

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner

ADMINISTRATIVE ORDER

v.

Ronald and Sandra Brown
and
Town of Weathersfield, Vermont,
Respondents

Having found that Ronald and Sandra Brown and the Town of Weathersfield, Vermont (Respondents) have 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: *Failure to comply with Conditions 18 and 27 of Land Use Permit #2S0818*

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On May 14, 1991 the District 2 Environmental Commission (Commission) issued Land Use Permit #2S0818 (Permit) to Ronald and Sandra Brown.

2. The Permit authorizes the Browns, as permittees, to operate a gravel pit on land owned by the Browns in the Town of Weathersfield, Vermont (Town).

3. Condition 18 of the Permit states:

18. Each phase of the project shall be reclaimed prior to clearing or extracting gravel from the next phase. The permittees shall submit an affidavit stating all reclamation is completed in accordance with permit conditions. Clearing of the next phase may proceed only with the written authorization of the District II Environmental Commission.

4. Condition 27 of the Permit states:

27. All gravel extraction and reclamation on this project must be completed by October 15, 2009.

5. The reclamation plan submitted by the Browns and approved by the Commission (Exhibit 11 to Land Use Permit #2S0818) states:

Gravel will be removed in five phases of about 3 acres each. The excavation and reclamation will be done in the following manner:

1. Clear land
 - a) Remove merchantable forest products
 - b) Chip or burn brush
2. Strip topsoil and stockpile.
3. Excavate gravel.
4. Install sedimentation pool and staked hay bales.
5. Grade banks 2.5:1 and floor of pit at 1/2%.
6. Reclaim previous phase before 5% of next phase is excavated.
 - a) Cover surface with 2" of topsoil
 - b) Seed with creeping red fescue and tall fescue grasses
 - c) Apply lime 2 tons/ acre
 - d) Apply fertilizer 10-10-10, 240 lbs/ acre
 - e) Mulch with hay 60 bales/acre

6. Under a written agreement between Ronald and Sandra Brown and the Town of Weathersfield, the Town has operated the Brown gravel pit since the late 1990s or early 2000s.

7. The Brown gravel pit has not been fully reclaimed.

8. No affidavits stating that reclamation of the Brown gravel has been completed in accordance with permit conditions have ever submitted to the Commission by the Browns or the Town.

9. The Commission has never given written authorization to the Browns or the Town to clear any phase of the Brown gravel pit subsequent to

Phase 1.

10. Reclamation at the Brown gravel pit was not completed by October 15, 2009.

11. Ronald and Sandra Brown, as owners of the Brown gravel pit, and the Town of Weathersfield, as operators of the Brown gravel pit, have violated and are in violation of Land Use Permit #2S0818.

ORDER

A. Respondents shall comply with Land Use Permit #2S0818 and shall immediately reclaim the Brown gravel pit in accordance with Exhibit 11 to Land Use Permit #2S0818.

B. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Fifty Thousand (\$50,000.00) Dollars (U.S.), for the violations noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and shall be sent to:

Denise Wheeler
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

Any payment by a 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. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. No Respondent shall deduct, or attempt to deduct, any payments, penalties, contributions or other expenditures required by this Administrative Order from said Respondent's state or federal taxes.

**RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT**

Pursuant to 10 V.S.A. §8012, any Respondent has the right to 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:

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

Clerk, Environmental Court
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 Court. 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 Court.

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: 4/20/2010


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