

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner

v.

**ASSURANCE OF
DISCONTINUANCE**

North East Materials Group, LLC
Respondent

VIOLATIONS: Commencement of development without a 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 North East Materials Group, LLC (Respondent), hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent operates a commercial stone crushing operation which is exempt from the permitting requirements of 10 V.S.A. Ch 151 within the existing Rock of Ages stone quarry located on Graniteville Rd. in the Town of Barre, Vermont,
2. On April 11, 2012, Respondent filed an Act 250 application to establish and operate a hot mix asphalt plant (the Plant) on approximately 3.46 acres in the interior of the Rock of Ages quarry (the Property). Plant components were brought to the Property, but not assembled, with the permission of the District 5 Act 250 Commission.
3. On June 21 and 22, 2012, Respondent hired a logger to remove two truck loads of trees in order to gain access to crushable stone piles adjacent to the Property. Some of those trees were located in areas of the Property to be cleared in connection with construction of the Plant.
4. As of the date of the tree removal, an Act 250 permit had not yet issued for construction of the Plant.

5. Respondents have commenced construction of improvements for a commercial or industrial purpose. 10 V.S.A. §6001(3)(A)(ii).
6. Respondents have not yet received an Act 250 Land Use Permit for such construction.
7. Respondents have commenced development without a Land Use Permit in violation of 10 V.S.A. §6081(a).

AGREEMENT

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

- A. Respondent shall continue to diligently pursue an Act 250 Land Use Permit for the Plant.
- B. For purposes of this Assurance, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 5 Environmental Commission, or 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, including those caused by the Commission or ANR or by other parties to its applications.
- C. If said permit application is denied by the Commission and said denial becomes final, then Respondents shall remove the Plant components from the Property within 120 days of the final permit denial.
- D. Following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
 1. A civil penalty, pursuant to 10 V.S.A. Ch. 201, in the amount of **Four Thousand Five Hundred (\$4,500.00) (U.S.)**, for the violation noted herein, by good check made payable to the "Treasurer, State of Vermont".
 - a) Respondent shall pay \$1,500.00 no later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.

- b) Respondent shall pay \$1,500.00 no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - c) Respondent shall pay \$1,500.00 no later than 90 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - d) Failure to make a payment in accordance with this schedule shall cause the entire amount of the penalty to become immediately due and owing.
 - e) Any late payment shall be subject to an annual interest rate of 12%.
2. Within **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division the amount of **Fifty Three Dollars and Seventy Four Cents (\$53.74) (U.S.)**, pursuant to 10 V.S.A. §8010(e)(2), to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont Natural Resources Board".
3. Within **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division the amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)** for the purpose of paying the recording fee for the filing of a notice of this Assurance of Discontinuance in the land records of the municipality where the Project is located, by check made payable to the Town of Barre, Vermont.

All payments pursuant to this paragraph shall be sent 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 Respondent pursuant to this Assurance is a penalty made to resolve the violations set forth in this Assurance. Respondent 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.

- H. 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.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- J. 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.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein, provided that the Respondent fully complies with the agreements set forth above.
- L. 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.
- M. 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.
- N. This Assurance is subject to the provisions of 10 V.S.A. Section 8007.

SIGNATURES

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

Dated at Graham, ^{Washington} Vermont, this 19 day of June, 2012.

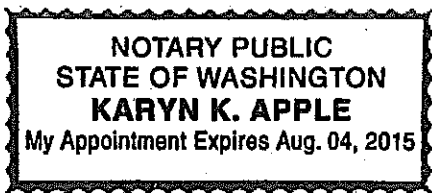
North East Materials Group, LLC

By: [Signature]
Duly Authorized Agent

^{Washington}
STATE OF ~~VERMONT~~
COUNTY OF Pierce, ss.

BE IT REMEMBERED that on the 19 day of June, 2012, personally appeared H.H. the duly authorized agent of **North East Materials Group, 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 **North East Materials Group, LLC** and that he has the authority to contract on behalf of **North East Materials Group, LLC** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,



[Signature]
Notary Public
My Commission Expires:

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

~~Dated at _____, Vermont, this _____ day of _____, 2012.~~

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

Dated in Montpelier, Vermont, this 29th day of June, 2012.

LAND USE PANEL

By: [Signature]
Ronald A. Shems, Chair

