

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

Natural Resources Board,)	
PETITIONER)	
)	Docket No.
v.)	
)	
Robert C. Nuzzo,)	
RESPONDENT)	

VIOLATIONS

- I. Failure to comply with Conditions 1, 2, 7, 8, 15, 19 of Land Use Permit Amendment #5L1100-2;
- II. Failure to obtain an Act 250 Permit Amendment pursuant to Act 250 Rule 34(A).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Robert C. Nuzzo (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On April 18, 2005, the District Environmental Commission issued Land Use Permit Amendment 5L1100-2 (the Permit) to the Respondent.
2. The Permit authorizes the Respondent to operate a gravel pit on the lands identified in Book 128, Pages 14-16, of the land records the Town of Cambridge, Vermont, as the subject of a deed to Robert C. Nuzzo, the permittee, as grantee, (the Project Tract). The Project Tract involves 18.48 acres (Lot 2) and a 9.9 acre lot known as the Steward Lot A.
3. In accordance with the Memorandum of Decision issued October 12, 2005, the Project Tract does not include the 146.82 acre Lot 1 (Home Farm Parcel).

Noise Control

4. On several occasions sound levels at the property line have exceeded 70 dB.
5. In particular, on July 1, 2013 sound levels of 72 dB to 76.6 dB were recorded on the Larz Allen property line adjacent to the Project Tract while activity occurred on the

Project Tract.

6. Condition 7 of the Permit states, "the noise level at the property lines shall not exceed 70 decibels at any time."
7. Respondent has violated Condition 7 of the Permit.

Disturbed Area

8. As of July 1, 2013, Respondent had approximately 2.5 acres of Lot 2 disturbed and under various stages of excavation.
9. Condition 15 of the Permit states, "no more than a total of 2 acres of Lot 2 shall be disturbed at one time, involving as many as three separate excavation areas."
10. The Respondent has violated Condition 15 of the Permit.

Dust Control

11. Condition 1 of the Permit states:

The project shall be completed, operated and maintained in accordance with Findings of Fact and Conclusions of Law #5L1100-2, the plans and exhibits on file with the District Environmental Commission, and the conditions of this permit.

12. Condition 19 of the Permit states:

All reasonable precautions shall be taken to control dust, including at least the following:

- a. Road, traffic areas, and material stockpiles shall be treated with water on a continuing as-needed basis to control dust.
- b. Loaded trucks leaving the site shall be covered. The loaded vehicles shall be kept clean from rubble or other debris that could be hazardous to other motorists.
- c. Any screening operation shall be located as far as possible from the closest residences.

13. The Permit does not authorize screening activities on the Stewart Lot A.
14. The screening equipment on the Project Tract is located on Stewart Lot A in close proximity to Larz Allen's (Neighbor) residence, which causes dust to accumulate on the Neighbor's real and personal property.
15. Both the Respondent and Neighbor have stated that dust can be a problem for the Neighbor, especially when the Respondent is operating the aggregate screening equipment.

16. The Natural Resources Board has received complaints from the Neighbor regarding dust from the project tract on at least the following three dates:

May 21, 2012; May 16, 2013; and July 15, 2013

17. By locating screening equipment on the Stewart Lot A, the Respondent has failed to reasonably control dust from the operations and property, and therefore the Respondent has violated Conditions 1 and 19 of the Permit.

Retention Pond Construction and Use

18. The Respondent excavated on Lot A which resulted in the formation of a substantial body of water on the northern end of Lot A, which the Respondent has used for dust control and watering of his cattle on the adjacent property.

19. Condition 1 of the Permit states:

The project shall be completed, operated and maintained in accordance with Findings of Fact and Conclusions of Law #5L1100-2, the plans and exhibits on file with the District Environmental Commission, and the conditions of this permit.

20. The Commission's Findings of Fact number 11 states, "No retention pond is proposed."

21. The Commission's Findings of Fact number 20 states, "Water for dust control will be provided from existing drilled wells serving the farm or from existing farm ponds. (Exhibit 3)"

22. The Commission's Findings of Fact, under Section II, Jurisdiction, states:

the applicant asserts that the continued operation of his agricultural operation on Lot 1 will not be involved with, or affected by, the gravel extraction parcel to the north. . . . The only relationship between the farm and the gravel extraction will be financial, not physical.

23. The use of this retention pond for dust control on the property increases the amount of truck traffic from Lot 2 to Lot A, thereby increasing noise impacts upon a neighbor to the Project Tract.

24. The Respondent has not obtained an Act 250 Permit Amendment for the construction or use of the Retention Pond. The Respondent's creation and use of the Retention Pond is a material change as defined by Act 250 Rule 2(C)(6).

25. By inadvertently creating and subsequently using the retention pond on Lot A for dust control contrary to Findings of Fact 11 and 20, the Respondent has violated Condition 1 of the Permit and Act 250 Rule 34(A).

Activity on Stewart Lot A

26. The Respondent has conducted the following activities on Stewart Lot A:
 - a. Cleared vegetation, topsoil, and earth resources,
 - b. Stockpiled topsoil,
 - c. Stockpiled waste asphalt, and
 - d. Screened aggregate.
27. Respondent received an administrative amendment (5L1100-2A) for the receipt of approximately 3,255 cubic yards of material excavated as part of a VTRANS project. The amendment permitted the acceptance of silty sand, bank run, crushed gravel and blue clay. Ultimately, the material accepted also contained waste asphalt, which has been stored on the Project Tract.
28. As of the beginning of October 2013, the Respondent had moved the screening operation from the Stewart Lot A to Lot 2.
29. The reclamation of the Stewart Lot A as an agricultural field as the final phase of the project is the only activity authorized by the Permit for the Stewart Lot A. The Permit "specifically authorizes the permittee to extract . . . sand and gravel . . . from an 18.48-acre section (Lot 2) of his 179-acre property, and to reclaim a former extraction site (9.9 acres shown as Stewart Lot A)."
30. Condition 1 of the Permit states:

The project shall be completed, operated and maintained in accordance with Findings of Fact and Conclusions of Law #5L1100-2, the plans and exhibits on file with the District Environmental Commission, and the conditions of this permit.
31. Condition 2 of the Permit states:

No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.
32. The Commission's Findings of Fact number 2 states,

The applicant testified that he also intends to clear and re-contour the "Stewart" parcel, which was a former extraction site, yet un-reclaimed. He also intends to return that section to an open agricultural field.
33. The Commission's Findings of Fact on page 3, Jurisdiction, states:

...the project will involve the adjacent 9.9-acre "Stewart" lot (Lot A) as this area [Stewart Lot A] will be cleared and reclaimed as part of the final phase of reclamation of the project site.

34. The Commission's Findings of Fact number 57 states, "topsoil will be stripped and stockpiled in the locations shown on the site plan."
35. Exhibit 22 (Revised Site Plan) does not indicate stockpiles on Stewart Lot A. Stockpiles are only indicated on Lot 2.
36. The delivery of material from Lot 2 to Stewart Lot A for stockpiling of topsoil has required numerous truck and loader trips up and down the haul road, causing additional noise and dust impacts.
37. The Respondent's activities, including screening, on Lot A has increased dust and noise impacts upon neighboring property owners. These activities were not contemplated by the Permit and are not subject to any subsequently issued permit amendment authorizing the activities and are a material change as defined by Act 250 Rule 2(C)(6).
38. Respondent has violated Condition 1 and 2 of the Permit and violated Act 250 Rule 34(A) by clearing and utilizing Stewart Lot A as described above and without a permit amendment prior to the final phase of the project.

Hours of Operation

39. Condition 8 of the Permit, specifically states:

The hours of operation shall be limited to between 9:00 AM and 5:00 PM, Monday through Friday, between April 1 and November 1. These hours and dates may be exceeded only by amendment to this permit or to meet temporary emergency road repair needs.

40. On several occasions the Respondent has commenced operation of activities at the Project Tract outside the hours of operation, including at least the following:

7/16/13	8:05 a.m. (aggregate screening)
7/29/13	8:30 a.m.
7/30/13	8:15 a.m.
7/31/13	8:15 a.m.
8/02/13	8:00 a.m.
8/07/13	8:20 a.m.
8/14/13	8:20 a.m.
8/15/13	8:50 a.m.
8/17/13	Trucks running on a Saturday
8/21/13	8:00 a.m.
8/22/13	8:30 a.m.
8/26/13	8:30 a.m.

41. The Respondent has not obtained an Act 250 Permit Amendment to allow aggregate screening operations or other operations on the Project tract to exceed previously permitted operation hours.

42. By operating on the Project Tract outside of the permitted hours of operation, the Respondent has violated condition 8 of the Permit and Act 250 Rule 34(A).

Phasing of Extraction and Reclamation

43. Exhibits 10 and 22 outline the phased extraction and reclamation process authorized by the Permit, which allows for the orderly extraction and reclamation of nine zones.
44. As of July 1, 2013, the Respondent's earth extraction operations encompassed one single pit including zones 1G and 3G, portions of Zones 2G and 4G, and almost all of Lot A.
45. Zones 1G and 3G identified on the site plan have been depleted of sand and gravel. Operations have shifted to Zones 2G and 4G. Zones 1G and 3G remain open and have not undergone reclamation.
46. The Respondent has extracted earth resources from Stewart Lot A.
47. Condition 1 of the Permit states:

The project shall be completed, operated and maintained in accordance with Findings of Fact and Conclusions of Law #5L1100-2, the plans and exhibits on file with the District Environmental Commission, and the conditions of this permit.
48. Condition 2 of the Permit states:

No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.
49. The Commission's Findings of Fact on page one states, "[t]he earth material will be extracted at a rate not to exceed 20,000 cubic yards per year, and *the site will be returned to farm field on an on-going basis during the extraction.*" Emphasis added.
50. The Commission's Findings of Fact number 7 states:

It is the applicant's intention to reclaim as field, any completed extraction areas. The reclamation will occur annually. The areas of the field which are not open for extraction will continue to be planted with a cover crop.
51. The Commission's Findings of Fact number 56 states:

As extraction in each section is occurring, the depleted areas behind the open face will be reclaimed and returned to productive agricultural land continually. (Exhibits 10 and 22)"
52. The Commission's Findings of Fact number 48 states, "[t]his view will be disturbed by incursions of up to three separate extraction areas." The Commission's conclusion

under this same section states, "[t]he Commission will limit the amount of open extraction area which will be allowed."

53. Exhibit 10 of the Permit, "Sand & Gravel Operation and Reclamation Plan," states,
- The zones designated S1 (for sand zone #1); G1 (for gravel zone #1) and MS1 (for mound sand zone #1) will all be worked until they are exhausted and reclaimed. Then extraction will shift to zones S2 and G2, and reclamation will be undertaken in the completed zone. As zones S2 and G2 are exhausted, they will be reclaimed and extraction will move to zone S3 and so forth until the deposits in all zones have been exhausted and the land reclaimed and returned to productive agricultural use.
54. The Respondent has not received a permit amendment or otherwise sought approval from the District Commission for his alternate approach to the extraction and reclamation outlined in the Permit. The Respondent's alternate approach is a material change to the Permit as defined by Act 250 Rule 2(C)(6).
55. By operating contrary to the phased extraction and reclamation plan outlined in the Permit, the Respondent has violated Conditions 1 and 2 of the Permit and violated Act 250 Rule 34(A) by failing to receive a permit amendment for such activities.

AGREEMENT

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

- A. Respondent shall comply with all conditions of Land Use Permit series 5L1100 and any additional directives described herein.
- B. No later than 30 days following the entry of this Assurance as an order by the Superior Court, Environmental Division the Respondent shall:
1. Continue to cease operation of the aggregate screener on Lot A and maintain the aggregate screening equipment on the site of active operations on Lot 2;
 2. Accomplish the above item within the normal operating hours and control limits of the Permit.
- C. No later than 60 days following the entry of this Assurance as an order by the Superior Court, Environmental Division the Respondent shall diligently pursue an amendment to Land Use Permit 5L1100 (Amendment) for the unpermitted activities including:
1. an alternative phasing and reclamation plan for Lot 2, which brings the total disturbed area including stockpiles to less than two acres on the Project Tract;

2. the complete reclamation of the Stewart Lot A, including grading, topsoil application, seeding, and mulching by June 15, 2014.
 3. the creation and use (or removal and cessation of use) of the retention pond on Stewart Lot A;
 4. Removal of existing stockpiles of topsoil, sand, gravel, and mixed aggregates from Stewart Lot A to Lot 2 to the extent the topsoil is not incorporated into a reclamation plan for the Stewart Lot A.
 5. Removal from or re-use on the Project Tract of the stockpile of waste asphalt and other used highway products currently on the Project Tract. Any use of the waste asphalt in the creation of a road on the Project Tract shall not interfere with the Rondina Spring or 250 foot associated buffer.
- D. If the Respondent fails to diligently pursue the Amendment within 60 days or timely file said application for the Amendment and Respondents' permit application is denied by the Commission and said permit denial becomes final, then the Respondents shall:
1. Cease extraction operations immediately and reclaim the entire Project Tract as outlined in section III of the Sand & Gravel Operation and Reclamation Plan (Exhibit 10 of the Permit) and returned the Project Tract to agricultural land within 6 months of either the final permit denial or failure to pursue the Amendment.
- E. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 5 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.
- F. The Respondent shall pay:
1. a civil penalty pursuant to 10 V.S.A. Ch. 201 in the amount of Ten Thousand Fifty Dollars and Zero Cents (\$10,050.00) (U.S.) for the violations noted herein, by check made payable to the "Treasurer, State of Vermont" as follows:
 - a. Three Thousand Dollars and Zero Cents (\$3,000.00) (U.S.) no later than 45 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division;
 - b. The remaining Seven Thousand Fifty Dollars and Zero Cents (\$7,050.00) (U.S.) no later than June 30, 2014.

2. Pursuant to 10 V.S.A. §8010(e)(2), the Respondent shall pay to the Natural Resources Board the amount of One Thousand Fifty-Nine Dollars and Zero Cents (\$1,059.00) (U.S.), to reimburse the Board for the costs of this enforcement action. Payment shall be by check made payable to the "State of Vermont Natural Resources Board."
 3. The amount of Ten Dollars and Zero Cents (\$10.00) (U.S.) to pay the fee for recording a notice of this Assurance in the Town of Cambridge land records, by check made payable to the "Town of Cambridge."
- G. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Panel an executed Acceptance of Service, on a form approved by the Panel, showing that Respondents have actual notice of the Judicial Order and Assurance of Discontinuance.
- H. 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
- I. 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.
- J. The State of Vermont and the Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- K. 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.
- L. 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.
- M. 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.
- N. 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.

- O. 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.
- P. 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 Montpelier, Vermont, this 6th day of November, 2013.

Robert C. Nuzzo
Robert C. Nuzzo

STATE OF VERMONT
COUNTY OF Nashington, ss.

BE IT REMEMBERED that on the 6th day of November, 2013, personally appeared Robert C. Nuzzo, signer of the foregoing instrument, who are known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed.

Before me,

[Signature]
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 9th day of December, 2013.

NATURAL RESOURCES BOARD

By: [Signature]
Ronald A. Shems, Chair

Gill, Peter

From: Larz <larz@pshift.com>
Sent: Monday, December 09, 2013 12:07 AM
To: NRB - Comments
Subject: Comment on Natural Resources Board v. Robert C. Nuzzo

Received 12/8/2013
- PG

For the past eight years our family has been exposed to excessive amounts of noise, dust, and storm water run-off coming from the Nuzzo pit area. On one particular Saturday I had to listen to a reverse beeper run continuously for one hour from 5 to 6 p.m. When I brought this to Robbie Nuzzo's attention, he advised me to contact Act 250 and offered to give me the phone number. This prompted me to read the entire permit. The permit lists a strict list of rules which the permittee is obliged to operate by. Nineteen months ago I decided to file a formal complaint. It's not my nature to square off with anyone, especially a neighbor, but this is different. The noise compromises my life and my family's lives. The bucket loaders and trucks cannot drive up the pit road without breaching the 70 decibel limit. I have three decibel meters; each reads 90 decibels as the loader passes up the pit road along my property line. An empty truck reaches 86 decibels exiting on the same route. Watching the material being imported from pit 2 to pit 1 is particularly annoying, because it is beyond the scope of the permit and always has been. After exhausting efforts to have the material screen moved, it finally happened. Unfortunately, the new location, while decreasing the noise level at the back of our property, has increased the level of noise we are exposed to at the front of our property, especially in our house. This is unacceptable. Eight years of violations have soured our taste for the pit.

Additionally, the Act 250 permit states that only 2 acres can be mined at one time, and when they're done with that area, that 2 acres must be reclaimed before they open up another area. This has not been happening, and right now over a dozen acres are open. No reclamation has been done.

The pit is currently being mined from north to south. We think we would all be better off if that was reversed [south to north]. This would take the incline out of the equation, resulting in far less noise.

We are very pleased that in the last couple months the trucks and other pit operations only operated during the mandated pit hours.

When our neighbor first proposed to open and operate a pit, we were very supportive, but years of dealing with the dust, water run-off, and the noise have exhausted our family and have diminished our quality of life. When the pit is operating, we have to close all the windows and doors on the pit side of the house and shops, and the noise makes it extremely unpleasant to be outside. We are pleased that our neighbor has recently made changes to bring some issues with his pit into compliance, and we hope that he will continue to work to bring his whole operation into compliance with the state.

Thank you,
Larz Allen and Patty Genadio

