

STATE OF VERMONT

ENVIRONMENTAL COURT
Docket No.

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner,

v.

TOWN OF COLCHESTER, VERMONT
Respondent.

VIOLATION

Commencing development without having first obtained an amendment to an Act 250 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 the Town of Colchester, Vermont (Town) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

I. STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. In February 2007, the District 4 Environmental Commission issued a draft of Land Use Permit 4C1006-2 to the Town of Colchester, which addressed an application by the Town to construct a 7697 sf expansion of the existing Town Garage, to demolish a 1580 sf salt shed, to construct a new 864 sf salt shed, to replace a wastewater system, and to construct a 600 sf storage building (Project).
2. On the top of the first page of the draft Permit, the following words appear:

This is a **DRAFT** permit; please submit any written comments or corrections to: Peter E. Keibel, District #4 Coordinator, 111 West Street, Essex Junction, VT 05452.

A permit will NOT be issued by the District Commission until the following information is received:

1) Potable Water Supply and Wastewater System Permit Environmental Commission Condition 6 of Land Use Permit 4C1006-2 states: "No changes shall be made to the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Act 250 Rules.

(Emphasis in original)

3. During the summer and autumn of 2007, the Town commenced and completed construction of the Project.
4. Although the Town had issued itself a wastewater permit for the Project, that permit was not forwarded to or incorporated into Land Use Permit 4C1006-2. Therefore, at the time the Project was constructed Land Use Permit 4C1006-2 had not been issued by the Commission.
5. The Commission issued Land Use Permit 4C1006-2 on April 4, 2008.
6. By commencing development without first obtaining Land Use Permit 4C1006-2, the Town violated 10 V.S.A. § 6081(a).

II. AGREEMENT

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

- A. The Town shall comply with Land Use Permit 4C1006-2.
- B. For the violations noted herein, the Town shall, in accordance with 10 V.S.A. §8007(b)(2)(D), contribute the amount of Seven Hundred Fifty (\$750.00) Dollars (U.S.) toward the Supplemental Environmental Project (SEP) described in the June 26, 2008 letter from Bryan K. Osborne, Director of Public Works, Town of Colchester to John H. Hasen, General Counsel of the Natural Resources Board. (Attached to this Assurance as Exhibit A). The funds contributed shall be placed in an account earmarked for the SEP proposal no later than September 2, 2008
- C. 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.

- D. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Town's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Town.
- E. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental 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.
- F. Pursuant to 10 V.S.A. §8007(d), the Town shall not be liable for 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 Town fully complies with the agreements set forth above.
- G. 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 Environmental Court. 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.
- H. 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.
- I. This Assurance is subject to the provisions of 10 V.S.A. §8007.

III. SIGNATURES

The provisions of this Assurance of Discontinuance are agreed to and accepted.

Dated at Colchester, Vermont, this 31 day of July, 2008.

Town of Colchester, Vermont
By: Albin W. Voegele

STATE OF VERMONT
COUNTY OF CHITTENDEN, ss.

BE IT REMEMBERED that on the 31 day of July, 2008,
personally appeared Albin W. Voegele, 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/her free act and deed and that he/she is authorized to sign this
Assurance of Discontinuance on behalf of the Town of Colchester, Vermont.

Before me,

Elizabeth C. Deacon
Notary Public
My Commission Expires: 2/10/11

The provisions of this Assurance of Discontinuance are agreed to and accepted.

Dated in Montpelier, Vermont, this 4th day of August, 2008.

LAND USE PANEL
By: Peter F. Young, Jr., Esq., Chair