

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

_____)
LAND USE PANEL of the)
NATURAL RESOURCES BOARD,)
 Petitioner)
 v.)
DALE E. PERCY, INC.)
 Respondent)
 _____)

ASSURANCE OF DISCONTINUANCE

VIOLATION

- I. Commencement of a substantial change to a development without an Act 250 Land Use Permit. 10 V.S.A. §6081(a),(b).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. ' 8007, the Land Use Panel of the Natural Resources Board (Panel) and Dale E. Percy, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

- 1. Respondent owns an approximately 50± acre tract of land located on Cochran Road in Morrystown, Vermont. This tract is described in Book 86, Page 175 of the Town of Morrystown land records. (the Project tract)
- 2. There is a gravel and stone extraction pit located on the Project tract, managed and operated by the Respondent.
- 3. On January 8, 2009, District 5 Environmental Coordinator, Ed Stanak, issued Jurisdictional Opinion #5-02 (the JO) and found that the gravel pit located on the Project tract is a pre-existing development.
- 4. In his JO, Coordinator Stanak found that there had been a significant increase in the rate of gravel extraction in the 1970s thereby creating a substantial change to the pre-existing development on the Project tract requiring an Act 250 Land Use Permit.

5. Coordinator Stanak also found that stone extraction began on the Project tract in approximately 1980 at which time blasting and crushing of stone commenced on the Project tract. The extraction of stone, and the blasting and crushing activities associated with that process, constituted substantial changes to the Project tract requiring an Act 250 Land Use Permit.
6. On January 20, 2009, Respondent requested reconsideration of the JO.
7. On August 13, 2009, Coordinator Stanak issued a Reconsideration of the JO. (the Reconsideration). In the Reconsideration, Coordinator Stanak found that the pre-existing rate of gravel extraction was somewhat higher than originally indicated in the JO. However, the increase in extraction that occurred in the 1970s was still significant enough to be a substantial change to the pre-existing development.
8. The JO and the Reconsideration were not appealed and have gone final.
9. On June 3, 2011, the Commission issued Land Use Permit #5L1523 to the Respondent, specifically authorizing the operation of a quarry on the project tract.
10. Respondent violated 10 V.S.A. §6081(a) by commencing a substantial change to a development without first obtaining an Act 250 Land Use Permit.

AGREEMENT

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

- A. Respondent shall obtain and comply with the necessary Act 250 and Department of Environmental Conservation permits.
- B. Within thirty days (30) of the date on which this Assurance is signed by the Superior Court, Environmental Division, Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Two Thousand One Hundred and Twenty-Five Dollars (U.S.) (**\$2,125.00**) for the violations noted herein. Respondent shall make said payment by check made payable to the "Treasurer, State of Vermont" and 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

- C. Any payment by the Respondent pursuant to this Assurance is made to resolve the

violations 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. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.

- D. The Respondent shall also contribute **\$6,375.00** worth of Materials (type and quantity specified below) to fund a Supplemental Environmental Project (SEP) which will enhance the natural resources of the area affected by the violation, pursuant to 10 VSA § 8007(B)(2) as follows:

Project:

Materials:	One Hundred Fifty Six (156) cubic yards of 18" - 24" rip rap stone at \$13.50 per cubic yard (at the pit) and Two Hundred and Fifty (250) cubic yards of 8" stone at \$16.75 with a total agreed upon fair market value of Six Thousand Three Hundred and Seventy-Five Dollars (\$6,375.00)
Agreed Value of Materials:	\$6,375.00
Delivery:	Recipient will pick up at the pit.
SEP:	The Town of Hardwick will use the material to make stormwater treatment improvements, including rip rapping banks and lining stormwater ditches with stone. (See NRB-A: "Town of Hardwick Road and Stormwater Mitigation Project")
SEP Recipient:	Town of Hardwick.
Timing:	Respondent shall allow the Town to pick up the Materials at the pit as soon as possible, but no later than 60 consecutive calendar days following the date this Assurance is entered as an Order by the Superior Court, Environmental Division

- E. The Panel shall file a notice of this Assurance in the land records of the municipality where this project is located after this Assurance is signed by the Superior Court, Environmental Division. **The Respondent shall be responsible for the payment of the recording fee for such notice and shall send to the Panel at the address above a check in the amount of Ten Dollars (\$10.00), made payable to said municipality.**
- F. 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.
- G. 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.

- 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 Court, 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 Respondent 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 Respondent fully complies with the agreements set forth above.
- J. 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.
- K. 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.
- L. 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 Stowe, Vermont, this 7th day of July, 2011.

DALE E. PERCY, INC.

By: 

STATE OF VERMONT
COUNTY OF Lamoille, ss.

BE IT REMEMBERED that on the 7th day of July, 2011,
personally appeared Dale E. Percy, Jr. as the duly authorized agent of
DALE E. PERCY, 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 DALE E. PERCY, INC. and that he/she has the authority to contract on behalf of DALE E. PERCY, INC. and that he/she has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,



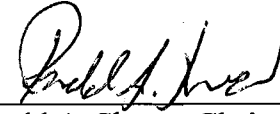
Notary Public

My Commission Expires: 2/10/15

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

Dated in Montpelier, Vermont, this 18th day of July, 2011.

LAND USE PANEL

By: 
Ronald A. Shems, Chair

**Agreement between the
Land Use Panel of the Vermont Natural Resources Board
and the
TOWN OF HARDWICK
concerning funds donated to a Supplemental Environmental Project.**

Under Vermont law, when a person or entity (Respondent) has violated Act 250 (10 V.S.A. Ch. 151), the Land Use Panel of the Vermont Natural Resources Board (Panel) and the Respondents may enter into a settlement agreement, called an "Assurance of Discontinuance" (AOD), whereby the Respondent, in lieu of paying a civil penalty, may make a "contribution toward other projects related to the violation, which the Respondent and the Secretary or the Land Use Panel agree will enhance the natural resources of the area affected by the violation, or their use and enjoyment. . ." 10 V.S.A. § 8007(b)(2).

Pursuant to the AOD in the matter of *Land Use Panel v. Dale E. Percy, Inc.* to be entered as an order by the Superior Court, Environmental Division, Dale E. Percy, Inc. (Respondent) has agreed to fund a Supplemental Environmental Project (SEP) in the amount of \$6,375.00. The Respondent will supply earth materials to fund that SEP.

THE TOWN OF HARDWICK (Recipient) has submitted a proposal for an environmental project (Project) entitled: "Town of Hardwick Road and Stormwater Mitigation Project", as described in Attachment A hereto, which the Panel and the Respondent agree meets the requirements of 10 V.S.A. §8007(b)(2). The Panel and Respondent have further agreed that the Respondent shall fund the Recipient's proposal. In return, the Recipient agrees:

- (1) To maintain a current record of all material received and utilized in furtherance of the Project, to be made available to the Panel upon request;
- (2) To complete the Project no later than December 1, 2011.
- (3) To provide to the Panel a final accounting of all material received from the Respondent as part of this SEP within thirty (30) days of the completion of the Project; and
- (4) To provide to the Panel, within thirty (30) days of the completion of the Project, a brief report of the Project, certifying that the materials have been expended in furtherance of the Project.

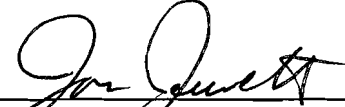
Restrictions on the use of SEP funds

SEP funds may not be used for litigation or lobbying purposes, nor may they be used in the preparation or presentation of matters before any state agency or board. The Recipient agrees to these restrictions.

The provisions set forth in this Agreement are hereby agreed to and accepted.

Dated in Hardwick, Vermont, this 11th day of July 2011.

Town of Hardwick

By: 
Jon Jewett
Town Manager, Hardwick

The provisions set forth in this Agreement are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 18th day of July 2011.

LAND USE PANEL

By: 
Chair

ATTACHMENT "A"

Title: Town of Hardwick Road and Stormwater Mitigation Project

Locations: all locations will be within the Town of Hardwick including Cobbs School Road, Bridgeman Hill Road, Hazen Union Road, and Hardwick Street

Funding: approximately \$6,375 worth of rip rap and ditch stone has been secured from an Act 250 fine violation, quarry location Morristown

Schedule: The stone will be picked up by the Town of Hardwick in spring of 2011 and projects implemented in summer and fall of 2011

Project Partners: Town of Hardwick Road Crew and Town Manager, VT Youth Conservation Corps (VYCC), DEC Watershed Coordinator, and Caledonia Natural Resources Conservation District (NRCD)

Project Summary: The Hardwick Road and Stormwater Restoration Project will include 6-7 sites in the town of Hardwick (see separate maps). Three sites will include road stone-lined ditch installation and gully stabilization adjacent to town roads. Road runoff has created sediment and non point source pollution to enter Porter Brook and the Lamoille River. Sites will retain and treat runoff from Main Street in Hardwick through the installation of bio-retention practices (rain gardens). The rain garden projects will be located in downtown Hardwick including Hazen Union High School and will allow for education and outreach to local residents. We will conduct a public site visit and education program for the rain garden installation. The Town of Hardwick will maintain the projects after installation. Funding has been secured for the rock, mulch, and plant material needed for the projects. We are seeking YCC as a source for the labor to install the projects. The project will offer the YCC crew members various watershed ecology education opportunities.

Partners' Roles and In-kind: Funding is being secured to hire a VYCC crew for 3-4 weeks for the summer of 2011 to work on the Hardwick Road and Stormwater Mitigation Project. The Town of Hardwick's road crew and Town Manager will be providing material trucking and project implementation (excavator time) and corresponding operators, drivers, and manual labor. The Caledonia NRCD

working with the DEC Watershed Coordinator in project development, coordination and supervision (especially the rain garden work).

Project specifics- rain gardens (stormwater bioretention) will be installed at 2-3 sites, stone line ditching will be installed at 2 sites (approximately 1,000 linear feet), bank stabilization will be installed at 2 sites. Additionally stone will be used for stormwater detention pond berm stabilization and stormwater detention area. The site remediation plans will address sources of excessive flow and/or erosion throughout town and are part of a larger more comprehensive inventory and plan to address road erosion, undersized stream culverts, and stormwater runoff in the Town of Hardwick in conjunction with the DEC Stormwater Section and River Management Program providing technical assistance. The DEC Watershed Coordinator will oversee the implementation of this specific project.

Contact: Jon Jewett, the Town Manager will be the responsible person to enter into a contract with the State of Vermont.

Jon Jewett, MPA, CET
Town Manager
Town of Hardwick
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PO Box 523
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