

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Francis Heffernan,
Diane Heffernan, and
Heffernan Brothers Aggregate, LLC,
Respondents

VIOLATIONS

*Failure to comply with Permit Condition 2 and 9 of Land Use Permit 9A0126-1,
Failure to comply with Permit Condition 2 and 6 of Land Use Permit 9A0126-2,
and
Failure to comply with Permit Condition 2 of Land Use Permit 9A0126-2A.*

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board and Francis Heffernan, Diane Heffernan, and Heffernan Brothers Aggregate, LLC (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own and operate a gravel pit and quarry (Project Tract) on land accessed off of Hardscrabble Road, and identified in Book 39, Pages 407-408 of the Land Records of the Town of Bristol, Vermont.
2. On September 15, 1983, the District 9 Environmental Commission issued Land Use Permit 9A0126, which authorized the Respondents to expand an existing gravel pit over an 18-acre area for the commercial sale of gravel with conditions.
3. On February 11, 1992, the District 9 Environmental Commission issued Land Use Permit 9 A0126-1, which authorized further expansion of the approved gravel pit with conditions.

4. On June 29, 2000, the District 9 Environmental Commission issued Land Use Permit 9A0126-1, which authorized further expansion of the previously approved gravel pit and the operation of a rock crusher at the site with conditions.
5. On January 8, 2009, the District 9 Environmental Commission issued Land Use Permit 9A0126-2A, which authorized the Respondents to amend Condition 14 of Land Use Permit 9A0126-2 to extend the expiration and operation of the gravel pit to September 15, 2013.
6. The Natural Resources Board Enforcement Officer inspected the Project Tract on March 9, 2016.

Description of Violations:

Exposed Acreage in Excess of Permitted Acreage

7. Condition 2 of Land Use Permit 9A0126-1 states:

The project shall be completed, operated and maintained as set forth in Findings of Fact and Conclusions of Law #9A0126-1, in accordance with the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.

8. Paragraph 38 of the Findings of Fact and Conclusions of Law 9A0126-1 states, in relevant part,

The proposed expansion area is a gravel deposit and the existing gravel pit is a sand deposit. Both areas will be operating simultaneously with a maximum of 5 exposed acres in each area at any one time.

9. As of approximately May 13, 2015, Respondents had exposed approximately 13 acres for mineral extraction, and therefore failed to operate the project as set forth in the Findings of Fact and Conclusions of Law, in violation of Condition 2.

Failure to Properly Establish Wetland Buffer Zone

10. Condition 9 of Land Use Permit 9A0126-1 states, in relevant part:

The 50' wetland buffer zone shown on Exhibit #15A shall be clearly flagged near areas of extraction work and shall remain flagged until such areas are reclaimed. A berm shall be constructed around the working area of the gravel

pit. The berm shall be constructed outside the wetland buffer zone. It shall be seeded and mulched immediately after construction and maintained until the exposed area has been reclaimed and stabilized with vegetation.

11. Respondents failed to flag a 50-foot wetland buffer zone as required by condition 9. Moreover, Respondents created a berm near the wetland buffer zone, but that berm did not extend completely around the working area of the pit as required by condition 9. Furthermore, Respondents failed to seed and mulch the berm as required by condition 9.

Exceeding Extraction Boundaries and Processing Waste Materials Without Written Authorization

12. Condition 2 of Land Use Permit 9A0126-2 states:

The project shall be completed, operated and maintained as set forth in accordance with the plans and exhibits on file with the District Environmental Commission, and in accordance with the conditions of this permit. No material or substantial changes shall be made in the project without the written approval of the District Environmental Commission.

13. Respondents exceeded the extraction boundaries delineated on the Grading Plan on file with the District Environmental Commission. Furthermore, Respondents accepted broken concrete and waste asphalt at the Project Tract for the purpose of crushing and recycling those materials into aggregate, without the written approval of the District Commission. These activities represent material changes to the permitted project, which violate condition 2.

Failure to Submit Annual Reclamation Reports and Commencement of Extraction from Phase B before Reclamation of Phase A is Complete

14. Condition 6 of Land Use Permit 9A0126-2 states, in relevant part:

The Permittee shall adhere to the revised reclamation plan limits as outlined in Exhibits #20 and #21. Extraction of material in Phase B shall not occur until reclamation of Phase A is complete and certified by the District Coordinator. The Permittee shall file an annual reclamation report each year no later than December 1st. The reclamation report shall depict the specific area reclaimed each year.

15. As of March 30, 2016, the District Commission had received only a single reclamation report, and this report was submitted as part of the Respondents'

application for a permit amendment in 2008. Furthermore, Respondents commenced extraction of material in Phase B before the reclamation of Phase A was completed and certified by the District Coordinator. Respondents have violated condition 6 for the above reasons.

Operation Beyond Permit Expiration Date and Failure to Complete Reclamation.

16. Condition 2 of Land Use Permit 9A0126-2A states:

Condition 14 Land Use Permit 9A0126-2 shall be amended to read as follows:

This Permit shall expire on September 15, 2013 and all reclamation shall be complete. A professional engineer shall certify that reclamation is complete and in accordance with the terms and conditions of the plans.

17. Respondents failed to complete all reclamation by the permit expiration date and continued to expand the pit and extract material from the Project Tract through the end of 2015, in violation of Condition 2.

Recent Actions:

18. During the spring and summer of 2016, in response to a Notice of Alleged Violation from the Board, the Respondents took actions to bring their project closer to compliance with the expired Act 250 Land Use Permit.
19. On April 21, 2016, the Respondents reported that they had reclaimed additional land to bring the Project Tract under the 10-acre open land limitation.
20. In addition, the Respondents constructed additional vegetated berms to better protect wetlands onsite, and installed cedar posts to demarcate a 50-foot wetland buffer zone. The Respondents also took steps to remove piles of wood, recycling materials, and some construction debris from the Project Tract.
21. On August 1, 2016, the District 9 Environmental Commission issued Land Use Permit Amendment 9A0126-4 to the Respondents, authorizing the Permittees to complete reclamation of the earth extraction operation and to extend the expiration and final operation date of the earth extraction operation to October 15, 2024.

AGREEMENT

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

- A. Respondent shall comply with Permit series 9A0126.
- B. No later than **90 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 **\$6,675.00** 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 **\$966.88**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 - 3. the amount of **\$10.00** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Bristol land records, by check made payable to the "Town of Bristol, Vermont."
- C. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
- D. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:

Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201
- E. Respondent shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- F. 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.

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- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- H. 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.
- I. 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.
- J. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond Respondents' control.
- K. 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.
- L. 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.
- M. 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.
- N. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

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

Dated at Montpelier, Vermont, this 01 day of June, 2017.


HEFFERNAN BROTHERS AGGREGATE, LLC

By 
JOHN HEFFERNAN,
Individual and as the Duly Authorized
Agent

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 1st day of June, 2017,
personally appeared John Heffernan, individually and as the duly authorized agent of
Heffernan Brothers Aggregate, LLC, 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 his free act and deed and the free act and deed of Heffernan Brothers
Aggregate, LLC, and that he has the authority to contract on behalf of Heffernan
Brothers Aggregate, LLC, and that he has been duly authorized to enter into the
foregoing Assurance on behalf of that entity.

Before me,

 2.10.19

Notary Public

My Commission Expires:

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Dated at Montpelier, Vermont, this 1 day of June, 2017.

Francis Heffernan
FRANCIS HEFFERNAN

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 1 day of June, 2017,
personally appeared Francis Heffernan, 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 his free act and deed.

Before me,

[Signature] 2.10.19

Notary Public

My Commission Expires:

Dated at Montpelier, Vermont, this 1 day of June, 2017.

Diane Heffernan
DIANE HEFFERNAN

STATE OF VERMONT
COUNTY OF Washington, ss.

BE IT REMEMBERED that on the 1 day of June, 2017,
personally appeared Diane Heffernan, signer and sealer of the foregoing instrument,
who is known to me or who satisfactorily established her identity to me and
acknowledged the same to be her free act and deed.

Before me,

[Signature] 2.10.19

Notary Public

My Commission Expires:

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Dated in Montpelier, Vermont, this _____ day of _____, 2017.

Natural Resources Board

By:

Diane B. Snelling, Chair