

STATE OF VERMONT

Superior Court

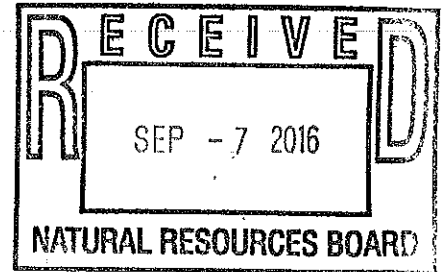
Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Town of Bakersfield, Vermont,
Respondent



VIOLATION

Failure to comply with Permit Conditions 2, 27, & 38 of Land Use Permit 6F0642.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. The Respondent owns approximately 104 acres, located at 3788 Egypt Road, and identified in Book 70, Page 243 of the Land Records of the Town of Bakersfield, Vermont, (the Project Tract).

Tree Removal

2. A site visit by the Board's Permit Compliance Officer on May 1, 2015, revealed that the Respondent had removed most of the trees from the northern part of the screening area depicted on the project plans.
3. On April 21, 2014, the District 6 Environmental Commission issued Land Use Permit 6F0642 (the Permit) to the Respondents, specifically authorizing the development of an earth extraction facility on the Project Tract.
4. Condition 2 of the Permit states:

"The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) the permit application, plans, and exhibits on file

with the District Environmental Commission and other material representations.
The approved plans are:

- Sheet C-1 - "Site Plan," dated 11/21/13 (Exhibit #16);
- Sheet C-2 - "Phasing Plan", dated 11/21/13 (Exhibit #17);
- Sheet C-3 - "Reclamation Plan," dated 11/21/13 (Exhibit #18);
- Sheet C-4 - "Cross Sections," dated 11/21/13 (Exhibit #19); and
- Sheet AG-1- "Mitigation Plan," dated 11/21/13 (Exhibit #20)."

5. Sheets C-2 and C-3 state:

"Tree line provides screening for extraction area."

6. Sheets C-2 and C-3 depict the existing tree line screening area extending northward roughly along the eastern edges of the Phase I, II, III, and V extraction areas.
7. Sheet C-1 clearly depicts the eastern edge of the "Proposed Pit Area" ending near the existing tree line screening area.
8. In Exhibit 7, the permit application, under Criterion 8, Scenic Beauty, Historic Sites, and Natural Areas, the Respondent made the following representations:

"The extraction area is hidden from the road by a buffer of trees running north to south, east of the extraction area. . . . When viewed from Egypt Road, the strip of vegetation along with the forested hillside aid in camouflaging the extraction area, minimizing the project's potential impact on natural and scenic beauty."

"There is no formal landscaping plan for this project. Existing vegetation provides a thorough visual barrier."

"Due to the distance from the road and the strip of trees to the east of the project area, project visibility from the road is minimal."

9. The Respondent did not operate and maintain the Project in accordance with the plans and exhibits on file. Therefore, the Respondent violated condition 2 of the Permit.

Improper Phasing

10. A site visit by the Board's Permit Compliance Officer on May 1, 2015, revealed that the Respondent had commenced extraction from Phase II prior to reclaiming Phase I.

11. Condition 27 of the Permit states:

"The site shall be reclaimed in a phased manner. Each phase is divided into approximate 2 acre phases, with an average 24,000 CY of material. As each phase is complete, it shall be graded, topsoiled, seeded and mulched. Prior to extraction of each subsequent phase, the Permittee shall submit an affidavit from a professional engineer certifying each phase has been graded, topsoiled, seeded and mulched. Failure to reclaim may result in significant financial penalty."

12. Exhibit 9 (Phasing Sequence) states:

"Phase II will not be started until the slopes from Phase I have been stabilized."

13. Therefore, by commencing extraction on phase II prior to reclamation of phase I, the Respondent violated Condition 27 of the Permit.

Absence of Required Fencing

14. Condition 38 of the Permit states:

"Prior to any site work, the Permittee shall install and maintain temporary fencing along the tree line to be retained."

15. A site visit by the Board's Permit Compliance Officer on May 1, 2015, revealed that the Respondent had commenced site work on Phases I and II without installing any fencing along the tree lines to be retained. Therefore, the Respondent violated condition 38 of the Permit.

Post Notice Compliance

16. A site visit by the Board's Permit Compliance Officer on October 22, 2015, and subsequent evidence emailed to the Board by the Respondent have verified that the Respondent performed the following work, as directed by the Board:

- a) installed temporary fencing along the tree lines to be retained adjacent to Phase I;
- b) installed additional temporary fencing to demarcate the northern boundary of Phase II, which is the southern boundary of Phase I; and,
- c) Planted unforested portions of the tree screen area with 125 white pine trees (*Pinus strobus*).

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 6F0642.
- B. Respondent shall maintain and keep intact the tree screen area; replacing any diseased or dead trees with comparable trees 5-7 feet in height within a season of discovering their condition.
- C. 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 **Four Thousand Nine Hundred Fifty Dollars (U.S.) (\$4,950.00)**, for the violations noted herein, by check made payable to the "State of Vermont."
 - ii. pursuant to 10 V.S.A. §8010(e)(2), the amount of **Seven Hundred Sixty-Two Dollars and Ninety-Eight Cents (U.S.) (\$762.98)**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 - iii. the amount of **Ten (\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Bakersfield land records, by check made payable to the "Town of Bakersfield, Vermont."
- D. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- E. 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.
- F. 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.

Assurance of Discontinuance

Natural Resources Board v. Town of Bakersfield, Vermont

Page 5 of 7


- G. 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.
- H. 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.
- I. 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.
- J. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- K. 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.
- L. 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.
- M. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- N. 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 Bakersfield, Vermont, this 15th day of Sept, 2016.

TOWN OF BAKERSFIELD

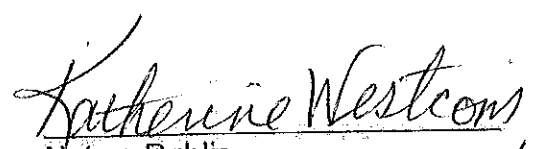
By 

Printed Name, Title WESTCOM BRIAN S.
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 15th day of Sept, 2016,
personally appeared Brian Westcom, as the duly authorized agent of the
Town of Bakersfield, Vermont, signer and sealer of the foregoing instrument who is
known to me or who satisfactorily established his/her identity to me and acknowledged
the same to be his/her free act and deed and the free act and deed of the Town of
Bakersfield, Vermont, and that (s)he has the authority to contract on behalf of the
Town of Bakersfield, Vermont, and that (s)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 in Montpelier, Vermont, this _____ day of _____, 2016.

NATURAL RESOURCES BOARD

By:

Diane B. Snelling, Chair