

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

Natural Resources Board, Petitioner,
v.
Dennis & Mary Heath,
Respondents.

ASSURANCE OF
DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Dennis & Mary Heath (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

VIOLATIONS

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Dennis & Mary Heath own a sand and gravel pit (the "Pit") on an approximately 45.72-acre parcel located off Marjorie Drive in the Town of Eden, Vermont (Project Tract).
2. Eden is a "one-acre town" for the purposes of Act 250 Jurisdiction.
3. A small gravel pit was developed on the Project Tract in approximately 1975.
4. From the mid-1970s through the mid-1980s, use of the pit was sporadic and infrequent.
5. In 1985 and 1986, Marjorie Heath and the Town of Eden were repeatedly informed in writing that an Act 250 Land Use Permit was required for this pit. The Town and Ms. Heath submitted an incomplete application for a Land Use Permit on May 6, 1986, and a draft permit was prepared, but in August of 1987, the applicants withdrew the application.
6. In October of 1985, the Town of Eden extracted and crushed gravel from the pit on a temporary emergency basis, with the permission of the Act 250 District Coordinator.
7. From 1985 through 2006, the pit remained approximately ½ acre in size. During this period, use of the pit was sporadic and infrequent.
8. In 2006, the Respondent extracted approximately 700-1,000 cubic yards of material from the pit for the construction of a garage at the M. B. Heath & Sons Lumber Company

property in North Hyde Park. From 2006 through 2015, use of the pit was sporadic and infrequent.

9. Starting in the Summer of 2015, Respondents began to cut timber, pull stumps, and clear vegetation, which resulted in an increase in the total area of disturbance associated with the pit. The Board asserts this increase approximately doubled the area, and Respondents assert that the increase was approximately 15-20%.
10. On April 11, 2016, Respondents met with the Town of Eden Selectboard and agreed to sell approximately 8,000 to 10,000 cubic yards of gravel to the Town of Eden. Between May 12, 2016, and June 1, 2016, Respondents extracted 5,016 cubic yards of material and crushed it on the Project Tract. Of this total, 3,689 cubic yards were removed from the Project Tract by the Town of Eden, and 1,327 cubic yards were stockpiled at the Project Tract for future use by the Town of Eden.
11. No Act 250 (10 V.S.A. Ch. 151) Land Use Permit, Construction General Permit (GP 3-9020) or Multi Sector General Permit (GP 3-9003) was obtained prior to commencement of these earth resource extraction operations on the Project Tract.
12. On October 5, 2016, the Agency issued Authorization to Discharge Stormwater under General Permit 7676-9020 to Respondent.
13. On December 15, 2016, the Agency issued Authorization to Discharge Stormwater under Multi-Sector General Permit 7676-9003 (NPDES VTR 050001) to Respondent.
14. On March 21, 2017, the District 5 Environmental Commission issued Land Use Permit 5L1580, specifically authorizing the continuation of excavation (extraction, processing, and stockpiling of gravel, as well as bank reclamation).
15. By failing to obtain a Land Use Permit prior to commencing development for a commercial purpose, Respondents violated Act 250, 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. No later than **60 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay each of the following by good check:
 - a. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$4,950.00** for the Board violations noted herein made payable to the "State of Vermont".

- b. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$834.30** to reimburse the Natural Resources Board for the costs of this enforcement action made payable to the **"State of Vermont."**
 - c. The amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Eden land records, made payable to the **"Town of Eden, Vermont."**
- B. All payments and documents required by this Assurance shall be sent to:
- Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, VT 05620-3201**
- C. Respondents are jointly and severally liable for all obligations under this Assurance, unless otherwise indicated.
 - D. No Respondent shall deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
 - E. 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.
 - F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
 - G. 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.
 - H. 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 set forth herein, provided that the Respondents fully comply with this Assurance.
 - I. 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.

- J. 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.
- K. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURES

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

Dated at Morris town, Vermont, this 8th day of May, 2017.

Dennis C. Heath
Dennis Heath

State of Vermont
County of Lamoille, ss:

At Morris town in said County and State, this 8th day of May, 2017, Dennis Heath personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me,

Marcia P. Marble
Notary Public
My Commission Expires: 2 - 10 - 2019

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

Dated at Monestown, Vermont, this 8th day of May, 2017.

Mary Heath
Mary Heath

State of Vermont
County of Lamoille, ss:

At Monestown in said County and State, this 8th day of May, 2017, Mary Heath personally appeared and she acknowledged this instrument, by her sealed and subscribed, to be her free act and deed.

Before me,

Marcia P. Marble
Notary Public
My Commission Expires: 2-10-2019

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

Dated at Montpelier, Vermont this _____ day of _____, 2017.

NATURAL RESOURCES BOARD

By: _____

Diane Snelling, Chair