

STATE OF VERMONT
ENVIRONMENTAL COURT

Re: Vermont Compost Company
Jurisdictional Opinion 5-08-1

Docket No. 103-6-08 Vtec

and

Land Use Panel of the
Natural Resources Board,
Petitioner

Docket No. 145-7-08 Vtec

v.

Vermont Compost Company, Inc.
and Karl Hammer,
Respondents

Consent Order

WHEREAS, the Vermont Legislature adopted Act 130, effective May 12, 2008, in which it declared “until July 1, 2010, no composting facility holding a permit under 10 V.S.A. chapter 159 issued after January 1, 2001 shall be required to obtain a permit or a permit amendment under 10 V.S.A. chapter 151”; and

WHEREAS, the Legislature has stated in Act 130 that, “the general assembly finds that composting is an important management technique necessary for the existing and future management of solid waste in Vermont and for the management of manure and agricultural wastes on farms. The agency of natural resources, the natural resources board, and the agency of agriculture, food, and markets should work together to protect the environment, assure the continued viability of composting facilities in the state, assure continued composting on farms”; and

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WHEREAS, in Act 130 the Vermont Legislature has directed the Agency of Natural Resources (ANR) to “convene a study committee to review the existing regulatory requirements for composting in the state and to recommend amendments or improvements to the existing rules governing the construction, alteration, or operation of a composting facility” and that the study committee shall issue a final report of its findings to the Legislature by January 15, 2009; and

WHEREAS, the Jurisdictional Opinion asserted jurisdiction over commercial uses but not “exempt farming uses” and acknowledged the need to discern the lines of demarcation between “exempt farming uses” and commercial composting uses on site; and

WHEREAS, the Natural Resources Board (NRB) wishes to cooperate with the ANR, consistent with its duties under Act 130, in reviewing the regulatory requirements for composting within the State of Vermont; and

WHEREAS, although Vermont Compost Company’s composting operations on Vincent Flats Road in East Montpelier hold a permit under chapter 159 of Title 10, its composting operations at 1996 Main Street in Montpelier do not hold such a chapter 159 permit; and

WHEREAS, the NRB believes that the same benefits of Act 130 which are provided to Vermont Compost Company’s Vincent Flats operations may be provided to its 1996 Main Street operations, if restrictions similar to those in the chapter 159 permit applicable to the Vincent Flats operations are imposed on the 1996 Main Street operations; and

WHEREAS, solely for purposes of this Consent Order Vermont Compost Company agrees to certain conditions that may not otherwise apply to its operations at 1996 Main Street,

NOW THEREFORE, comes the Natural Resources Board Land Use Panel (Panel), by and through its General Counsel, John H. Hasen, and Vermont Compost Company, Inc. and Karl Hammer (collectively, VCC), by and through their attorney, Gerald R. Tarrant, Esq., and stipulate and agree that the Court may enter the following Order:

1. Until July 1, 2010, VCC shall not be required to obtain a permit under 10 V.S.A. Ch. 151 (Act 250), unless, before that date, this Court, pursuant to Paragraph 2 of this Order, determines that such a permit is required and such determination is not appealed, or, if appealed, such determination is not stayed on appeal.

2. Until July 1, 2010, proceedings in this consolidated action shall be stayed unless

a. VCC requests that they be recommenced, or
b. the Panel moves that they be recommenced, and this Court determines that amendments to Act 250 jurisdiction over composting operations are not immediately likely, and otherwise finds the Panel's position to be appropriate.

3. Without prejudice until July 1, 2010, or until this Order is superseded by an Act 250 permit issued by the District 5 Environmental Commission consistent with paragraph 2 above, whichever shall first occur, VCC agrees solely for purpose of this Consent Order that it shall conduct its allegedly commercial compost operations at its site at

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1996 Main Street, Montpelier, Vermont, (the facility) pursuant to the following terms and conditions:

a. VCC shall regularly inspect and police the incoming residuals and other materials and the facility for contaminants and litter; litter shall be picked up and properly discarded in accordance with Vermont law;

b. VCC shall operate the facility only between the hours of 7:00 am and 7:00 pm, Monday through Friday, and 8:00 am and 4:00 p.m. on Saturdays, except when weather exigencies such as snow plowing or water management emergencies require otherwise;

c. The delivery to and from the facility of food residuals, compost feed stocks, or compost material from VCC's site at Vincent Flats in East Montpelier shall not occur on Saturday or Sunday;

d. VCC shall allow Agency of Natural Resources and Agency of Agriculture personnel access to the facility during normal business hours to perform such inspections or other activities pursuant to their statutory authority as may be required to ensure compliance with agricultural and clean water requirements.

e. VCC shall implement measures to control dust and odors;

f. Consistent with accepted agricultural practices and its need to make feed available to its poultry, VCC shall implement management strategies to minimize the availability of food residuals to wild birds. VCC shall ensure that food residuals will not be delivered within 150 feet of the neighbors' boundary lines.

VCC shall install operational controls (e.g. covering food residuals with adsorptive and absorptive materials daily at close of business, ensuring the proper blending to reduce exposed food residuals and litter control), and shall rotate scare technologies (e.g. owl decoys and flashy reflectors) at least every four (4) weeks so birds do not become accustomed to one technology. In addition, VCC shall continue to research long term mitigation strategies including the installation of covered feeding areas.

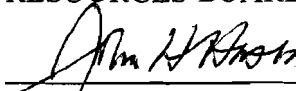
4. The Agency of Natural Resources and the Agency of Agriculture shall provide technical assistance in order to support VCC's obligations under Paragraphs 3(e) and (f) of this Order. The two agencies shall cooperate and coordinate their oversight over VCC.

5. By entering into this Consent Order, VCC does not concede that any of its activities at 1996 Main Street, Montpelier, Vermont are not "farming," as that word is defined in 10 V.S.A. §6001(22).

6. By entering into this Consent Order, neither the Panel nor VCC concede or waive any rights, duties, obligations or defenses that they may have in any action or matter brought pursuant to 10 V.S.A. Ch. 151.

DATED in Montpelier, Vermont this 21st day of August 2008.

LAND USE PANEL OF THE NATURAL
RESOURCES BOARD



John H. Hasen
General Counsel

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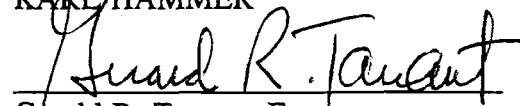
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DATED in Montpelier, Vermont this 21st day of August 2008.

VERMONT COMPOST COMPANY, INC.

KARL HAMMER



Gerald R. Tarrant, Esq.

Their Attorney

SO ORDERED

Judge, Environmental Court

Dated: _____

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