

**STATE OF VERMONT
ENVIRONMENTAL COURT**

**LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner**

v.

Docket No.

**DENNIS & LORI DEMERS
Respondents**

VIOLATION

Placement of fill within 100 feet of a stream without a permit amendment, in violation of Land Use Permit # 7C1091, as amended, and in violation of Act 250 Rule 34(A).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Dennis & Lori Demers (Respondents) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND VIOLATION

1. Respondents own and operate a sand and gravel pit on both the north and south sides of Hilary Drive, on land identified in Book 99, Pages 430-431 of the Hardwick land records (Project).
2. The Project is subject to Land Use Permit # 7C01091, issued on October 25, 2000, as amended (the Permit).
3. At some time before February 5, 2008, Respondents began placing fill in an area visible from Route 16 and within 100 feet of a stream.
4. Condition 3 of the Permit states that:

No changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.
5. Condition 12 of the Permit states that:

A minimum 100 foot buffer to the on-site stream shall be established and protected excepting that minor work on the existing haul road may be conducted in order to address erosion control and drainage objectives.

6. To date, Respondents have neither requested nor obtained a permit amendment for said placement of fill.
7. Respondent violated the Permit and Rule 34(A) by placing fill within 100 feet of a stream without a permit amendment.

AGREEMENT

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

- A. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$1,125.00** U.S. Dollars for the violation noted herein. Respondent shall make said payment by check or money order payable to the "Treasurer, State of Vermont" and shall send it to:

Denise Wheeler, Business Manager
Natural Resources Board, Land Use Panel
National Life Records Center
Montpelier, Vermont 05620-3201
- B. Any payment by the Respondents pursuant to this Assurance is made to resolve the violation set forth herein and shall not be considered to be a charitable contribution or business expense under federal or state tax laws.
- C. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondents shall file with the District 7 Environmental Commission a complete permit amendment application to address the placement of fill, and any other project changes Respondents wish to make or retain.
- D. If the Respondents fail to file such application in compliance with the preceding paragraph, or file a complete and timely application and the Commission denies said application, the Respondents shall restore the project site to its permitted condition. Said restoration shall be completed within one hundred eighty (180) days of the deadline in the preceding paragraph for filing an application if Respondents fail to file a complete application by that date, or within one hundred eighty (180) days of the permit denial if Respondents file an application in accordance with the preceding paragraph.

- E. Respondents shall comply with all terms and conditions of Land Use Permit #7C1091 as amended.
- F. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violation set forth herein above.
- G. 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.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, 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), Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondent fully complies with the agreements set forth above.
- J. 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 Environmental Court. 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.
- K. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- L. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES


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

By: 
Dennis Demers

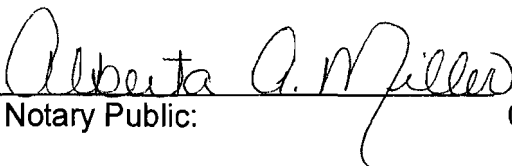
BE IT REMEMBERED that on the 14 day of October, 2008, personally appeared Dennis Demers, signer of the foregoing written instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed.

Before me: 
Notary Public: Commission Expires: 02/10/2011.

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

By: 
Lori Demers

BE IT REMEMBERED that on the 14 day of October, 2008, personally appeared Lori Demers, signer of the foregoing written instrument who is known to me or who satisfactorily established her identity to me and acknowledged the same to be her free act and deed.

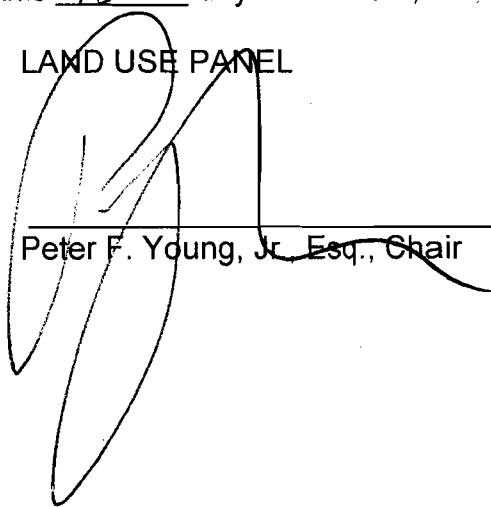
Before me: 
Notary Public: Commission Expires: 02/10/2011.

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

DATED in Montpelier, Vermont, this 15TH day of October, 2008.

LAND USE PANEL

By:


Peter F. Young, Jr., Esq., Chair