

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)
Petitioner,)
)
v.)
)
WRB, LLC, Roger Wright, et al.)
Respondent.)

Docket # 13-1-19 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on September 20th, 2018 and October 11th, 2018, and filed with the Superior Court, Environmental Division, on January 18th, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 22nd day of January 2019.



Thomas S. Durkin, Judge
Vermont Superior Court
Environmental Division

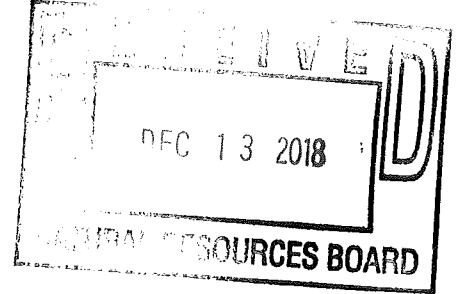
STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

Natural Resources Board,)
)
 Petitioner,)
)
 v.)
)
 WRB, LLC, Roger Wright, and Brenda)
 Wright,)
)
 Respondents.)

ASSURANCE OF
DISCONTINUANCE



Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board), the Agency of Natural Resources (ANR); WRB, LLC, Roger Wright, and Brenda Wright (collectively "Respondents") hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

VIOLATIONS

1. *Failure to comply with Permit Conditions 1, 2, and 5 of Land Use Permit 6F0176 (the Permit) and paragraphs 4(a), 4(b), 7(b), 8(a), and 8(b) of the Findings of Fact.*
 - a. *Failure to reclaim pursuant to the Permit.*
 - b. *Failure to cease operations at the expiration of the Permit.*
 - c. *Failure to arrange for annual inspections and submit annual reports.*
2. *Respondents have commenced development without a Land Use Permit. 10 V.S.A. § 6081(a).*
 - a. *Failure to extend Permit duration to cover development beyond Permit expiration date.*
 - b. *Development of extraction far in excess of area contemplated by Permit.*
3. *Respondents have discharged into waters of the state without a permit. (10 V.S.A. § 1259).*

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. WRB, LLC is comprised of two members: Roger Wright and Brenda Wright.
2. Land Use Permit 6F0176 was issued on September 15, 1977 to allow for earth extraction at the

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"Lamkin Road Gravel Pit" (the Pit).

3. Roger Wright and Brenda Wright control the operation of the Pit.

4. LUP 6F0176 expired on September 1, 2012.

5. Condition 5 of LUP 6F0176 states:

The applicant shall arrange for an inspection during the fall of every year, in which material is removed from this development, by a representative of District Environmental Commission #6.

No operations may be commenced in the following year unless District Environmental Commission #6 has received an inspection report that the operation is in essential compliance with the rehabilitation plan filed with the application.

6. The Respondents have never complied with Condition 5 (inspection requirements).

7. Approximately 8 acres of the total area mined on the property have been reclaimed by establishment of vegetation.

8. The remainder of the 40.4-acre mine remains completely un-reclaimed, portions of which have been open since extraction began.

9. The Mining Plan and associated sketch maps that accompany the Permit indicate that extraction was to be conducted incrementally (extraction cells are labeled on the plan by year), with "the area to be mined for the year" to "be cleared and grubbed," at the commencement of each season, and then excavated. It states that "all exterior slopes will be a one on two and will be roughed in as the excavation is being carried out." The sketch maps indicate that mining was proposed to commence on the southern end of "Mine A," and progress incrementally "northbound" annually until extraction on Mine A was completed (anticipated by roughly 1992). At that point, extraction on "Mine B" would commence, and proceed in the same gradual south-to-north progression.

10. Historic aerial photography reveals that both Mine A and Mine B were opened and operated simultaneously.

11. A comparison of the Mining Plan and Final Reclamation Plan approved by the District Commission in 1977 with orthophotography dating to 2013 reveals that by 2013, the Respondents had greatly exceeded the area delineated for extraction as "Mine A" within the 1977 Mining Plan. By 2013, the Respondents had excavated approximately 185.3% of the acreage authorized for extraction as "Mine A" by the Permit.

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12. By 2008, the Respondents' excavations on Mine A had progressed westward to the rim of a steep-sided forested ravine through which flows a small perennial stream. The western boundary of the area actually graded and/or excavated is from 310 to 650 feet west of the western limit authorized by the Permit.
13. In the spring of 2014, a portion of the southwestern corner of the Pit (in an area not authorized to be mined by the Permit) collapsed along the edge of this ravine, forming a Y-shaped gully over 150 feet long and approximately 25 feet deep. Large quantities of fine-grained sediment washed from the gully down to the bottom of the forested ravine, and accumulated at the margin of the Missisquoi River, forming an extensive delta. The sediment was deposited on a tract of land owned by the Village of Swanton. The Village of Swanton land borders the Project site to the northeast and the Missisquoi River to the Southwest.
14. The Respondents have not complied with the Mining Plan. Failure to adhere to the Mining Plan constitutes a violation of Conditions 1 and 2 of the Permit.
15. The Reclamation Plan that accompanies the Permit specifies that reclamation will be carried out "on a yearly basis," at the end of each season, when "all final sloped areas" and "areas of the floor not being used for processing" will be "graded, topsoiled, compacted, seeded, fertilized, and mulched."
16. Failure to reclaim the site constitutes a violation of Conditions 2 and 5 of the Permit, and paragraphs 4(a), 4(b), 7(b), 8(a), and 8(b) of the Findings of Fact.
17. The facts discussed herein constitute violations of Act 250 because the Respondents have failed to comply with Permit Conditions 1, 2, and 5 of Land Use Permit 6F0176, and paragraphs 4(a), 4(b), 7(b), 8(a), and 8(b) of the Findings of Fact. Respondents have also commenced development without a Land Use Permit. 10 V.S.A. § 6081(a).
18. The facts discussed herein constitute a violation of 10 V.S.A. § 1259, because Respondents have discharged sediment into waters of the state without a permit.
19. On October 30, 2014, the District 6 Environmental Commission Issued Permit 6F0176-1 (the Dash 1 Permit) for the renewal and extension of the previously approved development. Neither the application materials nor the Dash 1 Permit references the significant unauthorized mining discussed herein. Nor do the application materials discuss the significant erosion event, which predated the application, also discussed herein.
20. Respondent admits the factual findings described above, solely for purposes of resolving this case.
21. The parties now resolve the above claims and agree that this settlement will avoid the costs

and uncertainties of litigation, is a just resolution of the disputed claims, and is in the public interest.

AGREEMENT

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

- A. By no later than October 15, 2018, Respondents shall implement the measures described and depicted in Exhibits A through D of this Assurance. These measures shall be implemented for the purpose of stabilizing the large gully that formed on the property in the spring of 2014, reclaiming and stabilizing all areas of the Pit that were mined in excess of the 1975 permitted extraction area, and reducing the potential for future catastrophic slope failures on this portion of the Project Tract. On the recontoured gully banks, Respondent has committed to use Control Mat 60 erosion control blanket from GEI Works, which is detailed in Exhibit D.
- B. By October 16, 2018 or no later than 30 days following reclamation of the Project Area in accordance with the provisions of this AOD (whichever is earlier), the Respondents shall contact the Board's Enforcement Officer to arrange a site visit of the Property to determine whether the work outlined in paragraph A has been completed in accordance with this Assurance. The Board shall promptly issue a written determination to the Respondents explaining whether the work has been completed in accordance with this Assurance or whether deficiencies exist. If deficiencies exist, the Board shall identify such deficiencies and determine a reasonable timeframe for their completion. Nothing herein shall limit the Board's enforcement authority under 10 V.S.A. Ch. 201 to collect penalties or enforce provisions of this Assurance as entered as a Court Order.
- C. Except as modified by this Assurance, Respondents shall implement the reclamation directives required under the Dash 1 Permit.
- D. 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:
 - i. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$26,750.00 for the violations noted herein relative to the Act 250 violations. Respondent shall issue a check for these violations, by good check made payable to: "Treasurer, State of Vermont."
 - ii. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$13,250.00 for the violations noted herein relative to the Agency of Natural Resources violations. Respondent shall issue a check for these violations, by good check made payable to:

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"Treasurer, State of Vermont."

- iii. Pursuant to 10 V.S.A. §8010(e)(2), the amount of \$2,682.42, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to: "State of Vermont."
 - iv. Pursuant to 10 V.S.A. §8010(e)(2), the amount of \$318.30, to reimburse the Vermont Agency of Natural Resources for the costs of this enforcement action by good check made payable to: "State of Vermont."
 - v. The amount of Ten Dollars and Zero Cents (\$10.00), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Highgate land records, by good check made payable to: "Town of Highgate, Vermont."
- E. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respondents have actual notice of the Judicial Order and Assurance of Discontinuance.
- F. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- G. Respondents are jointly and severally liable for all obligations under this Assurance.
- H. Each Respondent shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above to resolve all outstanding disputes.
- J. Respondent agrees that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- K. 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.

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- L. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- M. 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.
- N. Pursuant to 10 V.S.A. § 8007(d), Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.
- O. 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.
- P. 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.
- Q. 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 Swanton, Vermont, this 11th day of October, 2018.

WRB, LLC

By Roger Wright
(Signature)

Roger Wright, Duly Authorized
Agent (Printed Name)

STATE OF VERMONT

COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 11th day of October, 2018, personally appeared Roger Wright as the duly authorized agent of WRB, LLC, 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 WRB, LLC and that he has the authority to contract on behalf of WRB, LLC, and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

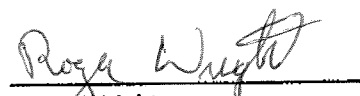


Notary Public

My Commission Expires: 2/10/19

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

DATED at Swaranton, Vermont, this 11th day of October, 2018.


Roger Wright

STATE OF VERMONT
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 11th day of October, 2018, personally appeared Roger Wright, signer of the foregoing instrument who is known to me or who satisfactorily established _____'s identity to me and acknowledged the same to be Roger Wright's free act and deed.

Before me,



Notary Public

My Commission Expires: 2/10/19

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

DATED at St Albans, Vermont, this 20 day of September, 2018.

Brenda L Wright
Brenda Wright

STATE OF VERMONT
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 20 day of September, 2018, personally appeared Brenda Wright, signer of the foregoing instrument who is known to me or who satisfactorily established Brenda's identity to me and acknowledged the same to be Brenda's free act and deed.

Before me,
Emily Samson
Notary Public
My Commission Expires: 2.10.19

Dated in Montpelier, Vermont, this 16 day of January, 2019

NATURAL RESOURCES BOARD

By:

Diane B. Snelling
Diane B. Snelling, Chair