

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

FILED

OCT 27 2015

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
)
v.)
)
Codling dba Codling Brothers)
Logging)
Respondent.)

Docket # 78-7-15 Vtec

FINDINGS

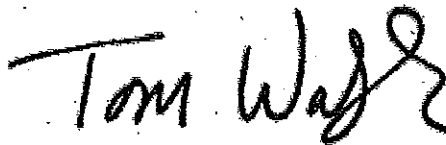
PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

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(s) timely requested a hearing in this matter in accordance with 10 V.S.A. §8008(b), however, after warnings from the Court, Respondent(s) failed to appear at two consecutive status conferences. Within the Court's notice setting this matter for an October 26 status conference, Respondent(s) were ordered to participate, or failing to do so, they would be held in default. It is incumbent upon a litigant to efficiently prosecute their position in litigation. See V.R.C.P. 41(b)(2) (allowing for a motion to dismiss for failure to prosecute or comply with procedural rules or orders of a court).
3. The Administrative Order otherwise meets the requirements of 10 V.S.A. Chapter 201.

ORDER

Respondent(s) request for hearing is **DISMISSED**. By the Court's signature below, the Administrative Order in this matter, filed with the Superior Court, Environmental Division, on May 15, 2015, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 27th day of October, 2015.



Thomas G. Walsh
Environmental Judge

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
DOCKET No.**

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

v.

**DAVID CODLING, JOE CODLING AND PAUL CODLING D/B/A CODLING
BROTHERS LOGGING,
Respondents**

ADMINISTRATIVE ORDER

Having found that David Codling, Joe Codling and Paul Codling d/b/a Codling Brothers Logging (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(a): Failure to follow Acceptable Management Practices (AMPs) resulting in discharge of materials to waters of the State without a permit

STATEMENT OF FACTS

1. Respondents David Codling, Joe Codling and Paul Codling own and operate a logging business known as Codling Brothers Logging.
Donald Harding Property, Barre, Vermont
2. On September 6, 2011, personnel with the Agency's Department of Forests, Parks and Recreation (FPR) received a request for assistance from Respondents regarding a logging job in Barre.
3. On September 8, 2011, Forester Bradley T. Greenough (Forester Greenough) with FPR inspected property owned by Donald Harding (Harding) on Cutler Corner Road in Barre, Vermont (the property).

4. Respondents conducted the logging activities in question.
5. During the inspection of the property, Forester Greenough observed AMP violations on the logging job as follows:
 - a. At three (3) temporary stream crossings, structures (poled fords) had been installed to cross a waterway. These structures were never removed at the completion of the job in violation of AMP #8 and #21; and
 - b. At the three (3) temporary stream crossings, seed and mulch had not been applied to exposed soil within 25 feet of the waterway in violation of AMP #22.
6. The failure to implement and comply with the AMPs resulted in discharges of logging slash and materials to unnamed streams, which are waters of the State. Respondents did not have a permit for the discharges.
7. On September 15, 2011, Forester Greenough sent a letter to Harding and the Respondents containing AMP compliance directives.
8. On October 5, 2012, Forester Greenough and Environmental Enforcement Officer (EEO) Daniel Mason visited the property to follow-up on the September 2011 inspection.
9. During the inspection of the property, Forester Greenough and EEO Mason observed AMP violations on the logging job as follows:
 - a. At one or more locations, slash and poled ford crossings remained in the watercourse in violation of AMP #8 and #21; and
 - b. At one or more locations, evidence of skidder activities occurring within the watercourse in violation of AMP #10.
10. On October 26, 2012, Respondents and Harding were issued a Notice of Alleged Violation (NOAV) containing AMP compliance directives and a completion deadline of December 1, 2012.
11. On July 31, 2013, Forester Greenough called Harding and was informed that no AMP remedial work had been completed.
12. On June 5, 2014, Harding informed Forester Greenough that some logging slash had been cleaned up but that further closeout work was needed.
13. On September 30, 2014, Forester Greenough and EEO Mason conducted a follow-up inspection of the property and observed that the remediation and implementation of AMPs were in progress.

14. On October 20, 2014, Forester Greenough conducted a follow-up inspection and observed all remediation and implementation of AMPs had been satisfactorily completed by Harding, at his own expense.
15. By failing to follow AMPs which resulted in discharges of material to waters of the State without a permit, Respondents violated 10 V.S.A. §1259(a).

Robert Bridges Property, Plainfield, Vermont

16. On October 12, 2012, Forester Greenough and EEO Mason inspected property owned by Robert Bridges (Bridges) on Middle Road in Plainfield, Vermont (the property).
17. The inspection was in response to a complaint that logging activities were causing a discharge to waters of the State.
18. Respondents conducted the logging activities in question.
19. During the inspection, Forester Greenough and EEO Mason observed AMP violations on the logging job's skid road that runs from the southeast corner of the landing (skid road 1) as follows:
 - a. At one or more locations, logging slash and debris in the waterway in violation of AMP #8; and
 - b. At eight (8) locations, no waterbars were installed in violation of AMP #6 and #11.
20. During the inspection, Forester Greenough and EEO Mason observed AMP violations on the skid road loop accessing the western and northwestern side of the logging job (skid road 2) as follows:
 - a. At one or more locations, there was logging slash and debris in the stream in violation of AMP #8;
 - b. At six (6) locations, no waterbars were installed on the skid road approaches to the waterway in violation of AMP #6 and #11.
 - c. At one or more locations, logging activities occurred within the stream buffer in violation of AMP #14; and
 - d. At one or more locations, the waterway had been used as the skid trail in violation of AMP #10.

21. The failure to implement and comply with the AMPs resulted in discharges of logging slash, sediment and materials to unnamed streams, which are waters of the State. Respondents did not have a permit for the discharges.
22. During the October 12, 2012 inspection, Forester Greenough and EEO Mason provided Bridges with instructions for remediation and the proper implementation of AMPs.
23. On October 24, 2012, Forester Greenough and EEO Mason, accompanied by Chief EEO Sean McVeigh (CEEEO McVeigh), conducted a follow-up inspection and observed additional AMP violations on the logging job as follows:
 - a. At six (6) locations on a skid road located to the south of skid road 1 (skid road 3), no waterbars were installed in violation of AMP #20; and
 - b. At one or more locations on all three skid roads, exposed soil adjacent to the waterway was not seeded and mulched in violation of AMP #22.
24. On October 26, 2012, Respondents and Bridges were issued an NOAV containing AMP compliance directives and a completion deadline of November 10, 2012.
25. On November 20, 2012, Forester Greenough and EEO Mason conducted a follow-up inspection of the property and observed all remediation work and implementation of AMPs had been satisfactorily completed by Bridges, at his own expense.
26. By failing to follow AMPs which resulted in discharges of material to waters of the State without a permit, Respondents violated 10 V.S.A. §1259(a).

ORDER

Upon receipt of this Administrative Order, the Respondents shall:

- A. For the violations that occurred on the Donald Harding property, Respondents shall pay a penalty of \$21,500.00 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:

Hope Kanarvogel, 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 violation(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. For the violations that occurred on the Robert Bridges property, Respondents shall pay a penalty of \$13,300.00 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:

Hope Kanarvogel, 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 violation(s) and by further consideration of any other component of penalty found in 10 V.S.A. § 8010, each according to proof at hearing.

- C. Respondents 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.

RESPONDENT'S 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 Respondent receives 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: Compliance and Enforcement Division,
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

2. Clerk, Superior Court, Environmental Division
32 Cherry St. 2nd. Floor, Suite 303
Burlington, VT 05401

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 Respondents 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 Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondents fail or refuse to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondents, 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 15 day of May, 2015.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: Michael Snyder

Michael Snyder, Commissioner
Department of Forests, Parks and Recreation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

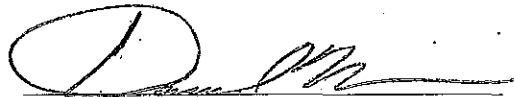
DAVID CODLING, JOE CODLING AND PAUL CODLING D/B/A CODLING
BROTHERS LOGGING,
Respondents

Affidavit of Daniel Mason

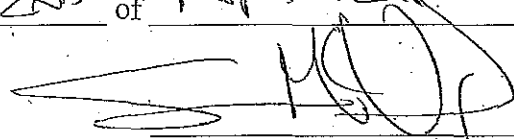
I, Daniel Mason, being duly sworn do attest:

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 & 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 Montpelier, Vermont this 2nd day of April, 2015.


Daniel Mason - Affiant

Subscribed and sworn before me on the 2nd of April, 2015.


Notary Public

My Commission Expires: 2.10.19