

STATE OF VERMONT
Superior Court - Environmental Division

Docket No.

Natural Resources Board,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Estate of George E. Huntington,

Respondent

VIOLATIONS

Conditions 1, 9, and 17 of Act 250 Land Use Permit 3R0677

ASSURANCE OF DISCONTINUANCE

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

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent owns approximately 20 acres of land (the "Project Tract") located on Route 25 in the Town of Bradford, VT subject to Act 250 Land Use Permit 3R0677 ("the Permit"). The Respondent is successor in interest to the Original Permittee (the now deceased previous owner of the project tract, George E. Huntington).
2. The Permit, which expired by its terms on October 1, 2014, authorized the extraction of up to 100,000 cubic yards of sand and gravel per year for 20 years as long as the project proceeds in accordance with the plans and exhibits on file with the District Environmental Commission. *Condition 1 of the Permit.*
3. Condition 9 of the Permit required reclamation "immediately upon completion of the excavated area" to be accomplished "continually while the excavation faces proceed through the project lands" and limited the area of active excavation to no more than two acres at any one time.
4. Condition 17 of the Permit requires that "[a]ll excavation and associated construction on this project must be completed by October 1, 2011, unless

extended by an amendment to this permit.”

5. Respondent and/or Original Permittee failed to operate the project in accordance with Condition 1, did not receive or apply for a Land Use Permit Amendment to authorize continued operations beyond October 1, 2011 or for any delayed reclamation in violation of Condition 17, and has not abided by the reclamation requirements of Condition 9.
6. Under ordinary circumstances, these actions and inactions on the part of a permittee would result in a substantial penalty based on 10 V.S.A. § 8010.
7. However, this matter contains unique circumstances and the Board, based on these mitigating circumstances and the agreement below, waives the assessment of a monetary penalty as a matter of enforcement discretion. Specifically, Respondent has a monetary obligation as a result of an automobile accident caused by the now deceased previous owner of the Project Tract, which cannot be paid in full with the current assets of the estate. It is further noted that Respondent has agreed to the compliance directives outlined below and the property will be purchased by an individual willing to reclaim the property in accordance with an amended reclamation plan to be submitted to the District 3 Environmental Commission.

AGREEMENT

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

- A. No later than 30 days following the entry of this AOD as an Order by the Superior Court, Environmental Division, the Respondent shall file a complete and updated reclamation plan with the District 3 Environmental Commission for the closure and reclamation of the Pit. The Amendment shall allow Respondent, or Successor in Interest, not less than twelve months and not more than twenty-four months to complete the reclamation and shall not allow for any continued operation of the Pit. The amendment shall require the Respondent or successor in interest to obtain review and written approval by the District 3 Environmental Coordinator as to the sufficiency of the closure and reclamation after one year of completion. Respondent or successor in interest shall diligently pursue said amendment.
- B. 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.

- C. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall:
1. Deposit into a Board approved escrow account a sum of **Forty-five Thousand Dollars and zero cents (\$45,000.00)** for the purpose of ensuring that the relevant portions of the Project Tract are reclaimed in accordance with a properly obtained permit amendment reflecting an updated reclamation plan as required by subdivision A. above. The Respondent shall provide the Board written notification within a week of the escrow account being fully funded. After completion of the reclamation work, and review and written approval issued by the District 3 Environmental Coordinator per subdivision A. above, the escrow amount shall be released to the Estate or directly to the personal injury victims if so directed by an order of the probate court in the Respondent's related probate matter. If approval is not granted for lack of successful reclamation of the Project Tract, the escrow amount shall be forfeited to the State of Vermont for the purposes of completing reclamation. Any sums not spent by the State for the reclamation shall be returned to the estate within 90 days of the completion of the reclamation.
 2. Pay the amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Bradford land records, by check made payable to the "Town of Bradford, Vermont".
- D. 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
- E. Respondents are jointly and severally liable for all obligations under this Assurance.
- F. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax

purposes or attempt to obtain any other tax benefit from such payment.


- G. 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.
- H. 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.
- I. 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.
- J. 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 set forth herein, provided that the Respondents fully comply with this Assurance. Furthermore, once the estate has submitted a completed reclamation plan prepared by an engineer to the State, paid the application fee, paid \$45,000.00 into escrow, signed this Assurance of Discontinuance, and transferred the Project Tract to a third party, the Estate shall have no further liability under the specific facts asserted here.
- K. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondents' control.
- L. 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.
- M. 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.
- N. 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 penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.

O. 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 Barre, Vermont, this 29 day of Nov, 2016



Executor of Estate of George E. Huntington
AG ADMINISTRATOR

BE IT REMEMBERED that on the 29 day of November, 2016, personally appeared THE ESTATE BY ANDREA GALLITANO AG, signers of the foregoing instrument who are known to me or who satisfactorily established their identity to me and acknowledged the same to be their free act and deed.

Before me,



Notary Public
My Commission Expires: 02/10/2019

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

Dated in Montpelier, Vermont, this _____ day of _____, 20__.

Natural Resources Board

By:

Diane B. Snelling, Chair