

STATE OF VERMONT
SUPERIOR COURT
ENVIROMENTAL DIVISION

ANR

v

Frank W. Whitcomb Construction

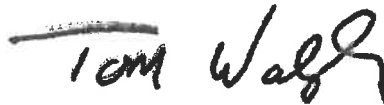
(
(
(

20-ENV-00002

ORDER

The Assurance of Discontinuance signed by the Respondent on 15th day of July 2020, and filed with the Superior Court, Environmental Division, on 28th day of August, 2020, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated on this the 2nd day of September, 2020



Thomas G. Walsh
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

JUL 17 2020

v.

FRANK W. WHITCOMB CONSTRUCTION CORPORATION,
Respondent

VIOLATIONS

1. Air Pollution Control Permit to Construct and Operate #AOP-15-029, Condition 14: Exceedance of 12 month rolling average for asphalt production
2. Air Pollution Control Regulations § 5-231(4) and Air Pollution Control Permit to Construct and Operate #AOP-15-029, Condition 43: Failure to take reasonable precautions to control and minimize emissions of fugitive particulate matter
3. Air Pollution Control Regulations § 5-241(1) and Air Pollution Control Permit to Construct and Operate #AOP-15-029 Condition 44: Allowance of objectional odors beyond the property line

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency”) and Frank W. Whitcomb Construction Corporation (“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 Vermont-registered corporation that owns and operates a rock quarry, stone crushing operation, manufactured sand and processing operation, and hot mix asphalt plant

(the “Facility”) located on U.S. Route 2 and U.S. Route 7 in Colchester, Vermont (the “Property”).

2. The Facility is subject to Air Pollution Control Permit to Construct and Operate # AOP-15-029, issued on September 2, 2014 (the “Permit”).
3. Condition 14 of the Permit limits the quantity of asphalt Respondent may produce at the Facility to 225,000 tons per year, based upon any rolling 12 consecutive calendar month period.
4. Respondent’s annual emissions data submitted to the Agency on February 1, 2019, show that Respondent produced 238,790 tons of asphalt in the 2018 calendar year.
5. Air Pollution Control Regulations § 5-231(4) and Condition 43 of the Permit require that Respondent take reasonable precautions to control and minimize emissions of fugitive particulate matter from operations at the Facility, including treating roads and parking areas with wet suppression or other dust control measures.
6. Air Pollution Control Regulations § 5-241(1) and Condition 44 of the Permit prohibit Respondent from causing or allowing emissions of objectionable odors beyond the Property lines.
7. On November 8, 2018, in response to a complaint that the Facility was generating dust and objectionable odors detectable beyond the Property boundaries, Agency staff visited a commercial property adjacent to the Facility located at 106 Highpoint Center (“Highpoint”) developed with a commercial business office, a restaurant, and shared parking lot.
8. While at Highpoint, Agency staff observed a significant amount of dust accumulating on many vehicles in the parking lot, with greater quantities of dust on vehicles closer to the Facility. Agency staff also observed plumes of airborne dust emanating from the Property as trucks departed the Facility, kicking-up dust that had settled on the Property’s travelled areas.
9. Agency staff notified Respondent of the fugitive particulate matter at the Facility, who dispatched a utility vehicle to treat the access road and other areas with wet suppression to control dust emissions from the Facility.

10. While at Highpoint, Agency staff also detected objectionable odors in the parking lot and within the stairwell of the commercial business office building.
11. On November 29, 2018, Agency staff returned to Highpoint in response to another complaint that the Facility was producing objectionable odors.
12. During the visit, Agency staff detected objectionable odors in the parking lot at Highpoint, as well as in two different stairwells and two different interior hallways of Highpoint's commercial business office building.
13. Since before 2012, the Agency has received a number of complaints from area landowners and tenant-businesses alleging that objectionable odors were leaving Respondent's Facility.
14. The Agency alleges that the above conduct constitutes violations of Conditions 14, 43, and 44 of the Air Pollution Control Permit to Construct and Operate #AOP-15-029 and Air Pollution Control Regulations §§ 5-231(4) and 5-241(1).
15. Respondent admits the factual findings described above solely for purposes of resolving this case.

AGREEMENT

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

- A. For the violations described above, Respondent shall pay a total penalty of \$ 9,125.00. 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 3
Montpelier, VT 05620-3803

Payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance.

- B. Respondent shall comply with all terms and conditions in Air Pollution Control Permit to Construct and Operate # AOP-20-016 related to the control of odors and dust. During the 2020 operating season, Respondent shall implement the Proposed Control Measures described in the letter from GeoInsight, dated March 13, 2020.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Division of the Superior Court (the “Effective Date”). When so entered by the Environmental Division, this Assurance shall become a judicial order. In the event that such order is vacated, this Assurance shall be null and void.

- H. Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein occurring before the Effective Date of the Assurance, provided that 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 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 be of 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 and 8020.

[Signature pages follow.]

SIGNATURES

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

Further, I, Frank L. Whitcomb, the undersigned, hereby state under oath that I am the President of Frank W. Whitcomb Construction Corporation, am an authorized representative of Frank W. Whitcomb Construction Corporation, 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 Colchester, Vermont, this 15th day of July, 2020.

Frank W. Whitcomb Construction Corporation

By: _____

[Signature]
Frank L. Whitcomb, President

STATE OF VERMONT

COUNTY OF Chittenden, ss.

At Colchester, Vermont, this 15th day of July 2020, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,

Notary Public State of Vermont

Printed Name Adam Jackson

Commission No. 157.0008564


My Commission Expires 1-31-21

ADAM JACKSON
Notary Public, State of Vermont
Commission No. 157.0008564
My Commission Expires Jan. 31, 2021

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

Dated at Montpelier, Vermont, this 23rd, day of July 2020.

SECRETARY, AGENCY OF NATURAL RESOURCES

By:  _____

Peter Walke, Commissioner
Department of Environmental Conservation