




3. Rutland City is a "ten-acre town" for purposes of Act 250 jurisdiction.
4. As of the date of its establishment and initial operation, Act 250 jurisdiction did not attach to the Hot Mix Plant, the Hot Mix Plant Operations or the Hot Mix Parcel due to the fact that size of the Hot Mix Parcel was below the Act 250 jurisdictional threshold.
5. The Hot Mix Parcel adjoins other land in Rutland City presently owned by Triple C LLC.
6. The Triple C parcel is bisected by an approximately 50 foot wide parcel owned in fee by a third party ("Bisecting Parcel").
7. The Bisecting Parcel divides the Triple C lands into two non-contiguous parcels, the southerly of which is 5.36 acres in size and the northerly of which is 2.68 acres in size. The two Triple C Parcels are collectively referred to herein as the "Triple C Parcels."
8. Since approximately 2010, Respondent has used portions of the southerly Triple C Parcel and the Bisecting Parcel for storage, sorting, crushing, screening and processing of aggregate, recycled asphalt pavement and other hot mix components and for the storage and operation of machinery, vehicles and equipment as part of the Hot Mix Plant and Hot Mix Plant Operations.
9. Lands from the Triple C Parcel, the Hot Mix Parcel and the Bisecting Parcel total over 10 acres of land.
10. S.J. Wilk presently intends to acquire and then lease to Respondent a portion of the Triple C Parcels and the Bisecting Parcel such that the total size of said acquired lands and the Hot Mix Parcel will be less than 10 acres in size (said lands to be acquired and leased being collectively referred to herein as the "Project Tract"). All of the foregoing parcels of land are located in the "Industrial District" under the Rutland City Zoning Regulations and City Plan.
11. In late 2013, Respondent established a concrete block wall (the "Project") to delineate the eastern-most limit of its operations on the Triple C and Bisecting Parcels. The establishment of the Project involved both of the Triple C Parcels and the Bisecting Parcel. Aggregate and other materials were stored on each of the parcels.
12. No Act 250 (10 V.S.A. Ch. 151) Land Use Permit has been obtained for establishment of the Project.
13. Respondent commenced development on the Triple C Parcels and the Bisecting Parcel through establishment of the Project without a Land Use Permit in violation of 10 V.S.A. § 6081(a).

**AGREEMENT**

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

14. Operations on the Project Tract may continue. However, Respondent must:

- i. <sup>September 30<sup>th</sup></sup> By no later than ~~August 1~~, 2015: The Respondent must apply for an Act 250 permit for the Project. 
- ii. If the Respondent fails to file said permit application by August 1, 2015, or if Respondent's permit application is denied by the Commission and said permit denial becomes final, then the Respondent shall remove all unpermitted development from the Triple C Parcels and Bisecting Parcel, within 30 days of the permit denial becoming final, or by December 31, 2015 if no permit application is filed with the Commission, in which case Respondent shall timely comply with all reclamation directives with respect to the Project from the Natural Resources Board.

15. It is agreed between the parties, and shall be established as a matter of law once this Assurance is entered as an Order by the Environmental Division, that Act 250 Jurisdiction will extend to the entire Project Tract. However, Act 250 and the District 1 Environmental Commission will not regulate or impose any restrictions or conditions with respect to the construction, operation, repair, maintenance or replacement in kind of the Hot Mix Plant or any machinery, equipment, vehicles, components or activities included in the Hot Mix Plant Operations, until it is conclusively determined that a "material change" which would otherwise trigger the requirement for an Act 250 Permit Amendment has occurred to the Hot Mix Plant or the Hot Mix Plant Operations subsequent to the date of this Assurance, or for any other reason established by the Act 250 laws, rules and case precedent.

16. Respondent shall (a) respond to any and all requests for information from the Act 250 District 1 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator; and (b) in good faith meet and comply with all scheduling or other orders or memoranda issued by the Commission. Respondent shall not be responsible for delays outside its control, including those caused by the Commission.

17. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondent shall pay the following:

- i. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$3,750.00**, for the violations noted herein, by good check made payable to the "State of Vermont".
- ii. Pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$776.34** to reimburse the Natural

Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont".

- iii. The amount of **\$10.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Rutland City land records, by good check made payable to the "Rutland City, Vermont".
- iv. Respondent, Wilk Paving, Inc. is liable for all amounts indicated in section 16 of the "Agreement".

18. All payments and documents required by this Assurance shall be sent to:

Natural Resources Board  
Dewey Building  
National Life Drive  
Montpelier, Vermont 05620-3201

19. Respondent is liable for all obligations under this Assurance, unless otherwise indicated in the "Agreement".

20. Respondent shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from Respondent's reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

21. 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.

22. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.

23. 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.

24. 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 set forth herein, provided that the Respondent fully comply with this Assurance.

25. 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.

26. 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.
27. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respondent has actual notice of the Judicial Order and Assurance of Discontinuance.
28. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

**SIGNATURES**

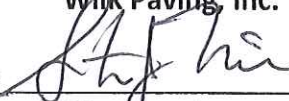
---

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

Dated at Rutland, Vermont, this 18<sup>th</sup> day of May, 2015.

**Wilk Paving, Inc.**

By



(Signature)

Stephen J Wilk, Duly Authorized  
Agent (Printed Name)

STATE OF VERMONT

COUNTY OF Rutland, ss.

BE IT REMEMBERED that on the 18<sup>th</sup> day of May, 2015, personally appeared **Stephen Wilk (President of Wilk Paving, Inc.)**, as the duly authorized agent of **Wilk Paving, Inc.** 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 **Wilk Paving, Inc.** and that he has the authority to contract on behalf of **Wilk Paving, Inc.** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,

  
Notary Public Dorothy McPhee  
My Commission Expires: 2-10-18

---

Dated in Montpelier, Vermont, this 15<sup>th</sup> day of July, 2015.

NATURAL RESOURCES BOARD

By:

  
John M. Groveman, Chair

Y:\NRB\NRB - Shared\Enforcement\CASES\OPEN CASES\Wilk, Rutland\Wilk AOD V4.docx