

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No.

Natural Resources Board, Petitioner, )  
 )  
 v. )  
 )  
 John B. Griffith, Jr., Edward Falzo, )  
 Respondents. )

ASSURANCE OF  
DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and John B. Griffith, Jr. and Edward Falzo (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

VIOLATIONS

1. Commencement of development without a Land Use Permit, in violation of 10 V.S.A § 6081(a).
2. Failure to file notice of intent and to obtain coverage prior to commencement of industrial activities. 10 V.S.A. §§ 1258 and 1263; Vermont Water Pollution Control Regulations, § 13.12(C)(2).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

3. Jon B. Griffith and Edward Falzo own a sand and gravel pit (the "Pit") on an approximately 20.9-acre parcel located off of South Main Street in the Town of Danby, Vermont (Project Tract).
4. Danby is a "one-acre town" for the purposes of Act 250 Jurisdiction.
5. The parties do not agree as to whether the Pit constitutes a "preexisting" development for purposes of Act 250, but it is undisputed that that Respondents have either: 1) restarted, or 2) substantially increased their rate of extraction over the last 5 years. The Parties also agree that the recent work at the Pit rises to the level of either a "substantial change" to a preexisting development OR is sufficient to trigger Act 250 anew. Either way the Parties agree that the recent work in the Pit necessitates an Act 250 permit.
6. No Act 250 (10 V.S.A. Ch. 151) Land Use Permit has been obtained for the earth resource extraction operations on the Project Tract.

7. By failing to obtain a Multi Sector General Permit (GP 3-9003), Respondents have also violated 10 V.S.A. §§ 1258 and 1264; Vermont Water Pollution Control Regulations, § 13.12(C)(2).
8. Respondents do not presently have the financial resources to obtain the necessary permits for the Pit. However, an adjacent earth extraction operation has expressed interest in acquiring and permitting the Pit provided that the alleged violations set forth in this Assurance are resolved.

### AGREEMENT

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

9. All operations on the Danby Tract shall immediately cease until:
  - a. The Respondents obtain an Act 250 permit and any other required State Permits (collectively, the "Permits") for the Pit. No later than 90 days following the entry of this AOD, the Respondents shall file complete applications for the Permits to allow continued operation and reclamation of the Pit;
  - b. If the Respondents fail to file said permit application within 90 days, or if Respondents' permit application is denied by the Commission and said permit denial becomes final, then the Respondents shall timely comply with all reclamation directives from the Natural Resources Board and the Agency of Natural Resources.
10. Respondents shall (a) respond to any and all requests for information from the Act 250 District 1 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission. Respondents shall not be responsible for delays outside their control, including those caused by the Commission.
11. No later than 60 days following final issuance of the last of the Permits, the Respondents shall pay the following:
  - a. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$9,900 for the Board violations noted herein. Respondents shall issue payment by good check made payable to: "State of Vermont" for the total amount of \$9,900.
  - b. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of \$4,444 relative to the Agency of Natural Resources violation (MSGP violation); pursuant to 10 V.S.A. §8010(c)(2). Respondents shall issue payment for this violation by good check made payable to: "State of Vermont" for the total amount of \$4,444.

- c. Pursuant to 10 V.S.A. §8010(e)(2), the amount of \$947.64 to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to: "State of Vermont".
- d. Pursuant to 10 V.S.A. §8010(e)(2), the amount of \$141.50 to reimburse the Agency of Natural Resources for the costs of this enforcement action by good check made payable to: "State of Vermont".
- e. The amount of \$10.00, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Danby land records, by good check made payable to: "Town of Danby, Vermont."

12. All payments and documents required by this Assurance shall be sent to:

Natural Resources Board  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

- 13. Respondents are jointly and severally liable for all obligations under this Assurance, unless otherwise indicated.
- 14. No Respondent shall 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.
- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.

19. 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.
20. 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.
21. 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.

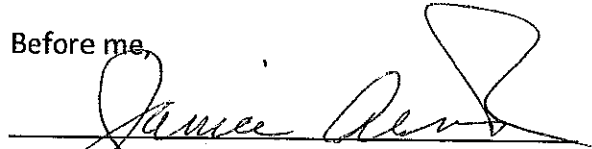
Dated at Danby, Vermont, this 20<sup>th</sup> day of JUNE 2016.

  
\_\_\_\_\_  
John B. Griffith, Jr.

State of Vermont  
County of Rutland, ss:

At DANBY in said County and State, this 20<sup>th</sup> day of JUNE, 2016, John B. Griffith, Jr. personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

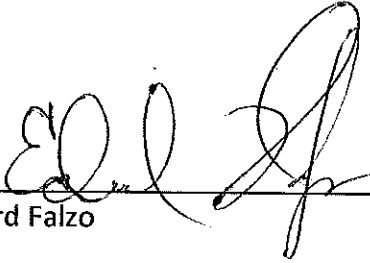
Before me,

  
\_\_\_\_\_  
Notary Public

My Commission Expires 02/10/2019

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

Dated at DANBY, Vermont, this 20<sup>th</sup> day of JUNE, 2016.

  
\_\_\_\_\_  
Edward Falzo

State of Vermont  
County of Rutland, ss:

At DANBY in said County and State, this 27<sup>th</sup> day of JUNE, 2016, Edward Falzo personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me,

  
\_\_\_\_\_  
Notary Public  
My Commission Expires 02/10/2019

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Dated at Montpelier, Vermont this 2 day of AUGUST, 2016.

NATURAL RESOURCES BOARD

By:

  
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Diane Snelling, Chair