

**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES**

**ENVIRONMENTAL COURT  
DOCKET NO.**

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

**Plaintiff**

**v.**

**VERMONT QUARRIES CORPORATION,**

**Respondent**

**ADMINISTRATIVE ORDER**

Having found that Vermont Quarries Corporation (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. Land Use Permit (LUP) #2S0826-1, Condition 5: Operation on weekends.
2. 10 V.S.A. §1259(a) and LUP #2S0826-1, Schedule B: Discharge to waters of the State without a permit.

**STATEMENT OF FACTS**

1. Respondent owns property located on Quarry Road in Cavendish, Vermont on which it operates a serpentinite quarry (the quarry).
2. The quarry abuts three Class III wetlands.
3. Wetland 1 is the headwaters of a stream which flows into the Black River in Proctorsville, Vermont (Stream 1). Wetland 3 is the headwaters of an unnamed stream (Stream 2).
4. Streams 1 and 2 are "waters of the state" as defined in 10 V.S.A. §1251.
5. The quarry is subject to LUP #2S0826-1 (the permit) issued on September 24, 1991. The permit, by its express terms applied to any assignees or successors in interest.

6. The permit Schedule B required that no discharges occur off the site.
7. Respondent began operations in the spring of 1998.
8. After the start of operations Respondent constructed a retention pond located near Wetland 1 to hold wastewater pumped from the quarry pit (Retention Pond 1).
9. In 1999 Respondent constructed a second retention pond located to the south near Wetland 3 (Retention Pond 2).
10. On July 17, 2000, Environmental Enforcement Officer (EEO) Tim McNamara responded to a discharge complaint at the quarry. EEO McNamara observed that Retention Pond 2 was overflowing and discharging process wastewater into Wetland 3 and Stream 2 in violation of 10 V.S.A. §1259(a) and LUP #2S0826-1, Schedule B.
11. EEO McNamara also determined during his investigation that Respondent conducted activities at the quarry on weekends in August 1999 and on weekends from January 2000 to June 2000 in violation of LUP #2S0826-1, Condition 5.
12. On July 19 and 20, 2000, Notices of Alleged Violations (NOAVs) were issued to Respondent by Act 250 and the Agency of Natural Resources for the discharge and permit violations. The NOAVs instructed Respondent to cease and prevent further discharges.
13. On August 23, 2000, EEO McNamara responded to another discharge complaint at the quarry and observed that Respondent had discharged process wastewater from stonecutting operations into Wetland 1 and Stream 1 in violation of 10 V.S.A. §1259(a) and LUP #2S0826-1, Schedule B.
14. On September 15, 2000, EEO McNamara revisited the site and observed that Respondent was attempting to drain Retention Pond 2 by pumping wastewater into woods south of the quarry and uphill from Wetland 3. However, the wastewater ultimately discharged into Wetland 3 and Stream 2 in violation of 10 V.S.A. §1259(a) and LUP #2S0826-1, Schedule B.
15. An examination conducted by James Kellogg, Aquatic Biologist, revealed that the cumulative impact of discharges to Stream 1 caused severe damage to its macroinvertebrate community.

## ORDER

Upon receipt of this Administrative Order, the Respondent shall:

- A. Pay a penalty of \$12,500 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 violations or the full amount of economic benefit gained by the Respondent from the violations. 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 violations, each according to proof at the hearing.

- B. Within thirty (30) consecutive calendar days following the effective date of this Order, Respondent shall hire a consultant to draft a Discharge Elimination Plan to eliminate all discharges of quarry and process wastewater into waters of the State. Respondent shall notify the Agency in writing that it has hired a consultant within seven (7) days of said hiring.
- C. Within sixty (60) consecutive calendar days following the effective date of this Order, Respondent shall submit to the Agency for approval a Discharge Elimination Plan.
- D. In the event that the Agency, in its sole discretion, disapproves the Discharge Elimination Plan, or any part of it, Respondent shall submit a Modified Discharge Elimination Plan to address issues raised by the Agency within thirty (30) consecutive calendar days of disapproval.

- E. The same procedure and timeline set forth in Paragraph D above shall govern the Agency's review of the Modified Discharge Elimination Plan, or any part of it, and the submission and review of any additional Modified Discharge Elimination Plan(s) as required by the Agency.
- F. Within forty-five (45) consecutive calendar days after receipt of the Agency's notice of final approval of the Discharge Elimination Plan or a Modified Discharge Elimination Plan, Respondent shall complete any and all construction at the Site required to implement the provisions of the approved Plan.
- G. Respondent shall provide written notice to the Water Quality Program within five consecutive (5) calendar days of the completion of construction referenced in Paragraph F above. Respondent shall permit the Agency to inspect the Site at any time to determine whether all discharges of wastes to waters of the State have been eliminated and provisions of the approved plan have been fully complied with.
- H. In the event of the occurrence of further discharges of wastes from the quarry to waters of the State, Respondent shall immediately notify the Water Quality Program and Act 250 District Coordinator and shall suspend all quarrying activity at the Site until the discharge(s) are eliminated to the satisfaction of the Agency.
- I. Respondent shall conform the hours of its operation to the applicable provisions contained in its Land Use Permit.

**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 16<sup>th</sup> day of January, 2004.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 

Jeffrey Wennberg, Commissioner  
Department of Environmental Conservation

STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES

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OF NATURAL RESOURCES,  
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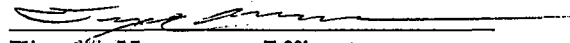
VERMONT QUARRIES CORPORATION,  
Respondent

Affidavit of Tim M. Namara


I, Tim McNamara, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as an Environmental Enforcement Officer in the Enforcement Division of the Agency of Natural Resources.
3. Based upon information discovered during my preparation of this case for enforcement the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Hartford, Vermont this 20th day of JANUARY, 2004.

  
Tim McNamara - Affiant

Subscribed and sworn before me on the 20 of January, 2004.

  
Notary Public

My Commission Expires: 2/10/07