

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Juddy's Septic Pumping Service, Inc. and
Brian K. Judd,
Respondents

VIOLATION

Failure to obtain a Land Use Permit 10 V.S.A. §6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Natural Resources Board and Juddy's Septic Pumping Service, Inc. and Brian K. Judd (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondents own and operate a commercial septic pumping service and portable toilet rental business (the Project) located on approximately 22 acres at 5530 Vermont Route 111 in Morgan, Vermont (the Project Tract).
2. The Town of Morgan is a "1-acre town" for the purpose of assessing "development" under 10 V.S.A. §6001(3)(A).
3. The Respondents constructed a sign posted on Route 111, two parking and portable toilet storage areas, and a commercial garage for truck and tool storage.
4. Respondents have been operating the Project since approximately 2002 and employ up to four individuals.
5. Respondents have 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 Violation, the parties hereby agree as follows:

- A. No later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall file a complete application for an Act 250 Land Use Permit with the District 7 Environmental Commission for the continued operation of the septic service as a commercial operation (permit application). Respondents shall diligently pursue said application.
- B. For purposes of this Assurance, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 7 Environmental Commission, the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR. Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its permit application.
- C. If the Respondents fail to file or diligently pursue the permit application within the 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division or if the Respondents timely file said application for a Permit and Respondents' permit application is denied by the Commission and said permit denial becomes final, then the Respondents shall immediately cease all commercial operations and uses noted herein.
- D. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the following provisions shall become effectively immediately:
 - a. The Respondent shall pay, pursuant to 10 V.S.A. §8010(e)(2), the amount of **Three Hundred Four Dollars and Zero Cents (U.S.) (\$304.00)** 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".
 - b. The Respondent shall pay the amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Morgan land records, by good check made payable to the "Town of Morgan".
 - c. The Respondent shall pay, pursuant to 10 V.S.A. Ch. 201, a civil penalty

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in the amount of **Seven Thousand One Hundred Fifty Dollars and Zero Cents (U.S.) (\$7,150.00)** for the violation noted herein, by good check made payable to the "Treasurer, State of Vermont" in accordance with the following schedule:

- i. no later than **30** days following the entry of this Assurance as an Order by the Superior Court, Environmental Division payment of **Four Thousand Dollars and Zero Cents (U.S.) (\$4,000.00)**;
 - ii. no later than **60** days following the entry of this Assurance as an Order by the Superior Court, Environmental Division payment of **One Thousand Five Hundred Seventy Five Dollars and Zero Cents (U.S.) (\$1,575.00)**;
 - iii. no later than **90** days following the entry of this Assurance as an Order by the Superior Court, Environmental Division Payment of **One Thousand Five Hundred Seventy Five Dollars and Zero Cents (U.S.) (\$1,575.00)**.
- E. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- F. If the Respondent fails to comply with any payment provisions of this Assurance by the schedule above, any remaining amount shall accrue interest at 12% per annum in accordance with 12 V.S.A. §2903(c) and the Natural Resources Board may record a judgment lien.
- G. Respondents are jointly and severally liable for all obligations under this Assurance.
- H. 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.
- I. 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.
- J. Nothing in this Assurance shall be construed as having relieved, modified,

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waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.

- K. 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.
- L. 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.
- M. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- N. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- O. 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.
- P. 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.
- Q. 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 Newport, VT, Vermont, this 29th day of May, 2014.

**Juddy's Septic Service, Inc. and
Brian Judd**

By Brian Judd
Individually and as the duly Authorized Agent

STATE OF VERMONT
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 29th day of May, 2014, personally appeared **Brian Judd**, individually and as the duly authorized agent of **Juddy's Septic Service, Inc.** 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 **Juddy's Septic Service, Inc.** and that he has the authority to contract on behalf of **Juddy's Septic Service, Inc.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Nancy A Cass
Notary Public

My Commission Expires:

2-10-15

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

Dated in Montpelier, Vermont, this 19th day of July, 2014.

Natural Resources Board

By:

Ronald A. Shems
Ronald A. Shems, Chair