

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-314

NOVEMBER TERM, 2004

Agency of Natural Resources	}	APPEALED FROM:
	}	
	}	
v.	}	Environmental Court
	}	
John Wellman	}	DOCKET NO. 101-6-04 Vtec
	}	
	}	Trial Judge: Merideth Wright

In the above-entitled cause, the Clerk will enter:

Respondent John Wellman appeals from an environmental court decision upholding the issuance of an emergency order by the Agency of Natural Resources Secretary, directing respondent to refrain from placing any additional fill within a wetland on his property, and to apply for conditional use approval of the fill and structure already placed within the wetland. We affirm.

As found by the trial court, the material facts are as follows. Respondent owns property adjacent to Route 5 in the Town of Guilford. The property contains a wetland area consisting, in part, of a former gravel pit formed when gravel was removed from the property for the construction of road improvements during the 1920s or 1930s. The property contains a former gasoline station, constructed in 1949 on or near a portion of the gravel pit that had been filled. Respondent purchased the property in 1974, and resides in the former gasoline station. Since 1999, he has been engaged in the raising and training of Alaskan husky dogs, with the goal of assembling a team capable of participating in the Iditarod dog sled race in Alaska.

In mid-May 2004, respondent began placing truckloads of sandy fill in the wetland area to extend the edge of the yard for the purpose of building a puppy enclosure. On May 21, 2004, an ANR enforcement officer visited the property in response to an anonymous report that respondent had placed fill in a wetland area. About a week later, an ANR wetlands ecologist visited the property to determine whether the area in question was a wetland. The ecologist observed vegetation consistent with a wetland, and later confirmed from the National Wetlands Inventory Map that it was a Class Two mapped wetland. On June 2, the enforcement officer served respondent with a notice of alleged violation of the Vermont Wetland Rules, directing respondent to cease placing fill within the wetland or a fifty-foot buffer, and to apply to the Agency for conditional use approval of the fill

already placed within the wetland or remove it within sixty days. On June 14, the enforcement officer observed that more fill had been placed within the wetland, and respondent informed the officer that he did not accept the ANR wetlands determination and did not intend to apply for conditional use approval.

Several days later, the environmental court approved the Secretary's application for an emergency order directing respondent to refrain from placing any further fill in the wetlands area and to submit a conditional use application or a plan for restoration of the site. 10 V.S.A. § 8009(a) (authorizing secretary to issue emergency administrative order if an activity requiring a permit has been commenced and is continuing without a permit). When the enforcement officer served the emergency order on June 23, he observed that a new dog enclosure has been constructed, partially located on the newly filled land.

Respondent requested and received a hearing before the environmental court, which issued a written decision on July 6, 2004. *Id.* § 8009(d) (granting respondent ability to request hearing before environmental court if emergency order is issued). The court found that the Secretary had made a sufficient showing that respondent had placed fill in a Class Two wetland without the requisite permit under the Vermont Wetland Rules, and ordered respondent to refrain from placing any additional fill in the wetland area until he applied for and received conditional use approval of the fill and enclosure, or applied for and obtained from the Water Resources Board a reclassification of the wetland to Class Three (Class Three wetlands are unregulated). If respondent failed to submit either application within thirty days, the court authorized the Secretary to apply for an emergency order requiring respondent to prepare and implement a site restoration plan. Finally, the court rejected respondent's request for monetary penalties and an apology from the Agency for the enforcement officer's allegedly "inexcusable" actions. Respondent has appealed pro se from the emergency order.

Respondent's brief does not approach even the minimum requirements of V.R.A.P. 28(a), in part because it lacks a concise statement of appellant's specific claims of error, with appropriate references to the record. If very liberally construed respondent's argument appears to be that a permit is not required because the wetland is at least partially manmade, resulting from the excavation of gravel years ago. As the State notes, however, respondent may apply to the Water Resources Board to determine whether the area is, in fact, a wetland, or should be reclassified, and has failed to exhaust this administrative remedy. See Morean-Usher v. Town of Whittingham, 158 Vt. 378, 381 (1992) (reciting general rule that courts will not interfere with agency or review its acts until all remedies before such agency have been exhausted). We note, as well, that respondent cites no authorities to support his claim, and our review of the Vermont Wetland Rules finds no basis for a distinction between natural and manmade wetlands in these circumstances. To the extent that respondent claims the fill would not adversely impact the wetlands area, his remedy, as the environmental court noted, is to apply for conditional use approval from the Agency.

Respondent's additional complaints, including assertions that the notice of violation was unconstitutional because it was based on an anonymous tip, and request for \$50,000 compensation

for the Agency's alleged harassment, are not grounds for us to overturn the decision of the environmental court. Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned