

STATE OF VERMONT

**ENVIRONMENTAL COURT
Docket No.**

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Burt J. Allen and New Haven Tire Center, Inc.
Respondents

VIOLATIONS

Failure to comply with Permit Conditions 1, 8, 10, 12 of Land Use Permit 9A0103;

Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A); and

Offer of sale of an interest in a subdivision without a Land Use Permit pursuant to 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Burt J. Allen and New Haven Tire Center, Inc. (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Burt J. Allen owns the lands identified in Book 38, Page 490 of the Land Records of New Haven, Vermont located at 92 Hunt Road New Haven, Vermont 05472 (the Project Site).
2. Respondent Burt J. Allen owns New Haven Tire Center, Inc., which operates a tire store as a commercial business on a portion of the Project Site.
3. On December 9, 1980 the District #9 Environmental Commission issued Land Use Permit 9A0103 (the Permit) to the Respondent Burt J. Allen for the Project Site.
4. Condition 1 of the Permit states:

The project shall be completed as set forth in Findings of Fact and Conclusions of Law #9A0103, in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.

5. In the initial stages of the project, the District #9 Environmental Commission issued three Act 250 Land Use Permit Amendments to cover various improvements on the Project Site including:
 - a. Land Use Permit Amendment 9A0103-1 issued October 1, 1982 approving a 30' x 40' building addition for cold storage and a redesigned free-standing sign;
 - b. Land Use Permit Amendment 9A0103-2A issued May 27, 1986 incorporating the Certificate of Compliance for the 20' x 20' addition for office space; and
 - c. Land Use Permit Amendment 9A0103-3 issued December 19, 1989 to construct a 30' x 72' warehouse addition and a 35' x 6' fence. This permit amendment was obtained after substantial construction of this project commenced.
6. The Superior Court issued a Consent Order on March 10, 1986, which, in essence, required the Respondents to install a composting toilet, obtain a permit amendment, and pay the State of Vermont \$500.00.
- ✓7. The Respondents have made several additions to the Project site totaling approximately 13,418 square feet. The District #9 Coordinator notified the Respondents that an Act 250 Permit Amendment was required on numerous occasions, and the Respondents failed to obtain such amendments. These additions to the Project Site include the following:
 - a. On June 1, 1993 Respondents constructed a 18' x 26' addition to the existing house;
 - b. On September 5, 1995 Respondents constructed a 42' x 60' tire shed;
 - c. On September 22, 1997 Respondents constructed a mound system and performed other construction on the Project Site; however Respondents did obtain Wastewater Permit WW-9-0063 for this activity;

- d. On March 20, 1997 Respondents constructed an addition to the Project Site of approximately 5,200 square feet, including an additional tire storage area, signage on the western side of the building, and a service shop;
 - e. On April 15, 2003 Respondents constructed an office expansion of approximately 1,450 square feet;
 - f. On August 15, 2003 Respondents constructed a 30' x 38' garage for the existing house;
 - g. On May 5, 2005 the Respondents constructed a 12' x 20' sunroom on to the house;
 - h. On May 6, 2005 the Respondents constructed a 40' x 60' tire shed;
 - i. In about the year 2006 the Respondents constructed a 17.5' x 60' lean-to tire shed;
 - j. On December 29, 2008 the Respondents created a two lot subdivision including a lot with the existing house and business (10.90 acres) and a lot for development (2.82 acres). The Respondents obtained a Wastewater Permit WW-9-0063-2 for the 2.82 acre lot.
 - k. On July 24, 2012 the Respondents constructed a replacement mound disposal system for the existing 3 bedroom residence covered by Wastewater Permit WW-9-0063-3.
8. Condition 8 of the Permit states:
- The Permittees and all assigns and successors in interest shall continually maintain the landscaping substantially as approved in Exhibit #9 by replacing any dead or diseased plantings as soon as seasonably possible.
9. Respondents have not maintained landscaping as required under condition #8.
10. Condition 10 of the Permit states:
- All outdoor lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view substantially beyond the perimeter of the area to be illuminated.
11. The project site contains unshielded outdoor lighting located on the Route 7

side of the project site.

12. Condition 12 of the Permit states:

Exterior storage of tires, trash or other materials on this site is prohibited. Any trucks or other vehicles parked on this site shall be located between the store and the house out of sight from Route 7.

13. Respondents have habitually stored tires outside of the existing buildings. On September 12, 2012 the Respondents had a large pile of tires stored on the Hunt Road side of the property outside of the main building.

14. Respondents have failed to comply with permit conditions 1, 8, 10, and 12 of Land Use Permit 9A0103.

15. Respondents have offered for sale an interest in a subdivision without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

16. Respondents have failed to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A).

AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

A. Respondent shall comply with Permit series 9A0103.

B. Within **30 days** following the entry of this Assurance as an Order by the Superior Court Environmental Division, the Respondents shall file an amendment application for an Act 250 Land Use Permit for the activities noted herein. Respondents shall diligently pursue said application.

A. "Diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Commission, or the Coordinator for the Commission, or other state or local agency by the date set by the Commission, or the Coordinator, or the agency; and (b) comply with all scheduling or other orders or memoranda issued by the Commission or other state or local agency. Respondents shall not be responsible for delays outside its control, including those caused or directed by the Commission or state or local agency or by any other parties to its application.

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- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Twenty Thousand One Hundred Twelve Dollars and Fifty Cents (\$20,112.50) (U.S.)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".
 2. Pursuant to 10 V.S.A. § 8010(e)(2), the amount of **One Hundred Ninety-Seven Dollars and Twenty-Six Cents (\$197.26) (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
 3. The amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town and New Haven land records, by good check made payable to the "Town of New Haven, Vermont".
- C. All payments required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- D. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- E. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- ✓F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.

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- H. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
- I. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- J. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- K. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Benningville, Vermont, this 9 day of October, 2012.

Burt J. Allen
Burt J. Allen, Individually

New Haven Tire Center, Inc.

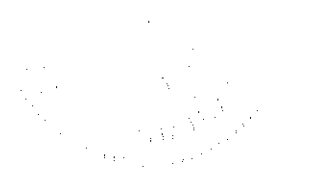
By Burt J. Allen
Burt J. Allen, Duly Authorized Agent

STATE OF VERMONT,
COUNTY OF Addison, ss.

BE IT REMEMBERED that on the 9th day of October, 2012, personally appeared **Burt J. Allen**, individually and as the duly authorized agent of **New Haven Tire Center, Inc.** signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of **New Haven Tire Center, Inc.** and that he has the authority to contract on behalf of **New Haven Tire Center, Inc.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Don Edwards
Notary Public
My Commission Expires: 6-19-15



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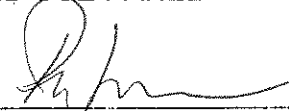
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 8th day of November, 2012.

LAND USE PANEL

By:



Ronald A. Shems, Chair