

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

FILED

FEB 19 2014

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
v.)
Nutting Farm, LLC,)
Respondent.)

Docket # 16-2-14 Vtec

FINDINGS

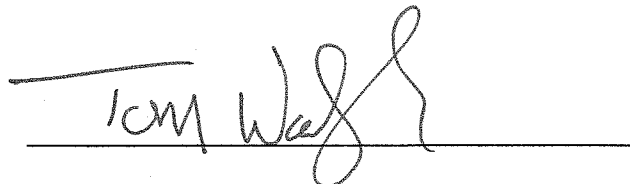
PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

1. The Administrative Order in this matter has been properly served on the Respondent(s) in accordance with 10 V.S.A. §8008(a).
2. The Respondent has not timely requested a hearing in this matter in accordance with 10 V.S.A. §8008(b).
3. The order otherwise meets the requirements of 10 V.S.A. Chapter 201.

ORDER

By the Court's signature below, the Administrative Order in this matter, filed with the Superior Court, Environmental Division, on February 10, 2014, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 19th day of February 2014.



Thomas G. Walsh
Environmental Judge

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

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

v.

**NUTTING FARM, LLC,
Respondent**

ADMINISTRATIVE ORDER

Having found that Nutting Farm, LLC (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:

VIOLATION

1. 10 V.S.A. §1259(a): Failure to follow Acceptable Management Practices (AMPs) resulting in discharge of material to waters of the State without a permit

STATEMENT OF FACTS

1. Respondent Nutting Farm, LLC is a Vermont-registered corporation which owns property on Nutting Road in Montgomery, Vermont (the property).
2. The property is approximately 590 acres in size.
3. At the time of the activities in question the property was enrolled in the Current Use Value Appraisal Program, subject to a Forest Management Plan (UVA Plan) prepared by a private consulting forester.
4. The UVA Plan was originally approved in 1998, and updated in October 2008.
5. The property was removed from the Current Use Value Appraisal Program in November 2012.
6. Respondent retained a private consulting forester to oversee UVA Plan activities and implementation of the AMPs during logging activities.

7. On September 7, 2011, personnel from the Agency's Department of Forests, Parks and Recreation (FPR) inspected the property in response to a discharge complaint from logging activities. Respondent's private consulting forester was present during the inspection.
8. At the time of the activities in question the property was being logged by Ken Davis d/b/a Davis Contracting Service.
9. During the inspection FPR personnel observed AMP violations on the logging job's western truck road, log landing, and main skid trail as follows:
 - a. At one location, no broad-based dips before crossings had been installed and no culvert was initially installed on the truck road stream crossing in violation of AMPs #9 and 11;
 - b. At three (3) locations, inadequately sized culverts had been installed on the truck road in violation of AMPs #9 and 11. The culvert crossings had also been backfilled with material which eroded, constituting improper installation;
 - c. At one location, lack of waterbars on the main skid trail in violation of AMP #6 and lack of hay bale check dams in the landing ditch in violation of AMPs #4 and 7; and
 - d. At one location, an inadequate number of waterbars on the main skid trail in violation of AMP #6 and lack of hay bale check dams at the outlets of waterbars on the main skid trail in violation of AMP #7.
10. The failure to implement and follow the AMPs resulted in discharges of sediment to the headwaters of the Trout River and unnamed tributaries of the Trout River, which are waters of the State. Respondent did not have a permit for the discharges.
11. During the inspection FPR personnel also observed that at three (3) locations on the logging job's northern main skid trail, the culvert crossings at each location had been backfilled with material which eroded, there was a lack of check dams where ditches terminated at the stream crossings, and a lack of waterbars on the sloped approaches to the stream crossings in violation of AMP #s 4 and 11.
12. The failure to implement and comply with the AMPs resulted in discharges of sediment to the headwaters of Pacific Brook and unnamed tributaries of Pacific Brook, which are waters of the State. Respondents did not have a permit for the discharges.

13. During the inspection FPR personnel provided instructions for remediation and implementing AMPs, provided a copy of the publication "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont," and referenced the publication during the inspection for remediation.
14. On October 28, 2011, FPR personnel conducted a follow up inspection and observed that the majority of the remedial work and AMP implementation had been completed by the logging contractor and Respondent's private consulting forester.
15. On March 23, 2012, FPR personnel inspected the property in response to a discharge complaint from the logging activities and observed additional AMP violations.
16. On March 28, 2012, FPR and Compliance and Enforcement Division (CED) personnel returned to the property to conduct a further inspection. Respondent's private consulting forester and representatives of the logging contractor were present during the inspection.
17. During the inspections, AMP violations were observed on a third central main skid trail as follows:
 - a. At one location, logging slash and debris in the stream in violation of AMP #8;
 - b. At one location, logging activities within the stream buffer in violation of AMP #14;
 - c. At one location, an improperly installed culvert crossing and lack of waterbars on the sloped approaches to the stream crossing, and lack of hay bale check dams in violation of AMP #s 7 and 11;
 - d. At six (6) locations, a lack of waterbars in violation of AMP #6 and logging activities within the stream buffer in violation of AMP #14;
 - e. At one location, a lack of waterbars on the approaches to the stream crossing in violation of AMP #11;
 - f. At one location, approximately 150 feet of stream channel had been used as skid trail in violation of AMP #10;
 - g. At one location, two stream crossings with no AMP structures in place in violation of AMP #9 and lack of waterbars on the approaches to the stream crossings in violation of AMP #11;
 - h. At one location, an improperly installed culvert stream crossing and lack of waterbars on the approaches to the stream crossing in violation of AMP #11; and

- i. At one location, a stream crossing with no AMP structure in place in violation of AMP #9 and lack waterbars on the sloped approach to the stream crossing in violation of AMP #11.
18. The failure to implement and comply with the AMPs resulted in discharges of slash and sediment to unnamed tributaries of Pacific Brook, which are waters of the State. Respondent did not have a permit for the discharges.
19. During the March 28, 2012 inspection FPR personnel provided instructions for remediation and implementing AMPs, provided a copy of the publication "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont," and referenced the publication during the inspection for remediation.
20. FPR personnel conducted follow-up inspections on May 7, 2012 and June 22, 2012 and observed that remediation and implementation of AMPs was in progress.
21. FPR personnel conducted a follow-up inspection on August 22, 2012 and observed all remediation and implementation of AMPs had been completed.
22. By failing to follow AMPs which resulted in discharges of material to waters of the State without a permit, Respondent violated 10 V.S.A. §1259(a).

ORDER

Upon receipt of this Administrative Order, the Respondent shall:

- A. Pay a penalty of \$9,000.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Alayna Howard, Administrative Assistant
Agency of Natural Resources
Compliance and Enforcement Division
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic

benefit gained by the Respondents from the violations(s) and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. Respondent shall implement and comply with all logging AMPs, and apply for and obtain all necessary logging-related State environmental permits on all future logging operations on the property.

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: Compliance and Enforcement Division,
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

2. Clerk, Superior Court, Environmental Division
2418 Airport Road, Suite 1
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 Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent, including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Montpelier, Vermont this 19 day of December, 2013.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: Michael Snyder
Michael Snyder, Commissioner
Department of Forests, Parks & Recreation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

NUTTING FARM, LLC,
Respondent

Affidavit of Edmond A. Cantwell

I, Edmond A. Cantwell, being duly sworn do attest:

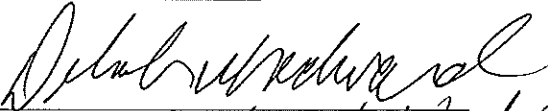
1. I am of legal age and a resident of the State of Vermont.
2. I am employed as an Environmental Enforcement Officer in the Compliance and Enforcement Division of the Agency of Natural Resources.
3. Based upon personal observations and conversations with witnesses, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Fairfax, Vermont this 16th day of December, 2013.



Edmond A. Cantwell - Affiant

Subscribed and sworn before me on the 16th of December, 2013.


Notary Public Deborah Woodward
Town Clerk / Treas.
My Commission Expires: 2/10/13