

**STATE OF VERMONT**  
**SUPERIOR COURT**  
**ENVIRONMENTAL DIVISION**

Agency of Natural Resources, )  
Petitioner, )  
v. )  
Mammoth Slate Company, Inc. )  
Respondent. )

Docket # 45-4-18 Vtec

**ORDER**

Based on the agreement of the parties in Paragraph J of the Assurance of Discontinuance filed on January 24, 2019, the Administrative Order in the above captioned matter issued by the Secretary of the Agency of Natural Resources on April 24, 2018, is hereby vacated.

The Assurance of Discontinuance signed by the Respondent on December 11, 2018, and filed with the Superior Court, Environmental Division, on January 24, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c), concluding this case.

Dated this 24th day of January 2019.



Thomas S. Durkin, Judge  
Vermont Superior Court  
Environmental Division

**STATE OF VERMONT**

**SUPERIOR COURT**

**ENVIRONMENTAL DIVISION  
Docket No. 45-4-18 Vtec**

**SECRETARY, VERMONT  
AGENCY OF NATURAL RESOURCES,  
Plaintiff**

**v.**

**MAMMOTH SLATE COMPANY, INC.,  
Respondent**

**VIOLATION**

1. 10 V.S.A. §1259(a): Discharge to waters of the State without a permit

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. Section 8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and the Mammoth Slate Company, Inc. (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION**

1. Respondent is a domestic profit corporation registered in the State of Vermont.
2. Respondent owns property in the Town of Wells, Vermont, SPAN #70822510815 (the property). The property consists of approximately 61.50 acres.
3. On or about June 4, 2015, the Agency received a complaint that a discharge of sediment was occurring to Lake St. Catherine in the vicinity of a residence located at 217 West Lake Road in Wells.
4. On or about June 9, 2015, Agency personnel visited the area and observed that sediment had been recently discharged to Lake St. Catherine, as well as indications that a stream located adjacent to the residence had recently experienced a high-volume flow of water.
5. Agency personnel made contact with Royal Harrison, Vice President of Mammoth Slate

Company, Inc., and Dave Camara at the property and observed recent heavy equipment work had occurred around a quarry test hole. Mr. Harrison explained that he had used a submersible pump to drain the water from the quarry test hole, and had run the discharge hose over an existing beaver dam.

6. The draining of the quarry test hole by Respondent caused a discharge of sediment to Lake St. Catherine.
7. Lake St. Catherine is a water of the State.
8. Respondent did not have a permit for the discharge.
9. By discharging material to a water of the State without a permit, Respondent violated 10 V.S.A. §1259(a).
10. To date, the Respondent has not removed the discharged sediment from Lake St. Catherine.
11. Respondent admits the factual findings described above, solely for purposes of resolving this case.
12. The Agency alleges that the above conduct constitutes a violation of 10 V.S.A. §1259(a).

#### AGREEMENT

Based on the foregoing Statements of Facts and Description of Violations, the parties agree as follows:

- A. For the violations described above, Respondent shall pay a total penalty of \$21,000.00. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant  
Agency of Natural Resources  
Environmental Compliance Division  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3803

Payment shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order by signature of the Environmental Court (effective date).

- B. The penalty amount assessed in paragraph A above shall be stayed pending compliance with the terms and corresponding deadlines contained in paragraphs C – F below. Should the Respondent fail to comply with any conditions of this AOD, the stayed penalty amount of

\$21,000.00 shall become immediately due and payable pursuant to paragraph A. Should the Respondent comply with all conditions and corresponding deadlines in this AOD, the stayed penalty amount shall be waived.

- C. No later than thirty (30) consecutive calendar days after the effective date of this Order, Respondent shall hire a consultant experienced in dredging to assess the scope of the discharge, develop a plan to remove the discharged sediment, and prepare a Lake Encroachment Individual permit application for the removal of the discharged sediment. Respondent shall submit the name and a description of the hired consultants' qualifications to the Watershed Management Division (WSMD).
- D. No later than forty-five (45) consecutive calendar days after the effective date of this Order, Respondent shall have their consultant submit to the WSMD, Lakes and Ponds Program for review and approval, an administratively complete Lake Encroachment Individual permit application, applicable fee, and dredging plans for the removal of the discharged sediment.
- E. In the event the Agency rejects any permit application in whole or in part, Respondent shall have the consultant submit a revised application to the Agency, which addresses those aspects of the application that were rejected, for review and approval no later than seven (7) consecutive calendar days following the Agency's rejection. In the event of additional rejections, Respondent shall submit any subsequent revisions for Agency approval within seven (7) consecutive calendar days following the rejection.
- F. Respondent shall initiate and complete sediment removal in accordance with the approved Lake Encroachment permit between September 3, 2019 and October 31, 2019.
- G. An extension to any of the deadlines set forth in paragraphs B – F of this Order may be granted at the discretion of the Agency to address any difficult and unforeseen design or construction issues, inclement weather, or any other reasonable cause to be addressed. Any request for an extension shall be made prior to the expiration of the applicable deadline.
- H. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.
- I. Respondent agrees that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past



record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. §8010.

- J. The parties intend that this agreement, upon being accepted by the Court, shall fully resolve and result in the dismissal of the pending Administrative Order filed in the Environmental Court, in Docket Number 45-4-18 Vtec., for this matter.
- K. The State of Vermont and the Agency reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- L. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondent's on-going obligation to comply with all other federal, state, or local statutes, regulations, or directives applicable to the Respondent in the operation of its business.
- M. 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. In the event that such order is vacated, this Assurance shall be null and void.
- N. Respondent shall not be liable for additional civil or criminal penalties with respect to the specific sites and facts described herein occurring before the effective date, provided that Respondent fully complies with the agreements set forth above.
- O. 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 be of no legal force or effect.
- P. 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.
- Q. 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. Further, I, Royal Harrison, the undersigned, hereby state under oath that I am the Vice President of Mammoth Slate Company, Inc., and an authorized representative of Mammoth Slate Company, Inc., and that I have the power to contract on behalf of that entity, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at RUTLAND, Vermont, this 11<sup>th</sup> day of DECEMBER 2018.

By: Royal Harrison  
Royal Harrison, Vice President  
Mammoth Slate Company, Inc.

STATE OF VERMONT

COUNTY OF RUTLAND, ss.

At RUTLAND, Vermont, this 11<sup>th</sup> day of December 2018, the above-signatory personally appeared and swore to the truth of the foregoing. Before me,

W C Adams

Notary Public

Term expires: 2-13-2019

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

Dated at Montpelier, Vermont, this 20 day of December 2018.

SECRETARY, AGENCY OF NATURAL RESOURCES

By: Emily Boedecker  
Emily Boedecker, Commissioner  
Department of Environmental Conservation