

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. _____

Land Use Panel of the
Natural Resources Board,
Petitioner

ADMINISTRATIVE ORDER

v.

Oscar's Farm of Vermont, Inc,
and Gary Schy,
Respondents

Having found that Oscar's Farm of Vermont, Inc. and Gary Schy (Respondents) have committed violations as defined in 10 V.S.A. § 8002(9), the Land Use Panel of the Natural Resources Board, pursuant to the authority in 10 V.S.A. §8008, issues the following Administrative Order:

Violations

- I. Commencement of development without an Act 250 Land Use Permit. 10 V.S.A. §6081.
- II. Construction of new structures without a permit Wastewater System and Potable Water Supply Rule (WSPWSR) §1-303(a)(4):
- III. Change of use of a structure without a permit WSPWSR §1-303(a)(7):

Statement of Facts and Description Of Violations

1. Respondent Gary Schy is, and was at all times relevant hereto, the owner of an approximately 40± acre parcel of land located off of Crosscut Road in West Burke Vermont. (project tract)

2. Respondent Schy operates a retreat center known as Oscar's Farm of Vermont, Inc. (Project) on the project tract.

3. Oscar's Farm of Vermont, Inc. is a corporation registered in Vermont. Gary Schy is a corporate officer and the registered agent for Oscar's Farm of Vermont, Inc.

4. Oscar's Farm of Vermont, Inc. is funded by contributions and donations.

5. Respondents have constructed structures on the project tract to be used as part of the Project; some of these structures were built during the summer of 2010.

Act 250 violations

6. Respondents have advertised that people who attend the Project will receive room, board, as well as other benefits in exchange for a two to eight week commitment to work at the Project.

7. Respondents have not applied for or obtained an Act 250 (10 V.S.A. Ch. 151) Land Use Permit for the Project.

8. Respondents violated 10 V.S.A. §6081(a) by constructing improvements for a commercial purpose on more than 10 acres of land without an Act 250 Land Use Permit.

Wastewater System and Potable Water Supply violations

9. The structures constructed at the Project in the summer of 2010 included a living unit similar to a rooming house, the use of which required construction of wastewater and potable water supply systems.

10. Respondents changed the use of two existing structures from primitive camps to rooming houses, the use of which required construction of wastewater and potable water supply systems.

11. Respondents did not obtain wastewater and potable water supply permits for the new construction or change of use.

12. Respondents violated WSPWSR §1-303(a)(4) by constructing new structures without first obtaining wastewater system and potable water supply permits.

13. Respondents violated WSPWSR §1-303(a)(7) by changing the use of structures without first obtaining wastewater system and potable water supply permits.

Order

Having found that Respondents have committed violations as defined in 10 V.S.A. § 8002(9), it is hereby ORDERED:

- A. Respondents shall cease all construction on the project site until all necessary permits are obtained.
- B. Respondents shall cease all use of the project site until all necessary permits are obtained.

- C. No later than fifteen (15) consecutive calendar days following the effective date of this Order, Respondents shall hire a licensed Class B designer with appropriate water supply system certifications or a Vermont-registered professional engineer to evaluate the property and design water supply and wastewater systems required to comply with the WSPWSR.
- D. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents' designer or engineer shall submit to the Wastewater Management Division (WWMD) for review and approval and diligently pursue, an administratively complete permit application for construction of water supply and wastewater disposal systems that meet the requirements of the WSPWSR.
- E. In the event a wastewater and potable water supply permit(s) is issued for the construction of any new systems, Respondents shall complete construction in accordance with the approved permit application(s) no later than sixty (60) consecutive calendar days following the date of the approved permit application(s).
- F. In the event the property cannot be brought into compliance with the WSPWSR through construction of a new system(s), an application that is timely submitted is denied, or Respondents fail to timely submit and diligently pursue an administratively complete permit application as specified in paragraph C above, then Respondents shall physically remove the unpermitted structures from the property no later than ninety (90) consecutive calendar days following the effective date of this Order.
- G. Respondents shall promptly respond to the directives and requests for information of WWMD personnel regarding the evaluation of the property and any permit applications within the timelines specified.
- H. An extension to any of the deadlines set forth in paragraphs C, D, and E above may be granted at the discretion of the Agency to address any difficult and unforeseen design or construction issues, soil conditions, inclement weather, or any other reasonable cause to be addressed. Any request for an extension shall be made prior to the expiration of the applicable deadline.
- I. Respondents shall comply with the Wastewater System and Potable Water Supply Rules as well as the terms and conditions of any applicable permits in the operation of any approved wastewater and potable water supply systems.
- J. Respondents shall submit and diligently pursue complete applications for an Act 250 Land Use Permit application for the aforementioned construction on the project tract no later than sixty (60) consecutive calendar days following the effective date of this Order. If Respondents fail to file said permit applications by

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that date, Respondents shall remove any unpermitted structures no later than ninety (90) consecutive calendar days following the effective date of this Order. If Respondents timely file a complete application and that application is denied and that denial becomes final, Respondents shall remove any unpermitted structures no later than ninety (90) consecutive calendar days following the date of said final denial.

- K. For purposes of this Order, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 7 Environmental Commission, or the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR.

Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.

- L. For the violations noted herein, the Respondents shall pay a penalty of Twenty-Five Thousand (\$25,000.00) Dollars (U.S.) 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

- M. Any payment by the Respondents 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. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Order from Respondents' state or federal taxes.

- N. The above penalty amounts do not include the costs incurred by the Panel for the enforcement of the above described violation, or the amount of economic benefit gained by the Respondents 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 violation, the amount of economic benefit gained by the Respondents from the 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.

**Respondents' Right to a Hearing Before
the Superior Court, Environmental Division**

Pursuant to 10 V.S.A. §8012, any Respondent has the right to request 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 Court at the following addresses:

John H. Hasen, General Counsel
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Clerk
Superior Court,
Environmental Division
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 Superior Court, Environmental Division. 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 Superior Court, Environmental Division. 10 V.S.A. § 8008(d).

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: 3/23/12



Ronald A. Shems, Chair
Land Use Panel

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Affidavit of John Wakefield

John Wakefield, 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 and discussions with staff at the Agency of Natural Resources.
3. I am the Permit Compliance Officer for the Natural Resources Board, and I have been so at all times relevant hereto.
4. I have reviewed the Administrative Order in this matter, and the *Statement of Facts and Description of Violations* are true.
5. No Act 250 (10 V.S.A. Ch. 151) Land Use Permit or water supply/wastewater permits have been issued for the construction at the Oscar's Farm of Vermont, Inc. lands.

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Affidavit of John Wakefield

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Dated at MONTPELIER, Vermont, this 23 day of MARCH 2012.


John Wakefield

Subscribed and sworn to before me this 23 day of March 2012.


Notary Public

My Commission expires:

2/10/2015