

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,)
Petitioner,)
)
v.)
)
Orwell Sand and Gravel Company, Inc.)
Respondent.)

ASSURANCE OF
DISCONTINUANCE

VIOLATION

Commencement of construction on a development without a Land Use Permit. 10 V.S.A. § 6081(a) and 10 V.S.A. § 6001(3)(iv).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Orwell Sand and Gravel Company, Inc., (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent is a Vermont corporation which, since approximately 1976, has operated an excavation and trucking business in the Benson/Orwell, Vermont area.
2. The subject property (the "Project Tract") is located in the Town of Benson, Vermont, a "1-acre town" for the purpose of determining whether "development" has occurred under Act 250.
3. The Project Tract is comprised of two parcels, being 165.7 acres owned by Robert Shaw which has historically been used for agricultural and logging purposes and an adjoining 10.106 acre primary residential parcel owned by Scott Hendee.
4. Respondent constructed a 3,000-square foot agricultural garage on the Project Tract which on occasion has been used to service commercial vehicles.
5. Since approximately 2007, Respondent has conducted some commercial operations on the Project Tract including storage and maintenance of some equipment in structures primarily devoted to agricultural use.
6. Subsequent to 2011, Respondent developed an aggregate stockpiling area, and an earth materials extraction area that has been used at times for commercial purposes and at other times, for agricultural or residential purposes.

Assurance of Discontinuance

Natural Resources Board v. Orwell Sand and Gravel Company, Inc.

Page 2 of 5

7. Respondent has never obtained a Land Use Permit for the aforementioned commercial activities.
8. Respondent has violated 10 V.S.A. § 6081(a) and 10 V.S.A. § 6001(3)(iv).

AGREEMENT

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

- A. Respondent shall immediately cease all blasting activities on the Project Tract until such time as those activities are authorized under an Act 250 Land Use Permit.
- B. No later than 90 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 with the District 1 Environmental Commission for development and activities at the Project Tract subject to Act 250 jurisdiction, including non-agricultural and non-logging components of the excavation and construction business, associated infrastructure, and any additional commercial activities on the Project Tract. Such application shall include the garage referenced in paragraph #4 of this AOD. Respondent shall diligently pursue said application. Pursuant to 10 V.S.A. § 6001(E), to the extent that the Project Tract is devoted to farming activity, only those portions of the Project Tract that support "development" shall be subject to Act 250 regulation or to Act 250 permit conditions.
- C. For purposes of this AOD, "diligently pursue" shall mean that Respondent shall (a) respond to any and all requests for information from the Act 250 District 1 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. Respondent shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications.
- D. 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 **\$5,000.00**, for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$690.13**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 3. the amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Benson land records, by check made payable to the "Town of Benson, Vermont."

Assurance of Discontinuance

Natural Resources Board v. Orwell Sand and Gravel Company, Inc.

Page 3 of 5

- 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. Pursuant to 10 V.S.A. § 6081(s)(1), no permit amendment is required for farming, as defined in Act 250 jurisprudence, that: (A) will occur on primary agricultural soils preserved in accordance with section 10 V.S.A. § 6093 or (B) will not conflict with any permit condition issued pursuant to Act 250.
- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondent, for good cause beyond Respondent's control.
- M. 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.

- N. 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 further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of 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 Benson, Vermont, this 12th day of May, 2016.

ORWELL SAND & GRAVEL COMPANY, INC.

By


Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 12th day of May, 2016, personally appeared Scott Henbee, as the duly authorized agent of Orwell Sand and Gravel Company, 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 Orwell Sand and Gravel Company, Inc. and that he has the authority to contract on behalf of Orwell Sand and Gravel Company, Inc., 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: 2/10/19

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

Assurance of Discontinuance

Natural Resources Board v. Orwell Sand and Gravel Company, Inc.

Page 5 of 5

Dated in Montpelier, Vermont, this 21 day of June, 2016.

Natural Resources Board

By:



Diane Snelling, Chair