

SUPERIOR COURT STATE OF VERMONT ENVIRONMENTAL DIVISION

Docket No.

Land Use Panel of the
Natural Resources Board,

ASSURANCE OF DISCONTINUANCE

v.

Town of Wallingford, Vermont

VIOLATION

Failure to comply with Conditions 5 and 13 of Land Use Permit #1R0797-1

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On May 1, 1996 the District 1 Environmental Commission (Commission) issued Land Use Permit #1R0797 to the Wallingford Park Association for the continued operation of a sand and gravel pit with extraction volumes not to exceed 65,000 cubic yards in 1996 and 3,000 cubic yards in following years. The pit is located on a 39 acre tract of land in the Town of Wallingford between Elfin Lake and Otter Creek.
2. When this project was first permitted, tract contained an out parcel of approximately three acres, owned by Ed Moore, abutting the extraction site.
3. On July 18, 1997 the Commission issued Land Use Permit Amendment 1R0797-1 ("the Permit"). Condition 5 of the Permit reads as follows:
 5. No later than October 15, 1999, the permittee shall ensure that the exiting north face, from the excavation area approved herein to the access road, shall either be 1) excavated and reduced in slope to less than 1:2 pursuant to a permit amendment, or 2) reclaimed to a grass slope using

jute matting and other methods to a 1:1 or less slope extending onto the lands of Ed Moore, if permission is granted, or 3) reclaimed to the maximum extent possible to a grass slope with jute matting and other methods at its existing slope, without further encroachment on lands of Ed Moore, if permission is not granted.

4. Condition 13 of the Permit reads as follows:

13. This permit shall expire and all final reclamation and other requirements of Permit Condition #5 above shall be completed by October 15, 1999 unless an extension of this date is approved in writing by the Commission. Such approval may be granted with public hearing.

5. The Wallingford Park Association was dissolved in 2005. On information and belief, ownership of the property subject to the Permit was transferred to the Respondent Town of Wallingford at that time.

6. On September 30, 2008, pursuant to 10 V.S.A. §8006, the Panel's Permit Compliance Officer issued a Notice of Alleged Violation to the Respondent informing the Respondent of the Respondent's failure to comply with the reclamation requirements of the Permit.

7. From late 2008 through early 2011, the Land Use Panel, through its Permit Compliance Officer, informed the Respondent of its obligations under Conditions 5 or 13 of the Permit.

8. The Respondent has not complied with Conditions 5 or 13 of the Permit.

9. The Respondent is in violation of the Permit.

AGREEMENT

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

- A. The Respondent shall comply with Land Use Permit series #1R0797.
- B. On or before November 1, 2012, the Respondent shall reclaim the gravel pit in accordance with the Conditions of Land Use Permit #1R0797-1 and all relevant Exhibits thereto.
- C. Pursuant to 10 V.S.A. Ch. 201, the Respondent shall be responsible for a civil penalty in the amount of Twelve Thousand Seven Hundred

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Fifty (\$12,750.00) Dollars (U.S.) for the violation noted herein.

- D. No later than 30 days following the entry of this Consent Order by the Superior Court, Environmental Division, the Respondent shall pay to the Natural Resources Board, pursuant to 10 V.S.A. 8010(e)(2), the amount of Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars (U.S.), as partial payment of the civil penalty noted in Paragraph C, above.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and shall be sent to:

Denise Wheeler
Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

- E. The Respondent shall contribute Ten Thousand (\$10,000.00) Dollars (U.S.), of the civil penalty noted in Paragraph C, above, to a Supplemental Environmental Project (SEP), pursuant to 10 V.S.A. §8007(b)(2), for the remediation of the sand and gravel pit subject to Land Use Permit #1R0797, which pit is the subject of this Assurance.

If, at the close of the 180 day period following the entry of this Assurance as an order by the Superior Court, Environmental Division, any of the monies allocated for the SEP referred to in this Paragraph have not been expended or committed by the Respondent in furtherance of the SEP, any such unexpended or uncommitted amount shall be converted to a civil penalty and shall be immediately due and payable to the State of Vermont. The Respondent shall then make said payment by check made payable to the "Treasurer, State of Vermont," which shall be forwarded to Denise Wheeler, at the address set out in Paragraph D, above.

- F. If any Respondent publishes by any means, directly or indirectly, the identity or result of an SEP that Respondent has funded, 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 Natural Resources Board.
- G. 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.

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- H. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- I. 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.
- J. 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 described herein, provided that the Respondent fully complies with the agreements set forth above.
- K. 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 Superior Court, Environmental Division. 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.
- L. 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.
- M. 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 Wallingford, Vermont, this 19 day of March, 2012.

Town of Wallingford, Vermont

by William H. Brooks

STATE OF VERMONT
COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 19 day of March, 2012,
personally appeared William Brooks, as the duly authorized agent of
the Town of Wallingford, Vermont, 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 the Town of Wallingford, Vermont,, and that
he has the authority to contract on behalf of the Town of Wallingford, Vermont, and
that he has been duly authorized to enter into the foregoing Assurance on behalf of
that entity.

Before me,

Julie Shannon
Notary Public
My Commission Expires: 2/10/15

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

Dated in Montpelier, Vermont, this 23rd day of March, 2012.

LAND USE PANEL
NATURAL RESOURCES BOARD

R. Shems
Ronald A. Shems, Chair