

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner

ADMINISTRATIVE ORDER

v.

Jack Bowen,
Respondent.

Having found that Jack Bowen, (Respondent) has committed a violation 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:

VIOLATION

Commencement of development without a Land Use Permit. 10 V.S.A. § 6081(a).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Jack Bowen owns an approximately 129-acre parcel located off of Walker Mountain Road in the Town of Clarendon, Vermont; the parcel is identified in Book 55, Pages 1-5 of the Town of Clarendon land records (the project tract).
2. On November 12, 2003, the Coordinator for the District 1 Environmental Commission issued Jurisdictional Opinion #1-363 to the Respondent. The Jurisdictional Opinion found that historical pit operations on the project tract are not exempt from Act 250 and that a Land Use Permit is required for continued extraction operations on the tract. The Jurisdictional Opinion was not appealed and is therefore final.
3. The Respondent owns Jack Bowen Excavating, a commercial excavation contracting business, which operates from the project tract.
4. The Respondent excavates material from the project tract for use with his excavation contracting business.
5. In CY2011, the Respondent extracted and sold at least 20,000 cubic yards of earth resources from the project tract.

6. Respondent has brought earth resources material from other sites on to the project tract for processing.

7. No Act 250 Land Use Permit (10 V.S.A. Ch. 151) has been obtained for the earth resources operations on the project tract.

8. The Respondent has commenced development at the project tract without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

ORDER

- A. Respondent Jack Bowen shall immediately cease any and all earth resources operations at the project tract, including the extraction, importation, screening or otherwise handling of earth resources.
- B. No earth resources operations or other activity may occur on the project tract until the District 1 Environmental Commission has issued a Land Use Permit for said operations or other activity.

Within 30 days of the receipt of this Order, the Respondent may file an application for a Land Use Permit from the District 1 Environmental Commission for earth resources operations or other activities at the project tract. In the event that the Respondent does not file such an application, he shall, within 30 days of the receipt of this Order, apply to the Commission for permit to close the present earth resources operation and remediate the project tract. The Respondent shall comply with all the terms of such permit, including any required site stabilization.

- C. No later than 30 days following the receipt of this Order, the Respondent shall pay the following:
 - 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Twenty-Five Thousand (\$25,000.00) Dollars (U.S.), for the violation noted herein, by check made payable to the "Treasurer, State of Vermont".
 - 2. the amount of ten (\$10.00) Dollars (U.S.), to reimburse the Natural Resources Board for the costs of this enforcement action and to pay the recording fee for the filing of a notice of this Assurance in the Town of Brandon land records, by check made payable to the "Town of Brandon, Vermont."

All payments under this paragraph shall be by check sent to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- D. 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.

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

Pursuant to 10 V.S.A. §8012, the Respondent has the right to a hearing before the Superior Court, Environmental Division concerning this Administrative Order, if the 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 Division at the following addresses:

John H. Hasen
General Counsel
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Jackie Fletcher, Clerk,
Superior Court,
Environmental Division
2418 Airport Road, Ste. 1
Barre, VT 05641-8701

If a hearing is requested, the Land Use Panel 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 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: _____

January 17, 2012



Ron Shems, Chair
Land Use Panel

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Affidavit of John Wakefield

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

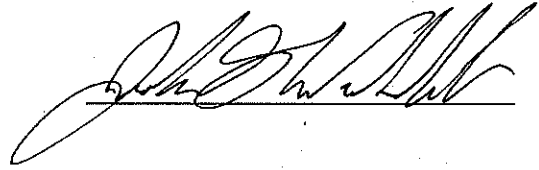
1. I am of legal age and competent to testify to the facts stated herein.
2. I make this Affidavit based upon personal knowledge, my review of the Natural Resources Board and District 1 Environmental Commission files, my review of town records, and interviews regarding this matter.
3. I am the Permit Compliance Officer for the Natural Resources Board, and I have been so at all times relevant hereto.
4. I have reviewed the Administrative Order in this matter, and the *Statement of Facts and Description of Violations* are true.
5. Jack Bowen has told me that in 2011 he has sold approximately 20,000 cubic yards of earth resources extracted from the project tract.

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Affidavit of John Wakefield

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6. No Act 250 (10 V.S.A. Ch. 151) Land Use Permit has been issued for
extraction of earth resources from the project tract.

Dated at MONTPELLER, Vermont, this 10 day of January 2012.



John Wakefield

Subscribed and sworn to before me this 10 day of January 2012.

Denise Wheeler
Notary Public

My Commission expires:
2/10/14