

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

Land Use Panel of the
Natural Resources Board,
Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

Hart Gravel Bank & Trust Construction Co.
and ~~Steven~~ ^{Stephen} Hart, ^{S.M.H.}
Respondents

VIOLATIONS

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

Failure to obtain permit for stormwater discharge. 10 V.S.A. Ch. 47

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Land Use Panel of the Natural Resources Board (Panel) and Hart Gravel Bank & Trust Construction Co. and ~~Steven~~ ^{S.M.H.} Stephen Hart (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

Violation of 10 V.S.A. Ch. 151 (Act 250)

1. Respondents own a parcel of land of approximately 100 acres in the Town of Pownal, Vermont.
2. Respondents conduct a commercial gravel extraction operation on twenty-six acres of their Pownal parcel (the Project)
3. In February 2011, the Coordinator for the District 8 Environmental Commission


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issued a Jurisdictional Opinion which concludes that, although the Respondents' gravel extraction operation pre-exists the adoption of 10 V.S.A. Ch. 151 (Act 250), increases in the extraction rate in recent years over historical, pre-1970 rates and the addition of a crusher constitute "substantial changes" to a pre-existing development, and the operation therefore requires an Act 250 permit. 10 V.S.A. §6081(b).

4. This Jurisdictional Opinion was not appealed and is therefore final and binding on the Respondents.
5. The Project requires an Act 250 permit.
6. The Respondents are applying for but do not yet have an Act 250 permit for the Project.
7. Failure to obtain a permit for the Project constitutes a violation of 10 V.S.A. §6081(a).

Violation of 10 V.S.A. Ch. 47

8. Pursuant to 10 V.S.A. Ch. 47, §1264, Respondents are and were required to obtain coverage under a MultiSector General Permit (MSGP) for stormwater from the Agency of Natural Resources (ANR) for the Project.
9. For several years Respondents operated the Project without the required MSGP.
10. On April 29, 2011, Respondents obtained coverage under MSGP #6523-9003 for their stormwater discharge at the Project.
11. The Respondents' coverage under MSGP #6523-9003 expired on August 18, 2011.
12. Respondents are applying for but do not presently have a MSGP for the Project.
13. Respondents' earlier failure to obtain and to presently have coverage under a MSGP for stormwater for the Project constitute violations of 10 V.S.A. Ch. 47.

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AGREEMENT

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

- A. Respondents shall diligently pursue their Act 250 (10 V.S.A. Ch. 151) permit application.
- B. Respondents shall diligently pursue their application for coverage under a MSGP from ANR.
- C. For purposes of this Assurance, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 8 Environmental Commission, or 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.

- D. 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 Nine Thousand (\$9,000.00) Dollars (U.S.), for the violations of 10 V.S.A. Ch. 47 and 151 noted herein, by good check made payable to the "Treasurer, State of Vermont".

2. 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 Pownal land records, by good check made payable to the "Town of Pownal, Vermont."

All payments pursuant to this paragraph shall be sent to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201

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- E. Any payment by the Respondents pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.
- F. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations 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 applicable to the Respondents.
- H. 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.
- I. 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 on the date the Court signs this Assurance, provided that the Respondents fully comply 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 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.
- 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.

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SIGNATURES

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

Dated at *Roxbury*, Vermont, this *19th* day of *March* 2012.

smff
Stephen *Stephen Hart*
Steven Hart, Individually and for
Hart Gravel Bank & Trust
Construction Co.

STATE OF VERMONT
COUNTY OF *Bennington*, ss.

smff BE IT REMEMBERED that on the *19th* day of *March* 2012,
Stephen personally appeared ~~Steven Hart~~, individually and as the duly authorized agent of Hart Gravel Bank & Trust Construction Co., 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 Hart Gravel Bank & Trust Construction Co., and that he has the authority to contract on behalf of Hart Gravel Bank & Trust Construction Co., and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.



Before me,
Karen Burrington
Notary Public
My Commission Expires:

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

Dated in Montpelier, Vermont, this *27th* day of *March* 2012.

LAND USE PANEL

By: *Ronald A. Shems*
Ronald A. Shems, Chair