

**STATE OF VERMONT
ENVIRONMENTAL COURT**

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

Petitioner,

v.

**LSF FOREST PRODUCTS, LLC and
TERRY RIGGS**

Respondent.

}
} Docket No. _____
}

}
} **ASSURANCE OF
DISCONTINUANCE**
}

VIOLATIONS

- I. Commencing development for a commercial or industrial purpose by constructing a sawmill without an Act 250 permit in violation of 10 V.S.A. § 6081[a].

- II. Violation of 10 VSA §§ 1259 and 1263 and 33 USC § 1342(p), by operating and discharging from a source of industrial stormwater without first obtaining an NPDES stormwater permit for discharges associated with industrial activity in violation of Section 402[p] of the federal Clean Water Act, 33 USC § 1342[p], and 10 VSA §§ 1259 and 1263.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and LSF Forest Products, LLC and Terry Riggs (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND VIOLATION

1. Terry Riggs (the Owner) owns a one hundred and sixteen (116) acre

parcel located at 1036 Pond Road, in Fletcher, Vermont (the Subject Property).

2. The Owner is a member of LSF Forest Products, LLC. Both the Owner and LSF Forest Products (Respondents) are Respondents herein.
3. On or about 2003 Respondents constructed and began the operation of a commercial lumber sawmill (the Facility) on the Subject Property.
4. Respondent maintains that the Facility only process lumber from timber harvested from locations other than the Subject Parcel.
5. The Facility processes approximately three hundred and thirty thousand (330,000) board feet of lumber per year.
6. Respondents' construction of a sawmill and associated activities and operations on more than ten (10) acres of land in the Town of Fletcher is a "development" within the meaning of 10 VSA § 6001[3][A][i].
7. Respondents commenced development by construction of improvements for commercial and/or industrial purposes without first obtaining an Act 250 Land Use Permit as required by 10 VSA § 6081[a].
8. By commencing development for a commercial and/or industrial purpose without an Act 250 permit, Respondents have violated 10 V.S.A. § 6081[a], and remain presently in violation of 10 VSA § 6081[a].
9. Respondents operated the Facility with the intent to discharge stormwater associated with industrial activities to waters of the State, and such discharges did in fact result.
10. Respondents failed to obtain a NPDES stormwater permit for discharges associated with industrial activity as required by 402[p] of the federal Clean Water Act, 33 USC § 1342[p], and 10 VSA §§ 1259 and 1263, and in violation thereof.

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 Respondent shall file with the District 6 Environmental Commission a complete Act 250 permit application and diligently pursue the same.
- B. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall file a Notice of Intent (NOI) with the Agency of Natural Resources Department of Environmental Conservation Water Quality Division (ANR/WQD) seeking coverage under the VTNPDES Multi-Sector General Permit (MSGP) 3-9003 for discharges of industrial stormwater. In the alternative, Respondent may, within thirty (30) days of the date on which this assurance is signed, and if the Facility qualifies, submit a "No Exposure" certification to the ANR/WQD. Falsely certifying "No Exposure" shall be a violation of the Assurance and subject the Respondent to additional penalties, including criminal penalties as may be appropriate, as set forth in the ANR/WQD MSGP No Exposure Certification Form.
- C. Should the District 6 Environmental Commission deny Respondent's Act 250 permit application, and should said denial become final, then Respondents shall immediately cease commercial and/or industrial operation of the Facility.
- D. No later than thirty (30) days of the date on which this Assurance is signed by the Environmental Court, the Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **Two Thousand Five Hundred Dollars (\$2,500.00)**, for the violations 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 Building
National Life Drive
Montpelier, Vermont 05620-3201

Any payment by the Respondent pursuant to this paragraph is made to resolve the violation set forth in this Assurance of Discontinuance and shall not be considered to be a charitable contribution, business expense or other deductible expense under the federal or state tax codes. Respondent 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.

- E. 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.
- F. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other 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 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.
- H. Pursuant to 10 V.S.A. § 8007(d), Respondent 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.
- 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 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.
- J. 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.
- K. 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.

Dated at FLETCHER, Vermont, this 9 day of JUNE, 2009.

Terry Riggs
TERRY RIGGS, Individually

LSF FOREST PRODUCTS, LLC,
by

Terry Riggs
TERRY RIGGS, Duly Authorized
Agent

STATE OF VERMONT
COUNTY OF Franklin, ss.

BE IT REMEMBERED that on the 9th day of June, 2009, personally appeared Terry Riggs, individually and as the duly authorized agent of LSF Forest Products, LLC 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 LSF Forest Products, LLC and that he has the authority to contract on behalf of LSF Forest Products, LLC and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

E. [Signature]

Notary Public
My Commission Expires: 2/10/11

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

Assurance of Discontinuance

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Dated in Montpelier, Vermont, this 12th day of June,
2009.

LAND USE PANEL

By:


Peter F. Young, Jr., Chair