



ACT 250
JURISDICTIONAL OPINION NO. «Application_Number»

State of Vermont

Natural Resources Board

Districts 5 Environmental Commission

10 Baldwin Street

Montpelier, VT 05633-3201

<https://nrb.vermont.gov/>

[phone] 802-476-0185

This is a Jurisdictional Opinion based upon available information and a written request from the landowner/agent or other person. Any notified person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator or an appeal with the Superior Court, Environmental Division within 30 days of the issuance of this opinion (see below). This Opinion identifies Act 250 Jurisdiction only. Other permits may be required (e.g., <https://dec.vermont.gov/permits>). For more information, please contact the Agency of Natural Resources Permit Specialist serving your area: (<https://dec.vermont.gov/environmental-assistance/permits/specialists>).

I hereby request a jurisdictional opinion from the District Coordinator regarding the jurisdiction of 10 V.S.A. Chapter 151 (Act 250) over the project described below.

A.J. LaRosa, Esq.
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P.O. Box 4485
Burlington, VT 05406

On behalf of

Charles & Margaret Kilpatrick
763 Goose Pond Road
Fairfax, VT

- Landowner
 Agent
 Other



Project Background/Description:

- Working Dog Septic Service Inc. (“Working Dog”) is a commercial enterprise and is a certified septic installation specialist in Franklin, Lamoille, and Chittenden counties of Vermont. Working Dog’s services also include septic repair, maintenance, and inspections, among other things.
- In a letter dated November 18, 2019, from Lawrence Young, owner of Working Dog, to Eamon Twohig of the Residual Management Section of the ANR-DEC Wastewater Management Division, Young advised of Working Dog’s proposal to provide domestic septage as an agricultural land amendment on the Boyden Farm in Cambridge, Vermont.
- Boyden Farm is a fifth-generation farm in Cambridge that utilizes sustainable farming practices to breed, raise, and finish grass-fed beef. The application of domestic septage as fertilizer is intended to grow feed and hay for cattle.
- In connection with its septic business, Working Dog entered into a lease agreement with Mark and Lauri Boyden regarding the application of domestic septage to an agricultural field owned by the Boyden’s in Cambridge which is used in connection with the Boyden’s commercial farming operations.
- On March 12, 2020, Working Dog submitted an application to the ANR-DEC Wastewater Management Division consisting of a plan titled Residual Waste Management Plan for certification of the proposed waste management facility (“Facility”).
- The application for certification of the management plan and Facility was reviewed by the Agency of Natural Resources, Department of Environmental Conservation, Waste Management & Prevention Division, Residual Management & Emerging Contaminants Program in accordance with the Vermont Solid Waste Management Act, 10 V.S.A. § 6601 et seq. and the Vermont Solid Waste Management Rules.
- The Draft Solid Waste Management Facility Certification states that, “The Facility includes one (1), 49.3 usable acre agricultural field located on River Road in the Town of Cambridge, Vermont...The land application area with required isolation distances is depicted in Appendix 3 and Six (6) groundwater monitoring wells are installed along property boundaries with locations identified on the Monitoring Well Location Map provided in Appendix 4.”
- The Draft Solid Waste Management Facility Certification states that, “The Facility will be used for the land application of stabilized domestic septage and will be applied at agronomic rates via surface application. Land application rates of stabilized septage

shall be based upon crop nutrient requirements determined in The University of Vermont Extension Nutrient Recommendations for Field Crops in Vermont (March 2018), contribution of nutrients from other sources, and the average nutrient content for septage as determined in annual samples with frequency determined in Table 2. Domestic septage is required to be treated for pathogen and vector attraction reduction prior to land application, according to the Vermont Solid Waste Management Rules, effective October 31, 2020 (Rules), 40 CFR Part 503, and this Certification.”

- Subchapter 13 of the Solid Waste Management Rules (updated 10/31/2020) applies to Residuals Management, which includes land application of biosolids and/or septage. Under section 6-1306 (Residuals Management Facility Operating Standards), the conditions pertaining to the land application of domestic septage being done for agronomic purposes are subsection (b), which states, “All biosolids and septage land application sites shall be incorporated in a field by field nutrient management plan developed by a certified nutrient management planner or the permittee. Development and implementation of the nutrient management plan shall meet or exceed the standards of Vermont Required Agricultural Practices and the Vermont USDA NRCS Nutrient Management Plan 590 Standard;” and subsection (d), which establishes an application rate based on crop nitrogen demand.
- The Draft Solid Waste Management Facility Certification reflects these provisions and contains conditions pertaining to application rates, cropping plans, and Required Agricultural Practices.
- In addition to prior installation of six total groundwater monitoring wells, the project also involves the installation of a frac tank on the project tract and access drive improvements have been made to Willow Drive in support of the project.
- There are many other current examples throughout Vermont of farmers applying domestic septage on agricultural fields for agronomic purposes. None of these existing solid waste management facilities are under Act 250 jurisdiction.

Existing Act 250 permit number(s) or series: #5L1279 Permit Series.

Project Type: Commercial Subdivision Municipal/State Mixed
 Farming/Forestry Housing Other _____

Has the landowner or affiliated person subdivided before? Yes No N/A

If Yes: Location: _____ no. of lots: _____ Date _____

AN ACT 250 PERMIT IS REQUIRED: YES NO

BASIS FOR DECISION:

Amendment Jurisdiction

Regarding the proposed project as it relates to existing Act 250 jurisdiction, as the ±49.3-acre tract at issue in this Jurisdictional Opinion (JO) is separate and distinct from the ±2.1-acre parcel under jurisdiction pursuant to land use permit series #5L1279 for the Boyden Valley Winery, the project does not constitute a “material change to a permitted development” pursuant to Act 250 Rule 34(A), therefore an Act 250 permit amendment to the Boyden’s existing permits is not required for the proposed project. Additionally, pursuant to Act 250 Rule 2(C)(5), although under common ownership, the ±49.3-acre tract at issue in this JO can not be said to be “involved” land to the jurisdictional ±2.1-acre tract under permit series #5L1279 and the authorized uses thereon.

Original Jurisdiction

As the Town of Cambridge is a 1-acre town for Act 250 jurisdictional purposes and the project tract that is the subject of this JO is greater than 1 acre in size, the primary question at hand is whether Working Dog’s proposed application of domestic septage on Boyden agricultural lands constitutes a “development” pursuant to 10 V.S.A. § 6001(3)(A)(ii). If so, then an Act 250 permit is required for the proposed project.

As stated above, Working Dog is a for-profit commercial entity that specializes in all things septic-related, and Boyden Farm is a commercial farming operation that specializes in the raising of beef cattle. Also as stated above, the project does indeed involve construction of various improvements including installation of groundwater monitoring wells, installation of an onsite frac tank, and access drive improvements. However, it is evident from the information available, including the Draft Solid Waste Management Facility Certification and associated documents, that the primary purpose of the septage application is as an agricultural land amendment in support of the Boyden’s farming operations. The construction of these improvements is solely in support of this proposed agricultural use. Further, a review of current Solid Waste Management Rules indicates that the Waste Management Facility Certification would not be approved, and a permit would not be issued if the proposed use were not for agronomic purposes.

Accordingly, as the project proposes construction of improvements for land application of domestic septage that is primarily for agronomic and agricultural purposes, the proposed project meets the Act 250 definition of “farming.” Therefore, the project does not constitute a “development” and is exempt from Act 250 jurisdiction pursuant to 10 V.S.A. §§ 6001(3)(D)(i) & (22)(A) and (B) and it is concluded that an Act 250 permit is not required.

Dated this 23rd day of June 2021.



By: _____

Josh Donabedian, Coordinator
District 5 Environmental Commission
10 Baldwin Street, Montpelier, Vermont 05633-3201
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This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file the entry fee required by 32 V.S.A. § 1431 with the Notice of Appeal, which is \$295.00. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **JURISDICTIONAL OPINION 5-44** (Working Dog Septic Service, Inc.) by U.S. Mail, postage prepaid, on this 23rd day of June 2021 to the following via email addresses:

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