

**STATE OF VERMONT
ENVIRONMENTAL COURT**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

Docket No.

v.

LUZENAC AMERICA, INC. and
U.S. TALC COMPANY,
Respondents

VIOLATION

Respondents failed to obtain a permit amendment for material changes to the permitted project, in violation of Land Use Permit 2W0551, as amended, and 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 Luzenac America, Inc. and U.S. Talc Company (Respondents) hereby enter into this Assurance of Discontinuance (Assurance) and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On October 20, 1982, the District 2 Environmental Commission (the Commission) issued Land Use Permit #2W0551 (the Original Permit) and corresponding Findings of Fact and Conclusions of Law (Findings), authorizing the Vermont Talc division of OMYA, Inc., (the Original Permittee) to operate a talc mine on approximately 84 acres of land in Windham, Vermont.
2. Respondents are the successors in interest to permittee Vermont Talc.
3. The Original Permit stated that the permittee, as well as its assigns and successors, were obligated "to complete and maintain the project only as approved by the district commission in accordance with" the permit conditions, its findings and conclusions, and the permittee's plans and exhibits that were stamped as approved by the Commission.
4. The Original Permit explicitly prohibited any changes in the project without the written approval of the Commission.
5. A Finding pertaining to the extraction of earth resources stated that "[t]he

project is planned to have shallow slopes to the water level of a pond in the open portion of the mine." The Finding further noted that the pond "can be used for recreation or for a fire pond."

6. The Original Permit called for the construction of a sediment pond to be located near the southeast corner of the proposed quarry to receive water from the mine, settle out solids and allow gradual drainage, and noted that the planned "[p]ermanent erosion controls consist of culverts, rip rap, a sedimentation pond and seed and mulch."
7. The Original Permittee commenced construction of a pond in the southeast corner of the property as approved by the permit, but in response to a notice of violation from the State of Vermont Agency of Environmental Conservation regarding functioning of said pond during the operation of the quarry abandoned and replaced this sedimentation pond with two sedimentation ponds west of the mine, at a higher elevation than the permitted pond.
8. The erosion control structures associated with the southeastern pond required by the Original Permit were also omitted.
9. Between 1984 and 1995, the Original Permittee or its successors in interest applied for several permit amendments. None of these applications referenced the abandonment of the sedimentation pond and discharge structures originally approved in the Original Permit or the replacement structures actually constructed and used in the operation of the mine.
10. Neither the Original Permittee nor any of its successors in interest ever sought or obtained from the Commission a permit amendment allowing either relocation of the approved sedimentation pond or omission of associated erosion control structures.
11. U.S. Talc Company acquired the mine site on or about May 13, 1988 at which time the perimeter of the mine was substantially in the location as it exists today and the sedimentation pond to the southeast had already been abandoned, and the sedimentation ponds had been relocated to the west.
12. In November 1991, Cyprus Windsor Minerals, Inc. was issued Land Use Permit #2W055-A which authorized the change of the name of the owner of the permit to Cyprus Windsor Minerals, Inc. and authorized a change from a continuous mining machine to blasting. No reference was made to the relocation of the approved sedimentation pond or omission of associated erosion control structures pertaining to the pond.

13. In 1992, Luzenac America, Inc. acquired its interest in U.S. Talc Company and took over actual mining operations at the Hamm mine.
14. November 1995, the Commission granted Luzenac's permit amendment application authorizing it to expand the mine's existing overburden disposal area – the area where waste rock fill was placed. One of the conditions to this permit amendment required Luzenac to reclaim the overburden disposal area by October, 2002, as outlined in its plan.
15. Luzenac stated in its application for the 1995 permit amendment that “[o]verall site reclamation is pending designation of mine closure date. Reclamation of overburden disposal area involves grading and revegetation.”
16. Mine operations ceased in 1997.
17. Between 1997 and 2002, Respondent Luzenac monitored the gradual filling of the pit with water that resulted from the cessation of pumping operations.
18. In October 2002, Luzenac informed the Commission that it had fully complied with permit conditions and outlined its future plans for the property, which were to allow the Act 250 permit to expire, complete reclamation, and sell the property. It entered into a sale agreement with regards to the property with Sean and Elizabeth Reese in October of 2002, and conveyed the property to the same by Quit Claim deed in December of 2002.
19. In 2003, the mine pond began overflowing at its northeastern corner near White Road and onto the McCandless property. The water collecting in the former mine has flowed on a generally continuous basis, with varying degrees of intensity, since at least 2003. The northeast portion of the mine pit edge became an unanticipated release point of water, which flowed into the ditches along White Road and onto McCandless property.
20. The overflow contributed to erosion of the McCandless property, as well as sedimentation buildup in ditches along and in culverts underneath White Road. An August 2003 rain storm increased the overflow so that it contributed to a wash out of a portion of White Road onto McCandless fields.
21. The continuous mine overflow has contributed to a portion of the McCandless' fields becoming saturated and muddy, such that machinery during certain seasons can no longer safely travel over this portion of the

McCandless fields.

22. Wetlands have been established on the McCandless property, due to the increased saturation. Wetland vegetation, such as cattails, have become established that did not exist prior to the Hamm Mine filling and overflowing with water. The overflow of water from the former mine and over the McCandless fields contributed to the establishment of the wetlands, thereby eliminating the productive use of a portion of the McCandless fields.
23. The Hamm Mine pond's spillage point functions as an unplanned spillway over a natural earthen dam. The capacity of the mine to retain water, and in cases of overflow, to act as a spillway, has not been certified by any regulating authority.
24. On November 26, 2003, district coordinator Linda Matteson wrote to Mr. Reese, advising him that it was his responsibility as the then-owner to address the impact from the recent mine pond overflow. Ms. Matteson also cited in this letter to the conditions relating to erosion and water control from Permit #2W0551 and suggested that Mr. Reese retain a professional engineer to assist in resolving the mine overflow issue.
25. By letter dated August 15, 2006, James McCandless sought a jurisdictional opinion from the district coordinator regarding the status of Act 250 jurisdiction over the former Hamm Mine on the Reeses' property and the impacts resulting from the overflow of water originating at the former talc mine.
26. On October 26, 2006, District Coordinator April Hensel issued JO #2-241, finding that the mine property remained subject to Act 250 jurisdiction.
27. Luzenac and Mr. Reese thereafter filed timely appeals of JO # 2-241 with the Environmental Court.
28. On May 15, 2008, the Environmental Court issued a Decision on the Merits and Judgment Order holding that the Hamm Mine continues to be subject to Act 250 jurisdiction and that a permit amendment was required for the changes made to the project.
29. The 2008 Environmental Court decision was affirmed by the Vermont Supreme Court on August 20, 2009.

AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations,

the parties hereby agree as follows:

- A. Within 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 \$6,562.00 (U.S. dollars), for the violations noted herein. Respondents shall make said payment by check made payable to the "Treasurer, State of Vermont" and shall send it 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

- B. 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 or business expense under the federal or state tax codes.
- C. The Panel shall file a notice of this Assurance in the land records of the Town of Windham after this Assurance is signed by the Environmental Court. Within fifteen days of the date on which this Assurance is signed by the Court, Respondents shall forward payment in the amount of Ten Dollars (\$10.00), by check made payable to the Town of Windham, to the Land Use Panel at the address listed above for the purpose of paying the recording fee.
- D. No later than one hundred and twenty (120) days after the date on which this Assurance is signed by the Environmental Court, Respondent U.S. Talc Company shall file with the District 2 Environmental Commission a complete permit amendment application for changes made to the site as found by the Vermont Environmental Court, and for the complete reclamation of the site. The Panel may extend this time period if appropriate, provided that Respondent U.S. Talc Company continues to work in good faith and with due diligence toward the filing of said application.
- E. 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.
- F. 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.

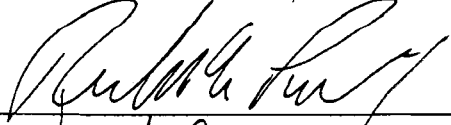
- G. Pursuant to 10 V.S.A. § 8007(d), neither the Respondents nor any prior or subsequent permittee shall be liable for any additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.
- H. 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.
- I. 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.
- J. Any violation of any agreement set forth herein 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 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.

LUZENAC AMERICA, INC.

By:

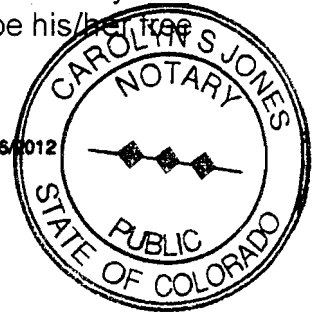


Richard Pierce; VP Legal
Print name and title

BE IT REMEMBERED that on the 14th day of December, 2009, personally appeared Richard Pierce, signer of the foregoing written instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of Luzenac America, Inc.

Before me: Carolyn Jones
Notary Public Commission Expires: _____

MY COMMISSION EXPIRES 04/08/2012



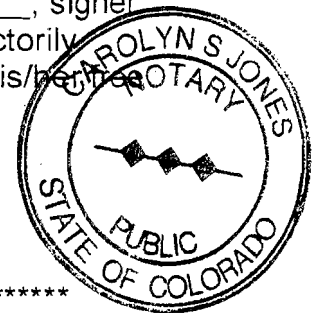
U.S. TALC COMPANY

By: Chris J. Robison
CHRIS J. ROBISON - PRESIDENT
Print name and title

BE IT REMEMBERED that on the 14th day of December, 2009, personally appeared Chris J. Robison, signer of the foregoing written instrument who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of U.S. TALC COMPANY

Before me: Carolyn Jones
Notary Public Commission Expires: _____

MY COMMISSION EXPIRES 04/08/2012



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

DATED in Montpelier, Vermont, this 21st day of December, 2009.

LAND USE PANEL

By: Peter F. Young, Jr.
Peter F. Young, Jr., Chair

