

STATE OF VERMONT

ENVIRONMENTAL COURT  
Docket No. \_\_\_\_\_

<b>LAND USE PANEL of the</b>	)
<b>NATURAL RESOURCES BOARD</b>	)
Petitioner	)
	)
v.	)
	)
<b>ALLEN LAFLAMME</b>	)
Respondent	)

**ADMINISTRATIVE ORDER**

Having found that Allen LaFlamme (Respondent) committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel of the Natural Resources Board (the Panel), pursuant to 10 V.S.A. § 8008, hereby issues the following Administrative Order:

**VIOLATIONS**

- I. The parking and storage of vehicles in the Route 113 right-of-way in violation of Condition No. 10 of Land Use Permit #3R0410-2 and the Assurance of Discontinuance in docket # 171-9-99 Vtec.
- II. The installation of fence bracing in the Route 113 right-of-way in violation of the Assurance of Discontinuance in docket # 171-9-99 Vtec.
- III. The placement of fill in a drainage ditch within the Route 113 right-of-way to create a parking area in violation of the Assurance of Discontinuance in docket # 171-9-99 Vtec.
- IV. The installation of a water line in a drainage ditch within the Route 113 right-of-way in violation of the Assurance of Discontinuance in docket # 171-9-99 Vtec.

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

- 1. Respondent is the owner of a salvage yard known as Allen's Auto Salvage located on Route 113 in Vershire, Vermont. The salvage yard is located on a 5± acre tract of land recorded and identified in Book 31, Page 93, of the land records of Vershire, Vermont. (the project tract)
- 2. The project tract is subject to Land Use Permit #3R0410 as amended.
- 3. On March 28, 1989, the District 3 Environmental Commission issued Land Use

Permit #3R0410-2 (the Permit) to the Respondent specifically authorizing “the permittee to renew Land Use Permit #3R0410 and #3R0410-1 and to enlarge the auto storage area by about 1 ½ acres.”

4. On September 29, 1999, the Environmental Court entered as a court order an Assurance of Discontinuance (the AOD) between the Respondent and the Environmental Board in docket # 171-9-99 Vtec. The AOD involved multiple violations of Land Use Permit #3R0410-2 and the Vermont Hazardous Waste Management Regulations.

#### I.

5. The Permit, amongst other conditions, required Respondent to enclose the salvage yard with a wooden fence.
6. The Route 113 right-of-way in front of the project tract is approximately 33 feet in width from the centerline of Route 113 and extends up to within several inches of Respondent’s wooden fence.
7. Condition No. 10 of the Permit states in relevant part “[s]tored vehicles shall be kept within the perimeters of the wooden fence.
8. Paragraph A(3) of the Agreement in the AOD requires Respondent to “[e]nsure that all vehicles and operations are behind the fence as specified herein.”
9. Paragraph A(9) of the Agreement in the AOD requires Respondent to “[p]ermanently keep the Route 113 right-of-way along the project site free of all motor vehicles and any other property or material... which may interfere with the public use... of Route 113 and the need by the Vermont Agency of Transportation or the Town of Vershire to operate snowplows on said route.”
10. Respondent has stored vehicles and other materials in the Route 113 right-of-way on a regular basis since at least 2002.
11. Respondent has violated Condition No. 10 of the Permit and paragraphs A(3) and A(9) of the AOD by storing vehicles and other materials outside of the wooden fence and within the Route 113 right-of-way.

#### II.

12. Paragraph A(1) of the Agreement in the AOD requires Respondent to “[m]aintain the wooden perimeter fence” on the project tract.
13. Paragraph A(2) of the Agreement in the AOD requires Respondent to construct a wooden palisade fence along the south property line of the salvage yard and Route 113, and requires that the fence not be in the Route 113 right-of-way.

14. Several Vermont Agency of Transportation (AOT) employees conducted a site visit to the section of Route 113 in front of the project tract on May 12, 2009. During the site visit, AOT employees observed fence bracing, from Mr. LaFlamme's wooden fence, extending into the Route 113 right-of-way.
15. At least as early as May 12, 2009, Respondent has maintained fence bracing or supports within the Route 113 right-of-way.
16. Respondent has violated paragraph A(2) of the AOD by placing and maintaining fence bracing within the Route 113 right-of-way.

### **III.**

17. During their site visit, AOT employees observed that crushed stone and/or other fill material had been placed in the roadside drainage ditch in one area within the Route 113 right-of-way in front of the project tract. This material had apparently been placed in order to create a parking and/or storage area along the roadside.
18. Respondent has used this parking area for storing vehicles and other materials.
19. Respondent has violated paragraph A(9) of the AOD by placing fill material in a drainage ditch within the Route 113 right-of-way.

### **IV.**

20. During their site visit, AOT employees observed that a waterline had been placed in the roadside drainage ditch within the Route 113 right-of-way along one portion of the project tract.
21. Said waterline serves the project tract.
22. Respondent has violated paragraph A(9) of the AOD by placing and/or maintaining a waterline in a drainage ditch within the Route 113 right-of-way.

### **ORDER**

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

- A. The Respondent shall pay a penalty of Thirty-Two Thousand Seven Hundred and Fifty Dollars (\$32,750.00) 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 Respondent pursuant to this Order is made to resolve the violation 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. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondent's state or federal taxes.
- C. Respondent shall remove all vehicles from the Route 113 right-of-way within 30 days of this Order. Respondent shall remove the fence bracing and waterline described above from the right-of-way no later than April 1, 2010.
- D. The Respondent shall comply with all provisions of the court-ordered AOD in docket #171-9-99 Vtec.
- E. The Respondent shall comply with Act 250 Land Use Permit #3R0410 as amended.
- F. The above penalty amounts do not include the costs incurred by the Land Use Panel of the Natural Resources Board (the Panel) for the enforcement of the above described violation, or the amount of economic benefit gained by the Respondent 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 violations, the amount of economic benefit gained by the Respondent 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.

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

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. § 8012 by filing a Notice of Request for Hearing within **fifteen (15) days** of the date the Respondent receives this Administrative Order. The Respondent must file, within the time limit, a Notice of Request for Hearing 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

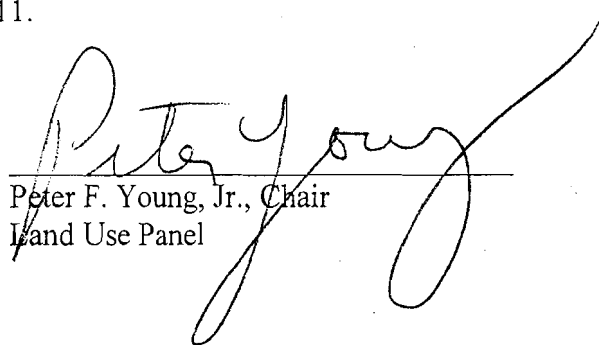
**EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER**

This Administrative Order shall become effective on the date it is received by the Respondent unless the 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 the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the 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 the 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 the Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: 12/28/09

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