

**STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

JEWELL BROOK, LLC,
Respondent

Docket No.

VIOLATION

Deconstruction of buildings prior to reporting to the Commission on identification and abatement of potential hazards from hazardous materials, in violation of Condition 10 of Land Use Permit #2S1253.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Jewell Brook, LLC (Respondent) enter into this Assurance of Discontinuance, and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On August 21, 2009, the District 2 Commission issued Land Use Permit No. 2S1253 (the Permit) to Jewell Brook, LLC (Respondent), authorizing the deconstruction and removal of the buildings making up the former Jewell Brook Woolen Mill and the construction of 33 condominium units, three in a building that will not be demolished and 30 in a newly constructed building in Ludlow, Vermont (Project).
2. Condition 9 of the Permit states:

9. Asbestos abatement of all ACM (material having more than 1% asbestos by weight) shall be undertaken prior to initiation of any deconstruction activities. Lead abatement of all contaminated building materials shall occur prior to deconstruction activities.
3. Condition 10 of the Permit states:

10. Prior to deconstruction, an investigation into the presence and extent of mercury contamination shall be conducted. Results shall be submitted to the Department of Environmental Conservation Sites Management Program and the District Environmental Commission. If mercury is present, the permittee shall implement an abatement program as recommended by the Sites Management Program and as

required by the District 2 Environmental Commission.

4. Condition 11 of the Permit states:

11. The permittee shall fully implement the Deconstruction and Recycling Plan (Exhibit 29) and, upon completion, file a short summary report with the District 2 Environmental Commission.

5. The Mill Deconstruction Recycling Plan (Plan) referred to in Condition 11 of the Permit was drafted by Heindel and Noyes, Inc. on September 22, 2008. Page 7 of the Plan, under 5.0 Deconstruction Plan and Procedures, provides, in relevant part:

All deconstruction work on the Former Jewell Brook Mill building should occur following the identification and removal of the potential hazards that may contaminate the building material to be removed from the building.

* * *

Once all potential hazardous materials are removed from the former mill building, deconstruction of the process of the Former Jewell Brook Mill can commence.

6. On or before September 4, 2012, Respondent began deconstruction of the Project exterior, removing exterior windows, doors, and siding.
7. On or about September 9, 2012, Respondent's consultant contacted the Agency of Natural Resources' Department of Environmental Conservation for guidance on mercury sampling and reporting.
8. On or before October 3, 2012, Respondent's consultant inspected the Project buildings for mercury. On or about October 3, 2012, the consultant reported to the Agency of Natural Resources' Department of Environmental Conservation that over 100 mercury-containing fluorescent light tubes (bulbs) were found in the main building in several locations and in the first and second floors, and several broken bulbs were observed on the stairs and second floor of the main Mill building. The consultant proposed to dispose of the bulbs prior to demolition.
9. The Agency of Natural Resources' Department of Environmental Conservation approved disposal of the mercury-containing bulbs in accordance with its Environmental Fact Sheet entitled "Universal Waste."
10. On or about October 4, 2012, Respondent met on the site with an Asbestos and Lead Program Engineer for the Vermont Department of Health to discuss the proposed removal of asbestos-containing materials from the site.

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11. The Vermont Department of Health Asbestos and Lead Regulatory Program issued Permit Number 1012283 to Respondent's abatement contractor, Catamount Environmental, Inc., for removal of materials from October 15, 2012 to November 15, 2012, with certain conditions, including daily perimeter air monitoring and reporting to the Department of Health.
 12. On or about November 1, 2012, Respondent developed a mercury abatement plan, and had the mercury-containing bulbs removed in accordance with that plan.
 13. Respondent worked with the Agency of Natural Resources' Solid Waste Division's Sites Management program in abating these mercury-containing materials, but did not report to the District Commission as required by Condition 10 of the Permit until on or about November 12, 2012.
 14. By commencing deconstruction of the Project exterior before investigating the presence of mercury and reporting results to the District Commission, Respondent violated Condition 10 of the Permit.
 15. By commencing deconstruction of the Project exterior prior to removing the mercury-containing materials from the former mill building, Respondent violated of Condition 11 of the Permit.
 16. By commencing deconstruction of the Project exterior prior to identification and removal of asbestos and asbestos-containing materials, Respondent violated Conditions 9 and 11 of the Permit.

AGREEMENT

Based on the Statement of Facts and Description of Violations as stated herein, the parties agree that:

- A. Respondent shall comply with Land Use Permit No. 2S1253, and any amendments thereto.
- B. No later than thirty days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall pay:
 1. A civil penalty for the violations set forth herein, pursuant to 10 V.S.A. Ch. 201, in the amount of **\$3,000.00** (U.S. dollars), by check made payable to: **Treasurer, State of Vermont.**
 2. Reimbursement for the costs of this enforcement action pursuant to 10 V.S.A. § 8010(e)(2), in the amount of **\$654.00** (U.S. dollars), by check

made payable to: **Vermont Natural Resources Board.**

- C. No later than ten days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall send a check in the amount of **\$10.00** (U.S. dollars), to pay the fee for recording a notice of this Assurance in the land records of the municipality where the Project is located, payable to: **Town of Ludlow.**
- D. All payments and documents required by this Assurance shall be sent to:
- Denise Wheeler, Business Manager
Vermont Natural Resources Board
National Life Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201
- E. Respondent shall neither deduct, nor attempt to deduct, any payment, penalty, contribution, or other expenditure required by this Assurance from its state or federal taxes.
- F. 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.
- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other 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. 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. Representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such representations shall have no legal force or effect.
- J. Pursuant to 10 V.S.A. § 8007(d), Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein, provided that Respondent fully complies with the agreements set forth above.

K. When this Assurance has been entered as a judicial order pursuant to 10 V.S.A § 8007(c), 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 set forth in 10 V.S.A. chapters 201 and/or 211 and/or contempt sanctions.

L. 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. Further, I, Salvatore Marottoli, the undersigned, hereby state under oath that I am duly authorized to enter into this Assurance of Discontinuance on behalf of Jewell Brook, LLC.

JEWELL BROOK, LLC

By:

Salvatore Marottoli
Salvatore Marottoli
(print name)

BE IT REMEMBERED that on the 24th day of January, 2013, personally appeared Salvatore Marottoli, signer 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.

Before me,

Maura Amphin
Notary Public


My Commission Expires: _____

My Commission Expires January 31, 2017

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

DATED at Montpelier, Vermont, this 6th day of March, 2013.

LAND USE PANEL

By: 
Ronald A. Shems, Chair