

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,)
Petitioner,)

v.)

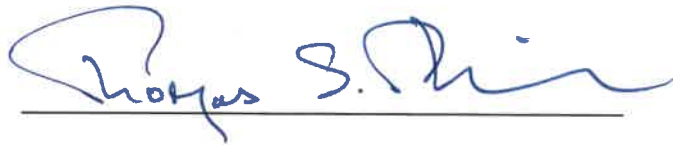
Docket # 16-1-19 Vtec

J.M. Rowley Corporation,)
Respondent.)

ORDER

The Assurance of Discontinuance signed by the Respondent on December 20th, 2018, and filed with the Superior Court, Environmental Division, on January 23rd, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 28th day of January 2019.



Thomas S. Durkin, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. _____

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

J.M. ROWLEY CORPORATION,
Respondent

VIOLATIONS

- I. Failure to comply with Condition 19 of Land Use Permit 4C0534-5 (the "-5 Amendment") and 10 V.S.A. § 1259(a) by discharging waste material into surface waters of the State.
- II. Failure to comply with Condition 20 of the -5 Amendment by disturbing the 50-foot buffer between all watercourses and disturbed areas subject to the permit.
- III. Failure to comply with Condition 25 of Land Use Permit 4C0534-4 (the "-4 Amendment") by constructing and using a fuel storage area.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and J.M. Rowley Corporation (Respondent) hereby enter this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

General Background

1. Respondent is a Vermont corporation with a principal place of business in Milton. Scott Allard is Respondent's president.
2. On November 15, 2012, the District 4 Environmental Commission issued the -5 Amendment to Respondent. The -5 Amendment applies to a project area consisting of 15 acres of a 277-acre tract of land in Milton, Vermont (the "Property"). The Property is included in those lands and premises described in a warranty deed recorded in Book 48, pages 147-49 of the Town of Milton land records.

3. The -5 Amendment authorizes the “continued operation of an existing sand extraction pit,” tree clearing within the permitted active pit area, and “after-the-fact approval for tree clearing and expansion of the active sand pit at the northwest corner of the pit.”
4. Reggie Smith & Son Trucking & Excavating, Inc. (“Reggie Smith Excavating”) participates in the operation of the permitted sand extraction pit.
5. Reggie Smith Excavating is also a Vermont corporation with a principal place of business in Milton. Reginald Smith is the president and vice president of Reggie Smith Excavating.
6. On December 3, 2009, the District 4 Environmental Commission issued the -4 Amendment to Respondent. The -4 Amendment gave after-the-fact approval for the creation of a three-lot subdivision and the construction of single-family residences on Lots 2 and 3.
7. Exhibit 34 to the -4 Amendment is a site plan titled “Archeological Buffer Plan and Building Record Drawing” and dated November 24, 2009. According to this plan, the Property lies wholly within Lot 1.

Discharging Waste Materials into Surface Waters

8. Condition 19 of the -5 Amendment states, “[T]he Permittees shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont’s Water Pollution Control Law.”
9. 10 V.S.A. § 1259(a) states, “No person shall discharge any waste, substance, or material into waters of the State...without first obtaining a permit for that discharge from the Secretary.”
10. 10 V.S.A. § 1251(13) defines “waters” as “all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the State or any portion of it.”
11. There are two streams adjacent to the sand extraction pit on the Property. One lies along the northwestern border of the pit (“Western Drainage Way”) and the other lies along the eastern border (“Eastern Drainage Way”). Both are identified as drainage ways on Exhibit 14 of the -5 Amendment, which is a site plan titled “Pit Operation Plan, Rowley Farm Sand Pit” and dated April 1, 2012.

12. On September 23, 2014, an Agency of Natural Resources staff member observed that Respondent had pushed trees and sand over the bank of and into the Eastern Drainage Way. This staff member confirmed that these discharges impacted the Eastern Drainage Way's ability to provide aquatic habitat.
13. On October 1, 2014, and October 20, 2014, the Board's Enforcement Officer and Agency of Natural Resources staff visited the Property. They observed evidence of stormwater and sediment discharges from extraction areas into both drainage ways. They also observed that stumps and woody debris had been discharged into the drainage ways.
14. Through conversations with Mr. Allard and Mr. Smith, the Board's Enforcement Officer learned that in 2012 Respondent discharged stumps and debris into the Western Drainage Way. In 2013 Respondent also caused discharges into approximately 340 linear feet of the Eastern Drainage Way. Finally, in 2014 Respondent caused discharges into approximately 374 linear feet of the Eastern Drainage Way.
15. Respondent did not obtain a permit prior to discharging sand, sediment, and woody debris into the Western and Eastern Drainage Ways.
16. By causing such discharges without a permit, Respondent violated Condition 19 of the -5 Amendment and 10 V.S.A. § 1259(a).

Disturbing the 50-foot Buffer of a Watercourse

17. Condition 20 of the -5 Amendment states, "the Permittees shall maintain a 50-foot undisturbed, naturally vegetated buffer strip between all watercourses on the project site and any disturbed areas."
18. During his site visits, the Board's Enforcement Officer observed that Respondent excavated earth material, pushed over trees with heavy equipment, and deposited sand, stumps and logs within the 50-foot buffers of the Western and Eastern Drainage Ways.
19. Respondent's activities within these 50-foot buffers negatively impacted streamside forested habitat for terrestrial species, reduced tree canopy for shading and cooling aquatic habitat, removed vegetative filter to trap pollutants, and disrupted the drainage patterns of and increased sedimentation of the Western and Eastern Drainage Ways.
20. By disturbing the 50-foot buffer of the Western and Eastern Drainage Ways, Respondent violated Condition 20 of the -5 Amendment.

Construction and Maintenance of the Fuel Storage Area

21. Condition 24 of the -4 Amendment states, "The Permittees will identify the remaining portion of VT-CH-1073, site VT-CH-140, and all other un-tested portions of Lots #1-#3 outside the building areas defined in Lots #2 & #3 and the footprint of the gravel/sand extraction area in Lot #1 as not-to-be disturbed archeological buffer zones."
22. Condition 25 of the -4 Amendment states, "Topsoil removal, grading, scraping, cutting, filling, stockpiling, or any other type of ground disturbance is prohibited within the archeological buffer zones without written approval of the District #4 Environmental Commission and the DHP."
23. Exhibit 34 of the -4 Amendment depicts the entire are of Lot #1 outside the Property as an a "not-to-be-disturbed archeological buffer area."
24. During his site visits, the Board's Enforcement Officer observed that Respondent had constructed a 150-square foot gravel fuel tank storage area ("Fuel Tank Storage Area") on the north side of the access road to the Property and within the not-to-be-disturbed archeological buffer area.
25. Respondent confirmed for the Board's Enforcement Officer that it constructed the Fuel Tank Storage Area in the summer of 2014 to stage and temporarily store propane tanks related to its heating fuel business.
26. By constructing the Fuel Tank Storage Area in the not-to-be disturbed archeological buffer area without written approval of the District #4 Environmental Commission, Respondent violated Condition 25 of the -4 Amendment.

Notice of Alleged Violation

27. On October 27, 2014, the Board's Enforcement Officer issued Respondent a Notice of Alleged Violation ("NOAV") for the above-described violations except for the violation of Condition 25 of the -4 Amendment.
28. The NOAV mandated various compliance directives and provided an opportunity for Respondent to address the facts concerning the alleged violations and provide any reason that it could not comply with the compliance directives in a timely manner.
29. On November 10, 2014, Respondent responded to the NOAV in writing. It acknowledged the violations and agreed to follow the compliance directives.

30. The Board's Enforcement Officer conducted a site visit of the Property on April 13, 2017. Site conditions indicated Respondent properly followed the temporary compliance directives regarding mitigation of the damaged stream buffers.

ORDER

- A. Respondent shall comply with the permit series 4C0534 and shall immediately cease all activities that are inconsistent therewith.
- B. No later than **June 30, 2019**, Respondent shall plant approximately 70 white pine trees along the outside edge of the 50-foot riparian buffer along the Western Drainage Way as denoted on **Exhibit A**. All trees planted shall be between 2-6 feet in height and spaced at 10-foot intervals along the approximately 714-foot stretch. Respondent shall replace any damaged or diseased trees immediately for a 5-year period ending June 30, 2024. All previously required mitigation measures (compliance directives) required by the NOAV shall be maintained, and nothing herein limits Respondent's obligations under Land Use Permit series 4C0534 including maintenance of buffer conditions. These plantings will encourage slope stabilization and discourage future encroachment of the 50-foot riparian buffer.
- C. No later than **August 1, 2019**, the Respondent shall discontinue use of the Fuel Tank Storage Area, remove all gravel from that area, and seed the area to reestablish its vegetated state. Respondent shall use seed that will establish vegetation consistent with the immediately surrounding area and shall continue to reseed the area until vegetative cover is established. Upon Request, the Respondent shall submit to the Board photographic evidence that this work has been completed and allow the Board's Enforcement Officer to visit the Property to confirm.
- D. No later than **30 days** following the receipt of this Order Respondent shall pay the following:
1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Fourteen Thousand Sixty-Two Dollars and Fifty Cents (\$14,062.50)**, for the violations noted herein, by check made payable to: "Treasurer, State of Vermont."
 2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **Three Thousand One Hundred Forty-Two Dollars and Forty-four Cents (\$3,142.44)**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to: "Vermont Natural Resources Board."

3. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **Five Hundred Forty-One Dollars and Eleven Cents (\$541.11)** to reimburse the Agency of Natural Resources for the costs of this enforcement action by check made payable to the "Vermont Agency of Natural Resources."
 4. The amount of **Ten Dollars and Zero Cents (\$10.00)**, to pay the recording fee for the filing of a notice of this Assurance in the Town of Milton land records, by check made payable to: "Town of Milton, Vermont."
- E. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- F. 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.
 - G. Respondent acknowledges that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. § 8010.
 - 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.
 - I. 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.
 - 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 set forth herein, provided that the Respondent fully complies with this Assurance.
 - L. The Board reserves the right to make reasonable extensions of any deadline

contained herein, upon prior request by the Respondent, for good cause beyond Respondent's control.

- M. 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.
- N. 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.
- O. 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 the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- P. 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 Milton, Vermont, this 20th day of Dec.; 2018.

J. M. Rowley Corp.

By Scott K. Allard
Scott Allard, Duly Authorized

Agent

STATE OF VERMONT
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 20th day of December, 2018, personally appeared **Scott Allard** as the duly authorized agent of **J. M. Rowley Corp.** 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 **J. M. Rowley Corp.** and that he has the authority to contract on behalf of **J. M. Rowley Corp.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

Louisa R. Dennis
Notary Public
My Commission Expires: 2.10.19

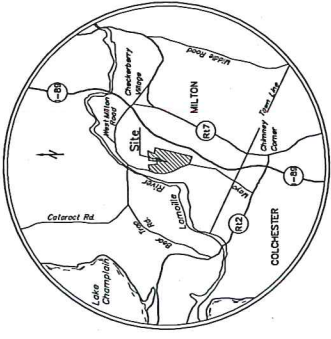
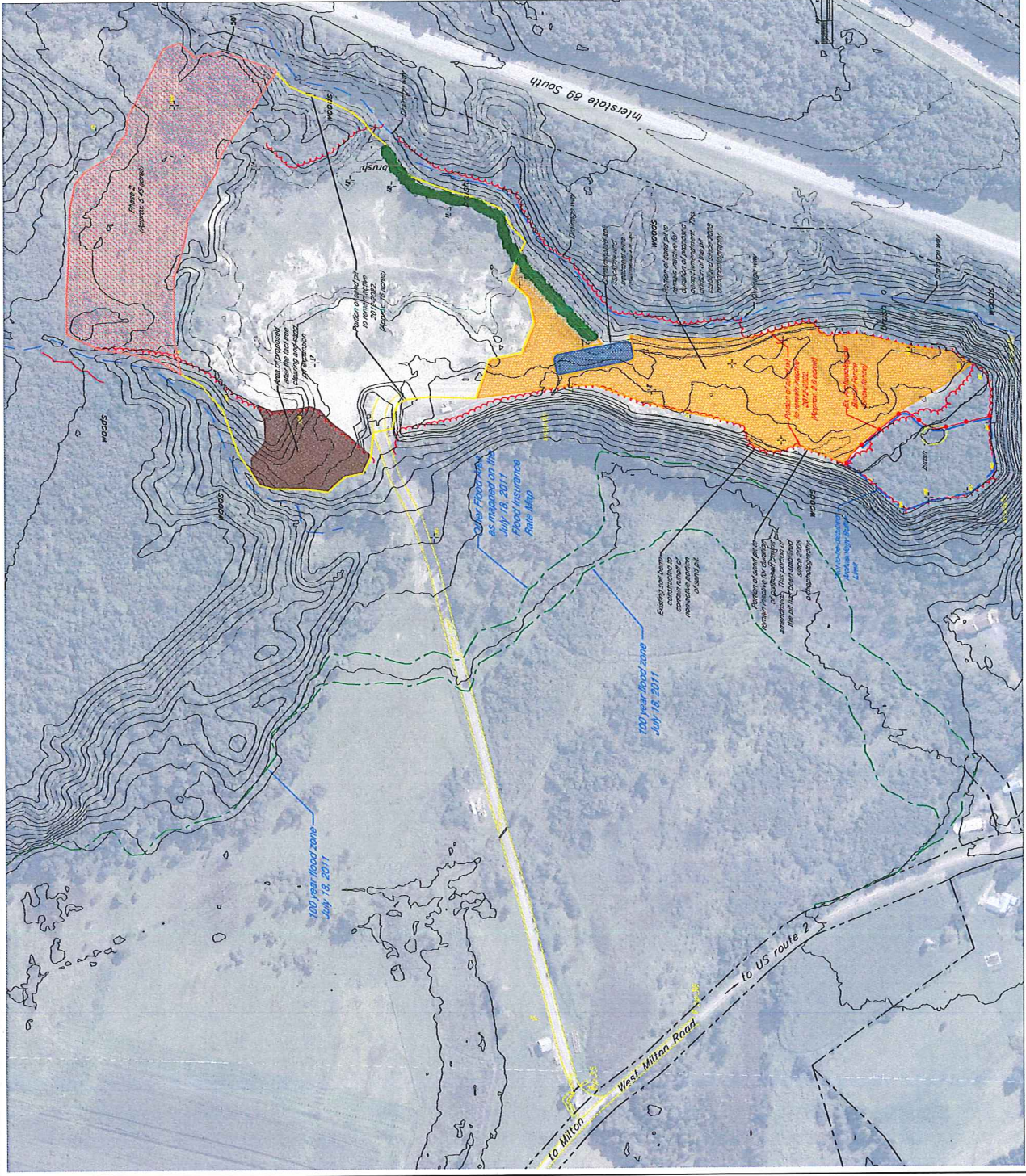
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 22nd day of January, ~~2018~~ 2019

Natural Resources Board

By: 
Diane B. Snelling, Chair

Exhibit A



Location Map
N.T.S.

- Legend**
- Portion of sand pit to be active
 - Anticipated Phase 1 (2012 - 2019)
 - Portion of sand pit to be active
 - Anticipated Phase 2 (2019-2022)
 - Portion of sand pit to be stabilized
 - Cleared and separated portion of sand pit
 - 3 ft. waterline channel
 - New archaeological barrier fence (new fence)
 - 'Not to be disturbed' archaeological buffer limit
 - Photography strip
 - Flood zone limits from July 18, 2011
 - 7.14 Linear Foot Riparian Tree Planting Zone

- Notes:**
1. Digital Aerial Photography based on 2008 conditions.
 2. Limits of 'Not-to-be-disturbed' archaeological buffer taken from the Rowley Farm Sand Pit Site Plan #10297 for the former Minto's excavation plan for the active treatment of sand was prepared by Lincoln Applied Geology, Inc. in August 2005.
 3. Limits of flood zone taken from Flood Insurance Rate Map #1000202011D dated July 18, 2011. Other flood zones shown with a 100 year return period are shown in yellow. Other flood zones shown with a 100 year return period are shown in light green. Flood zones shown in light blue are shown in light blue. Flood zones shown in light green are shown in light green. Flood zones shown in light blue are shown in light blue.
 4. Excavation of sand pit was much more difficult due to the continued extraction of sand.
 5. The sand pit area containing contaminated soils is part of a Corrective Action Plan (CAP) Site #10297 for the former Minto's excavation plan for the active treatment of sand was prepared by Lincoln Applied Geology, Inc. in August 2005.

Operational Notes (2012 - 2022):

1. Maximum 15 acres of the pit will be open and cleared at any one time.
2. Sand extraction will primarily be focused at the northern Phase 1 area and will proceed in a north and east direction. All other areas shall remain stabilized with vegetation cover.
3. Excavation of sand pit shall be completed by the end of the project #10297 and all sand shall be removed from the site.
4. All sand shall be removed from the site.

Date	June 12, 2012	Phase 2 area	DMR
Drawn	DMR	Description	DMR
Checked	DMR		
Scale	1" = 100'		
Date	April 1, 2012		
Project	11252		
	West Milton Road		
	Rowley Farm Sand Pit		
	Milton, Vermont		
	ARRIS & LANSING Consulting Engineers, Inc.		
	164 Main Street, Colchester, Vermont 05446		