

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No. _____

LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
Petitioner,)
)
v.)
)
CHARLES AND LINDA YOUNG,)
Respondents.)
)

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Commencing development on a waste disposal/recycling facility without an Act 250 Land Use Permit in violation of 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 Charles and Linda Young (collectively Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. Respondents Charles and Linda Young own 1.05 acres of land off VT102 in the town of Lemington, Vermont (the project tract).
- 2. On or before January 25, 2001, Respondents began operating a recycling facility (the facility) for a commercial purpose on the project tract.
- 3. Improvements to the facility have been constructed on the project tract.
- 4. On November 15, 2006, District Coordinator Kirsten Sultan issued a Jurisdictional Opinion finding Act 250 jurisdiction attached to the project tract.
- 5. That Jurisdictional Opinion was not appealed and has gone final.
- 6. Respondents filed a Land Use Permit Amendment application on July 7, 2009.
- 7. Respondents have not obtained an Act 250 permit to date.
- 8. Respondents continue to operate the facility today.

9. Respondents violated 10 V.S.A. § 6081(a) by commencing the construction of improvements on a recycling facility for a commercial purpose without obtaining an Act 250 Land Use Permit.

AGREEMENT

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

A. If Respondents' permit application is denied by the Commission and said permit denial becomes final, then Respondents shall cease commercial use of all unpermitted improvements within sixty (60) days of said denial, except for use that constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or other use that would not be subject to Act 250 jurisdiction. However, if Respondents wish to use the project tract for any commercial purpose, then within thirty (30) days of the permit denial becoming final, Respondents shall request a jurisdictional opinion from the District Coordinator to ensure that any proposed commercial use of the project tract constitutes a "home occupation" as defined in Act 250 Rule 2(C)(17), or is otherwise exempt from Act 250 jurisdiction. Any commercial use of the project tract that is not determined to be exempt from Act 250 in a final jurisdictional opinion shall be prohibited, unless an Act 250 permit is obtained prior to the commencement of that activity.

B. Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Nine Hundred and Thirty-Eight dollars (\$938.00) for the violation noted herein as follows:

- Nine payments of \$100.00 commencing on August 10, 2009 and due each consecutive month on or before the 10th day thereof.
- A tenth, and final, payment of \$38.00 due on May 10, 2010.

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

Late payments shall bear interest at the rate of twelve percent (12%) per annum. In the event that Respondents fail 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.

- D. Any payment by the Respondents pursuant to this Assurance is made to resolve the violation set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.
- 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 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 ~~25~~ Colebrook, Vermont, this 27 day of August, 2009.
N.H.

Charles Young
CHARLES YOUNG

STATE OF ~~VERMONT~~ New Hampshire
COUNTY OF Coos, ss.

BE IT REMEMBERED that on the 27 day of August, 2009, personally appeared Charles Young, 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,

Bridget Freudenberger
Notary Public
My Commission Expires: 6.13.12

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

Dated at Colebrook, NH Vermont, this 27th day of August, 2009.

Linda Young
LINDA YOUNG

STATE OF ~~VERMONT~~ New Hampshire
COUNTY OF Coos, ss.

BE IT REMEMBERED that on the 27 day of August, 2009, personally appeared Linda Young, 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.

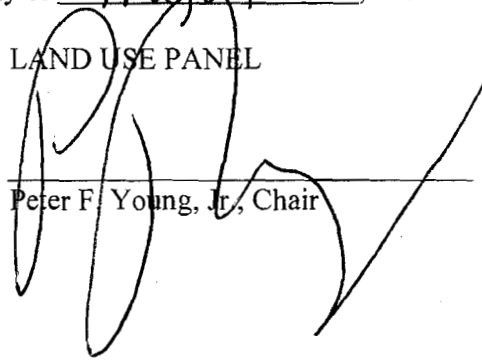
Before me,

Bridget Froudeberger
Notary Public
My Commission Expires: 6.13.12

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

Dated in Montpelier, Vermont, this 31st day of August, 2009.

LAND USE PANEL

By: 
Peter F. Young, Jr., Chair