

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

McDonald's CORPORATION

VIOLATION

Failure to comply with Permit Conditions 2, 11, 12, 18, 20, 21, 24 & 29 of Land Use Permit 2S0289-6 (altered) (the "Permit")

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and McDonald's Corporation (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns approximately 3.28 acres identified in Book 160, Page 823 of the Land Records of the Town of Springfield, Vermont (the Project Tract).

Construction Waste Site Reduction Plan

2. Condition 11 of the Permit states,

The Permittee shall implement the Demolition and Construction Waste Site Reduction Plan. Within 30 days of completion of construction, the Permittee shall submit a report to the District 2 Environmental Commission detailing compliance with the components of the Demolition and Construction Waste Site Reduction Plan.

3. The building was completed in late October of 2013. To date, the compliance report has not been filed with the District Commission, therefore Respondent failed to comply with Condition 11 of the Permit.

Recycling and Waste Disposal

4. Condition 12 of the Permit states,

The Permittee shall effectively recycle glass, metal, plastic, paper, cardboard and waste cooking oil. An in-restaurant recycling program shall be implemented to ensure effective separation of plastic bottles and paper waste. The Permittee shall submit a compliance report to the District 2 Environmental Commission at three and six months after completion of the construction to document the effectiveness of the in-restaurant recycling separation protocol.

5. In Exhibit 30 the Respondent's engineer stated,

Inside the dining room, there will be separate bins for recycling plastic bottles and paper waste. We have contacted Mary O'Brien at the Southern Windsor/Windham County Solid Waste District and she had no further comments/expectations.

6. Site visits by Board personnel in the summer of 2014 and the spring of 2015 confirmed that while the Respondent effectively recycles corrugated cardboard, the restaurant does not recycle glass, metal, paper, or plastic.
7. To date, the compliance reports have not been filed with the District Commission, nor has effective recycling occurred, therefore, Respondent failed to comply with Condition 12 of the Permit.

Buffer Disturbance

8. Condition 18 of the Permit states, in relevant part,

The Permittee shall remove the existing curb and pavement next to the bank of the Black River and restore a 20-foot riparian area as shown on Exhibits 106 and 107. This area shall be seeded and mulched with conservation mix over 6 inches of loam and allowed to revegetate to a natural, wild vegetated buffer. The Permittee shall not clear, cut, mow, place or plow snow or otherwise disturb the land in this riparian buffer.

9. Site visits by Board personnel in the summer of 2014 and the spring of 2015 revealed that the riparian buffer is being mowed.
10. Site visits by Vermont Fish & Wildlife personnel in the winter of 2015 revealed that snow had been placed on the riparian buffer.
11. A site visit by the Board's Enforcement Officer on April 24, 2015, revealed that

snowplowing activities had scraped off the top layer of soil within portions of the riparian buffer, pushing soil and vegetation over the river bank, along with dirty snow, damaging both the new restoration area and pre-existing mature vegetation growing on the river banks, and exacerbating the flow of untreated runoff from parking areas into the river.

12. Therefore, Respondent failed to comply with Condition 18 of the Permit.

Landscaping

13. Condition 2 of the Permit states,

The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law #2S0289-6, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

14. Condition 20 of the Permit states,

The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.

15. A site visit by the Board's Enforcement Officer on April 24, 2015, revealed that landscaping has not been installed as approved on Exhibit 69.

16. By failing to install the required landscaping, Respondent failed to comply with Conditions 2 and 20 of the Permit.

Landscaping Reporting

17. Condition 21 of the Permit states,

At the completion of the project, the Permittee shall certify by affidavit from a nursery person or landscape architect that the site improvements have been carried out as described in this permit.

18. To date, the affidavit has not been filed with the District Commission, therefore, Respondent failed to comply with Condition 21 of the Permit.

Waste Water Reporting

19. Condition 24 of the Permit states,

The Permittee shall install a functional grease trap to resolve the problem of grease clogging the town manhole. The Permittee shall obtain all necessary permits from the Department of Environmental Conservation for this installation and submit a copy of the permits to the District 2 Environmental Commission upon issuance with an administrative amendment application to incorporate these permits into the Act 250 permit.

20. The Respondent obtained the necessary DEC permit number WW-2-0204-R1 on 6/21/13, and installed the grease trap. However, to date, neither copies of the necessary permits nor the administrative amendment application have been filed with the District Commission, therefore Respondent failed to comply with Condition 24 of the Permit.

Construction Costs Certificate

21. Condition 29 of the Permit states,

The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, National Life Records Center Building, National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.

22. To date, neither a Certificate of Actual Construction Costs nor a supplemental fee (if required) has been filed with the District Commission, therefore, Respondent failed to comply with Condition 29 of the Permit.

AGREEMENT

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

- A. Respondent shall comply with Permit series 2S0289-6(altered).
- B. Respondent shall permanently cease from clearing, cutting, mowing, placing or plowing snow, or otherwise disturbing land or vegetation within the riparian buffer.
- C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall:
 - 1. Submit a report to the District 2 Environmental Commission detailing compliance with the components of the Demolition and Construction Waste Site Reduction Plan.
 - 2. Secure collection services for recycling plastic, paper/food together and cardboard from both the kitchen and the dining room.
 - 3. Install effective recycling bins inside both the kitchen and the dining room to recycle plastic, paper/food together and cardboard.
 - 4. Submit copies of all necessary permits from the Department of Environmental Conservation for the installation of the grease trap to the District 2 Environmental Commission, along with an administrative amendment application to incorporate these permits into the Act 250 Land Use Permit.
 - 5. File a Certificate of Actual Construction Costs, along with the appropriate supplemental fee, as necessary, by check payable to the "State of Vermont" and mailed to: Natural Resources Board, Dewey Building, 1 National Life Drive, Montpelier, VT 05620-3201; Attention: Certification.
- D. If glass or metal are used in the future, then Respondent shall install effective recycling bins inside the kitchen and dining room for metal and glass items and Respondent shall secure a collection service for recycling glass and metal items.
- E. At 3 months, and again at 6 months following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall:
 - 1. Submit a compliance report to the District 2 Environmental Commission to document the effectiveness of the in-restaurant recycling separation protocol.

- F. No later than **June 15, 2016**, complete installation of landscaping as approved on Exhibit 69, and submit to the District 2 Environmental Commission, an affidavit from a nursery person or landscape architect that the site improvements have been carried out as described in this permit. In addition, Respondent shall:
1. Plant no less than 5 October Glory red maples (2.5"-3" caliper) within the 20-foot riparian buffer zone in locations that will discourage future piling or plowing of snow within the designated riparian buffer zone.
 2. Re-seed and mulch all un-vegetated portions of the 20-foot riparian buffer zone shown on Exhibits 106 and 107 with conservation mix over 6 inches of loam.
- G. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00) (U.S.)**, for the violations noted herein, by good check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **Six Hundred Twenty Nine Dollars and Sixty Two Cents (\$629.62) (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."
 3. the amount of **Ten (\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Springfield land records, by good check made payable to the "Town of Springfield, Vermont."
- H. 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
- I. The Superior Court agrees that in the event the Superior Court or the Board must contact Respondent with respect to its obligations under the Permit, the Superior Court and/or the Board will notify Respondent in writing at the following address:
- One McDonald's Plaza
Oak Brook, IL 60523
US Legal #091

L/C: 044-0016

- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 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.
- O. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond either Respondent's control.
- P. 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.
- Q. 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.
- R. 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.
- S. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURES

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

Dated at Oakbrook, Illinois, this 11th day of April, 2016.

MCDONALD'S CORPORATION

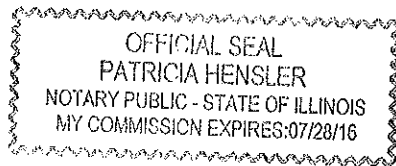
By Meghan Seitz
Name: Meghan Seitz
Its: Senior Counsel

STATE OF Illinois

COUNTY OF DuPage, ss.

BE IT REMEMBERED that on the 11th day of April, 2016, personally appeared Meghan Seitz, as Senior Counsel of **McDonald's Corporation** 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 **McDonald's Corporation** and that he has the authority to contract on behalf of **McDonald's** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,



[Signature]
Notary Public
My Commission Expires: 7-28-16

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

Dated in Montpelier, Vermont, this 16 day of May, 2016.

NATURAL RESOURCES BOARD

By:



~~Lou Borie, Acting Chair~~

Diane Snelling
Chair, NRB