

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
)
v.)
)
B & D Service Station, Inc.)
Joseph Desmarais and Richard)
Desmarais dba B & D Service ()
Station)
Respondent.)

Docket # 44-4-17 Vtec

FINDINGS

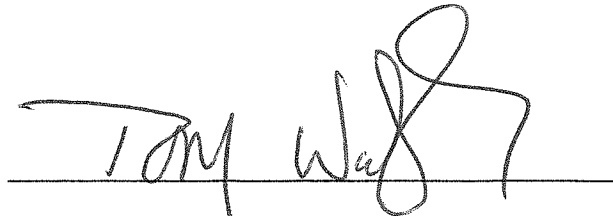
PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

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) has/have 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 April 24, 2017, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 2nd day of May 2017.

A handwritten signature in black ink, appearing to read "Tom Walsh", is written over a horizontal line.

Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

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

v.

**B & D SERVICE STATION, INC.,
JOSEPH DESMARAIS AND RICHARD DESMARAIS
d/b/a B & D SERVICE STATION,
Respondents**

ADMINISTRATIVE ORDER

Having found that B & D Service Station, Inc., Joseph Desmarais and Richard Desmarais d/b/a B & D Service Station (Respondents) have 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. 24 V.S.A. §2242(a)(2): Operation of a salvage yard without a Certificate of Registration (COR)

STATEMENT OF FACTS

1. Respondent B & D Service Station, Inc., a Vermont corporation, owns property located at 161 and 165 Province Street in Richford, Vermont, SPAN #51616210797 and 51616210798, respectively (the property).
2. Respondents operate a salvage yard on the property, known as B & D Service Station.
3. On June 2, 2015, Agency personnel inspected the property and observed more than four (4) junk motor vehicles located outdoors on the property, as well as various piles of scrap metal.
4. On June 9, 2015, Agency personnel performed a follow-up inspection of the property and observed more than four (4) junk motor vehicles located outdoors on the property, as well as various piles of scrap metal.

5. Pursuant to 24 V.S.A. §2242(a)(2), a person must hold a Certificate of Registration issued by the Secretary to operate, establish or maintain a salvage yard. A Certificate of Registration may only be issued to a salvage yard that holds a Certificate of Approved Location issued by the legislative body of the municipality in which the salvage yard is located. Respondent's operation meets the definition of a salvage yard pursuant to 24 V.S.A. §2241(7) and (15). Respondents had not obtained a Certificate of Approved Location (COAL) from the municipality or a Certificate of Registration (COR) from the Secretary to operate a salvage yard.
6. On June 17, 2015, the Agency issued a Notice of Alleged Violation (NOAV) to Respondents with instructions to come into compliance with applicable salvage yard law.
7. The Agency issued a second NOAV to Respondents on August 19, 2015.
8. On November 20, 2015, Agency personnel conducted a follow up inspection of the property and observed more than four (4) junk motor vehicles and various scrap metal, were stored outdoors on the property.
9. On January 26, 2016, Agency personnel conducted a follow up inspection of the property and observed more than four (4) junk motor vehicles were stored outdoors on the property.
10. To date, Respondents have not obtained a Certificate of Registration from the Secretary.
11. By failing to obtain a Certificate of Registration from the Secretary to operate a salvage yard, Respondents have violated 24 V.S.A. §2242(a)(2).

ORDER

Upon receipt of this Administrative Order, the Respondents shall:

- A. Pay a penalty of \$9,750.00 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:

Administrative Assistant
Agency of Natural Resources
Environmental Compliance 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. Respondents shall immediately cease accepting junk, motor vehicles, tires, vehicle parts, or any other materials unless and until all applicable environmental permits, including but not limited to, a Certificate of Registration, are issued for the property.
- C. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondents shall either: 1) submit an application for a Certificate of Approved Location to the Town of Richford, with a copy of the application to the Agency, or 2) remove all junk and junk motor vehicles from the property and properly dispose of them at a certified salvage yard or shredder. Junk motor vehicles shall be removed intact and shall not be crushed or otherwise dismantled prior to delivery to the certified salvage yard or shredder, except by a mobile crusher equipped with an on-board fluid recovery system.
- D. In the event Respondents apply for and receive a Certificate of Approved Location from the Town of Richford, then no later than fifteen (15) consecutive calendar days following issuance of the Certificate of Approved Location, Respondents shall submit to the Agency an administratively complete application for a Certificate of Registration/Salvage Yard Permit.
- E. In the event Respondent's application for either a Certificate of Approved Location or Certificate of Registration/Salvage Yard Permit is denied, then Respondents shall remove all junk and junk motor vehicles from the property and properly dispose of them at a certified salvage yard or shredder no later than thirty (30) consecutive calendar days following the Town or Agency denial, whichever is applicable. Junk motor vehicles shall be removed intact and shall not be crushed or otherwise dismantled prior to delivery to the certified salvage yard or shredder, except by a mobile crusher equipped with an on-board fluid recovery system.

F. Respondents shall not operate, establish, or maintain a salvage yard on the property unless and until all applicable environmental permits, including but not limited to, a Certificate of Registration/Salvage Yard Permit, are issued.

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 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 and Litigation Section,
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.

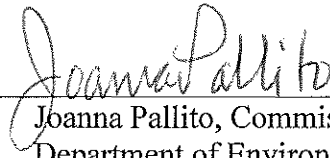
COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

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 17th day of January, 2017.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: _____



Joanna Pallito, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

B & D SERVICE STATION, INC.,
JOSEPH DESMARAIS AND RICHARD DESMARAIS
d/b/a B & D SERVICE STATION,
Respondents

Affidavit of Edmond A. "Ted" Cantwell

I, Edmond A. "Ted" 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 Environmental Compliance 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 20th day of April, 2016.

E.A. Cantwell

Edmond A. "Ted" Cantwell - Affiant

Subscribed and sworn before me on the 20th of April, 2016.

[Signature]
Notary Public

My Commission Expires: 8.10.19