



NATURAL RESOURCES BOARD

Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201

10-27-16

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

Re: Assurance of Discontinuance

Natural Resources Board v. *Daniel Clay*, Respondent

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 10-24-16.

No comments were received on this Assurance of Discontinuance during the 30-day public notice and comment period.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Gill".

Peter J. Gill, Associate General Counsel

Encl.

cc: Robert MacDougal, Acting Chief of the Environmental Division, Attorney General's Office
(via email)
Linda Matteson, Coordinator, District #3 Environmental Commission (via email)

For Court informational purposes

Respondent(s) Address:

Nate Stearns P.O. Box 909, Norwich, VT 05055-0909

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**STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

THE NATURAL RESOURCES)	
BOARD,)	Docket No.
Petitioner,)	
)	
v.)	ASSURANCE OF
)	<u>DISCONTINUANCE</u>
Daniel Clay,)	
Respondent.)	
)	
_____)	

VIOLATIONS

- I. Blasting within a 40- by 100-foot area on the “Residential Project Tract”, in violation of Condition 1 of Land Use Permit 3W0687-1.
- II. Silage Storage in the unfinished building on the “Commercial Project Tract,” in violation of Conditions 2, 7 and 17 of Land Use Permit 3W0637-2F.
- III. Plowing snow in the riparian buffer on the “Commercial Project Tract” in violation of Condition 22 of Land Use Permit 3W0637-2F.
- IV. Failure to maintain silt fence around stockpiled earth materials on the “Commercial Project Tract” in violation of Condition 7 of Land Use Permit 3W0637-2C.

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

Residential Project Tract

Background

1. On April 10, 2001, the District 3 Environmental Commission issued Land Use Permit 3W0687-1 to Frederick and Elizabeth Davis, authorizing the creation of two lots with a single family home on each lot. Respondent Daniel Clay purchased the 6.6-acre residential lot from Mr. and Mrs. Davis on April 7, 2004. The residential project tract is located at 289 Byron Hill Road in Hartford, Vermont and is subject to Land Use Permit Series 3W0687 ("Residential Project Tract").

I. Blasting

2. The Respondent conducted blasting within a 40- by 100-foot area three times during the Week of August 16, 2015 on the Residential Project Tract, with the intent of creating a flat area for calf hutches, an agricultural building, and agricultural equipment storage. The blasting was contrary to the plans and exhibits in violation of condition 1 of Land Use Permit 3W0687-1.
3. Condition 1 of Land Use Permit 3W0687-1 reads as follows:

The project shall be completed, operated, and maintained in accordance with: (a) the plans and exhibits on file with the District Environmental Commission and (b) the conditions of this permit.

The approved plan is: Sheet 1 - "Site Plan", dated September 13, 1995, last revised December 15, 1995.
4. Within the Act 250 Application for Land Use Permit 3W0687-1, Schedule B, on page 13, under Criterion 8 – Scenic Beauty, Historic Sites, and Natural Areas, the applicant states:

The location of the proposed homes is such that no trees will have to be removed.
5. Under Criterion 9C – Forest and Secondary Agricultural Soils, the applicant stated:

Lots are for private dwellings and are too small for commercial agriculture or forestry development.

The only soil to be disturbed would be at the home and septic sites. The remainder would remain as is.

6. Under Criterion 9D and 9E – Earth Resources, the applicant stated:
 - i) The *[sic]* will be no blasting or earth extraction for commercial sale. There is no need for blasting even for home construction.
 - iii) There will be no extraction area other than for home construction.
7. On August 28, 2015 the Board issued a Notice of Alleged Violation with a compliance directive to cease all blasting activity. On September 16, 2015, the Respondent indicated in writing, through counsel, that he had ceased blasting in accordance with the Board's compliance directives. Respondent has filed an application for a permit amendment from the District 3 Environmental Commission in order to continue blasting.
8. Respondent's blasting activities on the permitted tract violated condition 1 of Land Use Permit 3W0687-1.

Commercial Project Tract

Background

9. On June 24, 2004, the District 3 Environmental Commission issued Land Use Permit 3W0637-2A to the Respondent Daniel Clay for construction of a sand and salt shed, and for additional construction and storage of materials at 1444 Route 14 in Hartford, the "Commercial Project Tract." The Respondent commenced construction of the sand and salt shed shortly thereafter. To date, only the concrete foundation has been completed, consisting of a slab and four open bays.
10. On June 28, 2013, the District 3 Environmental Commission issued Land Use Permit 3W0637-2F to the Respondent for construction of 3 buildings for the housing, care, and feeding of a dairy herd on the "Commercial Project Tract." The tract of land consists of 4.94 acres. The design of the 3 buildings incorporated the existing foundation of the originally proposed sand and salt shed. However, to date, none of the additional construction approved under 3W0637-2F has commenced. The "Commercial Project Tract" is subject to Land Use Permit Series 3W0637.
11. On August 28, 2015 the Board sent a Notice of Alleged Violation (NOAV) to the Respondent for alleged violations of Land Use Permit Series 3W0687 and Land Use Permit Series 3W0637.

12. On January 14, 2016 Respondent filed an application for a Land Use Permit amendment with the District 3 Environmental Commission for a project described as extracting and crushing of ledge material to create a flat area to be used for constructing a pole barn and for storage of agricultural material and equipment.

II. Silage Storage in the Unfinished Building

13. The Respondent has been storing silage in the concrete foundation of the unfinished milking barn since the fall of 2014 in violation of Conditions 7, 2, and 17 of Land Use Permit 3W0637-2F.

14. Condition 7 of Land Use Permit 3W0637-2F reads as follows:

No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.

15. Condition 2 of Land Use Permit 3W0637-2F reads as follows:

The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law 3W0637-2F, and (c) the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations.

The approved plans are:

- Sheet S1 – “Existing Conditions Compilation Map,” dated 2/7/13, last revised 5/5/13 (Exhibit # 18).
- Sheet C1 – “Schematic Site Development Plan,” dated 2/7/13, last revised 5/5/13 (Exhibit #19).
- Sheet D1 – “Schematic Building Elevations,” dated 3/14/13 (Exhibit #10).
- Sheet D2 – “Details,” dated 3/14/13, last revised 5/15/13 (Exhibit #20).

16. Exhibit 10 of Land Use Permit 3W0637-2F depicts a 40- by 70-foot milking barn with a roof over the existing concrete foundation.

17. Paragraph 7 of the Findings of Fact of Land Use Permit 3W0637-2F reads as follows:

Cows will be fed dry hay bales that will be kept inside and wrapped hay bales that will be kept outside. The cows will also be fed grain which will

be kept in a galvanized bin in the front of the building. The cows will receive their food in the holding area. The food will be delivered to the property in "ag bags," dry, or wrapped bags/bales. Testimony.

18. Condition 17 of Land Use Permit 3W0637-2F reads as follows:

The Permittee shall transport animal feed to the property in "ag bags," dry or in wrapped bags/bales. Food shall be kept wrapped in bins, dried, or inside the buildings.

19. Accordingly, Respondent has violated Conditions 2, 7, and 17 of Land Use Permit 3W0637-2F.

III. Placing Plowed Snow in the Riparian Buffer

20. During an inspection of the "Commercial Project Tract" on April 24, 2015, the Board's Enforcement Officer observed that large amounts of plowed snow had been piled within the Permit's designated riparian buffer in violation of Condition 22 of Land Use Permit 3W0637-2F. This snow contained sediment, crushed slate, silage, and refuse.

21. Condition 22 of Land Use Permit 3W0637-2F reads, in relevant part, "...Snowplowing or storage of any materials with this buffer is prohibited."

22. By plowing snow into the designated buffer the Respondent violated Condition 22 of Land Use Permit 3W0637-2F.

IV. Failure to Maintain Silt Fence

23. During an inspection of the "Commercial Project Tract" on April 24, 2015, it was noted that the Respondent failed to install and maintain siltation fencing around several large piles of earth materials stockpiled on the lower terrace in violation of Condition 7.

24. Condition 7 of Land Use Permit 3W0637-2C reads as follows:

The permittee shall store all gravel and topsoil as far as possible from the White River on the lower level and shall install and maintain a siltation fence around the entire perimeter of any stockpile of earth.

25. The Respondent has been notified of this issue previously. On September 5, 2008 the Respondent was issued a Notice of Alleged Violation from the Board alleging that he failed to install a siltation fence around stockpiled earth.

26. Accordingly, the Respondent violated Condition 7 of Land Use Permit 3W0637-2C.

AGREEMENT

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

- A. Respondent shall comply with Permit Series 3W0687 and Permit Series 3W0637.
- B. Respondent shall cease any and all unpermitted storage on the Commercial Project Tract.
- C. Respondent shall diligently pursue his current Land Use Permit Amendment application for extraction and crushing ledge material as filed with the District 3 Environmental Commission.
- D. For purposes of this AOD, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 3 Environmental Commission, the Coordinator for the Commission, or ANR (as applicable) by the date set by the Commission or Coordinator or ANR; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission or ANR. Respondents shall not be responsible for delays outside their control, including those caused by the Commission or ANR or by other parties to its applications. If, after diligently pursuing his current Land Use Permit Amendment application Respondent does not receive approval of such application from the Commission, Respondent may not proceed with his project but Respondent shall be under no further obligation to pursue a permit and shall not be subject to any further AOD, penalties, fines, or enforcement action in connection with the issues described in this AOD.
- E. With respect to Condition 7 of Land Use Permit 3W0637-2C, which reads as follows:
 - The permittee shall store all gravel and topsoil as far as possible from the White River on the lower level and shall install and maintain a siltation fence around the entire perimeter of any stockpile of earth.

The Natural Resources Board agrees that the reference to "earth" refers to readily erodible earth material (i.e., dirt), and does not include stone or gravel product.

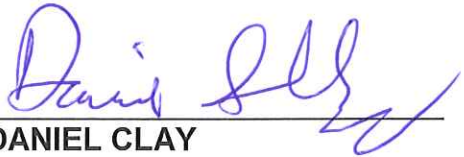
- F. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) Dollars (U.S.)**, 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 **One Thousand Three Hundred Eighty-Five Dollars and Thirty-Three Cents (\$1,385.33) (U.S.)**, 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 (\$10.00) Dollars (U.S.)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Hartford land records, by check made payable to the "Town of Hartford, Vermont."
- G. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
- H. 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
- I. 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.
- J. 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.
- K. 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.

- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. 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.
- Q. 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.
- R. 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 Sept, Vermont, this 12 day of _____, 2016.


DANIEL CLAY

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 12th day of September, 2016,
personally appeared Daniel Clay, 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 free act and deed.

Before me,


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 24th day of October, 2016.

Natural Resources Board

By:



Diane B. Snelling, Chair