

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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

Docket No.

v.

**HUTCHINS BROTHERS, INC., and
BURNOR & SON LOGGING and
FIREWOOD, LLC
Respondents**

ADMINISTRATIVE ORDER

I. VIOLATION

Construction of improvements for a commercial purpose without an Act 250 land use permit, in violation of 10 V.S.A. § 6081 (a.)

II. ADMINISTRATIVE ORDER

Having found that Hutchins Brothers, Inc. and Burnor & Son Logging and Firewood, LLC (Respondents) committed violations as defined in 10 V.S.A. § 8002(9), the Environmental Court, pursuant to the authority set forth in 10 V.S.A. §§ 8008 and 8012, hereby issues the following Administrative Order:

III. STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Hutchins Brothers Inc. (Respondent HBI) owns a 2.87-acre tract of land located on Route 100C in Johnson, Vermont (Project Tract). Sometime in the early 1980s Respondent HBI constructed a large garage on the property for the purpose of leasing the garage for splitting wood to be sold as firewood.
2. Respondent HBI currently leases the garage to Dan Burnor, operator of Burnor & Son Logging and Firewood, LLC (Respondent Burnor). Respondent HBI and Respondent Burnor have a business relationship where Respondent HBI's logging company brings logs to the property and Respondent Burnor uses equipment located within the garage to cut and split the wood. The wood is then hauled off the site by Respondent Burnor and sold as firewood.
3. The Town of Johnson has not adopted permanent zoning bylaws. Therefore, construction of improvements for commercial purposes on a parcel larger than one acre requires an Act 250 land use permit.
4. Respondents have failed to obtain an Act 250 Land Use Permit for the development on the Project Tract.

ORDER

- A. Respondents shall file with the District 5 Environmental Commission a complete permit application for the improvements constructed on, and use of, the Project Tract.
- B. If said Act 250 permit application is denied by the Commission, and said permit denial becomes final, then within sixty (60) days after said decision becomes final:
- a. Respondents shall cease all commercial use of the Project Tract.
 - b. If Respondents or either of them wish to use the Project tract for a "home occupation" as defined in Act 250 Rule 2(C)(17), or for other use that would not be subject to Act 250 jurisdiction, then Respondents or either of them shall request a jurisdictional opinion from the District Coordinator to ensure that each proposed use of the Project Tract constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or is otherwise exempt from Act 250 jurisdiction. Any use not determined to be exempt shall cease within thirty (30) days of the date upon which such jurisdictional opinion is issued. Any such use may only occur after an Act 250 permit is obtained or after said jurisdictional opinion is modified upon reconsideration or appeal.
- C. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of five thousand two hundred and fifty dollars U.S. (\$5,250) for the violations noted herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall have it delivered 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
- D. Any payment by either or both Respondents pursuant to this Order is made to resolve the violation set forth in this Assurance and shall not be claimed as a charitable contribution, business expense, or other deduction or credit under the federal or state tax codes.
- E. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.

**RESPONDENTS' RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT**

Each 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 that you receive this Administrative Order. Respondent must file, within the time limit, a Notice of Request for Hearing with both the Panel and the Environmental Court at the following addresses:

Melanie Kehne, Associate General Counsel
Natural Resources Board, Land Use Panel
National Life Records Center
National Life Drive
Montpelier, VT 05620-3201

Ms. Jacalyn Fletcher, Court Manager
Vermont Environmental Court
2418 Airport Road, Suite 1
Barre, VT 05641-8701

If a hearing is requested, the Panel reserves the right to seek additional penalties for additional costs of enforcement and other relevant factors. 10 V.S.A. § 8010(b).

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by Respondents unless the Respondents or either of them files a Notice of Request for Hearing within **fifteen (15) days** of receipt as provided in the preceding section. The timely filing of a Notice of Request for Hearing by either or both Respondents shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If neither Respondent timely files a Notice of Request for a Hearing, this Administrative Order shall become a Judicial Order when filed with and signed by the Environmental Court.

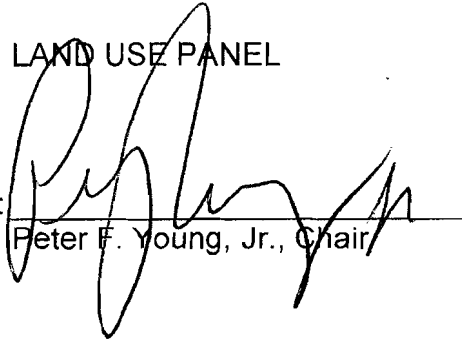
COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondents or either of them fail or refuse to comply with the conditions of a final Administrative Order, the Land Use Panel shall have cause to initiate an enforcement action against the Respondents or either of them pursuant to 10 V.S.A. Chapters 201 and 211.

DATED in Montpelier, Vermont, this 22nd day of July, 2009.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair

