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APR 11 2008
WAITSFIELD

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
SECTION 1272 ORDER

IN THE MATTER OF: Town pond drawdown and temporary downstream channel stabilization work on a tributary to the Mad River off Radcliffe Drive in Waitsfield, Vermont

Attention: Valerie Capels, Town of Waitsfield
9 Bridge Street
Waitsfield, VT 05673
(802) 496-2218

In accordance with the provisions of 10 V.S.A. Section 1272, the Secretary ("Secretary") of the Agency of Natural Resources ("Agency") makes the following:

FINDINGS OF FACT

1. On April 10, 2008, Sean McVeigh, an Environmental Enforcement Officer for the Agency, visited the Town pond site and adjacent downstream Class II wetland located on Route 100 in Waitsfield, Vermont. Mr. McVeigh observed that the town, in reacting to a potential dam failure at its pond site, had dewatered a downstream Class II wetland and excavated approximately 200' of channel material (in the wetland) to allow the water to flow away from the outlet works. All of this work was completed by the Town and its contractor without any engineering consultation or State approvals. This work resulted in an ongoing release of sediment to waters of the State in violation of 10 V.S.A. Section 1259.
2. Without complete implementation of the methods and procedures outlined below, continued discharges to waters to the State are expected to continue to occur and reasonably can be expected to create or cause a discharge to waters in violation of Subchapter 1 of Chapter 47 of Title 10.

In accordance with the provisions of 10 V.S.A. Section 1272, the Secretary, based on the above findings of fact, hereby issues the following order to establish methods and procedures to eliminate or control the discharges:

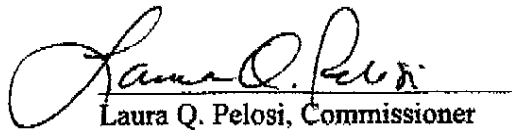
ORDER

- A. The Town shall immediately retain a professional engineer qualified in dam safety to assess the condition of the Town dam. Drawdown procedures shall be defined by a qualified engineer in coordination with the ANR Stream Alteration Engineer – Patrick Ross, P.E. (802) 279-1143. Drawdown shall not commence until such procedures are approved by the Agency.

- B. The Town shall immediately and temporarily stabilize the 200 feet of disturbed channel downstream of the dam outlet structure. The channel shall be stabilized with clean matting that can be laid in place. The matting shall be left in place until the channel and wetland restoration can be addressed.
- C. All work required under Paragraph A shall be completed as soon as possible, but no later than April 20, 2008.
- D. Downstream flows shall not be interrupted at any time.
- E. All machinery shall be fueled away from State waters. All equipment shall be cleaned and well maintained, free of fuel, hydraulic and gear oil leaks.
- F. Any sandbags and other temporary fill material shall be fully removed from the stream channel and banks.
- G. Any water quality problems shall immediately be brought to the attention of Stream Alteration Engineer.
- H. This approval is only for the work described. Any additional work or changes in procedure must be approved in advance in by the Stream Alteration Engineer.
- I. The Stream Alteration Engineer shall be notified prior to commencement of the project via phone call (802.279.1143).
- J. The Agency shall be notified immediately upon completion of the project.
- K. There shall be no additional work in the wetland complex other than that work defined in this Order. If there are any questions pertaining to the wetland beyond the temporary channel stabilization work; those issues shall be addressed to ANR Wetlands Ecologist - Shannon Morrison at (802) 241-3762.
- L. This approval does not grant any exclusive rights or privileges which would impair any rights possessed by other riparian or littoral owners of the State of Vermont. It does not grant any right, title or easement to or over any land not owned in fee by the applicant, nor does it authorize any damage to private property or invasion of private rights or the violation of Federal, State or local laws or regulations.
- M. The Town shall allow access to Agency representatives to inspect the site and sample any discharge or receiving waters as necessary to assess compliance with this order and other applicable state laws related to water quality.
- N. The State of Vermont and the Agency reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- O. Nothing in this Order shall be construed as having relieved, modified, or in any manner affected the Town's on-going obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Town in the operation of its business, nor does it relieve the Town of the obligation to obtain all necessary federal, state, and local permits.
- P. This order is not a resolution of any enforcement action that may be pending, contemplated, or initiated in these matters.

- Q. The Agency, in issuing this order, accepts no legal responsibility for any damage, direct or indirect of whatever nature and by whomever suffered arising out of the activities described.
- R. By issuing this Order, the Agency is not waiving its rights to initiate any future enforcement action and/or assess or seek penalties.
- S. Pursuant to 10 V.S.A. Chapter 220, any appeal of this Order must be filed with the clerk of the Environmental Court within 30 days of the date of the Order. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is 225 North Main Street, Suite 1, Barre, VT 05641 (Tel. # 802-479-4487).
- T. This Order shall be effective immediately and remain in effect until such time as the activities governed under this Order are completed or until such time as the Agency rescinds the Order or issues a subsequent Order, or which ever comes first.

IT IS SO ORDERED:

A handwritten signature in cursive script, reading "Laura Q. Pelosi", is written over a horizontal line.

Laura Q. Pelosi, Commissioner
Department of Environmental Conservation

Dated: April 11, 2008