

STATE OF VERMONT  
ENVIRONMENTAL COURT

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LAND USE PANEL of the	)	<u>Docket No.</u>	Vtec
NATURAL RESOURCES BOARD,	)		
Petitioner,	)		
	)		
V.	)	<b><u>ASSURANCE OF</u></b>	
	)	<b><u>DISCONTINUANCE</u></b>	
ROBLEE FARM, INC.	)		
Respondent.	)		

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**VIOLATIONS**

1. Violation of Condition 15 of Land Use Permit #1R0932, as amended, and 10 VSA § 6081[a], by expanding area of mined land at gravel quarry without first obtaining written approval from the District 1 Environmental Commission.
2. Violation of Condition 2 of Land Use Permit #1R0932, as amended, and 10 VSA § 6081[a], by conducting blasting without first obtaining a permit amendment.
3. Violation of 10 VSA §§ 1259 and 1263 and 33 USC § 1342(p), by operating and discharging from a source of industrial stormwater without first obtaining an NPDES stormwater permit for discharges associated with industrial activity in violation of Section 402[p] of the federal Clean Water Act, 33 USC § 1342[p], and 10 VSA §§ 1259 and 1263.
4. Violation of Condition V(G) of VT NPDES Construction General Permit 3-9001 and 10 VSA § 1263 and 33 USC 1342(p), for failing to comply with conditions of construction general permit for stormwater regarding authorization for winter work.
5. Violation of Condition 3 of Land Use Permit #1R0932, as amended by failing to comply with construction general permit for stormwater regarding authorization for winter work.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and RobLee Farm, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

## STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent is and was, at all times pertinent herein, owner of an approximately three hundred (300) acre tract of land (the Subject Parcel) on Kelley Hill Road off Route 133 in the Town of Pawlet, Vermont (the Facility), which was and is subject to Land Use Permit #1R0932, as amended, issued by the District 1 Environmental Commission on April 5, 2006.
2. The Facility is a sand, gravel and construction aggregate quarry which includes two (2) areas of excavation. To the North of Kelley Hill Road is the so-called Sheldon Quarry, while the so-called Danby Quarry lies to the south of Kelley Hill Road.
3. Jim Sheldon Excavating, Inc. and James F. Sheldon, Jr. (hereinafter collectively Sheldon) were co-operators of the Facility with Respondents at all times pertinent herein.
4. This enforcement action has been bifurcated between Respondent and Sheldon for purposes of settlement. The Panel has reached a separate settlement via a separate Assurance of Discontinuance with Sheldon with respect to concurrent violations of Condition 6 of Land Use Permit #1R0932, as amended, and 10 VSA § 6081[a], and by 10 VSA § 555 and the Vermont Air Pollution Control Regulations § 5-401[12], for operating a stone crushing plant with a maximum rated capacity of greater than 150 tons per hour without first obtaining an air pollution control permit and approval of the Act 250 District Commission (hereinafter the Sheldon AOD).
5. The Sheldon AOD was entered as an Order of the Environmental Court on August 21, 2008, Docket No. 183-8-08 Vtec. Pursuant to that AOD, Sheldon paid a fine of \$8,650.00 for operator liability for violations associated with this matter.
6. Respondents expressly deny liability for the violations which were resolved by the Sheldon AOD. The purpose of this AOD is to resolve Respondent's liability as owners of the Facility for the above-enumerated violations associated with this matter.
7. Condition 15 of Land Use Permit #1R0932, as amended, provided that no further subdivision, alteration and development of land on the Subject Parcel would be permitted without the written approval of the District 1 Environmental Commission.
8. Condition 2 of Land Use Permit #1R0932, as amended, provided that no blasting was permitted without an amendment thereto.
9. On or about June 1, 2007, Respondent and/or others acting at Respondent's direction expanded the Danby Quarry by conducting blasting and the extraction of materials for the purpose of creating a wintering feedlot area for livestock and for commercial purposes of extracting and processing construction aggregate materials.

10. Respondent violated Condition 15 of Land Use Permit #1R0932, as amended, and 10 VSA § 6081[a], by expanding the Danby Quarry without first obtaining the written approval of the District 1 Environmental Commission.
11. Respondent violated Condition 2 of Land Use Permit #1R0932, as amended, and 10 VSA § 6081[a], by conducting blasting without first seeking an amendment to the Permit.
12. On or about August 7, 2008, Respondent obtained an amendment to Land Use Permit #1R0932 which authorized Respondent to conduct limited blasting to open a new extraction area in the Danby Quarry, known as the "Danby Feedlot."
13. Condition 5 Land Use Permit #1R0932, as amended, required that activities at the Facility be subject to the terms and conditions of an Underground Injection Control (UIC) Permit and a Construction General (stormwater) Permit.
14. Respondent obtained a UIC permit on or about September 16, 2008.
15. Respondent obtained coverage for stormwater discharges associated with construction activity under VT NPDES Construction General Permit (CGP) 3-9001 on or about April 18, 2006.
16. Pursuant to Condition V(G) of CGP 3-9001, Respondent was required to obtain authorization from the Agency of Natural Resources (ANR) to conduct winter construction activity (earth disturbance from mining) any later in the season than October 15.
17. Respondents violated Condition V(G) of CGP 3-9001 by conducting winter construction activity during the winter of 2007 without first obtaining authorization from ANR.
18. Respondent violated Condition 5 Land Use Permit #1R0932, as amended, by conducting winter construction activity during the winter of 2007 without first obtaining authorization from ANR.
19. On or about May 7, 2008, Respondents renewed their coverage under the current VT NPDES Construction General Permit 3-9020.
20. Respondents operated the Facility with the intent to discharge stormwater associated with industrial activities to waters of the State, and such discharges did in fact result.
21. Respondents failed to obtain a NPDES stormwater permit for discharges associated with industrial activity as required by 402[p] of the federal Clean Water Act, 33 USC § 1342[p], and 10 VSA §§ 1259 and 1263, and in violation thereof.

22. On or about July 28, 2008, Respondents obtained coverage under VT NPDES Multi-Sector General Permit 3-9003 for discharges of industrial stormwater.

### AGREEMENT

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

A. For the violations noted herein, Respondent shall contribute and deliver the Materials (type and quantity specified below) for a Supplemental Environmental Project (SEP) to the SEP Recipient (also identified below) pursuant to 10 VSA § 8007[b][2] which will enhance the natural resources of the area affected by the violations, as well as their use and enjoyment, as follows:

Materials: (a) Eight Hundred and Twelve Yards (812 yds.) of bank-run gravel at Fourteen Dollars per yard (\$14.00/yd.) with an agreed fair Market value of **Eleven Thousand Three Hundred and Sixty-Eight Dollars (\$11,368.00)**, and

(b) Four Hundred and Twenty Seven Yards (427 yds.) of three quarter inch (3/4") screened gravel at Seventeen Dollars per yard (\$17.00/yd.) with an agreed-upon fair market value of **Seven Thousand Two Hundred and Fifty-Nine Dollars (\$7,259.00)**

Agreed Value of Materials: **\$18,627.00** (SEP Amount)

Delivery: By Respondent to a location or locations that are not more than one (1) hour roundtrip from the Facility, either on-site for project work or tendered in stockpiles as per the direction of the SEP Recipient. At the sole option of the SEP Recipient, Materials may be tendered for pickup at the Facility by a third-party contractor identified by the SEP Recipient.

SEP: Better Backroads project involving the correction of road-related erosion problems in the Poultney-Mettowee Watershed in the Town of Pawlet, Vermont (see **Attachment A** hereto) in order to reduce phosphorus and sediment pollution to Lake Champlain.

SEP Recipient: Poultney-Mettowee Natural Resources Conservation District, P.O. Box 209, Poultney, Vermont 05764, or such other or additional person(s) as the Land Use Panel may designate in writing as a successor or additional SEP Recipient.

Timing: Respondent shall deliver the Materials no later than one hundred and eighty (180) consecutive calendar days following the date this assurance is entered as an Order by the Environmental Court.

- B. Should Respondent fail to perform its obligations set forth above, the full SEP amount, or so much of the SEP Amount as remains outstanding, shall be converted to a civil penalty and shall be immediately due and payable to the "Treasurer, State of Vermont" and shall be forwarded to:

Denise Wheeler, Business Manager  
Land Use Panel of the Natural Resources Board  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

- C. If, at the close of the 180 consecutive calendar days, any of the agreed value of the Materials allocated for SEP which has not been delivered by the Respondent, shall be converted to a civil penalty and shall be immediately due and payable to the State of Vermont. Respondent shall make said payment by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Denise Wheeler, Business Manager  
Land Use Panel of the Natural Resources Board  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

- D. The value of any Materials provided by Respondents pursuant to this Assurance and directed to the SEP shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- E. In the event Respondent publishes by any means, directly or indirectly, the identity or result of any SEP for which Respondent has provided the Materials, the Respondent shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Land Use Panel of the Vermont Natural Resources Board.
- 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 Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.

- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable to the Land Use Panel for additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- J. 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 Environmental Court. 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.
- K. Any violation of any agreement set forth herein will 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.
- L. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

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**SIGNATURES**

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

Dated at Pittsford, Vermont, this 21<sup>st</sup> day of May, 2009.

RobLee Farm, Inc.

By: Mark Mason

Duly Authorized Agent  
Mark Mason, President

BE IT REMEMBERED that on the 21<sup>st</sup> day of May, 2009, personally appeared Mark Mason, as the duly authorized agent of RobLee Farm, 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 the free act and deed of RobLee Farm, Inc. and that he has the authority to contract on behalf of RobLee Farm, Inc. and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

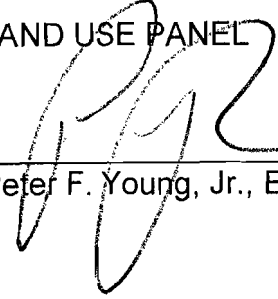
Linda J. Dawes  
Notary Public  
My Commission Expires: 2/11

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

Dated in Montpelier, Vermont, this 10<sup>th</sup> day of June 2009.

LAND USE PANEL

By:   
Peter F. Young, Jr., Esq., Chair

# **ATTACHMENT A**



STATE OF VERMONT  
ENVIRONMENTAL COURT

**Land Use Panel of the  
Natural Resources Board**

-vs-

**RobLee Farms, Inc.**

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Docket No. \_\_\_\_\_

**Supplemental Environmental (SEP) Project Proposal  
Watershed Planning and Better Backroads**

*Submitted on behalf of.*

***Poultney- Mettowee Natural Resources Conservation District,  
SEP Applicant***

**The District**

The Poultney-Mettowee Natural Resources Conservation District (the District) is a political subdivision of the State of Vermont that functions as a non-profit municipality. The District was created in 1942 as the first Conservation District in Vermont, and continues to work with agricultural producers as well as landowners, communities, youth and the general public on issues related to water quality and natural resource conservation. The District covers the watershed area for the Poultney and Mettowee Rivers in Vermont. The District works with its partners in New York to encompass the entire watershed

**Introduction**

Enhanced coordination between Vermont's Watershed Planning Initiative and the Better Backroads Program has led to expanded implementation of better backroads projects around the state. During the watershed planning process, high priority erosion and nonpoint source pollution problems are identified and prioritized for project implementation. Often times, these issues are related to our road infrastructure and back roads in particular. The District works with municipalities, the watershed planners for the Agency of Natural Resources (ANR), road commissioners and road crews to identify the most problematic areas within a town for remediation. Once these issues have been categorized, project funding is sought to leverage existing technical resources and funding to implement these chronic problems affecting our waterways.

## **Vermont Better Backroads Program**

The Better Backroads Programs are key components of the Clean and Clear Action Plan. The Better Backroads Program enables towns to fix chronic erosion problems in an optimal way so they can avoid annual repairs and reduce phosphorus and sediment pollution. Roadside drainage ditches and culverts become part of the stream network during rainstorms or snowmelt events. Sediment eroding from road surfaces and ditches washes into the drainage network and delivers phosphorus that is transported downstream, eventually to Lake Champlain, Lake Memphremagog, the Connecticut River or the Hudson River. With an average of 46 miles of backroads per town, the impact can be significant.

The very mechanisms that will protect a town's investments in their roads will also prevent sediment and phosphorus pollution of surface water. The major challenges in this partnership are insufficient road maintenance funding both locally and at the state level, lack of good planning and ordinances at the local level, and the need for increased education and visibility of this important issue.

Proper correction of these roadside erosion problems has the dual benefit of reducing long-term road maintenance costs while protecting water quality. The goal of this program is to provide sufficient administrative assistance, technical support, and grant funding to eventually involve all Vermont towns in the program. Financial and technical support demonstrates to towns that the proper fix pays for itself in a few years, increasing the likelihood that towns will implement such projects on their own.

### **Proposed SEP-related Material Projects**

A Better Backroads grant awarded this past fall to the Poultney Mettowee Conservation District is being implemented this spring (2009). As a result of this project, key project areas are identified that require the use of 812 yards of bank run gravel and 427 yards of 3/4" screened gravel. This gravel will be used on multiple road and culvert projects in the towns of the Poultney Mettowee watershed.

**Agreement between the Land Use Panel of the Vermont Natural Resources Board and the Poultney Natural Resources Conservation District concerning funds donated to Supplemental Environmental Project.**

Under Vermont law, when a person or entity (Respondent) has violated Act 250 (10 V.S.A. Ch. 151), the Land Use Panel of the Vermont Natural Resources Board (Panel) and the Respondent may enter into an agreement called an "Assurance of Discontinuance" (AOD) whereby the Respondent, in lieu of paying a civil penalty, may make a "contribution toward other projects related to the violation, which the respondent and the secretary or the land use panel agree will enhance the natural resources of the area affected by the violation, or their use and enjoyment. . ." 10 V.S.A. § 8007(b)(2).

Pursuant to the AOD in the matter of Land Use Panel vs. RobLee Farm, Inc. (Respondent) dated 6/10/09, Respondent has agreed to contribute materials (bank run and ¾" screened gravel, hereinafter the "Materials") to a Supplemental Environmental Project (SEP) in the following amounts:

(a) Eight Hundred and Twelve Yards (812 yds.) of bank-run gravel at Fourteen Dollars per yard (\$14.00/yd.) delivered, with an agreed fair market value of **Eleven Thousand Three Hundred and Sixty-Eight Dollars (\$11,368.00)**, and

(b) Four Hundred and Twenty Seven Yards (427 yds.) of three-quarter inch (¾") screened gravel at Seventeen Dollars per yard (\$17.00/yd.) delivered, with an agreed-upon fair market value of **Seven Thousand Two Hundred and Fifty-Nine Dollars (\$7,259.00)**.

The Materials shall be delivered by Respondent to a location or locations that are not more than one (1) hour roundtrip from Respondent's facility in Pawlett, Vermont. Deliver shall be either on-site for project work or tendered in stockpiles as per the direction of the Poultney Natural Resources Conservation District (hereinafter the "SEP Recipient"). At the sole option of the SEP Recipient, the Materials may be tendered for pickup at the Respondent's facility by a third-party contractor identified by the SEP Recipient.

The SEP Recipient has submitted a proposal for an environmental project (Project), as described in Attachment A hereto (and Attachment A to the said AOD), which the Panel and the Respondent agree meets the requirements of 10 V.S.A. §8007(b)(2). The Panel and Respondent have further agreed that Respondent shall fund the SEP Recipient's proposal with the SEP funds. In return, the SEP Recipient agrees:

(1) To maintain a current accounting of all Materials received and expended in furtherance of the SEP, to be made available to the Panel upon request;

(2) To complete the SEP no later than one hundred and eighty (180) days after the AOD is entered as an Order of the Environmental Court;

(3) To provide to the Panel a final accounting of all Materials contributed to the SEP by Respondent within thirty (30) days of the completion of the SEP; and

(4) To provide to the Panel, within thirty (30) days of the completion of the SEP, a brief report of the SEP, certifying that the Materials have been expended in furtherance of the SEP.

**Restrictions on the use of SEP funds**

SEP funds may not be used for litigation or lobbying purposes, nor may they be used in the preparation or presentation of matters before any state agency or board. The Recipient agrees to these restrictions.

The provisions set forth in this Agreement are hereby agreed to and accepted.

Dated in Montpelier Vermont, this 8<sup>th</sup> day of June, 2009.

LAND USE PANEL

By: 

Peter F. Young, Jr. Chair

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The provisions set forth in this Agreement are hereby agreed to and accepted.

Dated in Poultney Vermont, this 30 day of May, 2009.

Poultney Natural Resources  
Conservation District

By: 

Marli Rupe  
District Manager