

STATE OF VERMONT

Superior Court

Environmental Division  
Docket No.

Natural Resources Board,  
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Ed Bessette  
Respondent

**VIOLATION**

*Commencement of development without a Land Use Permit. 10 V.S.A. § 6081(a).*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. §8007, the Natural Resources Board (petitioner) and Ed Bessette (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Ed Bessette owns approximately 85 acres of real property on the west side of Meehan Road, in the Town of Bristol, Vermont (the Project Tract).
2. An access road on the Project Tract leads to a gravel pit on the north side of the access road near a large field (the Pit).
3. Ed Bessette and Four Hills Farm had a one-time agreement whereby Four Hills Farm performed excavation work for Ed Bessette in exchange for the use of gravel from the Pit.
4. Gravel has been removed from the Pit to create the road leading to the Pit and for off-site purposes at the Four Hills Farm.
5. The construction of the road and related excavation of the Pit caused several trees and debris to enter a stream on the Project Tract.
6. Respondent has removed the trees and debris from the stream in accordance with an Agency of Natural Resources directive.

7. Respondent failed to obtain an Act 250 Permit prior to conducting the above described activities on the Project Tract.
8. *Respondent has commenced development without a Land Use Permit in violation of 10 V.S.A. § 6081(a).*

### AGREEMENT

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

- A. The Respondent (including lessees, assignees, or those acting on the Respondent's behalf) shall immediately cease any and all earth extraction operations of the Pit.
- B. No further earth material extractions or development as defined in 10 V.S.A. §6001(3)(A) may occur on the Project Tract unless and until the District Environmental Commission has (1) issued a Land Use Permit authorizing the activity or (2) a final Jurisdictional Opinion issued in accordance with 10 V.S.A. §6007 and Act 250 Rule 3 finds the activity exempt under existing applicable laws or (3) the Natural Resources Board determines the provisions of this Assurance including Attachment A have been met at which time Act 250 jurisdiction shall lift from the Project Tract unless otherwise triggered.
- C. Following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall commence the implementation of the reclamation plan for the Project Tract attached to this Assurance as **Attachment A** (plan and map) and shall complete such reclamation plan pursuant to its terms.
- D. Respondents shall file a reclamation report certifying completion of the reclamation plan with the Board no later than fifteen (15) days after the completion of the terms of Attachment A. The report may be in the form of a letter with photos documenting the actions taken.
- E. The District Coordinator or Board Compliance Officer may inspect the Project Tract with notice to Respondents to determine continued and final compliance with Attachment A.
- F. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall:
  1. pursuant to 10 V.S.A. Ch. 201, pay a civil penalty in the amount of **Four Thousand Nine Hundred Fifty Dollars and Zero Cents (\$4,950.00)**

Dollars (U.S.), for the violations noted herein, by good check made payable to the "Treasurer, State of Vermont".

2. pursuant to 10 V.S.A. §8010(e)(2), pay the amount of **One Hundred Eighty-Eight Dollars and Zero Cents (\$188.00) (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 Natural Resources Board".
  3. pay the amount of **Ten Dollars and Zero Cents (\$10.00) (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Bristol land records, by good check made payable to the "Town of Bristol, Vermont".
  4. Send the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respondent has actual notice of the Judicial Order and Assurance of Discontinuance.
- G. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board  
Dewey Building  
1 National Life Drive  
Montpelier, Vermont 05620-3201
- H. 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.
- 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. 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.

- 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 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 Bereto 1, Vermont, this 31<sup>st</sup> day of January, 2014.

Ed Bessette  
Ed Bessette

STATE OF VERMONT  
COUNTY OF Vermont, ss.

BE IT REMEMBERED that on the 31 day of January, 2014, personally appeared Ed Bessette signer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be their free act and deed.

Before me,

Melrose Kirby  
Notary Public  
My Commission Expires: 2/10/2015

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

Dated in Montpelier, Vermont, this 17<sup>th</sup> day of March, 2014.

Natural Resources Board

By:

Ronald A. Shems  
Ronald A. Shems, Chair

**ATTACHMENT A**  
**(Reclamation Plan and Schematic Map)**

Attachment A is part of the Assurance of Discontinuance between the Natural Resources Board and Respondent, Ed Bessette. Attachment A outlines the reclamation plan for the Bessette gravel pit on the Project Tract. Attachment A also includes an overview map (figure 1) and a schematic map of the required reclamation (figure 2). The reclamation plan is as follows:

1. Operation hours for the reclamation activities described below shall occur between the hours of 9:00 AM and 5:00 PM Monday through Saturday. No reclamation work shall occur outside these hours.
2. Cut and fill slopes of the gravel pit shall be graded to slopes no steeper than 2:1 (2 horizontal feet for 1 vertical foot), and 3:1 grading is encouraged where possible. This shall occur no later than **July 1, 2014**.
3. Three to four inches of top-soil shall be spread over the entire exposed area of the pit. This shall occur no later than **July 15, 2014**, but no sooner than 1 week prior to seeding and mulching.
4. The entire exposed area of the pit shall be seeded at a rate of 4.0 lbs/acre (PLS) with Niagara Big Bluestem. Where the slope allows, the seeded area should be "tracked" with a bulldozer immediately after planting. Clean straw (weed-free) shall be spread as mulch at a maximum rate of 1,500 lbs/acre on all slopes. This shall occur no later than **July 15, 2014**.
5. Four Vermont native saplings (five feet or taller, such as maple or beech) shall be planted at the base of the reclaimed pit area. This shall occur after spring snow melt and no later than **July 15, 2014**. All trees planted that fail to survive beyond five (5) years from the completion date of this Plan shall be re-planted with comparable trees.
6. Exposed areas shall be re-seeded and maintained to preserve slope stability until at least October 2015.

### Maps of Besette Farm Restoration Plan



**Figure 1:** Overview map of Besette Farm. Area represented by figure 2 is outlined in red and includes the earth extraction area.



**Figure 2:** Map of Besette Farm earth materials extraction area with approximate restoration area shaded and outlined in red. Four green dots represent the approximate location of the four required saplings to be planted as part of this Assurance of Discontinuance.

## Seckington, Donna

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**From:** Pete Diminico <diminico@gmavt.net>  
**Sent:** Tuesday, March 04, 2014 10:05 AM  
**To:** NRB - Comments  
**Subject:** comments

I submitted a complaint to ANR EEO, Gary Urich in August 2013 and I am on record as the complainant: Vermont Statue allows a 30 day period for comment: I was notified of this posting by email on March 3, 2014, the closing date is 3/14/14. The due process of 30 days comment period needs to be compliant for said parties within the statute, it clearly was not in this case. This violation developed in August 2013 and admin stated to keep looking for a posting. This procedure is problematic since the time line is lengthy, no party filing a complaint can continue to monitor the posting in a reasonable manner or timeline. The partie(s) who notified ANR should be notified immediately by the ANR when the decision is posted to the NRB.

Item # 6 Statement of Facts, Description of violations: States all debris has been removed from stream: There is one small section of tree and debris removal not taken away from the lower section of the stream

No mention in the reclamation plan of assurances and prevention of erosion(AMP or BMP) be required as restorative work commences. It needs to be mentioned in the plan for the client. An email to me assuring "let me know when they're out their working and we can tidy up any ANR concerns then" is not adequate.

Pete Diminico

New Haven Riverwatch founder(1993), Board member ACRW

cofounder Bristol Conservation Commission

Past pres. (14) New Haven River Anglers, inaugural 3 years conserv. pl. grants review com.

coordinator for the Univ. Fish. Platform @ Eagle Park on the NHRiver. Middlebury River Task Force(re: post Irene restorative work)