

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES**

**ENVIRONMENTAL COURT
DOCKET NO.**

**SECRETARY, VERMONT AGENCY
OF NATURAL RESOURCES,
Plaintiff**

v.

**R. R. CHARLEBOIS, INC.,
Respondent**

ADMINISTRATIVE ORDER

Having found that R. R. Charlebois, Inc. (Respondent) has committed a violation 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. Condition #16 of Land Use Permit #4C0471-6A, Paragraph J of 1996 Assurance of Discontinuance (Docket #E96-207), and Vermont Wetland Rules (VWR) §6.3 and §8: Disturbance of 50-foot wetland buffer zone.
2. 10 V.S.A. §6081(a): Construction of maintenance building and expansion of parking area without amendment to existing Act 250 permit.

STATEMENT OF FACTS

1. Respondent is a commercial enterprise which sells and services trucks. Respondent's principal place of business is located at the intersection of Hercules Drive and Routes 2 & 7 in Colchester, Vermont (the property).
2. The property contains a Class II wetland identified as contiguous to a mapped wetland on the Vermont Significant Wetlands Inventory. As such, any activity in the wetland or adjacent 50-foot buffer zone, other than allowed uses specified in VWR §6.2, requires a Conditional Use Determination (CUD) from the Agency.

The property is also subject to Land Use Permit (LUP) #4C0471-6A, issued to Respondent on March 1, 1990.

3. On October 2, 2001, April Moulaert, District Wetlands Ecologist, conducted a site visit of Respondent's property at the request of the Town of Colchester (the Town) and discovered that Respondent had paved an area located within the 50-foot wetland buffer without a CUD.

4. The work observed during the site visit resulted in noncompliance with Condition #16 of LUP #4C0471-6A. Condition #16 states as follows:

"The Permittees shall continually maintain a 50 foot undisturbed vegetated buffer zone from the edge of the wetland shown on Exhibits #13 - 15 and 26. There shall be no construction, filling, or disturbance of soils or vegetation within this buffer zone, other than that required for the installation of the approved landscape plantings as shown on Exhibits #15 and 26."

5. The work observed also resulted in noncompliance with Paragraph J of Assurance of Discontinuance (Docket #E96-207), entered into by Respondent on November 25, 1996. Paragraph J states as follows:

"Respondent shall allow all portions of the wetland and the 50 foot buffer zone to revegetate naturally following the seeding described in Paragraph G above, and during the nuisance plant control described in Paragraph I above. Respondent shall not mow or remove any vegetation from the wetland and the 50 foot buffer zone, except the vegetation described in Paragraph I above."

6. By removing vegetation and paving an area located within the 50-foot buffer of the Class II wetland, Respondent violated Condition #16 of LUP #4C0471-6A, Paragraph J of the November 25, 1996 AOD (Docket #E96-207), and VWR §6.3 and §8.

7. The site visit also revealed that Respondent had constructed a maintenance building and expanded the parking lot without an amendment to its existing Act 250 permit. The construction meets the definition of development pursuant to Environmental Board Rule 2(A)(5) because the project is a material change to an existing Act 250 permitted project (#4C0471).

8. On November 20, 2001, Agency and Town personnel met with Respondent at the property to discuss the violations. The site visit revealed that recent paving had occurred on land previously owned by First Choice Rental and now owned by Respondent. Respondent had also neglected to amend wastewater permits for the new building.

9. By constructing a maintenance building and expanding the parking area without an amendment to its existing Act 250 permit, Respondent violated 10 V.S.A. §6081(a).

ORDER

Upon receipt of this Administrative Order, the Respondent shall:

- A. Pay a penalty of \$42,500.00 within thirty (30) consecutive calendar days. 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 05671-0401

The above penalty amount may 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 Respondent 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 total costs incurred by the Secretary for the enforcement of this matter and by the total amount of economic benefit gained by the Respondent from the violation(s), each according to proof at the hearing.

- B. Within 90 consecutive calendar days following the effective date of this Order, Respondent shall submit completed permit applications for an Act 250 permit, stormwater permit, and wastewater permit. In order to facilitate the processing of after-the-fact permits, Respondent shall have an engineering firm record on a site plan the following information:
1. The permitted buildings and permitted paved areas from the existing Act 250 permit #4C0471-6A, together with a survey of all other pertinent existing conditions.

2. Utilizing the old site plan and 2002 wetlands delineation, determine the extent of filled areas that are found in the 50-foot wetland buffer zone and the reference year of that determination.
3. The Class II wetland boundary and 50-foot buffer zone based on the 1996 AOD (Docket #E96-207) signed by Respondent and the Agency of Natural Resources as well as the 2002 wetlands delineation.
4. The footprint of the "unpermitted building" and the existing paved areas. These items shall utilize line weights and styles that easily distinguish them from the permitted conditions.
5. The current wastewater and floor drain system in the "unpermitted" building. Show all connections to the "First Choice Building" or to municipal systems. Dye tests shall be conducted to confirm the flows of water.
6. The stormwater system as approved in Land Use Permit #4C0471-6A and currently in operation today. The extent of paved areas shall also be shown on the plan.

C. Respondent shall immediately cease all unapproved activities in the wetland and buffer zone as delineated on the site plan.

D. Within 90 consecutive calendar days following the effective date of this Order, Respondent shall submit a plan to the Water Quality Division detailing the removal of paving and construction materials located in the wetland and buffer zone. The plan shall also include a planting plan with provisions for restoring the area to its pre-violation condition. After receiving approval from the Water Quality Division, Respondent shall within 90 consecutive calendar days complete restoration in accordance with the approved plan.

RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT

The 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 the Respondent receives this Administrative Order. The Respondent 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

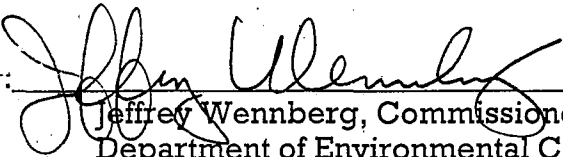
This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does 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 Respondent fails or refuses to comply with the conditions of a final Administrative Order, the Secretary shall have cause to initiate an enforcement action against the Respondent pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Waterbury, Vermont this 9th day of October, 2003.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 
Jeffrey Wennberg, Commissioner
Department of Environmental Conservation