# Colton Enterprises, Inc.

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TO: ANR, FPR (Snyder, Lincoln, Coster, Mojo), Senator Collamore
FROM: Christi Bollman, General Manager
DATE: December 30, 2019
SUBJECT: Response to Land Use Permit 3W0405-6

Colton Enterprises submitted an Act 250 amendment application in April. A hearing was held on May 29, 2019. Approximately 8 months after application, on December 20, 2019 the attached Permit and Findings of Fact and Conclusions of Law were received. Due to the timing of the permit issuance we have even less than the standard 15-day timeframe to request reconsideration, as there are two major holidays in those 15 days. Due to the outcome of the permit, we find ourselves once again contemplating the mill's fate. While it outwardly appears as a permit, when considering actual consequences of implementation, and limitations on production, it is more accurately described as a Permit Denial, in that the added restrictions far outweigh the clarification and flexibility we were seeking.

The following information outlines some of the intentional consequences imposed on Colton Enterprises that penalize us with this permit.

The details of our business operations have been explained and demonstrated to Act 250 and yet new restrictions are being randomly and arbitrarily imposed upon us that are unrelated to our proposed changes. These restrictions create unrealistic operational guidelines, confusing and unattainable permit conditions that have the potential to put Colton Enterprises out of business. The following details prove that the statistics touted by Act 250 proponents about District Commissions having all the power they need to make things right for us, permits being issued quickly and concisely are misleading, at best.

Colton Enterprises is a forest products business that provides locally produced home heating fuel products, that will help the State reach its clean energy goals.

The Commission chose to impose these conditions with full knowledge of the severity and significant impacts on our family business, our employees, suppliers and customers, yet they are arbitrary and punitive. The Commission has imposed these conditions to protect objecting neighbors despite the fact that the only objecting neighbors do not reside in Pittsfield full time. In fact, one neighbor, the Grays have attempted to extort us by offering to sell their property at an excessively inflated value, while listing the property for sale on the open market for a lower price than was offered to us. They also publicly chastised The Town of Pittsfield in open meeting for their letter in support of Colton Enterprises.

The following comments reference Permit and Findings of Fact by page and paragraph.

**PERMIT**

A. *This permit specifically authorizes the Permittees to operate the kiln as needed outside of the normal operating hours and allows the Permittees to empty and refill the kiln bays and refuel the boilers on Sundays and holidays between the hours of 7:00 a.m. and 4:00 p.m.*

   As with our previous Act 250 permits, this permit was issued with such *other* restrictions it overrides what was requested.

B. *This permit also allows the Permittees to chip wood into an insulated storage building Monday through Saturday, from 10:00 a.m. to 2:00 p.m. except holidays.*

   This limit was imposed despite the fact that the application proposed to mitigate noise impacts by insulating the build and limiting noise to not more than 55 dBA Lmax at areas of frequent human use. There is no rationale for imposing more restrictions than other Act 250 projects despite the fact the Commission acknowledged that the noise from Route 100 was far greater than the noise from the mill. No evidence was given, discussions held, or rationale provided for limiting chipping hours to 10 to 2, especially given the sound mitigated environment. Limiting to 3.5 hours each day is counterintuitive. The chipper is not a piece of equipment that is left in place overnight and not quickly setup (including log setup) and broken down. The reduced daily hours, unless amended, will force us to chip more days instead of less and waste limited resources and manpower. We may propose that the Commission reconsider the 10 to 2 limitation and expand it to 8 to 4 but spread over fewer days of the week.

C. *After March 1, 2020, the use of any chipper outside of the insulated building is prohibited.*

   The previously permitted and preexisting 24-hours of annual chipping is critical to mill operations, and our permit application specifically requested that this condition not be eliminated.

   The firewood storage shed that we proposed to insulate to mitigate chipper noise, is at its core, a firewood storage shed that was a direct result of previous act 250 proceedings. Once any firewood is stored in the shed, the shed can no longer be used for chipping in order to avoid contaminating firewood with chip dust. Therefore, at times when the shed is full, we must be able to continue to chip outdoors, as we always have while that shed is used for firewood storage. For example, in 2019, that shed stored firewood for 6 months (April to November). Due to the other critical needs of the shed, the new condition removes our ability to create fuel and treat EAB, by chipping, for 6 months of the year.

Without fuel, the kiln don't operate. Without chipping, we also lose our other EAB treatment method. The Commission chose to impose this with full knowledge of the impacts.

D. *Starting on the first Sunday in August, the facility shall shut down for two weeks except that logs may be delivered.*

Colton Enterprises does not deliver logs, we receive logs – we deliver firewood. Colton cannot receive logs while closed, without employees or without using equipment that makes noise.

We deliver firewood during our mill shut down and that is critical to our ability to fulfill contracts. All our contracts and agreements have 7-day delivery performance clauses. The loss of this business would result in revenue loss of approximately a quarter million dollars annually.

Depending on how the calendar year falls, this permit condition could result in the mill being closed past our existing permit startup date of August 15.

Prior to this permit, we were permitted to operate all other mill aspects (not the kiln) of our business year-round. Now all mill operations are being removed for 2 weeks. This is a loss of valuable production, delivery and maintenance time. We use mill shutdowns for critically timed maintenance and this condition removes our ability to use historically scheduled downtime in this way.

As evidenced during hearing testimony we offered that we often shut down the mill the last week in July. Requiring a 2-week shut down in August is in direct opposition of existing operating procedures and is an arbitrarily imposed permit condition. The two week timing is arbitrary, as is the condition allowing receiving of logs but not delivering of firewood – both tasks involve essentially the same level of noise producing activities, and there is no rationale offered as to why receiving logs is OK but delivering firewood is not. As noted above, inability to deliver firewood will have a significant economic impact on the business and is not a readily available mitigation measure.

Arbitrarily imposing a complete shut down for two weeks could force our employees onto unemployment during this shut down period.

E. *Items 13 – 17*:

The deadline of March 1, 2020 is unreasonable and unfeasible given:

i) it is end of 2019 already, 60 days is unreasonable,
ii) these are custom made products, not off the shelf pre-built items and
iii) winter is the peak firewood season and therefore the shed is in use.

F. *Item 18: Starting with the first Sunday in August, the Permittees shall shut the facility down for the first two full weeks in August. All equipment and activities that generate noise, including firewood processing and splitting, operating kilns, chipper and mulch grinder shall not be in use during those two weeks of mill shut down. Permittees may continue to accept logs.*

These three sentences are in complete contradiction with each other. Colton Enterprises cannot receive logs without making any noise. Personnel is required to operate scales, noise is generated during log deliveries, some trucks require unloading using our M318 loader. See Item D above.

G. *Item 19: Daytime noise levels shall not exceed 55 dBA Lmax and nightime noise levels shall not exceed 45 dBA Lmax at areas of frequent human use, including the residence north of the property (now owned by Sarah and Gordon Gray).*

a) The noise from existing operations has never been evaluated based on this noise standard. The imposition of this noise standard to existing operations could shut down the pre-existing business entirely.

b) Also, we note that per our verification, at the Pittsfield Town Office, that Sarah Gray is not listed as an owner; Gordon Gray only.

**FINDINGS OF FACT CONCLUSION OF LAW, AND ORDER**

H. *Page 2, Item IV. Amendment Application, Second Paragraph, "The Applicants are proposing to amend conditions #10, #16 and #7 . . ."*

Point of clarification. The Applicants did not and are not proposing to amend 16 and 17, only 10. As a matter of fact, Applicants requested and received a corrected Hearing Notice as the Coordinator admitted she had misstated which conditions Applicants were applying for in the original Hearing Notice.

I. *Page 3, Para 1 and Page 9, Item 24, ". . . no more than 24 hours per year. . . . "*

On February 9, 2012 Act 250 enforcement officer, John Wakefield, visited Colton Enterprises, conducted an inspection, concluded and stated that as long as Colton

Enterprises stayed within the 24 hours per year, they would have no issues with Act 250 enforcement on this matter. Testimony was given demonstrating compliance.

*J. Page 3, Para 4, "heat treating or chipping ash logs are recommended treatments . . ."*

This states heat treating and chipping are recommended treatments, however, permit condition 12, if not amended, removes our ability to chip for approximately 6 months out of the year which includes EAB flight season.

*K. Page 3, Para 4; Page 4, Para 4; Page 10, Items 36; Page 14 next to last para; Page 16, Last Para; Page 17, Para 2; Page 17, section (c), Para 2 and 3;*
*". . . but are proposing to place a new chipper at another location."*

We, have not, and are not, proposing to place a new chipper at another location. Existing chipper and location already permitted and in use.

L. *Page 3, Para 4, "Increased noise as evidenced by time and expense that went into the Settlement Agreement of 2002 . . . additional wood chipper be allowed with no limitations to operating times. . . "*

a) Expense of mediation was paid by Colton Enterprises
b) Not all the Gray's that signed the agreement attended all days of mediation
c) Mediation went into 3rd day, Colton's offered to split the cost, Gray's declined, and Colton's paid the full $1,500 for the third day of State Mandated Mediation
d) There are limitations on operation times (8 to 4 vs 7 to 6:30)
e) Professional sound expert testified that noise impacts of indoor chipping will be fully mitigated.

*M. Page 4, Para 7 and 8, ". . . The degree of reliance on the permit conditions, the Agreement and material representation made in the prior proceeding, by the neighbors was significant."*

These paragraphs imply that only Grays relied on the agreement. Not true. Colton's also heavily relied on the agreement. Sarah Gray's admitted under oath that she has never (~18 years), notified Colton's as agreed. Colton's have complied with the agreement and this amendment request is fully within the guidelines of that agreement.

N. *Page 4, Last Para, ". . .Colton's have been deviating from the notifications to the neighbors related to the chipping".*

No notification deviation has occurred. At the hearing, under oath, Gordon Gray admitted he added a few extra notification letters of his own into the pile of letters he submitted. And this was accepted, by the Commission, as submitted.

*O. Page 5, Para 1, ". . . Since the conditions have not been effective, it is necessary for the commission to find a better way to mitigate the existing and proposed noise level impacts. "*

The Commission has taken it upon themselves to create an ad hoc situation to the neighbors' concerns without following the strict requirements of the Act 250 criteria. The resulting conditions impose arbitrary restrictions that do not take into account how the business actually needs to operate to both stay in business and follow the State's slow the spread guidelines.

P. *Page 5, Item V, Item A. 1. ". . .Christa Bollman. . ."* Correction. Christi Bollman.

Q. *Page 5, Item V, Item A. 3. "Then Pittsfield . . ."* Typo. The . . . not then.

R. *Page 5, Item V, Item B. i. 2. "Don Gray, lives across Route 100 from the Coltons' mill . . ."*

From statements made at the hearing by Don Gray, one might infer Don lives in Pittsfield and has limited enjoyment of his home. However, Don Gray no longer resides in Pittsfield, VT. Don sold his primary residence (parcel 67-0163) and now resides at 17 Perry Street, Rockland, ME 04841 (see COS). Don Gray owns parcel 67-0281 and a rental house 67-0161 which is currently occupied by tenants and has been on and off the real estate market listed for sale.

*S. Page 7, Item 4, ". . .operation from September through March."*

Previous permit language is not being transferred properly. Inattention to details in this legal document could be further misconstrued and give inaccurate guidance and become confusing in the future as parties interpret intent of the Commission. Existing permits allow operations starting of kiln on August 15 (not September).

*T. Page 9, Item 19, ". . . unless Ms. Gray is away. . . "*

Previous permit language is not being summarized accurately. Inattention to details in this legal document could be further misconstrued and give inaccurate guidance and become confusing in the future as parties interpret intent of the Commission. Existing permits allow 3 summer session even if Ms. Gray is visiting Pittsfield.

U. *Page 10, Item 27, ". . .Deliveries to fulfill contracts continue during the vacation shutdown. . ."*

Colton Enterprises stated that we have contracts and agreement with inflexible 7-day delivery performance clauses. Colton Enterprises offered to agree to a permit condition to not run the kiln during two noncontiguous weeks. That offer was disregarded. The consequences of not being able to qualify for these contracts, due to a 2-week complete mill shut down with no product deliveries, could result in approximately a quarter million dollars in lost revenue and the potential impact of several full-time employee positions. Complete mill shut down also prevents us from doing necessary maintenance. Many maintenance items must be performed while not in operation.

V. *Page 10, Item 30, ". . .Noise starts at 7 AM . . ."*

Colton Enterprises is permitted to start operations at 7 AM.

W. *Page 11, Item 41, "Average background sound levels between 7 am and 5 PM at seven nearby residences due to traffic ranged from 50 dba to 64 dba. . ."*

Expert testimony provided evidence to this. However, Commission chose to implement Permit Condition #19, with lower dba levels and specific testing methods. This is in direct conflict with the expert testimony and their own site visit observations (Item 39). Evidence speaks to Route 100 traffic, Commission observed the "objectionable" Route 100 traffic, which is closer to the Gray's house then our mill, and yet Commission still imposed lower noise restrictions on our mill than the traffic going by creates. This is an unattainable standard.

X. *Page 11, Item 42, "For the seven closest residences, both the maximum and average sound levels of the proposed operation are less than the maximum and average sound levels caused by traffic on Route 100."*

Colton Enterprises went to great lengths and expense before applying to make sure what was proposed would be mitigated.

We should not be held legally accountable for the noise impacts of Route 100 which are greater than the kiln. Permit Condition #19 can create a situation where our mill would be responsible for noise impacts that are less than traffic going by on Route 100.

Y. *Page 12, Item 47, ". . .Heat treatment relates to . . . "*

The statement is technically flawed, and it cannot be correct as we are unsure of the point being made.

Z. *Page 12, Item 49, "The Grays . . . <u>They</u> lived next door to the mill facility since it was originally permitted. . . . . second floor deck . . . "*

a) <u>They</u> have not lived there since mill facility was originally permitted. Sarah Gray has submitted written testimony stating she recalls a particular conversation before mill was built, when in fact, she was not present. Sarah Gray has not lived there since mill facility was originally permitted. Only Gordon has.

b) During the May site visit the Gray's did not show the commission their living quarters on the south side of the house farthest away from the mill, they only provided access to their unoccupied rental unit on the north side.

AA. *Page 12, Items 51, ". . . Noise Barrier . . . "*

a) Gordon Gray built the fence to his specification. Colton Enterprises paid Gordon $2,000 for the fence. Again, Sarah is not listed as an owner of this property.

BB. *Page 13, Items 57, ". . . pulpwood . . . "*

Unsure of the accuracy of this statement.

CC. *Page 14, Criterion 1 – Air Pollution, Para 3, ". . . In addition to the noise mitigation addressed below under Criterion 8 . . . Complying with the maximum nighttime sound levels may require the fan speeds to be reduced at night. "*

Kiln speeds are already reduced procedurally at the end of the day. Controlling fan speed is necessary as a safety mechanism, that is occasionally used to control boiler pressure.

*DD. Page 15, Item 1, Para 2, ". . . an increase in the use or duration of the equipment that makes noise, including the kiln and chippers is adverse."*

Indoor chipping does not create adverse impacts as it will be sound mitigated.

*EE. Page 16, First Para, Line 6, ". . . A intended . . ."*

Assume this is a typo but unclear if this is supposed to say <u>un</u>intended or <u>in</u>tended.

*FF. Page 17, section (c), Para 1, ". . . A generally available mitigation step "is one that is reasonably feasible and does not frustrate [either] the project's purpose or Act 250's goals."*

Colton Enterprises' project purpose is frustrated by the State of Vermont, Act 250 Commission:

1. Imposing the loss of operations and revenue,
2. dictating vacation times,
3. inability to adhere to State EAB treatment guidelines,
4. potentially requiring unemployment claims
5. negatively impacting our ability to provide year-round employment,
6. removing previously permitted activities,
7. disregarding scientific evidence,
8. allowing unsubstantiated evidence, and
9. imposing conditions that create immediate punitive conditions.

GG. *Page 17, section (c), Para 4, ". . . chipping from 10:00 am to 2 pm . . ."*

The proposed chipping hours of between 8 and 4 align with preexisting and previously mitigated outdoor chipping hours. Further reducing the inside chipping hours to 3.5 hours per day, from 10 to 2, makes no practical or logical sense. There is no evidence to support this change in hours. The functional reality of that condition is, it will force more frequent chipping which is counterintuitive.

HH.*Page 17, Last para*

This statement is inconsistent with previous statements on the same subject as it leaves out the logs deliveries during shut down.

*II. Certificate of Service*

Sarah Gray resigned in writing, as the Pittsfield Zoning Administrator, and verbally stated her reason was that she is not spending enough time in Pittsfield. This letter was submitted as evidence during the hearing and yet the Commission still inaccurately lists her on the COS and has negotiated conditions that one would assume are for the benefit of a full time resident/abutter.

*JJ. Personal Interactions*

Act 250 permit conditions have given Gordon and Sarah Gray the platform to make our operations very unpredictable. As an example, Gordon called and offered to "not complain for a year", if we would close one weekend when his daughter was going to get married. We agreed but the wedding never took place.

While the Commission was in recess, Gordon Gray repetitively offered us the option to purchase his home and one of his other rental units for initially $700,000 and later $675,00 which is  $285,000 above assessed values, with a $200,000 payment due immediately, and then, a down payment and subsequent owner financing.  You can infer what you like at the requirement of a $200,000 payment that is not categorized as a down payment.

Due to the unreasonable asking price and property limitations, which made it ineligible for bank financing, inability to come to terms, and the fact that it would not alleviate Colton Enterprises burdensome Act 250 conditions, the sale was not completed.