

**STATE OF VERMONT  
ENVIRONMENTAL COURT**

**LAND USE PANEL of the  
NATURAL RESOURCES BOARD,**  
Petitioner

Docket No. 134-7-09 Vtec

v.

**HUTCHINS BROTHERS, INC., and  
BURNOR & SON LOGGING  
AND FIREWOOD, LLC,**  
Respondents

**VIOLATION**

Construction of improvements for a commercial purpose without an Act 250 land use permit, in violation of 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 Hutchins Brothers, Inc. and Burnor & Son Logging and Firewood, LLC (collectively, Respondents) hereby enter into this Assurance of Discontinuance (Assurance) to resolve the pending enforcement action in Docket No. 134-7-09 Vtec, and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

1. Hutchins Brothers Inc. (Respondent HBI) owns a 2.87-acre tract of land located on Route 100C in Johnson, Vermont (Project Tract). In the fall of 2003, Respondent Burnor placed a firewood processor on the property of Respondent HBI.
2. Respondent Burnor, in the fall of 2003, constructed a slab and a twenty (20') foot by fifty (50') foot addition (processing shed) to an existing garage owned by Respondent HBI.
3. Respondent Burnor constructed this addition on the property of HBI for the purpose of processing log-length wood into saleable firewood.
4. Respondent HBI currently has authorized Dan Burnor, operator of Respondent Burnor to use the processing shed. Respondent HBI and Respondent Burnor have a business relationship where Respondent HBI's

logging company brings logs to the property and Respondent Burnor uses equipment located within the processing shed to cut and split the wood. The wood is then hauled off the site by Respondent Burnor and sold as firewood.

5. The Town of Johnson has not adopted permanent zoning bylaws. Therefore, construction of improvements for commercial purposes on a parcel larger than one acre requires an Act 250 land use permit.
6. Respondents have failed to obtain an Act 250 Land Use Permit for the development on the Project Tract, in violation of 10 V.S.A. § 6081.
7. The Panel issued an Administrative Order in this matter, which was served upon Respondent Hutchins on July 28, 2009 and upon Respondent Burnor on August 4, 2009.
8. Respondent Burnor requested a hearing on August 18, 2009. Respondent Hutchins did not request a hearing.

### **AGREEMENT**

Based on the aforementioned Statement of Facts and Description of Violation, and in full settlement of the pending action to enforce the Administrative Order, *Land Use Panel v. Hutchins Bros., Inc. and Burnor & Son Logging and Firewood, LLC*, No. 134-7-09 Vtec, the parties hereby agree as follows:

- A. No later than sixty (60) days after the date on which this Assurance is signed by the Environmental Court, Respondents shall file with the District 5 Environmental Commission a complete permit application for the improvements constructed on, and use of, the Project Tract.
- B. If said Act 250 permit application is denied by the Commission, and said permit denial becomes final, or if Respondents fail to file a complete application in a timely manner as required by Paragraph A above, then within sixty (60) days after said decision becomes final or said permit application is due and not filed:
  - a. Respondents shall cease all commercial use of the Project Tract.
  - b. If Respondents or either of them wish to use the Project tract for a "home occupation" as defined in Act 250 Rule 2(C)(17), or for other use that would not be subject to Act 250 jurisdiction, then Respondents or either of them shall request a jurisdictional opinion from the District Coordinator to ensure that each proposed use of the Project Tract constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or is otherwise exempt from Act 250 jurisdiction. Any

use not determined to be exempt shall cease within thirty (30) days of the date upon which such jurisdictional opinion is issued. Any such use may only occur after an Act 250 permit is obtained or after said jurisdictional opinion is modified upon reconsideration or appeal.

- C. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$3,500.00 for the violations noted herein, on the following schedule:
- a. The first payment of \$500.00 shall be paid within 30 days after the Court signs this Assurance into a judicial order.
  - b. Beginning no later than 60 days after the Court signs this Assurance into a judicial order, Respondents shall pay \$250.00 per month for twelve months.
- D. Respondents shall make said penalty payments by check or money order made payable to the "Treasurer, State of Vermont" and shall send each payment 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
- E. Any payment by either or both Respondents pursuant to this Assurance is made to resolve the violation set forth in this Assurance and shall not be claimed as a charitable contribution, business expense, or other deduction or credit under the federal or state tax codes.
- F. **Interest.** Late payments shall bear interest at the rate of twelve percent (12%) per annum.
- G. **Acceleration.** In the event that Respondent fails to make any payment by the date due, the Panel, at its option, may declare the whole amount then owing under this Assurance due and payable, any terms herein to the contrary notwithstanding.
- H. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives

applicable to the Respondents.

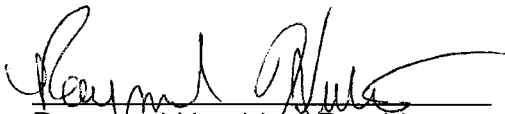
- J. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.
- L. 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 Environmental Court. 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. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- N. This Assurance is subject to the provisions of 10 V.S.A. § 8007.
- O. This Assurance or a notice thereof may be filed within the land records of the town in which the property is located.
- P. This Assurance is being entered into to resolve the pending enforcement action, *Land Use Panel v. Hutchins Bros., Inc. and Burnor & Son Logging and Firewood, LLC*, No. 134-7-09 Vtec, against both Respondents. The parties agree that said enforcement action may be dismissed.

**SIGNATURES**

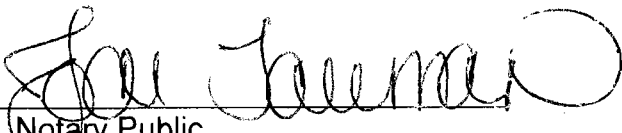
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED at Johnson, Vermont, this 25<sup>th</sup> day of September, 2009.

HUTCHINS BROTHERS, INC.


By:   
Raymond Hutchins, President

BE IT REMEMBERED that on the 25<sup>th</sup> day of September 2009, personally appeared Raymond Hutchins, President and duly authorized agent of Hutchins Brothers, Inc. signer of the foregoing written 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 Hutchins Brothers, Inc. and that he has the authority to contract on behalf of Hutchins Brothers, Inc. and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me:   
Notary Public  
Comm. Exp: 02/10/2011

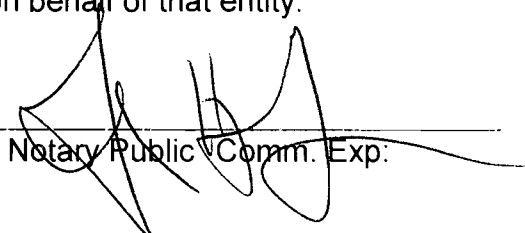
DATED at Johnson, Vermont, this 25<sup>th</sup> day of September, 2009.

BURNOR & SON LOGGING  
AND FIREWOOD, LLC

By:   
HEATHER DALE PORTER  
(print name and title) MEMBER

BE IT REMEMBERED that on the 25<sup>th</sup> day of September 2009, personally appeared H. DALE PORTER, duly authorized agent of Burnor & Son Logging and Firewood, LLC signer of the foregoing written 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 Burnor & Son Logging and Firewood, LLC and that he has the authority to contract on behalf of Burnor and Son Logging and Firewood, LLC and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me:

  
Notary Public Comm. Exp.

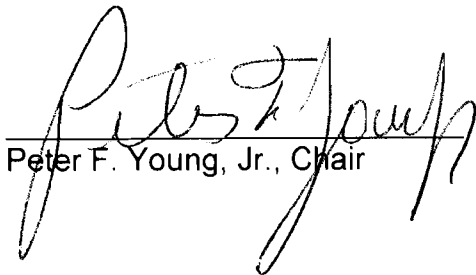
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED at Montpelier, Vermont, this 6<sup>th</sup> day of October, 2009.

LAND USE PANEL

By:

  
Peter F. Young, Jr., Chair