

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. _____

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

PIGGY AND THE THREE J, LLC.
JAMES MCGOVERN,
RALPH RUPRECHT,
JOHN AND JOAN CHADWICK,
Respondents

ADMINISTRATIVE ORDER

Having found that Piggy and the Three J, LLC., James McGovern, Ralph Ruprecht, and John and Joan Chadwick (Respondents) have committed violations as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS:

1. 10 V.S.A. § 1259: Prohibited discharge of material to waters of the State.
2. 10 V.S.A. § 1272: Construction or alteration of an impoundment with a capacity greater than 500,000 cubic feet without the required state permit.
3. 10 V.S.A. §6081: failure to obtain a permit prior to the expansion and substantial change in a commercial operation.

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own and operate a gravel pit on Cold Brook in the town of Wilmington, Vermont. Respondent Piggy and the Three J, LLC is a Vermont registered corporation with principal offices located in Wilmington, Vermont. Respondents James McGovern,

Ralph Ruprecht, and John and Joan Chadwick are owners and officers in the Piggy and the Three J, LLC. The pit is referred to as the Fabri gravel pit; it has been in operation for several decades.

2. On May 23, 2001, the Department of Environmental Conservation (Department) received a complaint of high turbidity levels in Cold Brook downstream of the gravel pit.
3. During investigation of the complaint, an Agency enforcement officer Tim McNamara found that two ponds had been created on either side of and adjacent to Cold Brook and that gravel was actively being mined by dredging the ponds with a drag line.
4. The pond on the east side of the brook (East Pond) was breached on the lower end, and turbid water from the pond coursed through a wetland and into Cold Brook. The embankment separating Cold Brook from the pond to the west of the brook (West Pond) also breached causing a discharge into Cold Brook. The excavation and extraction activities caused a major discharge of silt to the Cold Brook.
5. The Cold Brook waters meet the definition of "waters" of the state. Respondents had no permit to discharge to state waters. Therefore, Respondents violated 10 V.S.A. § 1259(a).
6. 10 V.S.A. § 1082(a) prohibits construction or alteration of an impoundment with a capacity greater than 500,000 cubic feet. The East Pond is an impoundment with a capacity greater than 500,000 cubic feet. Therefore, ongoing extraction of material from the East Pond without the required state permit violates 10 V.S.A. § 1082(a).
7. On December 27, 2001, the Water Quality Division issued a 1272 Order directing the Respondent to submit a Stream Corridor Restoration Plan, a Management Plan, and a

Reclamation Plan.

8. The Respondents previously submitted the following plans to the Water Quality Division (Division) of the Department for review and approval: a Management Plan for operation of the gravel pit, a Stream Corridor Restoration Plan for restoration of the Cold Brook riparian corridor and its two tributaries, and a Reclamation Plan. The Division has been unable to approve the plans because they are incomplete. On June 26, 2002, Jeffrey Cueto of the Division forwarded a letter to Respondents' registered agent via certified mail, directing Respondents to complete the plans. To date, Respondents have not responded to the Division's directives.
9. An Act 250 permit is required prior to a substantial change in a commercial operation. On February 20, 2002, the District 2 Coordinator promulgated a Jurisdictional Opinion advising Respondents that an Act 250 permit was required for the operation of the gravel pit. To date, Respondents have failed to obtain a land use permit for the gravel pit in violation of 10 V.S.A. §6081.

ORDER

Upon receipt of this Administrative Order, the Respondents shall:

- A. Pay a penalty of \$30,000.00 within thirty (30) consecutive calendar days of the receipt of this order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Becky Buchanan, Administrative Assistant
Environmental Enforcement Division
Agency of Natural Resources
103 South Main Street, 2 South
Waterbury, VT 05681-0401

The above penalty amount does not necessarily include all the costs incurred by the Secretary for the enforcement of the above-described violation(s) or the full amount of economic benefit gained by the Respondents from the violation(s). The Secretary reserves the right to augment the above stated penalty through evidence presented at hearing. In accordance with 10 V.S.A. §8010, the penalty may be increased by the costs incurred by the Secretary for the enforcement of this matter and by the amount of economic benefit gained by the Respondents from the violation(s), each according to proof at the hearing.

B. No later than thirty (30) consecutive calendar days from the effective date of this Order, Respondents shall submit a *Management Plan* to the Division for review. The plan shall include the following:

- a. the projected annual phasing of work activities;
- b. the sequence and timing of each year's activities,
- c. an overall site drawing showing the annual phases of extraction and reclamation and conservation area boundaries defined by the stream corridor restoration plan (including any protected wetlands);
- d. a grading plan for that year's activities, with that plan including information on drainage control, the erosion control measures to be deployed, and the limits of disturbance;
- e. contact information for individuals responsible for the work; and
- f. include annual reporting provisions at the end of each season indicating over-winter erosion control measures in place, which areas of the pit are active, and which areas have been reclaimed.

C. No later than thirty (30) consecutive calendar days from the effective date of this Order,

Respondents shall submit a completed *Restoration plan* for restoration of the Cold Brook riparian corridor and its two tributaries. The *Restoration Plan* shall include the following:

- a. The designation of a conservation zone to include Cold Brook and a beltwidth for its future pattern evolution, the two tributaries, associated wetlands, and isolation offsets to protect water quality;
- b. Restoration of the land form (topography) in the conservation zone (grading plans and channel cross sections);
- c. Restoration of vegetative cover in the conservation zone. The quantity, size and species of vegetation should be identified. The location of the plantings, the source of the plant materials, and information on the replacement of dead plants shall also be provided. Only native species shall be utilized, and the selection of species and sources of plant materials should be determined in consultation with the Department;
- d. Any design for a relocated stream channel shall consider long term stability of the system, the threat of flooding of the work area, and restoration and maintenance of instream habitat quality (bed substrate, cover, appropriate diversity of pool, run, and/or riffle habitat structure types);
- e. The conservation zone boundary shall be designed to contain the expected long term stream meander pattern (beltwidth) and an additional offset from the beltwidth boundary that provides for an isolation distance to future excavation areas; corridors shall also be provided for the two tributaries, with setbacks of at least 50 feet;
- f. Wetland vegetation should provide for appropriate buffers (as required by the Vermont Wetland Rules) and specify the quantity, size and species of vegetation as well as the location of the planting and the source of the vegetation;
- g. Suitable clean fill material shall be used for all subsoils.

- D. Respondents shall complete restoration in accordance with the approved *Restoration Plan* during the 2003 construction season and reflected in the management plan for 2003.
- E. No later than thirty days from the effective date of this order, Respondents shall develop

a *Reclamation Plan* for the gravel pit outside of the aforementioned conservation area.

The *Reclamation Plan* shall cover existing disturbed areas that are not planned for future gravel extraction and any areas that are planned for future extraction but would present a risk to water quality if they are not temporarily reclaimed. The *Reclamation Plan* shall include grading (existing and proposed topography); topsoil depth, seed mix, fertilizer and mulch application information, drainage design, erosion and sediment control, measures to be taken prevent turbid water from entering Cold Brook when fill is placed in the existing ponds, and contact information for individuals responsible for the work.

F. Respondents shall complete all reclamation in accordance with the *Reclamation Plan* as approved by the Division, no later than December 1, 2003.

G. Respondents shall not extract gravel from the pit until such time as all requisite permits, including an Act 250 land use permit, are obtained and effective, and the terms of this Assurance are met.

H. All operations in the pit area shall be suspended until the *Management Plan* is approved. All operations at the gravel pit shall conform to the approved *Restoration, Management, and Reclamation Plans* and the conditions of Respondents' land use permit. Any modifications to the *Restoration, Management, Reclamation, and Financial Means Plans* (see Paragraph J) are subject to prior approval by the Division. Respondents shall notify the Division in the event that any of the Plans are modified by a subsequent land use permit.¹

¹ The terms included in the the *Restorationm, Management, Reclamation, and Financial Means Plans* are subject to Environmental Board review and approval and may be modified during the land use permit process.

- I. Respondents shall notify the Division immediately if any subsequent discharge or discharges to Cold Brook occur at the gravel pit. Upon discovery of a discharge Respondents shall immediately cease operations and take the necessary steps to abate and eliminate the discharge.
- J. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall develop a *Financial Means Plan* to insure future compliance with the Reclamation Plan. The *Financial Means Plan* shall be subject to Division approval and review every 2 years to assure future compliance with the Reclamation Plan.
- K. Respondents shall implement the directives issued by the Division, within the time lines specified by the Division, regarding erosion control, wetland remediation, restoration of the riparian corridor, and the plans required in this Order.
- L. No later than fifteen (15) consecutive calendar days following the effective date of this Order, Respondents shall hire a Vermont registered professional engineer with experience in the design and investigation of dams to develop a plan, in accordance with 10 V.S.A. Chapter 43, for:
1. The full or partial elimination of the East Pond in a manner that protects water quality²; or
 2. The construction of dams, dikes and levees adequate to contain the contents of East Pond and protect the water quality of Cold Brook; or
 3. A combination of subparagraphs 1 and 2 above.
- M. No later than thirty (30) consecutive calendar days following the effective date of this

² Any plan for the full or partial elimination of the East Pond shall be consistent with the *Restoration, Management, and Reclamation Plans*, and shall include an extensive water pollution prevention plan subject to approval by the Division as part of the Chapter 43 application. The full or partial elimination of the pond impoundment(s) or the construction of dams, dikes and levees may also require Act 250 approval.

Order, Respondent shall hire a Vermont registered professional engineer to determine the capacity of the West Pond, and Respondents shall submit a report, prepared by that Vermont registered professional engineer, to the Agency regarding the capacity of West Pond. If the capacity of West Pond is greater than 500,000 cubic feet, Respondents shall abide with Paragraphs O and N with respect to West Pond.

- N. No later than sixty (60) consecutive calendar days following the effective date of this Order, Respondents shall file an application with the Agency for the construction, reconstruction or elimination of any impoundment exceeding 500,000 cubic feet.
- O. No later than sixty (60) consecutive calendar days from the date that Respondents receive all necessary approvals for the construction, reconstruction or elimination of any pond impoundment exceeding 500,000 cubic feet, Respondents shall construct and/or install the dam structures as approved by the Agency. An extension may be granted at the discretion of the Agency to address issues such as design difficulties, inclement weather, or the necessity for additional permits. Respondents shall perform the work during the optimal construction season if so directed by the Agency.
- P. No later than sixty (60) days from the effective date of this Order, Respondents shall submit to the District #2 Environmental Commission a completed Act 250 application for the gravel pit operation. The Act 250 permit application shall include the *Restoration, Management, Reclamation, and Financial Means Plans*, as well as, a copy of the application for the construction, reconstruction or elimination of the pond impoundment(s).
- Q. Respondents shall promptly and fully respond, within the time lines specified, to requests

for further information or directives by the District Environmental Coordinator regarding the Act 250 permit application.

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

The 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 timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Enforcement Division, 2 South
103 South Main Street
Waterbury, Vermont 05671-0411

2. Clerk, Environmental Court
225 North Main Street
Barre, Vermont 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

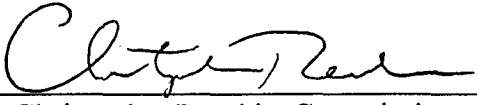
This Administrative Order shall become effective on the date it is received by the Respondents unless the Respondents file a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondents do not make a timely filing of a Notice of Request for 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 Secretary 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 at Waterbury, Vermont this 4th day of September, 2002.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 
Christopher Recchia, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

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Affidavit of Jeffrey R. Cueto

I, being duly sworn do attest:

1. I am of legal age and a resident of Vermont.
2. I am employed as the Chief of the Hydrology Section in the Water Quality Division of the Department of Environmental Conservation of the Agency of Natural Resources.
3. Based upon personal observations and conversations with witnesses and the Respondents, the violations described in the Administrative Order occurred on or about the dates set forth therein.

Dated at Waterbury, Vermont this 28 day of August 2002.

Jeffrey R. Cueto
Jeffrey R. Cueto - Affiant

Subscribed and sworn before me on the 28th day of August 2002.

Carolyn B. Buchanan
Notary Public

My Commission Expires: 2-10-03