

**STATE OF VERMONT  
ENVIRONMENTAL COURT**

	)	
	)	Docket No. _____ Vtec
	)	
LAND USE PANEL of the	)	
NATURAL RESOURCES BOARD,	)	
Petitioner,	)	
	)	
	)	<b><u>ASSURANCE OF</u></b>
	)	<b><u>DISCONTINUANCE</u></b>
	)	
v.	)	
	)	
JIM SHELDON EXCAVATING, INC.	)	
and	)	
JAMES F. SHELDON, Jr.,	)	
Respondents.	)	

**VIOLATIONS**

- I. Violation of Condition 6 of Land Use Permit #1R0932, as amended, and 10 VSA § 6081[a], by 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.
  
- II. Constructing and operating a source of air contaminants as defined by 10 VSA § 555 and the Vermont Air Pollution Control Regulations § 5-401[12] without first obtaining an air pollution control permit as required by 10 VSA § 566 and Vermont Air Pollution Control Regulations § 5-501.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Jim Sheldon Excavating, Inc. and James F. Sheldon, Jr. (Respondents) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

## **STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondents were, at all times pertinent herein, Operators at an existing gravel pit owned by Rob Lee, Inc. (the Owners) in the Town of Pawlett, Vermont (the Facility), which was and is subject to Land Use Permit #1R0932 issued by the District 1 Environmental Commission on April 5, 2006.
2. The Panel is currently investigating and attempting to resolve a wide variety of environmental violations at the Facility, and bring the Facility into compliance with Act 250 and other state and federal environmental laws. To that end, the Panel is currently negotiating another settlement with Rob Lee, Inc., as owners, with regard to separate but related violations of Act 250 and other state and federal environmental laws at the Facility.
3. Paragraph 6 of Land Use Permit #1R0932 prohibits the operation of a gravel or stone crushing plant with a maximum rated capacity of greater than 150 tons per hour at the Facility, unless said crushing plant has a permit to operate from the District Commission and the Vermont Air Pollution Control Division.
4. On or before July 17, 2007, Respondents delivered or caused to be delivered a new aggregate wash plant and rock crusher (the Crusher) with a capacity in excess of 150 tons per hour to the Facility.
5. Thereafter, Respondents operated the Crusher on a regular basis for at least several months.
6. Operation of the Crusher constituted a substantial change within the meaning of 10 VSA § 6081[b].
7. By operating the Crusher at the Facility, Respondents violated Condition 6 of Land Use Permit #1R0932 and 10 VSA § 6081[a].
8. By operating the Crusher at the Facility without an air pollution control permit, Respondents violated 10 VSA § 566 and Vermont Air Pollution Control Regulations § 5-501.
9. Respondents expressly deny liability for any other violations of Act 250 and/or any other applicable state or federal environmental laws that may have occurred at the Facility, including, by way of limitation, violations of federal and state stormwater regulations, underground injection control (UIC) permit regulations, and violations of Land Use Permit #1R0932 regarding blasting and expansion of the mined area.
10. Respondents obtained an air pollution control permit for the Crusher on or about September 17, 2007.

11. Respondents have since removed the Crusher from the Facility.
12. On or about May 1, 2008, the Owners applied for an amendment to Land Use Permit #1R0932, which is currently pending before the District Commission.

### AGREEMENT

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

- A. Pursuant to the payment schedule set forth below, Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a total civil penalty in the amount of **Eight Thousand Six Hundred and Fifty Dollars (\$8,650.00)** for the violations noted herein:

On or before April 1, 2009:	\$2,000.00
On or before May 1, 2009:	\$2,000.00
On or before June 1, 2009:	\$2,000.00
On or before July 1, 2009:	\$2,650.00

Respondents shall make said payments 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

Late payments shall bear interest at the rate of twelve percent (12%) per annum. In the event that Respondent fails to make any payment by the date due, the Land Use Panel, at its option, may declare the whole amount then owing under this Assurance due and payable, any terms herein to the contrary notwithstanding.

- B. Any payment by the Respondents pursuant to this paragraph 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.

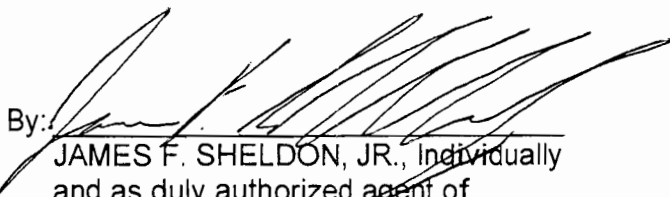
- C. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- D. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- E. 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.
- F. Pursuant to 10 V.S.A. § 8007(d), Respondents shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein regarding the violations resolved by this Assurance and the violations set forth in Paragraph 9 hereof, 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. This Assurance does not affect any potential liability of the Owner.
- G. 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.
- H. 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.
- I. 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 Manchester Vermont, this 13<sup>th</sup> day of AUGUST, 2008.

JAMES F. SHELDON, JR.

By:   
JAMES F. SHELDON, JR., Individually  
and as duly authorized agent of  
Jim Sheldon Excavating, Inc.

BE IT REMEMBERED that on the 13<sup>th</sup> day of AUGUST, 2008,  
personally appeared JAMES F. SHELDON, 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.

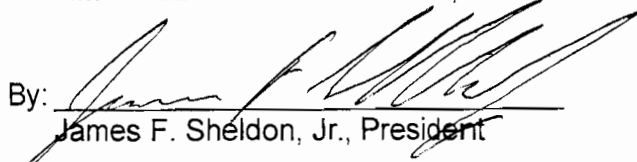
Before me,  
  
Notary Public  
My Commission Expires: 2/10/2010

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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and  
accepted. Further, I, JAMES F. SHELDON, the undersigned, hereby state under  
oath that I am PRESIDENT of Jim Sheldon Excavating, Inc., that I have  
the authority to contract on behalf of Jim Sheldon Excavating, Incorporated, and that I  
have been duly authorized to enter into the foregoing Assurance of Discontinuance on  
behalf of that entity.

Dated at MANCHESTER, Vermont, this 13<sup>th</sup> day of AUGUST, 2008.

JIM SHELDON EXCAVATING, INC.

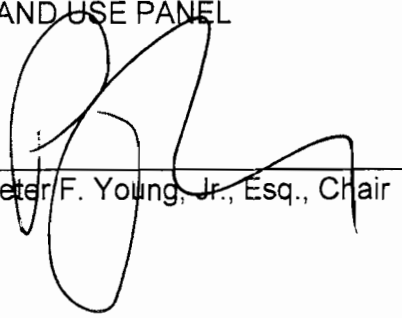
By:   
James F. Sheldon, Jr., President

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

Dated in Montpelier, Vermont, this 18<sup>th</sup> day of August, 2008.

LAND USE PANEL

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