

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

Land Use Panel of the
Natural Resources Board,
Petitioner

ADMINISTRATIVE ORDER

v.

Hazel Mohan and Markowski Excavating, Inc.,
Respondents.

Having found that Hazel Mohan and Markowski Excavating, Inc., (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

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Hazel Mohan owns an approximately 113 acre parcel located off of Blackberry Lane in the Town of Brandon, Vermont (the project tract).
2. There is a current gravel and sand extraction operation on the project tract.
3. The project tract is leased to Richard Bloomer, who in turn subleases it to Markowski Excavating, Inc., a Vermont corporation with its principal place of business in Florence, Vermont. Markowski Excavating, Inc. took over operations of the gravel and sand extraction operation in 2001.
4. The gravel and sand extraction operation presently includes the use of a crusher on-site; prior to this year no crusher has been used at the project tract.
5. No 10 V.S.A. Ch. 151 Land Use Permit (Act 250) has been obtained for the gravel and sand extraction operation on the project tract.

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6. Respondents have commenced development at the project tract without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

ORDER

- A. Respondents shall immediately cease any and all earth resources extraction operations at the project tract.
- B. No earth resources extraction 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.

In the event that the Respondents do not seek a permit from the District 1 Environmental Commission to continue to engage in earth resources extraction operations at the project tract, they shall, within 30 days of the receipt of this Order, apply to the Commission for permit to close the operation and remediate the site. The Respondents shall comply with all the terms of such permit.

- C. No later than 30 days following the receipt of this Order, the Respondents shall pay the following:

- 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Eleven Thousand (\$11,000.00) Dollars (U.S.)**, for the violations noted herein, by check made payable to the "Treasurer, State of Vermont".

- 2. pursuant to 10 V.S.A. § 8010(e)(2), the amount of **Eighty (\$80.00) 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 "State of Vermont Natural Resources Board."

All payments 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

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- 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. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. 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, any Respondent has the right to a hearing before the Superior Court, Environmental Division 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 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: _____

01/03/2011



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