any action or matter brought pursuant to 10 V.S.A. Ch. 151, or 201, or may have under an appeal pursuant to Ch. 220.

10. This Order shall supersede this Court's August 28, 2008 Order in this matter, except as provided herein.

DATED in Montpelier, Vermont this 8th day of July 2010.

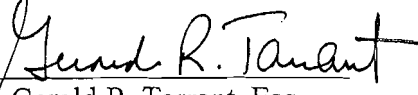
LAND USE PANEL OF THE NATURAL
RESOURCES BOARD



John W. Hasen
General Counsel

DATED in Montpelier, Vermont this 8th day of July 2010.

VERMONT COMPOST COMPANY, INC.



by Gerald R. Tarrant, Esq.
Attorney for Vermont Compost Company, Inc.

SO ORDERED

Dated:



7.9.10.
Judge, Environmental Court