

CASE NO: 2S0214-9 (Second Remanded)

Town of Chester

P.O. Box 370

Chester, VT 05143

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6111 (Act 250)

The District 2 Environmental Commission hereby issues Land Use Permit Amendment 2S0214-9 (Second Remanded), pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6111. This Permit amendment applies to the lands identified in Book 166, Page 61, of the land records of the Town of Chester, Vermont, as the subject of a deed to the Town of Chester.

This Permit specifically authorizes the extraction of sand and gravel in a five-acre area, with a potential future three-acre expansion, exclusively for Town of Chester municipal use; 150,000 cubic yards total and 20,000 cubic yards per year maximum extraction.

The Project is located on Route 103 in Chester, Vermont.

Jurisdiction attaches because the Project constitutes a material change to a permitted development or subdivision, and thus requires a permit amendment pursuant to Act 250 Rule 34.

The Permittee, and assigns and successors in interest, is obligated by this Permit to complete, operate and maintain the Project as approved by the District 2 Environmental Commission (the "Commission") in accordance with the following conditions.

1. The Project shall be completed, operated and maintained in accordance with: (a) the conditions of this Permit, (b) Findings of Fact and Conclusions of Law 2S0214-9 (Remanded) as amended by the Judgment and Order of Remand of the Environmental Division, dated November 18, 2021, in Case No. 21-ENV-00032 (the "Environmental Division Judgment"), and (c) the Permit application, plans, and exhibits on file with the Commission and other material representations. In the event of any conflict, the terms and conditions of this Permit and the Conclusions in the Findings shall supersede the approved plans and exhibits. In the event of any conflict between this Permit and the Conclusions in the Findings, the terms of this Permit shall prevail.

The approved plans are:

Sheet G1 - "Scope of Work Plan/Project Description," dated 6/29/20, (Exhibit #052);

Sheet C1 - "Pre-Construction/Present Conditions Site Plan," dated 6/1/20, last revised 8/5/20, (Exhibit #52);



Sheet C2 – “Construction/Operational Plan with EPSC Measures,” dated 6/1/20, last revised 8/5/20, (Exhibit #52);

Sheet C3 – “EPSCP Details,” dated 6/29/20, (Exhibit #52);

Sheet C4 – “Stabilization/Reclamation Plan,” dated 6/29/20, (Exhibit #52).

2. All conditions of Land Use Permit 2S0214 and amendments are in full force and effect except as further amended herein.
3. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permit:
 - a. Multi-Sector General Permit 3-9003, Permit #8375-9003, issued on June 14, 2019 by the Stormwater Management Program. Exhibit 007.
4. Any nonmaterial changes to the permit listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
5. Representatives of the State of Vermont shall have access to the property covered by this Permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this Permit.
6. A copy of this Permit and plans shall be on the site at all times throughout the construction process.
7. No change shall be made to the design, operation or use of this Project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
8. No subdivision or further alteration or development on the tract of land approved herein shall be permitted without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
9. Pursuant to 10 V.S.A. § 8005(c), the Commission may at any time require that the Permit holder file an affidavit certifying that the Project is in compliance with the terms of this Permit.
10. The conditions of this Permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and their successors and assigns.
11. The Permittee shall take reasonable precautions at all times to prevent fugitive particulate matter (dust) from becoming airborne from the Project and its operations. Reasonable precautions to be taken shall include, but not be limited to, the following measures or other equally effective measures for Project operations and activities under the Permittee’s control or supervision:

- a. The unpaved traffic and parking areas at the Project shall be periodically maintained by the application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions;
 - b. Any paved traffic and parking areas at the Project shall be periodically maintained as necessary to prevent buildup of material that may generate fugitive dust emissions. Sweeping shall be performed in a manner to minimize fugitive dust air emissions, and may include lightly wetting the paved surface immediately before sweeping, or preferably by the use of a vacuum, regenerative, or high-efficiency sweeper
 - c. All trucks owned, operated or under the control of the Permittee shall be securely covered when operated on public roadways and when loaded with materials that may generate fugitive dust;
 - d. All unenclosed crushing and dry screening operations shall be equipped with a wet dust control (suppression) system with spray nozzles at appropriate locations and shall be operated as necessary to effectively limit visible dust emissions;
 - e. Active storage piles shall be periodically maintained by application of water and/or generally accepted chemical treatments, such as calcium chloride unless otherwise restricted, which are applied at a rate and frequency to effectively limit visible dust emissions. Inactive storage piles and exposed surfaces shall be revegetated as soon as reasonably practicable; and
 - f. The Permittee shall ensure that any dust control measures taken in accordance with the conditions listed above are in compliance with all other state and federal requirements.
12. The Permittee shall not allow the operation of a gravel or stone crushing plant on the premises with a maximum rated capacity (based on the crusher's largest possible setting and maximum throughput, not actual operating rate) of greater than 150 tons per hour, unless said crushing plant has a permit to operate from the District Commission and the Vermont Air Pollution Control Division.
 13. Fueling or maintenance of vehicles and mobile equipment and overnight parking of vehicles shall occur in the area designated for that activity on the Project site plan, Exhibit 052 (site plan C-2) which shall be located outside the immediate area where extraction is occurring. Fueling and maintenance of stationary or semi-stationary equipment in active extraction areas shall be conducted over absorbent pads or with secondary containment.

14. The Permittee shall maintain a three-foot separation zone between extraction activities and the seasonal high groundwater table. If the groundwater table is encountered, the Permittee shall cease operations in that area and contact the Water Resources section of the Drinking Water and Groundwater Protection Division for advice.
15. No hazardous materials or hazardous waste shall be stored onsite.
16. The Permittee shall not blast, drill, or hammer.
17. The maximum annual extraction is 20,000 cubic yards.
18. The maximum extraction for the Project is 150,000 cubic yards.
19. The Project is approved for the following hours of operation:
 - a. Extraction, screening, trucking and general operations: Monday through Friday, 7:00 a.m. through 4:30 p.m., except for emergencies; and
 - b. Crushing: Monday through Friday 8:00AM - 4:30PM with variances for emergencies.
20. Truck trips from the Project are approved as follows:
 - a. April 16 through June 15 and September 1 through December 14:
Approximately 5 round truck trips per day.
 - b. December 15 through April 15:
Trucks may occasionally access the Project during this period in accordance with the Conservation Easement between Permittee and the Department of Fish and Wildlife, (Exhibit 009) and with prior approval of the Department, and in any event, no more than approximately 4 round truck trips per day.
 - c. June 16 through August 31:
 - i. Approximately 10 round truck trips per day.
 - ii. Notwithstanding (c)(i) above, up to 180 round truck trips per day may be allowed on no more than 5 operation days during this period, unless prior permission for additional truck trips has been granted by the District Coordinator or District Commission, as applicable.
 - d. Permittee shall always make its best effort to minimize the impact resulting from the operation of the Project on the Green Mountain Union High School and areas used for outdoor recreation and education, by considering, at a minimum, the Green Mountain Union High School's operating hours and days. Regarding (c)(ii), above,

Permittee shall consult with Green Mountain Union High School prior to any day(s) that it intends to use more than 10 round truck trips per day.

21. The Permittees shall keep a log of all truck trips, listing the date and time of each trip. Accurate copies of the log shall be submitted to the Commission within 3 business days upon request.
22. All onsite equipment shall use radar activated or broadband backup alarms.
23. No extraction, crushing, or screening is allowed December 15th through April 15th each year.
24. Crushing at the Project shall only occur during the months of June, July, August and September on days when the Green Mountain Union High School is not in regular session. Crushing may not occur during any other month. Prior to the commencement of crushing activity at the Project in any calendar year, the Permittee shall consult with Green Mountain Union High School staff to determine which days school will be in regular session. The Town shall not conduct crushing activity at the Project on the days so indicated.
25. The Permittee shall post at the town office and on the town website when crushing will occur at least a week in advance. The Permittee shall directly notify any neighbor who chooses to be notified about crushing at least a week in advance through the communication means of the neighbor's choosing.
26. The Permittees shall keep a log of all truck trips, listing the date and time of each trip. Accurate copies of the log shall be submitted to the Commission within 3 business days upon request.
27. All onsite equipment shall use radar activated or broadband backup alarms.
28. The maximum noise levels from routine operations at the Project site including, but not limited to, crushing, on-site trucking, extraction, screening and general operations, shall be the greater of a) 55 dBA Lmax at adjacent residences and areas of frequent human use and 70dBA Lmax at the Project property line, or b) as specified in Appendix C, "Modeled Receiver Results," of the Noise Assessment prepared by Resource Systems Group, White River Junction, entitled "Town of Chester Municipal Gravel Pit Updated Noise Assessment," dated June 1, 2020, Trial Exhibit R, and in the table found on page 1 of "Summary of Sound Levels Along the GMUHS Trails," Trial Exhibit S, both of which are attached to and incorporated in this Permit.

29. Extraction shall proceed initially in the 4.2-acre shown on Exhibit 052. Extraction in the second 3-acre area shown on the foregoing Plans may proceed only after completion of extraction in the initial 4.2-acre area and upon receipt of an amendment to this Permit. In the event that an Application is filed for the second 3-acre phase, the first 4.2-acre phase shall be reclaimed to the maximum extent feasible before extraction of the second phase proceeds. Nothing in this paragraph shall be interpreted to entitle the Permittee to Department approval for the second 3-acre phase. The Department will assess the proposal for the second 3-acre phase based on the circumstances at that time, in accordance with the Grant of Development Rights, Conservation Restrictions, recorded in Volume 185, page 209, of the Town of Chester land records on July 10, 2018.
30. The width of the road and the boundary of the initial clearing for the 4.2-acre phase shall be clearly marked on the ground prior to commencement. No clearing, site preparation, processing, extraction or other encroachment shall be allowed outside of this boundary without the permission of the District Coordinator or the District Commission, as appropriate.
31. The Permittee shall develop and implement a Habitat and Forest Management Plan consistent with the terms and conditions of Conservation Easement Section 5, which shall provide for the re-establishment of deer wintering area in the old and presently closed 9.3 acre pit on the property as shown on the mylar referenced in the Conservation Easement. Said Plan shall be prepared by a qualified forester and shall be subject to the review and reasonable approval by the Department.
32. Upon completion of all extraction contemplated in this Permit, including potential future extraction from the second 3-acre phase following issuance of an appropriate amendment by the District Commission, the Town shall develop and implement a Plan for the reestablishment of deer wintering area in the initial 4.2-acre extraction area in accordance with a Plan prepared by a qualified forester subject to the review and approval of the Department.
33. Prior to construction of the approved work, the Permittee shall: a) clearly delineate the construction limits with flagging or snow fencing; b) place diversion ditches on the uphill limits of the construction area; and c) place temporary siltation controls on the downhill limits of construction.
34. A copy of the approved erosion prevention and sediment control plan shall be on the site at all times during construction.
35. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the

Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.

36. The Permittee shall maintain an undisturbed, naturally vegetated buffer zone on the Project Tract within 50 feet of any wetlands as depicted on Exhibit #052. The term "undisturbed" means that there shall be no activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to construction, earth-moving activities, storage of materials, tree trimming or canopy removal, tree, shrub or groundcover removal; plowing or disposal of snow, grazing or mowing.
37. All wetland buffers and the ephemeral stream shall be marked with a continuous line of flagging prior to site preparation and construction and shall remain for the duration of the life of this Permit. Additionally, these areas shall be marked with reinforced silt fencing or other physical barrier during construction.
38. The Permittee shall install EPSC measures: silt fence shall be installed on the downhill side of topsoil stockpiles and the downhill side of construction activities. Diversion ditches shall be installed as necessary.
39. Any extracted stumps shall be disposed of on-site above the seasonal high water table and not in any wetland, or at a state-certified stump and inert waste disposal facility, so as to prevent groundwater pollution.
40. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the Land Use Permit Amendment and the Findings of Fact before any written contract of sale is entered into.
41. This Permit Amendment shall expire on **December 15, 2060**, unless that date is extended in writing by the Commission.
42. Act 250 jurisdiction over the Project Tract shall not be lifted until the following requirements have been met:
 - a. The Permittee must submit a report from a Professional Engineer specifically documenting how the required reclamation work has been completed in accordance with (a) the conditions of this Permit, (b) Findings of Fact and Conclusions of Law 2S0214-9(Remanded), and (c) the Permit application, plans, and exhibits, including but not limited to Exhibit 052.
 - b. The District Coordinator must issue a written opinion, determining that all required reclamation has been successfully completed, and formally lifting jurisdiction over the Project Tract.

Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated this 7th day of January 2022.

By 
Thomas J. Fitzgerald, Chair
District 2 Commission

Members participating in this decision: Cheryl Cox and Julia H. Schmitz

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.