

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. 128-7-09 Vtec

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

Kevin Rogers and Kevin Rogers, Inc.
Respondents

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. In July 2008, the Land Use Panel and the Respondents entered into an Assurance of Discontinuance regarding the unpermitted construction of improvements on lands owned by the Respondents in South Royalton.
2. The said Assurance was entered as an order of the Environmental Court on July 25, 2008.
3. Paragraph C of the said Assurance reads: "Respondents shall not park any vehicles or store any materials on the unpermitted gravel parking area unless and until they obtain a Land Use Permit."
4. On November 25, 2008, the Land Use Panel's Permit Compliance Officer (PCO) observed that Respondents had several pieces of equipment and vehicles stored on the "unpermitted gravel parking area," including: two fuel trucks, a small plow/dump truck, a flatbed trailer, and two storage trailers. In addition, the PCO observed that a small structure was constructed on the property for material storage, which, at the time of the PCO's site visit, contained road sand.
5. During the PCO's observance of the property, a dump truck entered the property and dumped a load of materials in front of the said storage structure.
6. Respondents' actions violated Paragraph C of the said Assurance.

7. On April 20, 2009, the District 3 Environmental Commission issued Land Use Permit #3W1010, which approves the so-called "unpermitted gravel parking area" and the construction of a 40' x 60' garage.

AGREEMENT

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

- A. Respondents shall comply with Land Use Permit #3W1010, as amended (and if amended) by the Environmental Court in Docket No. 88-5-09 Vtec.
- B. The June 1, 2009 Administrative Order issued by the Land Use Panel in this matter shall be dismissed.
- C. Within thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Seven Hundred (\$700.00 (U.S)) Dollars, for the violation noted herein. Respondents shall make said payment by check made 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
- D. Any payment by the Respondents pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution or business expense under the federal or state tax codes.
- E. 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.
- F. 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.

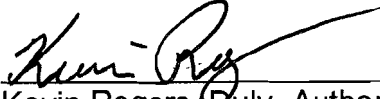
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- H. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for any 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 Respondents fully comply with the agreements set forth above.
- I. 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.
- J. 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.
- K. This Assurance is subject to the provisions of 10 V.S.A. § 8007.
- L. This Assurance or a notice thereof may be filed within the land records of the town(s) in which the property is located.

SIGNATURES

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

Dated at Hartford, Vermont, this 23 day of July 2009.

Kevin Rogers, Individually
Kevin Rogers, Inc.

By 
Kevin Rogers, Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 9th day of July, 2009, personally appeared Kevin Rogers, individually and as the duly authorized agent of Kevin Rogers, 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 Kevin Rogers, Inc and that he has the authority to contract on behalf of Kevin Rogers, Inc and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Elizabeth Gaila Rose

Notary Public

My Commission Expires: 02/10/2011

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

Dated in Montpelier, Vermont, this 25th day of JULY 2009.

LAND USE PANEL

By: [Signature]
Peter F. Young, Jr., Chair