



ADMINISTRATIVE OFFICE
1021 Redmond Road
Williston, VT 05495
EMAIL info@cswd.net
TEL (802) 872-8100
www.cswd.net

PROPOSED ORDER

In Re: THE LIGHTHOUSE RESTAURANT

This is a Proposed Order issued pursuant to the Chittenden Solid Waste Management Ordinance (the "Ordinance") adopted by the Chittenden Solid Waste District (the "District").

FINDINGS

On November 15, 2019, The Lighthouse Restaurant (the "Respondent") received a Warning of Non-Compliance referencing Section 3.13 of the Ordinance (Ordinance Sections attached).

On January 7, 2020, Respondent received a Notice of Violation (NOV) citing the failure to divert food residuals, as a violation of Section 3.13 of CSWD's Solid Waste Management Ordinance (Ordinance), and informing the Respondent that such violation is alleged to constitute **Unlawful Conduct** under and as defined in the Ordinance.

In such NOV, the Respondent was notified of their right to request a hearing before the Executive Board. No notice of request for a hearing has been received by the Executive Board within the time limit allowed.

Staff of the District has submitted findings of fact to the Executive Board for consideration in determination of whether the Respondent has committed Unlawful Conduct. Such facts include a timeline of outreach efforts which commenced in 2013 and included attempts to obtain cover or meals served information from the owner.

Commented [JM1]: These are outlined in the NOV which I've attached. I stopped in again on January 27 and asked staff to have Doug call me. I left my card. We have not received any correspondence.

The Executive Board hereby finds that the Respondent has failed to comply with the Ordinance, as set forth in the Notice of Violation, a copy of which is attached hereto and incorporated by reference into this Proposed Order. Specifically, the Executive Board finds that Respondent failed to comply with Section 3.13 of the Ordinance.

In its determination of a civil penalty, the Executive Board has considered:

- A. The degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;
- B. Whether the Person has cured the violation;
- C. The presence of mitigating circumstances;
- D. Whether the Person knew or had reason to know the violation existed;
- E. The Person's record of compliance;
- F. The economic benefit gained from the violation;
- G. The deterrent effect of the penalty;
- H. The costs of enforcement;
- I. The length of time the violation existed.

ORDER

Based upon the information submitted, and the findings of the Executive Board, the Executive Board hereby orders that Respondent is subject to the following civil penalties pursuant to Section 12.5 of the Ordinance:

- Respondent has committed **Unlawful Conduct** as described above and is fined in the amount of **\$250.00**.
- Respondent is fined **\$50.00** per day starting **March 15, 2020** for each day of the continued Unlawful Conduct until Respondent is in compliance with Section 3.13 of the Ordinance, which compliance shall be subject to verification by CSWD staff.

NOTICE OF RIGHT TO A HEARING

Respondent is hereby notified that it has the right to request a hearing before the Board of Commissioners of the District. A request for a hearing must be made in writing to the General Manager of the District no later than fifteen (15) days after the receipt of this order. Receipt is considered to be three (3) days after the date of mailing. If Respondent does not request a hearing within such allowed time, this order shall be deemed final and shall be effective on the date of receipt.

If Respondent requests a hearing before the Board of Commissioners, the Board of Commissioners shall hold a hearing within fourteen (14) days of receipt of the request. After the hearing, the Board of Commissioners may withdraw or amend the proposed order and may issue a final order that shall be effective on the date of receipt. CSWD may seek enforcement of a final order in the Vermont Environmental Division of the Vermont Superior Court.

Once an order is deemed final, Respondent shall have a right to request a hearing before the Vermont Environmental Division of the Vermont Superior Court. Review of a municipal solid waste order shall be taken by filing a notice of the request with the clerk of the Environmental Division of the Vermont Superior Court and with the Secretary of the CSWD Board of Commissioners within ten days of receipt of the final order.

Filing a request for hearing before the Environmental Division will stop penalties from accruing in the case of a continuing violation.

Questions about this proposed order may be directed to the District's Compliance Specialist, Jeannine McCrumb, at 802.922.6208 or jmccrumb@cswd.net.

Proposed order issued this 19th day of February, 2020.

By: _____
Michelle DaVia
Chair, CSWD Executive Board
& Board of Commissioners

Commented [JM2]: I'm working on a penalty chart and am thinking that we should go with either \$250.00 or \$500.00 for what I see as Type 1 or Type 2 violations. The lower amount would be applied to most generators while those with some sort of professional licensure (e.g. haulers) would be fined \$500.00. If the Board wishes to reduce a fine, I would not recommend they go below \$100.00 to account for the additional administrative burden incurred by staff when outreach efforts and warning letters are ignored. I'm recommending a similar Type 1 or 2 approach with the daily fee.

Commented [JM3]: Allows 3 days for receipt of Order plus 15 to request hearing. If no hearing request, Order is final on that day. Note: first day is not counted but last day is per statute.



Chittenden Solid Waste District

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January 7, 2020

Doug Simms
The Lighthouse Restaurant
4 Kimberly Drive
Essex Jct, VT 05452

FIRST CLASS MAIL

Re: NOTICE OF VIOLATION (NOV) – Failure to divert food residuals

The Chittenden Solid Waste District (CSWD) is issuing this Notice of Violation (NOV) to Doug Simms, owner of The Lighthouse Restaurant. CSWD staff identified a violation of Section 3.13 Separation of Food Residuals of CSWD's Solid Waste Management Ordinance (Ordinance) in July, 2018. The Lighthouse Restaurant, located at 38 Lower Mountain Drive in Colchester, has no food residual waste service.

CSWD staff commenced outreach efforts with this business in 2013. Additional attempts at communication occurred in 2015, 2016 and 2017 prior to the restaurant's due date for compliance with the food diversion ban which was July 1, 2017. Staff visited the restaurant in July of 2018 and confirmed there was no program in place for food diversion. Staff had phone correspondence with Mr. Simms in the summer and fall of 2019. In addition, staff requested cover data via email on September 11 and October 28, 2019 in response to Mr. Simms assertion that the restaurant does not meet the 18 ton per year threshold.

CSWD issued a Warning of Noncompliance to The Lighthouse Restaurant on November 14, 2019. The Lighthouse Restaurant has failed to respond to such Warning. Staff visited the restaurant on November 28 and December 9, 2019 and January 4, 2020 and confirmed that no food residual waste service for the restaurant is on site.

Based upon the above information, CSWD alleges that The Lighthouse Restaurant has failed to comply with Section 3.13 of the Ordinance and that such conduct constitutes Unlawful Conduct under and as defined in the Ordinance.

Pursuant to Ordinance Section 11.1, any Person who engages in any Unlawful Conduct shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500) for each violation or, if lower, the maximum amount allowed by law. Each instance of Unlawful Conduct shall be a separate violation. In the event of other Unlawful Conduct which is deemed "continuing", the Person who engages in such conduct shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500), plus not more than One Hundred Dollars (\$100) for each succeeding day, or, if lower, the maximum amounts allowed by law.

Pursuant to Ordinance Section 12.5, The Lighthouse Restaurant has the right to a hearing before CSWD's Executive Board for the purpose of determining whether such Unlawful Conduct occurred. In order to receive a hearing before CSWD's Executive Board, The Lighthouse Restaurant must send a written request for a hearing to CSWD's Executive Director within ten (10) business days from the date of receipt of this Notification of Violation.

Doug Simms, The Lighthouse Restaurant

January 7, 2020

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CSWD's Executive Board, upon receipt of a written request for a hearing within the permitted ten (10) business day period, shall hold a hearing within fourteen (14) days of receipt of The Lighthouse Restaurant's request.

Within 30 days following the hearing or following expiration of the hearing request date, the Executive Board will issue a proposed order. The order shall include, if applicable, information on civil penalties assessed and directives necessary to achieve compliance with the Ordinance. The order will also include information pertaining to your right to a hearing on the order.

All written requests for a hearing must be sent by first class mail or certified mail with return receipt to Chittenden Solid Waste District, Attn: Sarah Reeves, Executive Director, 1021 Redmond Road, Williston, Vermont 05495-7729.

This letter is sent under reservation of all rights that CSWD may have under applicable law.

If you have any questions, please contact Jeannine McCrumb at 802.922.6208 or jmccrumb@cswd.net.

Sincerely,



Sarah Reeves
Executive Director

cc Burlington Hotel Propco LLC, property owner
Michelle DaVia, Chair CSWD Board of Commissioners *via email*
Timothy Moran, CSWD Colchester Commissioner *via email*
Josh Estey, CSWD Director of Compliance *via email*
Ethan Hausman, CSWD Business Outreach Coordinator *via email*
Jeannine McCrumb, Compliance Specialist *via email*
Emma Stuhl, State of VT Solid Waste Program *via email*