

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

NRB v. Kelly and Linda Sweet, et al

23-ENV-00085

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 2nd day of June, 2023 and filed with the Superior Court, Environmental Division, on the 10th day of August, 2023, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed August 28, 2023 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Kelly Sweet,
Linda Sweet,
Estate of Robert Sweet,
Sweet Haven Farm, LLC,
G.W. Tatro Construction, Inc.
Respondents.

VIOLATION

Commencement of development for a commercial purpose without a Land Use Permit. 10 V.S.A. § 6081(a).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and Kelly Sweet, Linda Sweet, Estate of Robert Sweet, Sweet Haven Farm, LLC, and G.W. Tatro Construction, Inc. (collectively "Respondents") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. This Assurance applies to lands consisting of approximately 379.8 acres located at 1199 Fairfield Road in the Town of Fletcher, Vermont and identified by School Property Account Number (SPAN) 231-074-10567 (the "Project Tract").
2. Respondents Kelly Sweet, Estate of Robert Sweet, and Linda Sweet own the Project Tract which primarily consists of the Sweet Farm, operating as a Medium Farm Operation under the Vermont Required Agricultural Practices Rules. The

Project Tract also contains the residential home of Linda Sweet and an existing quarry.

3. Respondent G.W. Tatro Construction, Inc., a commercial excavation / site preparation entity, has engaged in the extraction of earth materials at the aforementioned quarry on the Project Tract, along with the commercial use and sale of said materials.
4. On April 20th, 2022, the Board's Enforcement Office received a complaint of an alleged commercial quarry operation at the Project Tract, including crushing and blasting without a permit, unreasonable hours of operation, and frequent truck trips transporting extracted materials resulting in damage to public roadways. Included in the complaint was an allegation of over 100 truck trips from said quarry being undertaken by G.W. Tatro Construction, Inc.
5. On April 26, 2022, in response to said complaint, Board Enforcement Officer ("EO"), Kaitlin Hayes left a voicemail with Linda Sweet regarding the alleged violations and the need for follow-up discussion. Ms. Sweet did not reply to EO Hayes.
6. On May 11, 2022, EO Hayes issued a Notice of Alleged Violation ("NOAV")¹ citing a violation related to the alleged commercial quarry operation at the Project Tract without a permit, pursuant to 10 V.S.A. § 6081(a). The NOAV included a directive for Ms. Sweet to request a Jurisdictional Opinion from the Act 250 District 6 Coordinator by no later than May 27th, 2022 regarding whether the active quarrying operations were jurisdictional under Act 250.
7. On May 18, 2022, following receipt of the NOAV, engineer Samuel Ruggiano (on behalf of Ms. Sweet) contacted EO Hayes in writing², stating that material excavated from the existing quarry operation was used primarily for agricultural purposes and only occasionally trucked offsite. The May 18, 2022 response also included an opinion that an Act 250 land use permit was not required for that reason.
8. Ms. Sweet did not formally file a request for a Jurisdictional Opinion by the May

¹ Included in Attachment A (Jurisdictional Opinion #6-025).

² Included in Attachment A (Jurisdictional Opinion #6-025).

27, 2022 deadline, as previously directed in the NOAV.

9. On June 23, 2022, EO Hayes conducted a site visit at the Project Tract with Mr. Ruggiano and Kelly Sweet to collect information about the quarry operation for the purposes of making an Act 250 applicability determination.
10. During the June 23, 2022, Mr. Kelly Sweet and Mr. Ruggiano maintained that the earth material from the quarry and/or sand and gravel extraction pit was being used primarily for agricultural purposes solely on the Project Tract. Mr. Sweet indicated that G.W. Tatro Construction, Inc.'s use of the quarry was informal with no monetary purchase of earth materials. However, there was a mutual exchange of benefits.
11. On July 6, 2022, the Board Enforcement Office received the following information and documentation from a complainant which contradict prior information conveyed to EO Hayes during the June 23, 2022 site visit:
 - a. An April 8, 2016 "Material Pricing" sheet published by G.W. Tatro Construction, Inc.³ which included per-cubic-yard prices for the various earth materials available for sale at five different G.W. Tatro Construction, Inc. locations. One of the locations listed on the document was the "Fletcher Quarry."
 - b. A November 13, 2020, Agency of Natural Resources Watershed Management Division's Stormwater Multi-Sector General Permit 3-9003 Permit Coverage Determination letter to G.W. Tatro Construction, Inc.⁴, in reference to "Tatro Quarry, 1199 Fairfield Road, Fletcher, Vermont."
12. On September 14, 2022, District 6 Coordinator, Joshua Donabedian issued Jurisdictional Opinion ("JO") #6-025 at the request of A.J. LaRosa, Esq. (MSK Attorneys).⁵ The JO concluded that G.W. Tatro Construction, Inc. had constructed improvements on the Project Tract for industrial / commercial purposes ("*...extracting and taking control of aggregate materials and entering them*

³ Included in Attachment A (Jurisdictional Opinion #6-025).

⁴ Included in Attachment A (Jurisdictional Opinion #6-025).

⁵ JO-6025 was revised on January 18, 2023 to correct an erroneous reference to the Project Tract being located East Fairfield.

into the stream of commerce, by which [G.W. Tatro Construction, Inc.] gains a financial benefit"), constituting "development" pursuant to 10 V.S.A. § 6001(3)(A)(i), thereby requiring an Act 250 land use permit. The JO was not appealed, and the decision became final. See Attachment A.

13. On September 16, 2022, Board Enforcement Office received additional complaints alleging G.W. Tatro Construction, Inc.'s continued trucking of aggregate from the Project Tract, contrary to JO #6-025, specifically the requirement to obtain an Act 250 land use permit.
14. On September 19, 2022, EO Christopher Kinnick (who had replaced EO Hayes) transmitted a letter via certified mail to Ms. Sweet in response to the September 16, 2022 complaints. The letter included a warning about continued quarry operations without the required land use permit and imposition of a 30-day deadline to apply for the permit. The letter was received on September 24, 2022, which set the permit application filing deadline at October 30, 2022.
15. On September 21, 2022, EO Kinnick had a telephone exchange with Gregory Tatro (President of G.W. Tatro Construction, Inc.) who explained that his company had stopped extracting from the subject quarry before the September 19, 2022 letter was received by Ms. Sweet and assured that extractions would cease until the required permit could be obtained.
16. On October 17, 2022, Mr. Ruggiano emailed EO Kinnick (et al.) stating the following: *"The Sweets at this time, have decided to halt earth moving activities leaving their farm at 1199 Fairfield Road, Fletcher at this time. They are evaluating whether to proceed with obtaining an Act 250 Land Use permit for continuing earth extraction or stopping excavation all together. The owners need time to determine if they can afford to take on the time and expense of obtaining an Act 250 land use permit."*
17. The October 30, 2022 land use permit application filing deadline elapsed without any further action or communication from the Respondents, other than what had previously been conveyed by Mr. Ruggiano.
18. The Board alleges that the Respondents violated 10 V.S.A. § 6081(a) by commencing development for a commercial purpose without a land use permit.

19. The Respondents admit the factual findings described above, solely for purposes of resolving this case.

AGREEMENT

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

- A. The Respondents shall **immediately** cease any and all non-agricultural commercial operations at the Project Tract.
- B. **No later than 60 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall file a complete application for an Act 250 Land Use Permit with the District 6 Environmental Commission for either the continued operation of the quarry as a commercial operation, or for the closure and reclamation of the quarry. Respondents shall diligently pursue said application.
- C. For purposes of this AOD, "diligently pursue" shall mean that the Respondents shall (a) respond to any and all requests for information from the Act 250 District 6 Environmental Commission, the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR. Respondents shall not be responsible for delays outside their control.
- D. **No later than 30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay, by separate checks, the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Three Thousand Three Hundred (\$3,300.00) Dollars (U.S.)**, for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **One Thousand Six Hundred Twenty-Four (\$1,624.00) Dollars (U.S.)**, to reimburse the Natural

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Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."

3. the amount of **Fifteen (\$15.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Fletcher land records, by check made payable to the "Town of Fletcher, Vermont."
- E. Without formally admitting or denying wrongdoing or liability, the Respondents agree to this settlement of the violations alleged above to resolve all outstanding disputes.
 - F. The Respondents agree that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondents' past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
 - G. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
 - H. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
 - I. Respondent(s) shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
 - J. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
 - K. Nothing in this Assurance shall be construed as having relieved, modified,

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waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.

- L. 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.
- M. 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 set forth herein, provided that the Respondents fully comply with this Assurance.
- N. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondents' control.
- O. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- P. 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.
- Q. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- R. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.
- S. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed

claims and is in the public interest.

SIGNATURES

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

Dated at Jeffersonville, Vermont, this 2nd day of June, 2023.

Kelly Sweet
Kelly Sweet

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 2nd day of June, 2023, personally appeared Kelly Sweet, 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,

[Signature] #157.0013073
Notary Public
My Commission Expires: 1/31/25

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


Dated at Jeffersonville, Vermont, this 2nd day of June, 2023.

Linda Sweet
Linda Sweet

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 2nd day of June, 2023, personally appeared Linda Sweet, 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 #157.0013073
My Commission Expires: 11/31/25

Dated at Jeffersonville, Vermont, this 2nd day of June, 2023.

ESTATE OF ROBERT SWEET


Linda Sweet
Authorized Representative

Name: Linda Sweet

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 2nd day of June, 2023, personally appeared Linda Sweet, 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 157.0013073
My Commission Expires: 1/31/25

Dated at Jeffersonville, Vermont, this 2nd day of June, 2023.

SWEET HAVEN FARM, LLC


Linda Sweet
Authorized Representative

Name: Linda Sweet

STATE OF VERMONT
COUNTY OF Lanark, ss.

BE IT REMEMBERED that on the 2nd day of June, 2023, personally appeared Linda Sweet, 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 157.0013073
My Commission Expires: 1/31/25

Dated at Jeffersonville, Vermont, this 2nd day of June, 2023.

G.W. TATRO CONSTRUCTION, INC.

Greg Tatro
Authorized Representative

Name: Greg Tatro

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 2nd day of June, 2023, personally appeared Greg D Tatro, 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,

[Signature]

Notary Public 157.00 3073
My Commission Expires: 1/31/25

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

Dated in Montpelier, Vermont, this 12th day of June, 2023.

NATURAL RESOURCES BOARD

By: Sabina Haskell

Sabina Haskell, Chair

