

**STATE OF VERMONT
ENVIRONMENTAL COURT**

_____)
)
)
)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner,)
)
 v.)
)
CHARLES W. AND NANCY J. COOK,)
 Respondents.)
_____)

Docket No. _____

ASSURANCE OF DISCONTINUANCE

VIOLATIONS

- I. Commencing construction of improvements for a commercial purpose without having first obtained an Act 250 Land Use Permit Amendment in violation of 10 VSA § 6081[a] and Condition No. 1 of Land Use Permit #7R0725.

- II. Expanding an existing impervious surface in excess of 5,000 square feet such that the total resulting impervious surface is in excess of one (1) acre without the required state operational stormwater permit in violation of 10 V.S.A. §§ 1259 and 1263, and the Vermont Stormwater Management Rule §18-302(A)(2).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Charles W. and Nancy J. Cook (Respondents) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own land located in Newport, Vermont, identified in Book 17WD, Pages 23-24, and Book 14WD Pages 419-420 of the land records (the Project Tract).

2. Respondents own and operate an equipment retail business known as "Cook's Equipment" on the Project Tract.
3. The Project Tract is subject to Land Use Permit #7R0725, as amended and subject to permit #7R0093, amended (the Permits).
4. Condition No. 1 of the #7R0725 permit states in pertinent part: "No changes shall be made in the project without the written approval of the District Environmental Commission."
5. On or before September 1, 2005, Respondents (1) constructed an 8,331 square foot building for storage, maintenance, and office use on the project tract; (2) constructed a 2,826 square foot cold storage building on the project tract; (3) constructed a 752 square foot cold storage building on the project tract; (4) constructed a 1,777 square foot cold storage building on the project tract; (5) expanded the existing gravel parking area on the project tract.
6. Respondents violated 10 V.S.A. § 6081[a] and Condition No. 1 of Land Use Permit #7R0725 by commencing construction of improvements for a commercial purpose on the Project Tract without having first obtained an Act 250 Land Use Permit Amendment.
7. Respondents have since obtained Act 250 Land Use Permit Amendments #7R0725-2 and #7R0093-2 for the project expansion identified in preceding paragraph 5. The referenced permit amendments were issued on December 12, 2008.
8. In constructing the storage buildings and expanding the parking area, Respondents expanded the existing impervious surface in excess of 5,000 square feet and such that the resulting impervious surface was greater than one (1) acre without first obtaining coverage under Vermont (State) General Operational Stormwater Permit 3-9015 in violation of 10 V.S.A. §§ 1259 and 1263, and the Vermont Stormwater Management Rule §18-302.
9. Respondents have since obtained coverage under Vermont (State) General Stormwater Permit 3-9015 dated July 14, 2008.

AGREEMENT

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

- A. No later than twenty (20) days from the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Three Thousand Two Hundred and Sixty-Three Dollars (\$3,263.00)** for the violations noted

herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall be forwarded 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

- B. Any payment by the Respondents pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- C. In order to ensure compliance herewith, Respondents hereby authorize and permit personnel from the Land Use Panel and/or the Agency of Natural Resources to make entry upon the Site and conduct inspections during normal business hours.
- D. 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.
- E. 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 Respondent.
- F. 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.
- G. Pursuant to 10 V.S.A. § 8007(d), 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.
- H. 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.

- I. 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.
- J. 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 Newport, Vermont, this 12th day of January, 2009.

Charles W. Cook
CHARLES W. COOK

BE IT REMEMBERED that on the 13th day of January, 2009, personally appeared Charles W. Cook, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

Before me,

Rosemarie M. Hartley
Notary Public
My Commission Expires: 2-10-11

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

Dated at Newport, Vermont, this 12th day of January, 2009.

Nancy J. Cook
NANCY J. COOK

BE IT REMEMBERED that on the 12th day of January, 2009, personally appeared Nancy J. Cook, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

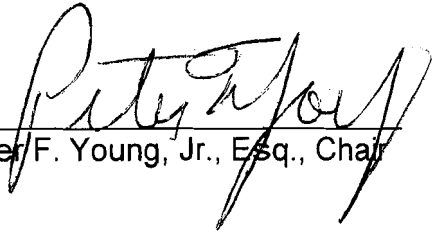
Before me,

Rosemarie M. Hartley
Notary Public
My Commission Expires: 2-10-11

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

Dated in Montpelier, Vermont, this 13TH day of January, 2009.

LAND USE PANEL

By: 
Peter F. Young, Jr., Esq., Chair