

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner,

ADMINISTRATIVE ORDER

v.

Kevin Rogers and Kevin Rogers, Inc.
Respondents

Having found that Kevin Rogers and Kevin Rogers, 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

Failure to comply with Assurance of Discontinuance

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. In July 2008, the Land Use Panel and the Respondent entered into an Assurance of Discontinuance regarding the unpermitted construction of improvements on lands owned by the Respondent in South Royalton.
2. The said Assurance was entered as an order of the Environmental Court on July 25, 2008.
3. Paragraph C of the said Assurance reads: "Respondents shall not park any vehicles or store any materials on the unpermitted gravel parking area unless and until they obtain a Land Use Permit."

4. On April 20, 2009, the District 3 Environmental Commission issued Land Use Permit #3W1010, which approves the so-called "unpermitted gravel parking area" and the construction of a 40' x 60' garage.

5. On November 25, 2008, the Land Use Panel's Permit Compliance Officer (PCO) observed that Respondents had several pieces of equipment and vehicles stored on the "unpermitted gravel parking area," including: two fuel trucks, a small plow/dump truck, a flatbed trailer, and two storage trailers. In addition, the PCO observed that a small structure was constructed on the property for material storage, which, at the time of the PCO's site visit, contained road sand.

6. During the PCO's observance of the property, a dump truck entered the property and dumped a load of materials in front of the said storage structure.

7. Respondents' actions violate Paragraph C of the said Assurance.

ORDER

- A. Respondents shall comply with Land Use Permit #2W1010.
- B. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of One Thousand Five Hundred (\$1500.00 U.S.) Dollars for the violations noted herein.

Payment shall be by check made payable to the "Treasurer, State of Vermont," which shall be 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

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. See Internal Revenue Code §162(f); Treasury Regulation §1.162-21. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.

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

Respondents have 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 Respondents receive this Administrative Order. The Respondents 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 John H. Hasen, General Counsel
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, VT 05620-3201

Clerk, Environmental Court
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 shall become effective on the date it is received by the Respondents unless the Respondents file 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 Respondents shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondents do not timely file a Notice of Request for a Hearing, this Administrative Order shall become a final Administrative Order.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondents 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 pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated: June 1, 2009



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