



STATE OF VERMONT
LAND USE PANEL of the NATURAL RESOURCES BOARD
NATIONAL LIFE RECORDS CENTER BUILDING
MONTPELIER, VERMONT 05620-3201
802-828-3309

July 23, 2008

Jackie Fletcher, Court Manager
Vermont Environmental Court
2418 Airport Road, Suite 1
Barre, VT 05641-8701

Re: **Assurance of Discontinuance**
Land Use Panel of the Natural Resources Board v. Kevin L. Rogers,
Kevin L. Rogers. Inc.

Dear Jackie:

Enclosed for filing is an Assurance of Discontinuance in the above referenced matter. After the related Order has been issued, kindly send a copy of it to the Attorney General's Office and to the Respondent.

A copy of this letter and the Assurance of Discontinuance are being sent simultaneously to the Attorney General's Office, in accordance with (10 V.S.A. § 8007(c)).

Sincerely,
Victoria Lory
Victoria Lory
Administrative Secretary

cc: Scot Kline, Esq.,
Chief, Environmental Protection Division,
Attorney General's Office
Linda Matteson, Coordinator, District #3 Environmental Commission

C. Daniel Hershenson, Esq.
Hershenson, Carter, Scott and McGEE, P.C.
Attorneys At Law
PO Box 909
Norwich, VT 05055-0909

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**LAND USE PANEL of the
NATURAL RESOURCES BOARD,**
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

**KEVIN L. ROGERS,
KEVIN L. ROGERS, INC.**
Respondents

VIOLATION

- I. Construction of commercial improvements on more than one acre of land without obtaining an Act 250 Land Use Permit pursuant to 10 V.S.A. §6081(a).

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 L. Rogers and Kevin L. Rogers, Inc. (collectively Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Rogers owns an approximately 2.2-acre parcel of land on the Haven Cemetery Road in South Royalton, Vermont, described in Book 62, Page 167-3 of the Town of Royalton land records (project tract).
2. Respondent Rogers operates a commercial trucking business, Kevin L. Rogers, Inc., out of his home on the project tract.
3. Prior to June 2007, Respondent Rogers placed fill on the project tract in order to create a parking area for the vehicles used in his trucking business.
4. Respondent Rogers failed to apply for and obtain an Act 250 Land Use Permit for the construction of those improvements.
5. On July 31, 2007, then *Assistant* District Coordinator for the District 3 Environmental Commission (Commission), Linda Matteson issued Jurisdictional Opinion #3-111

finding jurisdiction attached to the project tract.

6. That Jurisdictional Opinion was not appealed and has since become a final opinion.
7. Respondents violated 10 V.S.A. § 6081(a) by commencing the construction of improvements for a commercial or industrial purpose on more than one acre of land without obtaining the necessary Act 250 Land Use Permit.

AGREEMENT

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

- A. Respondents shall file and diligently pursue a complete application for the required Act 250 Land Use Permit. Respondents shall submit said application no later than ~~August 15, 2008.~~ *September 1,*
- B. If Respondents fail to file a complete application by ~~August 15, 2008,~~ *September 1,* or timely file said application and said application is denied by the Commission and said permit denial becomes final, then Respondents shall remove any unpermitted commercial improvements, including but not limited to the gravel parking area described in paragraph 3 herein, and shall restore the project tract to its condition prior to the commencement of construction. Respondents shall remove all unpermitted commercial improvements within sixty (60) days from the date the permit denial becomes final.
- C. 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.
- D. Within thirty (30) days from 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 Eight Hundred Dollars (\$800.00) for the violations 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

- E. 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.

- 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 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.
- 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.

SIGNATURES

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

Dated at Hartford, Vermont, this 17th day of July, 2008.

Kevin L. Rogers
KEVIN L. ROGERS

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 17th day of July, 2008, personally appeared Kevin L. Rogers, signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established his/her/their identity to me and acknowledged the same to be his/her/their free act and deed.

Before me,

Allyn Gould Rose
Notary Public
My Commission Expires: 02/10/2011

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Kevin L. Rogers, the undersigned, hereby state under oath that I am President of Kevin L. Rogers, Inc., that I have the authority to contract on behalf of Kevin L. Rogers, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Hartford, Vermont, this 17th day of July, 2008.

KEVIN L. ROGERS, INC.

By: Kevin L. Rogers
Kevin L. Rogers - President
(Print Name and Title)

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 17th day of July, 20 08,
personally appeared Kevin L. Rogers, duly authorized agent of
Kevin L. Rogers, Inc., signer of the foregoing written instrument who is known to me or
who satisfactorily established his/her identity to me and acknowledged the same to be
his/her free act and deed and the free act and deed of Kevin L. Rogers, Inc.

Before me,

Alison Gould Ross
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 22nd day of JULY, 2008.

LAND USE PANEL

By:

Peter F. Young, Jr.
Peter F. Young, Jr., Chair