

STATE OF VERMONT

Superior Court

Environmental Division
Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Frank W. Whitcomb Construction Corporation,
Respondent

VIOLATIONS

Failure to comply with Permit Condition 34 of Land Use Permit 4C0566-2B

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Natural Resources Board (Board) and Frank W. Whitcomb Construction Corp. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

- A. Respondent owns and operates a quarry located on Route 7 in the Town of Colchester, Vermont being identified in Book 37, Pages 253-256 and Book 91, Pages 401-402 of the land records of the Town of Colchester, Vermont, as the subject of a deed to Frank W. Whitcomb Construction Corp. (the Property).
- B. The Property is subject to Land Use Permit 4C0566, which contains a series of amendments.
- C. On October 29, 2008, the District 4 Environmental Commission issued Land Use Permit 4C0566-2B (the -2B Amendment), which authorized the Respondent to expand certain excavation activities.
- D. Condition 34 of LUP 4C0566-2B states:

The Permittee shall continue to make annual payments to the established escrow agreement. The annual contribution shall be indexed by the inflation rate and shall be evaluated every ten years. The amount

shall start at \$3,500 and is due before extraction operations resume after the winter of each year.

- E. The Respondent failed to make timely annual payments in accordance with condition 34 into the Escrow Fund in 2011, 2012, and 2013.
- F. On August 7, 2013, after the extraction season had begun, following an inquiry from the District 4 Coordinator, the Respondent paid the outstanding balance of \$10,500.00 (without interest) into the Escrow Fund.
- G. In 2014, the Respondent again failed to make an annual payment into the Escrow Fund. The required 2014 annual payment of \$3,500.00 was paid March 19, 2015.
- H. Respondent's failure to make timely annual payment into the Escrow Fund has resulted in at least \$161.35 in lost interest to the account.
- I. Respondent violated Condition 34 of the Permit by repeatedly failing to make timely annual payments into the Escrow Fund.

AGREEMENT

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

- A. Respondent shall comply with Land Use Permit series 4C0566.
- B. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall transfer **One Hundred Sixty-One Dollars and Thirty-Five Cents (U.S.) (\$161.35)** into the Escrow Fund account and submit a copy of the receipt of transfer to the District 4 Environmental Commission and the Natural Resources Board at that time.
- C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:
 - 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Seven Thousand Dollars and Zero Cents (U.S.) (\$7,000.00)**, 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 **Six Hundred Eighty-Five Dollars and Fifty-One Cents (U.S.) (\$685.51)**, 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 **Ten Dollars (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Colchester land records, by check made payable to the "Town of Colchester, Vermont."
- 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 Respondent's 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.
- 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 Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies 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 either Respondent's 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 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 Walpole, NH, this 20 day of April, 2015.

Frank W. Whitcomb Construction Corp.

By [Signature]
(Signature)

Allison Whitcomb Lewis, Duly Authorized Agent
(Printed Name)

STATE OF New Hampshire
COUNTY OF Cheshire, ss.

BE IT REMEMBERED that on the 20th day of April, 2015, personally appeared Allison Whitcomb Lewis, as the duly authorized agent of **Frank W. Whitcomb Construction Corp.**, signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of **Frank W. Whitcomb Construction Corp.** and that (s)he has the authority to contract on behalf of **Frank W. Whitcomb Construction Corp.** and that (s)he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

[Signature]
Notary Public

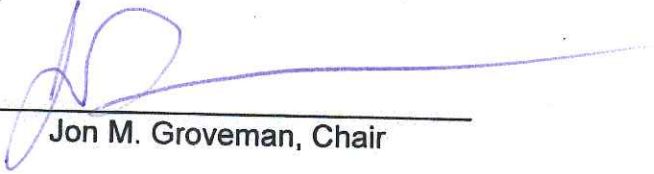
My Commission Expires:

LINDA L. PLOURDE
Notary Public, State of New Hampshire
My Commission Expires April 17, 2018

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Dated in Montpelier, Vermont, this 16th day of June, 2015.

NATURAL RESOURCES BOARD
By:



Jon M. Groveman, Chair