

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

BIG ROCK GRAVEL, LLC,
CULLEN HOWE,
SETH HOWE, and
A. SCOTT HOWE,
Respondents

Docket No. 68-5-10 Vtec.

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

A. SCOTT HOWE, and
JENNIFER C. HOWE
Respondents

Docket No. 89-5-10 Vtec.

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

v.

A.S.H. INC., and
A. SCOTT HOWE
Respondents

Docket No. 82-5-10 Vtec.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Big Rock Gravel, LLC, A.S.H., Inc., A. Scott Howe, Jennifer Howe, Cullen Howe and Seth Howe (collectively "Respondents") hereby enter into this Assurance of Discontinuance (Assurance). This Assurance represents a global settlement of the three Administrative Orders on appeal in the matters captioned above. The parties stipulate and agree as follows:

VIOLATIONS

- A. *Land Use Panel v. Big Rock Gravel, LLC, Cullen Howe, Seth Howe, and A. Scott Howe*; Docket No. 68-5-10 Vtec.
- I. Commencing development without an Act 250 Permit, in violation of 10 V.S.A. § 6081(a).
 - II. Failure to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit for discharges associated with industrial activity before operating and discharging from a source of industrial stormwater in violation of Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263.
 - III. Failure to obtain an Air Pollution Control Permit as required by 10 V.S.A § 556 and Vermont Air Pollution Control Regulations § 5-501.
- B. *Land Use Panel v. A. Scott Howe and Jennifer Howe*; Docket No. 89-5-10 Vtec.
- I. Failure to maintain sand pit floor at a negative grade and failure to maintain sediment ponds in violation of Land Use Permit Amendment #1R0809-1, Condition No. 10.
 - II. Failure to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit for discharges associated with industrial activity before operating and discharging from a source of industrial stormwater in violation of Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263.
- C. *Land Use Panel v. A.S.H. Inc. and A. Scott Howe*; Docket No. 82-5-10 Vtec.
- I. Stockpiling, processing and/or selling extracted earth materials without approval in violation of Condition No. 2 of Land Use Permit Amendment #2W0410-3 and Act 250 Rule 34(A).

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- A. *Land Use Panel v. Big Rock Gravel, LLC, Cullen Howe, Seth Howe, and A. Scott Howe*; Docket No. 68-5-10 Vtec.

1. Respondent Big Rock Gravel, LLC owns a sand and gravel pit on a 10± acre tract of land on Rowe Road in South Londonderry, Vermont (the Project tract).
2. Respondent A. Scott Howe purchased the Project tract on December 14, 2000.
3. Respondent A. Scott Howe conveyed the Project tract to his sons, Respondents Cullen Howe and Seth Howe, on or about February 6, 2007.
4. On or about March 6, 2007, Respondents Cullen Howe and Seth Howe conveyed the Project tract to Respondent Big Rock Gravel, LLC. Big Rock Gravel, LLC is managed by Respondents Cullen and Seth Howe.
5. Londonderry has not adopted permanent subdivision bylaws.
6. Respondents have operated a gravel pit on the Project tract since 2001 and continue to extract material from the Project tract for a commercial purpose.
7. Improvements have been constructed on the project tract to facilitate the extraction of material.
8. Respondents Big Rock Gravel, LLC, A. Scott Howe, Cullen Howe and Seth Howe violated 10 V.S.A. § 6081(a) by commencing development without first obtaining an Act 250 Land Use Permit.
9. Respondent Big Rock Gravel, LLC has operated the gravel pit with the intent to discharge stormwater associated with industrial activity to waters of the State, and such discharge has in fact resulted.
10. Respondent Big Rock Gravel, LLC operated the gravel pit without a stormwater permit until receiving coverage under the Multi-Sector General Permit on April 29, 2009.
11. Respondent Big Rock Gravel, LLC violated Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263 by operating and discharging from a source of industrial stormwater without first obtaining a NPDES stormwater permit for discharges associated with industrial activity.
12. Respondent Big Rock Gravel, LLC operated, or allowed operation of, a stone crusher with a maximum rated capacity greater than one hundred and fifty tons per hour on the project tract.
13. Respondent Big Rock Gravel, LLC operated, or allowed operation of, said crusher without an Air Pollution Control Permit until obtaining an Air Pollution Control Permit on March 16, 2009.

14. Respondent Big Rock Gravel, LLC violated 10 V.S.A. § 556 and Vermont Pollution Control Regulations § 5-501 by operating, or allowing operation of, an air contamination source without an Air Pollution Control Permit.

B. *Land Use Panel v. A. Scott Howe and Jennifer Howe*; Docket No. 89-5-10 Vtec.

1. On November 23, 1999, the District 1 Environmental Commission issued Land Use Permit Amendment #1R0809-1 (the Permit) to William and Shirley Bishop, which specifically authorized the extraction of "gravel and sand at a rate not to exceed a combined 10,000 cubic yards per year for 20 years."
2. The Permit applies to a parcel of land located on the River Road in West Haven identified in Book 26, Pages 41 - 42, of the land records of the Town of West Haven, Vermont.
3. On June 30, 2008, the Bishops conveyed to A. Scott Howe and Jennifer C. Howe a 20± acre portion of the parcel subject to the Permit. (the Project tract)
4. The Project tract includes two separate extraction areas referred to as the so-called "sand pit" and the "gravel pit."
5. A. Scott Howe operates the sand and gravel pits on the Project tract.
6. Condition No. 10 of the Permit states:

"The floor of the sand pit area shall be maintained with a negative grade such that stormwater does not drain out of the floor area and carry sediment to the river. The Permittees shall regularly clean out the two silt ponds at the base of the haul road and ensure that stormwater is directed to these silt ponds for detention prior to discharge to the River Road culvert. The haul road shall be routinely graded to ensure runoff is directed to these silt ponds."
7. On or about August 12, 2009, District Coordinator Warren Foster conducted a site visit to the Project tract. During that site visit, Coordinator Foster observed that the floor of the sand pit was not maintained with a negative grade. In fact, the sand pit floor was maintained at a positive grade which would direct stormwater out of the pit and into River Road.
8. On or about October 16, 2009, the Panel's Permit Compliance Officer (PCO) John Wakefield conducted a site visit to the Project tract. During that site visit, PCO Wakefield observed that the floor of the sand pit was not maintained with a negative grade. In fact, the sand pit floor was maintained at a positive grade which would direct stormwater out of the pit and into River Road.

9. PCO Wakefield observed that both silt ponds were inundated with silt and had not been maintained.
10. On or about March 29, 2010, PCO Wakefield conducted a site visit to the Project tract. During that site visit, PCO Wakefield observed that both silt ponds were inundated with silt and had not been maintained.
11. During that March 29, 2010 site visit, PCO Wakefield also observed that someone had regraded the sand pit floor to give it a negative grade.
12. Since PCO Wakefield's site visit, Respondent A. Scott Howe has cleared the silt ponds and restored them to good working order.
13. Respondents A. Scott Howe and Jennifer Howe violated Condition No. 10 of Land Use Permit Amendment #1R0809-1 by failing to maintain the proper floor grade in the so-called sand pit, and by failing to maintain the silt ponds associated with the project.
14. Respondents A. Scott Howe and Jennifer Howe have operated the gravel pit with the intent to discharge stormwater associated with industrial activity to waters of the State, and such discharge has in fact resulted.
15. On or about March 29, 2010, PCO Wakefield observed stormwater runoff leaving the Project tract and discharging into the Hubbardton River.
16. Respondents A. Scott Howe and Jennifer Howe violated Section 402(p) of the federal Clean Water Act, 33 U.S.C. § 1342(p), and 10 V.S.A. §§ 1259 and 1263 by operating and discharging from a source of industrial stormwater without first obtaining a NPDES stormwater permit for discharges associated with industrial activity.

C. *Land Use Panel v. A.S.H. Inc. and A. Scott Howe*; Docket No. 82-5-10 Vtec.

1. On March 30, 2005, the District 2 Environmental Commission issued Land Use Permit Amendment #2W0410-3 to Jamaica Cottage Shop, Inc., which specifically authorized the subdivision of an approximately 40.7± acre parcel located at 170 Winhall Station Road in South Londonderry, Vermont into four separate lots, including "Lot 2 with 7.41 acres and existing sawmill and garage." These lands are described in Book 61, Pages 50-54 of the Town of South Londonderry land records.
2. Respondent A. Scott Howe subsequently purchased Lot 2 (the Project tract).
3. Prior to the subdivision of the 40.7± acre tract, the property, including the Project tract, was used as a sawmill.

4. Condition No. 2 of Land Use Permit Amendment #2W0410-3 states: "No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the District Environmental Commission, whichever is appropriate under the Environmental Board Rules."
5. As of September 5, 2008, Respondents A.S.H. Inc. and A. Scott Howe were engaged in the stockpiling, processing and sale of extracted earth materials on the Project tract.
6. The stockpiling, processing and sale of extracted earth materials on the Project tract is a material change from the previously permitted project.
7. Respondents A.S.H. Inc. and A. Scott Howe failed to obtain written approval from the District 2 Coordinator or the District 2 Environmental Commission for the change in use of the project.
8. Respondents A.S.H. Inc. and A. Scott Howe failed to obtain an Act 250 Land Use Permit Amendment for this material change to Land Use Permit Amendment #2W0410-3.
9. Respondents A.S.H. Inc. and A. Scott Howe violated Condition No. 2 of Land Use Permit Amendment #2W0410-3 and Act 250 Rule 34(A) by stockpiling, processing and/or selling extracted earth materials on the Project tract without first obtaining a Land Use Permit Amendment for those activities.

AGREEMENT

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

- A. This Assurance supersedes the Land Use Panel's Administrative Orders in the above captioned matters. Upon entry of this Assurance as an Order, the Administrative Orders shall be dismissed.
- B. Respondents shall comply with all related Act 250 and Department of Environmental Conservation permits.
- C. Respondents shall pay to the State of Vermont the following:
 1. pursuant to 10 V.S.A. §8010(e)(2), the amount of **Six Hundred and Twenty Dollars (\$620.00)**, to reimburse the Natural Resources Board for the costs of this enforcement action, and for the purpose of paying the recording fees for the filing of notices of this Assurance in the Londonderry and West Haven land records; and

Respondents shall make said payment by good check made payable to the "Vermont Natural Resources Board" and shall forward it 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

2. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Five Thousand Six Hundred and Thirty Dollars (\$5,630.00)** for the violations noted herein.

Respondents shall make these payments by good check made payable to the "Treasurer, State of Vermont" and shall forward them 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

D. All payments shall be made in accordance with the following schedule:

On or before January 18, 2011	\$620.00
(to the "VT Natural Resources Board" for costs)	
On or before January 18, 2011	\$430.00
(to the "Treasurer, State of Vermont")	
On or before February 18, 2011	\$1,040.00
On or before March 18, 2011	\$1,040.00
On or before April 18, 2011	\$1,040.00
On or before May 18, 2011	\$1,040.00
On or before June 18, 2011	\$1,040.00

Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty and enforcement costs then remaining to become immediately due and owing. Late payments may be subject to an annual interest rate of 12%.

E. The Respondents shall also contribute **\$18,750.00** worth of Materials (type and quantity specified below) to fund three Supplemental Environmental Projects (SEP) which will enhance the natural resources of the area affected by the violations, and shall deliver said Materials to the SEP Recipients (also identified below) pursuant to 10 VSA § 8007(B)(2) as follows:

Project #1:

Materials: Fifty (50) cubic yards of screened sand at \$11.20 per

cubic yard (delivered) with an agreed fair market value of Five Hundred and Sixty Dollars (\$560.00)

Agreed Value of Materials: **\$560.00**

Delivery: By Respondent to the Village of Poultney Sewer Plant site at 685 York Street, Poultney, VT where the material is to be stockpiled as per the direction of the SEP Recipient or its agent.

SEP: The Village of Poultney will use the material in a project installing stormwater treatment measures to reduce stormwater runoff that would otherwise enter the Lake Champlain watershed. (See NRB-A: Poultney SEP Proposal)

SEP Recipient: Village of Poultney.

Timing: Respondent shall deliver the Materials no later than 180 consecutive calendar days following the date this Assurance is entered as an Order by the Superior Court, Environmental Division

Project #2:

Materials: Five Hundred and Fifty (550) cubic yards of bank run gravel at \$12.26 per cubic yard (delivered) with an agreed fair market value of Six Thousand Seven Hundred and Forty Dollars (\$6,740.00)

Agreed Value of Materials: **\$6,740.00**

Delivery: By Respondent to Charron Farms at 590 Main Road, West Haven, VT where the material is to be delivered for project work or stockpiled as per the direction of the SEP Recipient or its agent.

SEP: Charron Farms will be constructing an animal walkway for the exclusion of their beef herd from Coggman Creek, a tributary to the Lower Poultney River. This project is intended to benefit water quality in the Lake Champlain watershed. (See NRB-B: Charron Farms SEP Proposal)

SEP Recipient: Charron Farms, Inc.

Timing: Respondent shall deliver the Materials no later than 180 consecutive calendar days following the date this Assurance is entered as an Order by the Superior Court, Environmental Division

Project #3:

Materials: Six Hundred and Seventy-Seven (677) cubic yards of bank run gravel at \$16.91 per cubic yard (delivered) with an agreed fair market value of Eleven Thousand Four Hundred and Fifty Dollars (\$11,450.00)

Agreed Value of Materials: **\$11,450.00**

Delivery: By Respondent to Pond Hill Ranch at farms in Castleton and Poultney, VT where the material is to be delivered for project work or stockpiled as per the direction of the SEP Recipient or its agent.

SEP: Pond Hill Ranch will be constructing animal walkways, and stream crossings in their barnyards to help exclude livestock from tributaries to the Poultney River. This project is intended to benefit water quality in the Lake Champlain watershed. (See NRB-C: Pond Hill Ranch SEP Proposal)

SEP Recipient: Pond Hill Ranch

Timing: Respondent shall deliver the Materials no later than 180 consecutive calendar days following the date this Assurance is entered as an Order by the Superior Court, Environmental Division

F. 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 material allocated for the SEP(s) has not been delivered by the Respondents, the value of that material (as defined in the agreement) shall be converted to a civil penalty and shall be immediately due and payable to the State of Vermont. The Respondents shall then make said payment by good check made payable to the "Treasurer, State of Vermont," which 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

- G. Any payment by the Respondents, monetary or otherwise, pursuant to this Assurance is made to resolve the violation set forth herein 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.
- H. In the event Respondents publish by any means, directly or indirectly, the identity or result of any SEP for which Respondents have provided the materials, the Respondents 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 Vermont Natural Resources Board.
- I. 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 violation set forth herein above.

- J. 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.
- K. 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.
- L. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for any 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.
- M. 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.
- N. 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.
- O. 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 Windsor Vermont, this 2 day of December 2010.

BIG ROCK GRAVEL, LLC

By: _____

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 2 day of December, 2010, personally appeared Cullen Howe as the duly authorized agent of BIG ROCK GRAVEL, LLC, signer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be the free act and deed of BIG ROCK GRAVEL, LLC and that he/she has the authority to contract on behalf of BIG ROCK GRAVEL, LLC and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,
Carol Y Faas
Notary Public
My Commission Expires: 2/10/11

**

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

Dated at Windsor Vermont, this 28 day of December 2010.

A.S.H., INC.
By: [Signature]

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 28 day of December, 2010, personally appeared Scott Howe as the duly authorized agent of A.S.H., INC., signer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be the free act and deed of A.S.H., INC. and that he/she has the authority to contract on behalf of A.S.H., INC. and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.


Before me,
Carol Y Faas

Notary Public
My Commission Expires: 2/10/11

**

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

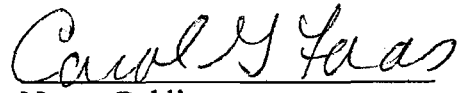
Dated at Londonbury, Vermont, this 28 day of December, 2010.


A/ SCOTT HOWE

STATE OF VERMONT
COUNTY OF Windsorham ss.

BE IT REMEMBERED that on the 28 day of December, 2010, personally appeared A. SCOTT HOWE, signer 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,


Notary Public
My Commission Expires: 2/10/11

**

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

Dated at Londonbury Vermont, this 28 day of December, 2010.


CULLEN HOWE

STATE OF VERMONT
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 2 day of December, 2010, personally appeared CULLEN HOWE, signer 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,

Carol Y Faas
Notary Public
My Commission Expires: 2/10/11

**

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

Dated at Solonduberry, Vermont, this 4 day of Jan, 2010.

Seth Howe
SETH HOWE

STATE OF VERMONT
COUNTY OF Windham, ss.

BE IT REMEMBERED that on the 4th day of January, 2010, personally appeared SETH HOWE, signer 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,

Valerie Perrin
Notary Public
My Commission Expires: 2/10/11

**

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

Dated at Londonberry Vermont, this 29 day of December 2010.

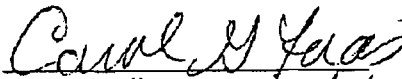


JENNIFER HOWE

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 29 day of December, 2010, personally appeared JENNIFER HOWE, signer 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.

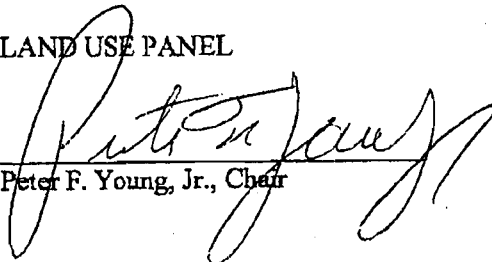
Before me,


Notary Public 2/10/11
My Commission Expires: _____

**

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

Dated in Montpelier, Vermont, this 30th day of December, 2010.

LAND USE PANEL
By: 

Peter F. Young, Jr., Chair

ATTACHMENTS

NRB-A

Village of Poultney SEP proposal

Project Description of the work to be completed:

Project location: between 154 East Main St. (Poultney Jr. / Sr. High School) and 222 East Main Street, Poultney Vermont.

The Village of Poultney proposes to pave a gravel parking lot located on East Main Street next to the Poultney Jr. / Sr. High school. As a result, flowing water can pick up and carry sediment and pollutants which can compromise water quality. The Village must address stormwater run-off issues in an environmentally safe manner.

To address this issue, the Village of Poultney proposes to install bio-retention rain garden to treat runoff from the impervious parking lot surface. This low impact development project will help increase infiltration, filtration and storage while reducing pollutants from reaching the Poultney River.

Base material needed: After removing 8 - 10 inches of soil, creating berms and forming the shape of a rain garden, the first layer of materials, **2 - 4 inches of sand** should be applied to the level bottom of the earth from the bottom to the top. **The quantity of sand needed for this project is 50 cubic yards.**

Other materials will be needed for this project but are not part of this agreement.

Sand will be delivered and stored on the property owned by the Village of Poultney located at 685 York Street in Poultney Vermont. The property is not located in the 100 year Flood Zone.

Jonas Rosenthal, the Village and Town Manager will be the responsible person to enter into a contract with the State of Vermont. Contact:

Village of Poultney
9 Main Street, Suite #1
Poultney, VT 05764
Phone: 802-287-9751

SEP Project Overview
Gravel and Crushed Rock Agricultural Walkways
Lower Poultney River Basin
December 2010

Background:

The lower Poultney River is designated a Vermont Outstanding Resource Water because of its exceptional natural, cultural, and scenic values. Upper reaches of the Poultney and its major tributary (the Castleton River) flow clean and fast out of the Taconic hills in southwestern (Rutland County) Vermont, and support a typical cold water fishery. The lower Poultney in northern Washington County, New York, and western Rutland County, Vermont, supports a warm water fishery as it runs muddy (due to the predominance of clay-rich soils), warm, and slow moving, finally forming a large freshwater estuary with the waters of Lake Champlain in East Bay. Forty-three species of fish and 12 species of freshwater mussels are documented in the Poultney including the eastern sand darter, threatened in both New York and Vermont, and the channel darter, black sandshell, giant floater, fragile papershell, pink heelsplitter, pocketbook, and fluted-shell mussels, threatened or endangered in Vermont. The wetland corridor alongside the river is also an outstanding natural resource. On the Poultney River floodplain, wetlands and floodplain forests form one of the most extensive and least developed riparian corridors to be found on a warm-water river in Vermont (Field et al, 2001).

The lower Poultney River and its tributaries are susceptible to pollutants entering the river upstream, and from land conversion. The Southern Lake Champlain Basin is currently plagued by elevated phosphorus levels, and segments of the Poultney River have been listed as "impaired" due to nutrient enrichment and pathogens from erosion and agricultural runoff (VANR, 2005). And, while forests have been returning to uplands over the past half century, agricultural use remains high along mid-sections of the Poultney and Hubbardton Rivers.

Of the 235,760 acres that make up the Vermont portion of the Poultney-Mettowee watershed, 16% or 38,533 acres, is in agricultural uses. This is the second largest land use type in the watershed but is far below the 69% of the land that is forested. Agriculture also has an impact on the environment in both positive and negative ways. It is estimated that almost 60 miles of rivers and 80 acres of lake water are adversely affected by agricultural runoff. * Excess nutrients, pathogens and sediments all can leave the farm when erosion control methods fail or heavy rains and floods inundate fields. In the recent past farmers were supported through government programs for increasing production and land base, which encouraged removing vegetation along rivers to access, more land. A greater awareness of the impact of farming on water quality and a better understanding of the long-term impacts of stream channel alterations has changed the focus of these programs. However many of the practices are still in place. Streambank destabilization on agricultural land is often associated with past cropping practices that removed riparian vegetation and left the banks susceptible to erosion leading to sedimentation.

10 V.S.A. § 1424A Outstanding Resource Waters

In 1991, the Lower Poultney River Committee successfully petitioned the Water Resources Board to designate the Lower Poultney River as an Outstanding Resource Water due to its exceptional natural, cultural and scenic values. Based on this designation, the VT Agency of Natural resources developed a management plan for the lower Poultney River that established the following goal: "For that portion of the Lower Poultney River within Vermont borders, the State will seek to manage certain activities affecting the water quality, flows, course, current, and cross-section of the Lower Poultney River to preserve and enhance the exceptional natural, cultural, scenic, and recreational values of the river and river corridor (refer to uses and values included in Section III of the *VANR Management Plan for The Lower Poultney River, A Vermont Outstanding Resource*)"

Environmental Benefits Accrued from Local Use of Material

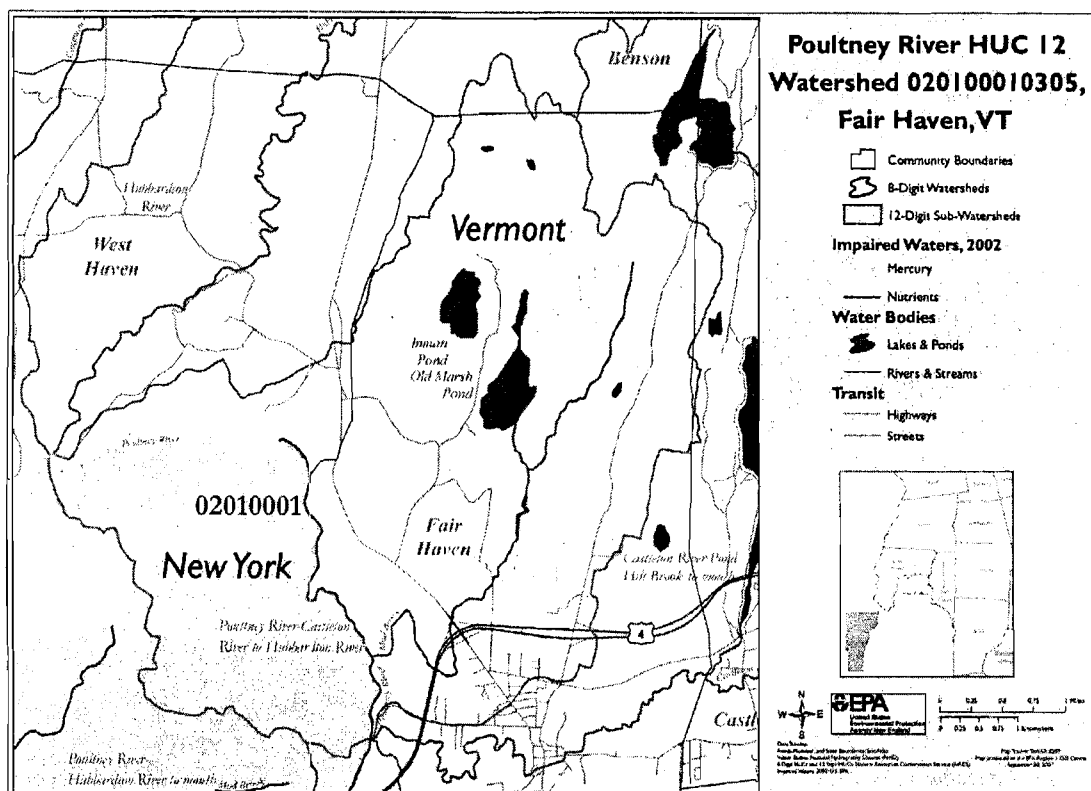
Poultney Mettowee Basin Plan (2005)

According to the Poultney Mettowee Basin Plan (VANR, 2005), the first objective under the goal to reduce nonpoint source pollution is to:

Reduce nutrients and sediments that enter surface waters from agricultural land uses. A strategy identified here is to "encourage agricultural practices such as nutrient management planning, conservation tillage, fencing, riparian area protection, and the development of alternative livestock watering supply" (page 40).

In addition, "fencing livestock out of surface waters should greatly curtail the amount of pathogens entering surface waters. Livestock should be pastured and excluded as far from surface waters as possible, and should use bridges to cross tributaries wherever possible" (page 49).

Until the 2008 EPA 303(d) listing cycle (of impaired waters in the state) the lower mainstem of the Poultney River (VT02-01 - 2.8 miles) was identified in the Vermont Section 303(d) of Impaired Waters List indicating that agriculture was a moderate source of impairment from Carvers Falls to the confluence with Castleton River possibly associated nutrient enrichment and streambank erosion from agricultural runoff. Also, above & below the mouth of the Castleton River (1.0 miles), agriculture was a moderate source of impairment 0.5 miles above and below the confluence with the Castleton River possibly associated with nutrient enrichment from agricultural runoff (page 66). However, simple because the lower Poultney River has been de-listed does not indicate that agricultural runoff is no longer a concern or that all agricultural resource concerns have been addressed at this point.



Poultney River Geomorphic Assessment and Stream Corridor Plan (2006)

According to the River Corridor Plan developed for the Poultney River (PMNRCD, 2006), increased sediment transport capacity of the river results in increased erosion and increased sediment transport and subsequent deposition in downstream reaches (in the vicinity of the confluence with both the Hubbardton River and Cogman Creek) and ultimately into Lake Champlain.

Sediment deposition occurs in areas where it would be expected; areas with shallow slopes, downstream of confined or heavily straightened sections, or at constrictions, bends, and debris jams. Addressing excessive sediment sources in the watershed and protecting these attenuation areas are key tasks to reduce sediment and nutrient loading of Lake Champlain.

Habitat conditions also appeared to suffer as a result of human activities. Reduction of riparian vegetation and unstable banks were key parameters affected. Stemming from these effects was increased fine sediments, embedded substrates, and reduced niche spaces for food and cover. Reducing nonpoint source pollutants from land erosion is one key strategy in addressing these issues.

Basin 2 Poultney Mettawee Watersheds Water Quality & Aquatic Habitat Assessment Report (1999)

Coggman Creek is identified in this assessment report as "threatened" due to turbid conditions, thermal modifications, nutrients and pathogens due to loss of riparian vegetation, agricultural land uses (pasture, livestock instream) and streambank erosion (VANR, 1999).

THREATENED MILES

Coggman Creek: 4.5 - beginning at the upstream end of the wetland (which is the lowest stretch of the creek) upstream - threats to aquatic biota/habitat, aesthetics, and contact recreation (swimming) due to turbid conditions, thermal modifications, nutrients and pathogens due to loss of riparian vegetation, agricultural land uses (pasture, livestock instream) and streambank erosion. c(900,1100,1400,1700,2500) s(1000,7600,7700)

Proposed Projects

Project Description:

Location: Charron Farm, Inc., West Haven, VT

Contact: David Charron
5090 Main Rd.
West Haven, VT 05743
Phone: 802-265-2080

Purpose: Livestock exclusion from Coggman Creek

Practice: Animal trail & walkway, access control (including several livestock watering holes); one stream crossing for a tributary to Coggman Creek

Authorization: VDFW (Chet McKenzie, Fisheries Biologist) has been to the site and has given approval for the stream crossing.

Details: Farmer Dave Charron is giving up 42 acres along Coggman Creek and the beef herd has been fenced out during the summer of 2010. USDA-NRCS is supplying 970' of animal trail and walkway under the EQIP program but additional gravel would help as the overall cost is more than what EQIP is cost-sharing on.

Amount of Material: **550 cubic yards of bank run gravel.** This site is in West Haven for exclusion of beef herd from Coggman Creek, a tributary to the Lower Poultney River. Additional gravel/ material could be used on one stream crossing and three controlled animal-watering holes.

References

Field, John, Jim Graves, and Kathy Doyle, July 2001. *A Wetland and Riparian Habitat Assessment of the Poultney River Watershed in NY and VT, Final Report.* The Nature Conservancy, Southern Lake Champlain Valley Office, NY and VT.

Poultney Mettowee Natural Resource Conservation District, December 2006. *Poultney River Geomorphic Assessment and Stream Corridor Plan, Poultney, VT.*

Vermont Department of Environmental Conservation, March 2005. *Poultney Mettowee River Basin Plan, Water Quality Management Plan*. Vermont Agency of Natural Resources, Waterbury, VT.

Vermont Department of Environmental Conservation, 1999. *Poultney Mettowee Watersheds Water Quality & Aquatic Habitat Assessment Report*. Vermont Agency of Natural Resources, Waterbury, VT.

NRB-C

Pond Hill Ranch SEP proposal

Project Description of the work to be completed:

Project location: Pond Hill Ranch, Poultney Vermont. (Multiple farms)

Contact: Harry O'Rourke
1683 Pond Hill Ranch Rd.
Castleton, VT 05735
Phone: 802-353-6636

Pond Hill Ranch (PHR) is comprised of several different farms and properties. PHR intends to construct measures on several of their farms that will help reduce non-point source pollution and improve water quality. Such projects may include:

Pond Hill Dairy Farm (Pond Hill Road) – animal walkway and exclusion; stream crossing (PHR would supply the culvert); barnyard - farm vehicle roadway improvement

Pond Hill Ranch (Pond Hill Ranch RD) - access road improvement (would also serve as animal walkway) – PHR would supply culverts where needed.

Brown Farm (Brown Farm RD) – Stream crossing/ livestock exclusion (PHR would supply the culvert); barnyard - farm vehicle roadway improvement

The PHR properties in question are located within the Poultney River watershed.

Material needed: Bank Run Gravel

Amount of material approved: 677 cubic yards

Delivery of material may need to be undertaken at the time of the project, however PHR may request the stockpiling of material at its property.