

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Hawk Rock Holdings, LLC,
Respondent

VIOLATION

Commencement of development without a Land Use Permit. 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 Hawk Rock Holdings, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- A. Hawk Rock Holdings, LLC (Respondent) owns 6 parcels totaling approximately 2,582 acres of land (the Property) located in Newark, Vermont identified in books 49 and 50 of the Town of Newark records.
- B. Respondent has developed an earth materials extraction site (HRH Pit) on the Property.
- C. In September of 2009 Respondent sold approximately 2,775 cubic yards of $\frac{3}{4}$ crushed gravel from the HRH Pit to the Town of Newark for approximately \$19,381.25.
- D. In October of 2009 Respondent sold approximately 2,500 cubic yards of $\frac{3}{4}$ crushed gravel from the HRH Pit to the Town of Newark for approximately \$20,450.00.
- E. The total cost to HRH for the transactions in C. and D. above include the cost of hauling the material (65 Hrs. x \$15.00/hr. or \$975.00) and the cost of crushing (5,275 yds. x \$3.60/hr. or \$18,990.00) for a total cost of \$19,965.00.

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- F. The net gain for these above transactions equals approximately \$19,866.25.
- G. In the summer of 2010 Respondent traded approximately 43 truckloads of gravel from the HRH Pit to Bud Santo for the value of an invoice (approximately \$2,225.25) owed by HRH.
- H. The Respondent's position is that it did not intentionally violate 10 V.S.A. §6081(a). Respondent provided an affidavit from an agent of HRH stating that Respondent inadvertently proceeded with the transactions cited above without a permit based upon incorrect information Respondent received from the Town of Newark that no Act 250 permit was required for the sale of gravel to the Town in which the gravel pit was located. Respondent further stated it did not understand that discounting an invoice owed by HRH, Inc. from Bud Santo up to the cost of producing gravel would be considered a commercial transaction that required a permit. Respondent did not contact the administering agency, the Act 250 District Office, prior to the transactions to confirm its understanding. The Land Use Panel asserts that Respondent's above-described position has not been considered by the Land Use Panel in this enforcement action. Notwithstanding the Respondent's position above, these transactions will be considered a prior violation under 10 V.S.A. §8010(b)(4) for any future enforcement action.
- I. Respondent has commenced development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

AGREEMENT

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

- A. The Respondent shall immediately cease any and all commercial earth extraction operations on the property.
- B. Within **30 days** following the entry of this Assurance as an Order by the Superior Court Environmental Division, the Respondent shall file a complete application for an Act 250 Land Use Permit for the activities noted herein. Respondents shall diligently pursue said application.
- C. "Diligently pursue" shall mean that Respondent shall (a) respond to any and all requests for information from the Commission, or the Coordinator for the Commission, or other state or local agency by the date set by the Commission,

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or the Coordinator, or the agency; and (b) comply with all scheduling or other orders or memoranda issued by the Commission or other state or local agency. Respondent shall not be responsible for delays outside its control, including those caused or directed by the Commission or state or local agency or by any other parties to its application.

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:

1, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Twenty-nine Thousand Five Hundred Sixteen Dollars and Fifty Cents (\$29,516.50) (U.S.)**, for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".

2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **Three Hundred Dollars and Forty-Seven Cents (\$300.47) (U.S.)**, to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".

3. the amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Newark land records, by good check made payable to the "Town of Newark, Vermont".

E. All payments required by this Assurance shall be sent to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
1 National Life Drive
Montpelier, Vermont 05620-3201

F. 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.

G. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

H. 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.

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- I. 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 this assurance is 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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 Island pond, Vermont, this 5th day of November, 2012.

Hawk Rock Holdings, LLC

By


Michael Moffatt, Duly Authorized Agent
(Printed Name)

STATE OF VERMONT
COUNTY OF Essex, ss.

BE IT REMEMBERED that on the 5 day of November, 2012, personally appeared Michael Moffatt, as the duly authorized agent of **Hawk Rock Holdings, 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 **Hawk Rock Holdings, LLC** and that he has the authority to contract on behalf of **Hawk Rock Holdings, 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: 2/10/15 exp.

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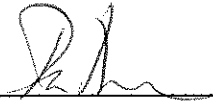
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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 17th day of December, 2012.

LAND USE PANEL

By: 

Ronald A. Shems, Chair

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