

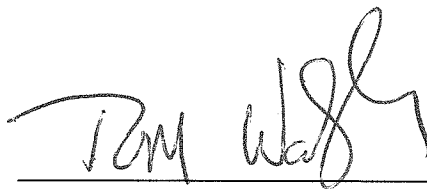
STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)	
Petitioner,)	
)	
v.)	Docket # 166-12-16 Vtec
)	
Hart Gravel Bank, LLC and)	
Stephen M. Hart,)	
Respondents.)	

ORDER

The Assurance of Discontinuance signed by the Respondent on November 4, 2016, and filed with the Superior Court, Environmental Division, on December 9, 2016, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 17th day of January 2017.



Thomas G. Walsh, Judge Superior Court
Environmental Division



NATURAL RESOURCES BOARD
Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201

Jennifer Teske, Court Manager
Vermont Superior Court
Environmental Division
32 Cherry St., 2nd Floor, Suite 303
Burlington, VT 05401
(*Electronic Filing*)

December 9, 2016

Re: Assurance of Discontinuance

Natural Resources Board v. *Hart Gravel Bank, LLC*

Dear Jennifer:

Enclosed is an Assurance of Discontinuance in the above-referenced matter for filing with the Vermont Superior Court, Environmental Division.

A copy of this letter and the Assurance of Discontinuance is also being sent to the Attorney General's Office in accordance with 10 V.S.A. § 8007(c).

Pursuant to 10 V.S.A. §8020(b), the Natural Resources Board posted the Assurance of Discontinuance on its website for the 30-day public notice and comment period.


The 30-day public notice and comment period ended on December 7, 2016.

Enclosed please find copies of the comments that were received on this Assurance of Discontinuance during the 30-day public notice and comment period.

Based on the comments, the Natural Resources Board has decided to file the Assurance of Discontinuance with the Environmental Division for further action by the Division.

Because comments were received, concurrent with this filing, the Assurance of Discontinuance will remain posted, beginning on the date of this letter, on the Natural Resources Board website for the additional 14-day public notice period required by 10 V.S.A. §8020(b).

Sincerely,



Peter J. Gill
Associate General Counsel

Encl. Cc (email): Rob MacDougal, Acting Chief of the Environmental Division, AGO
Warren Foster, Coordinator, District 8 Environmental Commission

For Court informational purposes

Respondent(s) Address: Represented by Paul Gillies, 44 E. State Street, Montpelier, VT 05602



received by email 11/5/16
Pete

STATE OF VERMONT
SUPERIOR COURT - ENVIRONMENTAL DIVISION

NATURAL RESOURCES BOARD,)	
Petitioner)	
)	
v.)	Docket No.
)	
HART GRAVEL BANK, LLC and)	
STEPHEN M. HART,)	
Respondents)	

VIOLATIONS

- I. Failure to control fugitive particulate matter from the site, in violation of Condition 12 of Land Use Permit 8B0611.
- II. Failure to maintain the crushed rock rumble zone in working order and failure to sweep sediment from Route 7 daily in violation of Condition 13 of Land Use Permit 8B0611.
- III. Failure to timely file a plan to revegetate the eroding slope behind Tornabene's, in violation of Condition 11 of Land Use Permit 8B0611.
- IV. Operating an aggregate screen without applying spray water for dust control, in violation of Condition 7 of Land Use Permit 8B0611.
- V. Failure to properly maintain the stormwater system in violation of Condition 2 of the Land Use Permit 8B0611, which requires the Permittee to complete, operate, and maintain the Project in accordance with the Findings of Fact and Conclusions of Law, as well as Exhibits 21, 22, 27, 34 and 35.
- VI. Failure to complete reclamation of Phase One by August 15, 2013, in violation of Condition 10 of Land Use Permit 8B0611.
- VII. Failure to document implementation of the corrective action plan outlined in the *Multi-Sector General Permit 3-9003 Annual Report Form* dated March 29, 2013, in violation of Multi-Sector General Permit 3-9003, Part 3.4.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Hart Gravel Bank, LLC and Stephen M. Hart ("Respondents") hereby enter into this Assurance of Discontinuance ("Assurance" or "AOD"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

Background

1. Respondent Stephen M. Hart operates an earth extraction operation on approximately 110 acres in Pownal, Vermont, which is subject to Act 250 Land Use Permit 8B0611 ("the Permit"). The Permit authorizes Hart Gravel Bank, LLC, the Permittee, to extract 200,000 cubic yards of sand and gravel per year from the existing pit off Route 7 (opposite Green Mt Track) (the "Project Tract").
2. Respondents have a prior violation of Act 250 for operating without a permit, which was adjudicated and entered as an Order of the Environmental Division of the Superior Court on April 2, 2012.
3. On December 19, 2012, the Board sent a Notice of Alleged Violation (NOAV) to the Respondents for alleged violations of Conditions 2, 11, 13, and 14 of the Permit.

Fugitive Dust Control

4. Condition 12 of the Permit states, in part:

The Permittee shall ensure that reasonable precautions are taken at all times to control fugitive particulate matter (dust) emissions from the site including the haul roads, traffic areas, storage piles, exposed surfaces and any site operations such as crushing and processing of materials. This shall include the application of water or calcium chloride as necessary to the haul roads, traffic areas and storage piles and the covering of all trucks entering, exiting or operating at the site that are loaded with materials that may generate fugitive dust.

5. On April 17, 2014, and May 8, 2014, fugitive dust from haul roads on the Project Tract was documented leaving the site, in violation of Condition 12 of the Permit.
6. On May 8, 2014, the Permit Compliance Officer (PCO) observed at least three uncovered loads arriving at the site carrying earth fill materials, in violation of Condition 12 of the Permit.
7. On June 12, 2014, the Board sent a NOAV to the Respondents for alleged violations of Conditions 12 and 13 of the Permit.
8. On July 1, 2014, Respondents admitted, within a letter provided by counsel, that there had been "some drifting of dust onto Route 7," and Respondents committed "to cure that by the application of calcium chloride and water on a daily basis." In that same letter, Respondents agreed that there had "been some blowage," and committed to use a power broom on the entryway to the pit to remove dirt from the highway edge, as needed." Respondents included photos with the letter that



appeared to show freshly exposed crushed rock within the rumble zone, and a newly swept entrance to the pit.

9. On June 20, 2014, September 4, 2014, September 24, 2014, and May 14, 2015, fugitive dust from haul roads on the Project Tract was again documented leaving the site, in violation of Condition 12 of the Permit.
10. On June 20, 2014, at least one uncovered load was documented arriving at the site carrying earth fill materials, in violation of Condition 12 of the Permit.
11. On May 5, 2015, at least two uncovered loads were documented arriving at the site carrying earth fill materials, in violation of Condition 12 of the Permit.
12. On September 30, 2014, ANR's Stormwater District Manager observed that dust control on the site was inadequate.
13. Because Respondents have repeatedly failed to control fugitive particulate matter (dust) emissions from the site, including the application of water or calcium chloride, and the covering of all loaded trucks entering, exiting or operating at the site, Respondents violated Condition 12 of the Permit.

Rock Rumble Zone

14. Condition 13 of the Permit reads as follows:

The Permittee shall install and maintain in working order a crushed rock rumble zone beyond and uphill of the paved entrance to prevent truck tires from carrying sediment onto Route 7. Notwithstanding this preventative measure, any accumulations of sediment near the entrance on Rt. 7 shall be swept off daily.

15. An inspection by the Board on May 8, 2014, revealed that Respondents had failed to maintain the required crushed rock rumble zone in working order as required, causing dust to accumulate on the traveled way and the paved shoulders of Route 7, in violation of Condition 13 of the Permit.
16. On June 12, 2014, the Board sent a NOAV to the Respondents for alleged violations of Conditions 12 and 13 of the Permit.
17. On July 1, 2014, the Respondents, through counsel, provided a statement and photographs to document their compliance with Permit Conditions 12 and 13.
18. On July 24, 2014, and October 8, 2014, it was again documented that the Respondent had failed to maintain the required crushed rock rumble zone in working order, rendering it ineffective.

19. On July 24, 2014, September 4, 2014, October 8, 2014, November 19, 2014, December 7, 2014, and December 5, 2015, it was again documented that the Respondent had allowed sediment to accumulate on the traveled way and the paved shoulders of Route 7, sometimes creating clouds of dust for motorists traveling on Route 7.
20. Because Respondents have repeatedly failed to properly maintain the crushed rock rumble zone and remedy accumulations on Route 7, Respondents violated Condition 13 of the Permit.

Amendment for Slope Revegetation - Tornabene's

21. Condition 11 of the Permit reads as follows:

Within thirty days after issuance of this permit, the Permittee shall file an administrative amendment plan and narrative, prepared by an engineer, to revegetate the eroding slope behind Tornabene's. If approved, said plan shall be installed prior to July 1, 2013.

22. The Permit issued on October 30, 2012, and therefore an administrative amendment plan and narrative should have been filed by November 29, 2012. Neither were filed by that deadline.
23. On December 19, 2012, the Board sent a NOAV to the Respondents for alleged violations including Condition 11 of the Permit.
24. On January 8, 2013, in response to the alleged violation of Condition 11, the Respondents provided, through counsel, an administrative amendment plan and narrative prepared by engineer John Ryan.
25. The Commission issued Administrative Amendment regarding the plan on December 21, 2015.
26. Because the Respondents failed to file an administrative amendment plan and narrative by the approved date, Respondents violated Condition 11 of the Permit.

Dust Control for Screening Operation

27. Condition 7 of the Permit reads as follows:

During operation of the crusher/screener, spray water shall be applied to conveyors and crusher/screener elements to prevent dust from leaving the area. The water suppression system shall provide sufficient water pressure and flow rates to achieve optimum dust control.

28. On September 23, 2014, Respondents were observed operating an aggregate screen without applying spray water for dust control; therefore, Respondents violated Condition 7 of the Permit.

Maintenance of Stormwater System

29. Condition 2 of the Permit states:

The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #8B0611, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit.

30. Exhibit 21 states in part:

Sediment traps and catch basin sumps (including the temporary use of the detention structure) shall be cleaned out when sediment accumulates so only 50 percent of the volume remains.

31. Exhibits 22 and 35 state in part:

Maintain the sediment basin with at least 50 percent of the sediment depth capacity.

32. Paragraph 27 of the Permit's Findings of Fact states:

Various sediment traps throughout the site will collect sediment and detain stormwater prior to its discharge. These traps will be cleaned out when 50% full.

33. In Exhibit 27, in response to the Commission's request for "a schedule for and description of the work to be done to restore retention/run-off ponds/traps post tropical storm Irene, which would be in compliance with Sheet C3 note regarding cleaning out sediment pond(s) when 50% full," the Respondent replied through counsel on February 20, 2012, as follows:

Schedule for restoration of retention/run-off ponds/traps post-Irene. The ponds and traps will be cleaned entirely after any major storm, or any two or three less major storms, when they are 50% full.

34. An inspection by the Agency of Natural Resources on August 6, 2014, revealed that Respondents had failed to regularly maintain sediment traps with at least 50 percent of their capacity.

35. Exhibit 34 shows four sediment traps, one stone-lined channel, and several series of stone check dams. Exhibit 35 provides drawings detailing how to construct the

sediment traps, stone-lined channel, and stone check dams.

36. In Exhibit 27, in response to the District 8 Commission's Recess Order dated October 13, 2011, in which the Commission asked the Respondent for a "schedule for implementing MSGP devices as outlined in your SWPPP (stormwater pollution prevention plan)," the Respondent replied through counsel on February 20, 2012, as follows:

Schedule for the continued implementation of the MSGP's erosion & sedimentation control devices. Spring/summer 2012.

37. From July 30, 2014, into July 31, 2014, the stormwater system on the Project Tract failed under heavy rains, causing sediment-laden stormwater to leave the Project Tract and overtop Route 7, depositing sediment on Route 7, interfering with the function of Route 7, and creating a potentially unsafe condition for motorists.
38. An inspection by the Agency of Natural Resources on August 6, 2014, revealed that Respondents had failed to construct and maintain Sediment Trap #4, the Stone Lined Channel, or the Stone Check Dams depicted on Exhibits 34 and 35.
39. On September 4, 2014, the Board issued a Notice of Alleged Violation to the Respondent outlining Respondents' failure to comply with Permit Condition 2 and requiring compliance with exhibits 34 and 35 of the Permit by October 15, 2014, and an affidavit certifying compliance by October 22, 2015. On September 15, 2014, the Respondents responded to the NOAV and specifically did not challenge the findings of the NOAV or object to the compliance directives. Respondent, Stephen Hart, stated that he built one very large sedimentation pond instead of the two prescribed traps at the bottom of the pit.
40. On January 13, 2015, the Respondent, Stephen Hart, filed an affidavit stating that "John Ryan, my engineer, has worked closely with me to ensure that all of the various requests and conditions of state officials are satisfied, including the digging of new sedimentation ponds, as well as other changes to the land to prevent sedimentation from running off site."
41. Respondents previously failed to complete, operate and maintain the Project in accordance with the Findings of Fact and Conclusions of Law, and as set forth in the plans and Exhibits 21, 22, 27, 34 and 35 on file with the District Commission. This constituted a violation of Condition 2 of the Permit.

Reclamation of Phase One and Continued Extraction

42. Condition 10 of the Permit states:

Phase one reclamation at the top end of the site shall be completed by August

- 15, 2013. Reclamation includes final grading, and hydroseeding with fertilizer, seed and mulch. Thereafter, as each phase of excavation is completed, the reclamation shall occur within the calendar year, but no later than August 15th of the following year. See Exhibits 30, 31. (Site Plans C1 and C2 Reclamation Plan dated February 15, 2012, by Guntlow and Associates, Inc.)
43. Respondents failed to complete reclamation of Phase One by August 15, 2013, in violation of Condition 10 of the Permit. An inspection by the Board on May 8, 2014, revealed that less than one quarter of Phase One had been reclaimed at that time. On July 1, 2014, Respondents asserted, through counsel, that the Respondents had "completed hydroseeding of all of the area to the north of the pit that was required in his permit." However, photos taken by Vermont DEC's Stormwater District Manager on August 6, 2014, and September 30, 2014, show less than approximately one third of the required reclamation complete.
44. Respondents appear to have reclaimed a portion of Phase Two, which is not specifically required as of the date of this Assurance.
45. A site visit by Vermont DEC's Stormwater District Manager on October 23, 2015 revealed that rather than reclamation, the Respondents continue to extract earth material from Phase One.
46. Therefore, Respondent violated Condition 10 of the Permit by failing to timely reclaim Phase One of the project tract.

Multi-Sector General Permit Corrective Action

47. On March 29, 2013, the Respondents' authorized representative John Ryan submitted *Multi-Sector General Permit 3-9003 Annual Report Form* to the Vermont Agency of Natural Resources (the "Agency"). This form included an 8-part Section D, which outlined numerous corrective actions needed to address problems identified during a comprehensive stormwater inspection on January 22, 2013.
48. Multi-Sector General Permit 3-9003, Part 3.4 requires that the permittee, within 14 days of discovery of any condition listed in Parts 3.1 and 3.2, document all corrective actions taken to address problems identified during the comprehensive stormwater inspection, and the date corrective action was completed, or is expected to be completed.
49. Respondent failed to document implementation of the corrective action plan outlined in the *Multi-Sector General Permit 3-9003 Annual Report Form* dated March 29, 2013, in violation of Multi-Sector General Permit 3-9003, Part 3.4.

AGREEMENT

- A. Respondents shall comply with Land Use Permit 8B0611 and Multi-Sector General Permit 3-9003 and any applicable separate authorization under Construction General Permit 3-9020 to the extent they are not in direct conflict with the provisions of this Assurance of Discontinuance.
- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall:
1. Pay, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Thirteen Thousand Five Hundred Twenty-Five Dollars (**\$13,525.00**) (U.S.), for the violations noted herein, by good check made payable to the "**State of Vermont.**"
 2. Pay, pursuant to 10 V.S.A. §8010(e)(2), the amount of Two Thousand Six Hundred Forty-Five Dollars and Eighty-Nine Cents (**\$2,645.89**) (U.S.), to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "**State of Vermont.**"
 3. Pay, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Six Hundred Sixty-One Dollars and Twenty-Nine Cents (**\$661.29**) (U.S.), for the violation of the Agency of Natural Resources' Multi-Sector General Permit 3-9003, by good check made payable to the "**State of Vermont.**"
 4. Pay the amount of Ten Dollars (**\$10.00**) (U.S.), for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Pownal land records, by good check made payable to the "**Town of Pownal, Vermont.**"
 5. Have hydroseed professionally applied to the lower portion of the slope behind Tornebene's (no less than 100 feet as measured on slope extending upward from the base of the slope) covering an area of approximately 0.15 of an acre.
 6. Place no fewer than three cement blocks or boulders (no smaller than 3 feet by 2 feet by 2 feet) at the entry drive to the slope behind Tornebene's for the purpose of blocking vehicular access to the slope and prohibiting continued extraction at the Tornebene's slope location to allow natural revegetation to occur.
 7. Provide the Board and District Commission with a sworn statement certifying that Respondent has an operational water suppression system to be employed when necessary to achieve compliance with Condition 7 of the Permit.

C. Respondents shall:

1. Fully reclaim Phase One of the Project in accordance with Condition 10 and Exhibits 30 and 31 of Land Use Permit 8B0611 by September 1, 2017. No further extraction shall be allowed of Phase 1 as of the date of this Assurance of Discontinuance as an Order by the Court, unless a permit amendment authorizing the extraction is obtained prior to such extraction.
2. File a sworn certification with the Board and the District Commission that the above condition (C. 1.) of this Assurance of Discontinuance has been met by September 30, 2017.

D. Immediately, and henceforth, in addition to all other relevant permit conditions, Respondents shall employ a device to apply water to all internal roadways within the permitted tract sufficient to prevent dust from traveling beyond the permitted tract. The water spreading apparatus proposed by the Applicant is a satisfactory device to achieve this objective if properly employed. **Exhibit A (page 13).**

E. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall send the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respond has actual notice of the Judicial Order and Assurance of Discontinuance.

F. All payments and documents required by this Assurance of Discontinuance shall be sent to:

Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201

G. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

H. 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 above.

I. 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.

- J. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental 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 Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein, provided that the Respondents fully comply with this Assurance.
- 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.
- M. Violation of any provision of this Assurance, as this Assurance is entered as a judicial order pursuant to 10 V.S.A. § 8007(c), shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief or penalties or both, including penalties set forth in 10 V.S.A. chapters 201 or 211 or both.
- N. This Assurance is subject to the provisions of 10 V.S.A. § 8007 and § 8020.

[SIGNATURES ON FOLLOWING PAGES]

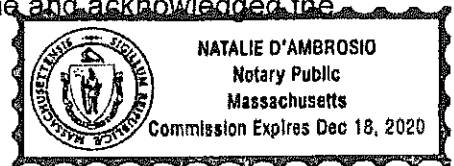
SIGNATURES

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

Stephen M. Hart
Stephen M. Hart

BE IT REMEMBERED that on the 4th day of November, 2016, personally appeared Stephen M. Hart, signer of the foregoing written 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: Natalie D'Ambrosio
Notary Public



Commission Expires:

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

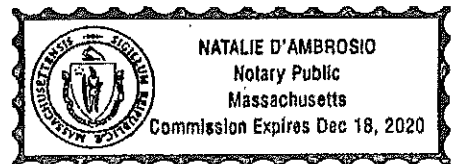
HART GRAVEL BANK, LLC

By: Stephen M. Hart
Authorized Agent

STEPHEN M. HART
(Print Name)

BE IT REMEMBERED that on the 4th day of November, 2016, personally appeared STEPHEN M. HART, signer of the foregoing written 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 Hart Gravel Bank, LLC.

Before me: Natalie D'Ambrosio
Notary Public



Commission Expires:

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

DATED in Montpelier, Vermont, this 8 day of December 2016.

NATURAL RESOURCES BOARD

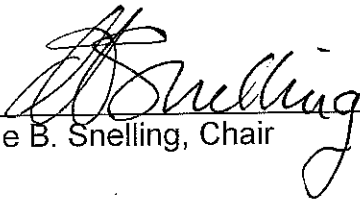
By: 
Diane B. Snelling, Chair

Exhibit A



Public Comment Received 12/7/2016 on subsequent page.

My property is located directly to the southeast of the Hart Gravel pit. The dust and aesthetic damage resulting from their complete disregard of the conditions of their LUP has had a significant negative impact on me and my family's ability to enjoy the property, potentially on our health, and on the value of our home.

Since the NOAV's were issued to Hart Gravel in 2012 and 2014, Hart Gravel has made no effort to comply with the conditions of their LUP in regards to the dust control or the reclamation requirements. This is despite the NRB being fully aware of the ongoing violations, as well as having a \$30,000 bond in place guaranteeing the reclamation be completed by August 15, 2013.

While I am glad to see something actually happening in the form of this AOD, I am highly skeptical of Hart Gravel's actual intention of coming into compliance. I would hope that in response to future violations of these same conditions, the action from the NRB would be swifter, and would not allow Hart Gravel to continue to openly operate in violation for years while another paltry fine is negotiated.

I would also hope that their history of violations be considered in the event that they seek to amend their permit to operate in areas not currently covered, before the complete reclamation of all currently open areas.

Eli Garnish
79 Cash Place
Pownal, VT 05261