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**LAND USE PANEL of the** )  
**NATURAL RESOURCES BOARD,** )  
 Petitioner )  
 )  
 v. )  
 )  
**BIG ROCK GRAVEL, LLC** )  
 Respondent )  
 \_\_\_\_\_ )

**ADMINISTRATIVE ORDER**

Having found that Big Rock Gravel, LLC (Respondent) committed violations 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:

**VIOLATIONS**

- I. Failure to obtain an Act 250 Permit before commencing development in violation of 10 V.S.A. § 6081(a).
- II. Failure to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit for discharges associated with industrial activity before operating and discharging from a source of industrial stormwater in violation of Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263.
- III. Failure to obtain an Air Pollution Control Permit as required by 10 V.S.A. § 556 and Vermont Air Pollution Control Regulations § 5-501.

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondent owns a 10 acre parcel of land located off the Rowes Road in South Londonderry, Vermont. (the project tract). Respondent purchased the project tract on December 14, 2000. Londonderry has not adopted permanent zoning and subdivision bylaws.

**I.**

2. Respondent operates a gravel pit on and currently extracts material from the project tract for a commercial purpose. Since purchasing the property, the Respondent has extracted approximately 9,000 – 11,000 cubic yards of material per year from the project tract and continues to extract material to date.

3. Improvements have been constructed on the project tract to facilitate the extraction of material.
4. Respondent has violated 10 V.S.A. § 6081(a) by commencing development without first obtaining an Act 250 Land Use Permit.

**II.**

5. Respondent has and continues to operate the gravel pit with the intent to discharge stormwater associated with industrial activity to waters of the State, and such discharge has in fact resulted.
6. Respondent has violated Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263 by operating and discharging from a source of industrial stormwater without first obtaining a NPDES stormwater permit for discharges associated with industrial activity.

**III.**

7. Respondent operates a stone crusher with a maximum rated capacity greater than one hundred and fifty tons per hour on the project tract.
8. Respondent operates said crusher without an Air Pollution Control Permit.
9. Respondent has violated 10 V.S.A. § 556 and Vermont Pollution Control Regulations § 5-501 by operating an air contamination source without an Air Pollution Control Permit.

**ORDER**

- A. The Respondent shall pay a penalty of Twenty-Three Thousand Five Hundred Dollars (\$23,500.00) 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 violations 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 Respondent shall cease and desist all operation of the gravel pit on the project tract until all necessary permits from Act 250 and the Department of Environmental Conservation (DEC) are obtained.
- D. The Respondent shall file complete permit applications (i.e., no further information required from Respondent for either DEC or the District 2 Environmental Commission to make the required permit determinations), for all required environmental permits including without limitation, an Act 250 Land Use Permit, coverage under the Vermont NPDES Multi-Sector General Permit and an Air Pollution Control Permit, and shall be diligently pursuing the same no later than October 3, 2008.
- E. The above penalty amounts do not include the costs incurred by the Natural Resources Board, Land Use Panel (Panel) for the enforcement of the above described violations, or the amount of economic benefit gained by the Respondent from the violations. 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

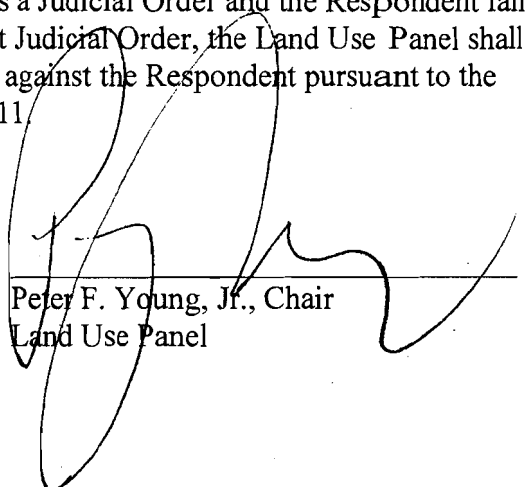
**EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER**

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: 9/12/08

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

STATE OF VERMONT

ENVIRONMENTAL COURT

Docket No. \_\_\_\_\_

**LAND USE PANEL of the  
NATURAL RESOURCES BOARD,**

Petitioner

**AFFIDAVIT OF BOOLIE SLUKA**

v.

**BIG ROCK GRAVEL, LLC**

Respondent

**AFFIDAVIT OF BOOLIE SLUKA**

Pursuant to 10 V.S.A. § 8010(a), Boolie Sluka being duly sworn, hereby deposes and states the following:

1. I am of legal age and competent to testify to the facts stated herein.
2. I make this Affidavit based upon personal knowledge, my review of the Natural Resources Board files regarding this matter, and my review of other pertinent documents and information relating to the Respondent's site.
3. I am the Assistant Coordinator for the District 2 Environmental Commission, and have been so at all times relevant hereto.
4. I have reviewed the Administrative Order in the above-captioned matter, and I believe the "*Statement of Facts and Description of Violations*," to be true.
5. Respondent has operated a commercial gravel pit since 2000 without an Act 250 Land Use Permit.
6. Respondent discharged or intended to discharge stormwater into waters of the state at least as early as April of 2008.
7. Respondent has operated a rock crusher on site since at least as early as April of 2008.

DATED at Springfield, Vermont, this 22<sup>th</sup> day of August, 2008.

Boolie Sluka  
Boolie Sluka

Subscribed and sworn to before me this 22<sup>th</sup> day of August ~~September~~, 2008.  
SVA

Sarah Abbott  
Notary Public