

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,
Petitioner,

v.

Markowski Excavating, Inc.,
Respondent.

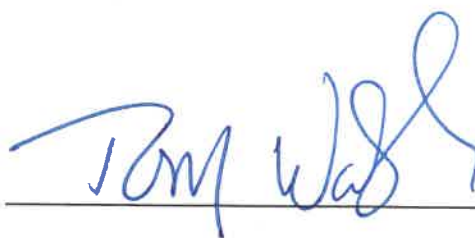
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Docket # 64-5-19 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on April 17th, 2019, and filed with the Superior Court, Environmental Division, on May 22nd, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 24th day of May 2019.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

**STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

THE NATURAL RESOURCES)	
BOARD,)	Docket No.
Petitioner,)	
)	
v.)	ASSURANCE OF
)	<u>DISCONTINUANCE</u>
Markowski Excavating, Inc.)	
Respondent.)	
)	
)	
)	

VIOLATION

Failure to comply with Permit Conditions 7 & 9 of Land Use Permit 1R0567-12 (the "Permit")

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and Markowski Excavating, Inc. ("Respondent") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Elnicki Aggregate, Inc. ("Elnicki") owns approximately 508 acres identified in Book 104 Pages 310-312 and Book 129 Pages 746-748 of the Land Records of the Town of Clarendon, Vermont and in Book 48 Page 83 of the Land Records of the Town Shrewsbury, Vermont (the "Project Tract").
2. Respondent Markowski Excavating, Inc. leases the Project Tract from Elnicki for earth materials extraction.

Failure to comply with condition 7 of Land Use Permit 1R0567-12 (Operation of the Project during the Required Winter Closure Period):

3. Condition 7 of Land Use Permit 1R0567-12 states, in relevant part,
"The approved hours of operation will remain unchanged from those previously permitted: Monday through Saturday 7:00 a.m. to 6:00 p.m. and no operations during the months of January, February and March."
4. Between January 1, 2015, and February 25, 2015, Respondent conducted brush removal, excavating, screening, crushing, and trucking activities on the Project Tract, primarily in connection with an ongoing construction project at the Rutland-Southern Vermont Regional

Airport.

5. On or around February 26, 2015, in response to a request from the Board, Respondent ceased operations and removed most of its equipment from the Project Tract.
6. By operating the Project during the required winter closure period, Respondent failed to comply with condition 7 of Land Use Permit 1R0567-12.

Failure to comply with condition 9 of Land Use Permit 1R0567-12 (Violation of the Conservation Easement):

7. Condition 9 of Land Use Permit 1R0567-12 states, in relevant part,
"In mitigation of impacts upon a mapped deer wintering area, the permittee shall abide by the terms of the permanent conservation easement and access right of way on 90 acres as described in exhibits 15 and 47."
8. Paragraph 1 of Section II (Restricted Uses) of the Conservation Easement states, in relevant part,
"No residential, commercial, industrial or mining activities shall be permitted, and no building, structure, telecommunications facility, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property."
9. Paragraph 6 of Section II (Restricted Uses) of the Conservation Easement states, in relevant part,
"There shall be no operation of motorized or mechanized vehicles, including but not limited to mountain bicycles, all-terrain vehicles, snowmobiles, and four-wheel-drive vehicles on the Protected Property except for uses specifically reserved, such as wildlife management and for emergency purposes."
10. The Respondent's previous placement of a camper trailer within the Conservation Easement Area on the Project Tract effectively triggered a violation of Paragraphs 1 and 6 of Section II of the Conservation Easement.
11. At the request of the Board, the Respondent removed the camper trailer from the Conservation Easement Area during the summer of 2015.
12. By failing to abide by the terms of the Conservation Easement, Respondent failed to comply with condition 9 of Land Use Permit 1R0567-12.

AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations, the parties

hereby agree as follows:

13. Respondent shall comply with Permit series 1R0567.

14. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:

- a. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$10,637.97** by good check made payable to the "State of Vermont."
- b. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,164.46**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont."
- c. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Clarendon land records, by good check made payable to the "Town of Clarendon, Vermont."
- d. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Shrewsbury land records, by good check made payable to the "Town of Shrewsbury, Vermont."

15. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201

16. 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.

17. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

18. 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.

19. 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.

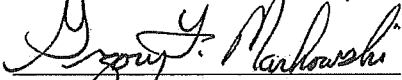
20. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
21. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond either Respondent's control.
22. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
23. 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.
24. 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.
25. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

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

Dated at Florence, Vermont, this 17th day of April, 2019.

MARKOWSKI EXCAVATING, INC.

By 
GREGORY MARKOWSKI, President,
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 17th day of April, 2019, personally

appeared **GREGORY MARKOWSKI**, as the duly authorized agent of **MARKOWSKI EXCAVATING, 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 **MARKOWSKI EXCAVATING, INC.** and that he has the authority to contract on behalf of **MARKOWSKI EXCAVATING, INC.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Brenda Bunk

Notary Public

My Commission Expires: Jan 31, 2021

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

Dated in Montpelier, Vermont, this 22 day of May, 2019.

By:

NATURAL RESOURCES BOARD

Diane B. Snelling
Diane B. Snelling, Chair