

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. _____

_____)
LAND USE PANEL of the)
NATURAL RESOURCES)
BOARD,)
 Petitioner,)
)
 v.)
)
S.T. GRISWOLD & CO., INC.)
 Respondent.)
 _____)

**ADMINISTRATIVE ORDER WITH
STAY OF PERMITTING PROCESS**

Having found that S.T. Griswold, & Co., Inc. (Respondent) committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel of the Vermont Natural Resources Board (the Panel), pursuant to the authority set forth in 10 V.S.A. § 8008 hereby issues the following ADMINISTRATIVE ORDER:

VIOLATIONS

10 V.S.A. Chapter 151; failure to file financial undertaking as security for mined land reclamation and failure to undertake reclamation in violation of LUP #6F0405 Conditions 7 and 11 and 10 V.S.A. § 6081(a).

PERMIT STAY

Pursuant to 10 V.S.A. §§ 8011(a)(3) and 8008(c)(2), the District 6 Environmental Commission's processing of the requested amendment to LUP#6F0405 is hereby STAYED for the reasons set forth herein until such time as Respondent complies with the directives of this Administrative Order or the Land Use Panel agrees to lift the stay via an Assurance of Discontinuance or otherwise.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On October 20, 1989, the District 6 Environmental Commission (Commission) issued LUP #6F0405 (the Permit) to Respondent's predecessor in interest, which authorized the operation of a 13.3 acre sand borrow pit (the Project) off of Lampkin Street in Highgate, Vermont, being more particularly described as the lands identified in Book 52, Page 300 of the land records of Highgate, Vermont (the Property).
2. Condition No. 7 of the Permit required the posting of a bond or other financial guarantee in the amount of \$10,000, to remain in effect until a registered engineer certified that reclamation of the Project was completed as required by the Permit and as per the final approval of the Commission.
3. No bond or other financial guarantee was ever posted for the Project, in violation of Condition No. 7 of the permit. Said violation has been continuous since at least September 30, 2008.
4. Condition No. 11 of the Permit required that the Property be reclaimed after the completion of each phase of the sand extraction process, and be re-vegetated with grass and trees after being graded to a gentle slope.
5. In 1989, the estimated cost for the reclamation required by Condition 11 of the Permit was \$2,920.00 per acre, or \$38,836.00 for the entire parcel.
6. Mining operations at the Project have been completed but no phase(s) of the reclamation required by Condition 11 of the Permit has/have been undertaken.
7. The Property was not reclaimed after the completion of each or any phase of the sand extraction process, was not re-vegetated with grass and trees, and was not graded to a gentle slope, in violation of Condition No. 11 of the Permit. Said violations have been continuous since at least September 30, 2008.
8. In a letter dated November 6, 2009, Respondent's consultant Brad Ruderman, P.E. of Brad M. Ruderman & Associates, Inc. proposed an amendment to the Permit to allow for the construction of a housing development with a \$75,000 performance bond to be provided for the "reclamation" of the Project.
9. Currently pending before the District 6 Environmental Commission is an application seeking to amend the Permit to allow construction of a housing development, including a shared road, driveways, drainage, utilities and house sites, in place of the reclamation required by the Permit. See **Exhibit NRB-D** and the accompanying Affidavit of District 6 Environmental Coordinator Geoff Green, attached hereto and made part hereof.

ORDER

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

A) The Respondent shall pay a penalty of **SEVENTY THREE THOUSAND EIGHT HUNDRED AND THIRTY-SIX DOLLARS (\$73,836.00)** 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 paragraph 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) The above penalty amount includes only the total costs **to date** incurred by the Panel for the enforcement of the above described violation, and does not include the entire amount of economic benefit gained by the Respondent from the violation, which the Land Use Panel reserves the right to augment through evidence obtained via discovery and presented at hearing.

D) 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 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, including, without limitation, the imposition of daily penalties for the continuing violation as may be demonstrated by evidence obtained via discovery and presented at hearing.

E) Pursuant to 10 V.S.A. § 8011(a)(3), the District 6 Environmental Commission's processing of the requested amendment to LUP#6F0405 is hereby **STAYED** for the reasons set forth herein until such time as Respondent complies with Paragraph A of this Administrative Order.

RESPONDENT'S 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
c/o Mark Lucas, 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

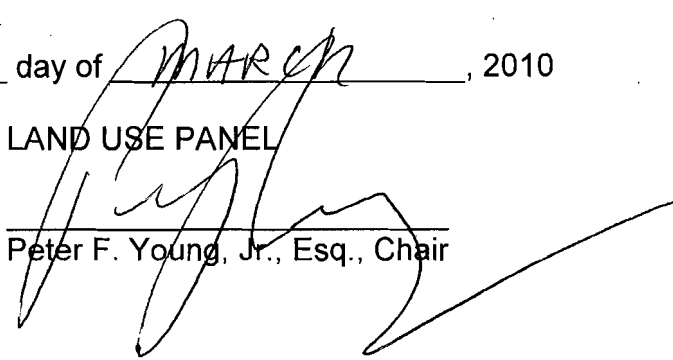
This Administrative Order shall become effective as to a Respondent on the date it is received by such Respondent unless that Respondent files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request 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). **Notwithstanding the foregoing, pursuant to 10 V.S.A. § 8011(c), the Permit Stay ordered herein shall not be stayed pending a hearing.**

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 at Montpelier, Vermont, this 19th day of MARCH, 2010

LAND USE PANEL

By: 
Peter F. Young, Jr., Esq., Chair