

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ANR v Windy Wood Housing, LLC and Gravel Construction Company, Inc.

22-ENV-00074

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 28th day of October, 2022 and filed with the Superior Court, Environmental Division, on the 12th day of December, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed December 14, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 22-ENV-00074

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

v.

**WINDY WOOD HOUSING LLC,
and
GRAVEL CONSTRUCTION COMPANY, INC.
Respondents**

VIOLATIONS

1. 10 V.S.A. §1264(c)(4): Prohibited construction without permit coverage.
2. Authorization # 5714-9020.1 under General Permit 3-9020 § 4.1: Failure to install and implement erosion prevention and sediment controls.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency”) and Windy Wood Housing LLC (“Windy Wood Housing”) and Gravel Construction Company, Inc. (“Gravel Construction”) (together “Respondents”) hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Windy Wood Housing is a real estate development and sales company that engaged in the development of a housing development in Barre Town, Vermont known as Windy Wood.
2. Respondent Gravel Construction is a construction company engaged in the general construction and site management of the Windy Wood housing development.

3. On August 26, 2008, the Agency issued authorization # 5714-9020 under General Permit 3-9020 to Windy Wood Housing, authorizing proposed construction activities and associated stormwater discharge on 24.3 acres at Windy Wood as a moderate risk project.
4. Respondents were subject to all requirements of authorization # 5714-9020 and General Permit 3-9020 (2008).
5. The # 5714-9020 authorization expired on August 26, 2013.
6. On July 9, 2014, the Agency issued authorization # 5714-9020.R to Windy Wood Housing, authorizing proposed construction and associated stormwater discharge on 20.6 acres at Windy Wood as a low risk project.
7. Respondents were subject to all requirements of authorization # 5714-9020.R and General Permit 3-9020 (2008).
8. The # 5714-9020.R authorization expired on July 9, 2016.
9. On August 20, 2019, Agency staff visited the Windy Wood site in response to a complaint that construction activities at the site were taking place with little to no erosion prevention and sediment controls (“EPSC”) and no permit coverage for the discharges of stormwater runoff from the construction activities in place.
10. During the site visit, Agency staff observed evidence of recent construction activities and insufficient EPSC in place, including a lack of silt fence around stockpiles of materials, lack of stabilization of open earth over one acre, and failed silt fence installation.
11. Agency staff informed principals of both Respondents that all construction activities other than earth stabilization activities at the site should cease until a new construction stormwater discharge permit for the project was issued by the Agency.
12. On October 17, 2019, Agency staff visited the Windy Wood site after a rain storm the previous night.

13. During the site visit, Agency staff observed damage to EPSC measures in place, rendering them insufficient.
14. On November 1, 2019, Agency staff visited the Windy Wood site after a rain storm the previous day.
15. During the site visit, Agency staff observed evidence of recent construction and earthwork, and damage to the site including excessive erosion, damaged EPSC measures, and failed silt fencing.
16. On November 13, 2019, the Agency issued authorization # 5714-9020.1 to Windy Wood Housing, authorizing proposed construction and associated stormwater discharge on 12.14 acres at Windy Wood as a moderate risk project under General Permit 3-9020.
17. On January 15, 2020, Agency staff visited the Windy Wood site to assess permit authorization compliance.
18. During the site visit, Agency staff observed General Permit violations, including the Notice of Authorization not posted in a visible location, insufficient mulch coverage needed for disturbed area stabilization, lack of silt fencing around soil stockpiles, concentrated water flow along an unstabilized channel without erosion control matting or stone check dams, silt fence failures, and an unstabilized soil stockpile.
19. On January 31, 2020, Agency staff visited the Windy Wood site to assess permit authorization compliance.
20. During the site visit, Agency staff observed a lack of proper stabilization for winter conditions, including failure to install proper EPSC under the snow and failure to repair failed silt fences.
21. On September 22, 2020, Agency staff visited the Windy Wood site to assess permit authorization compliance.

22. During the site visit, Agency staff observed General Permit violations including tracked soil onto paved roads due to improper construction entrance installation, and tracts of unstabilized soil.
23. Pursuant to 10 V.S.A. § 1264(c)(4), a person shall not commence a project that will result in an area of earth disturbance of one acre or greater, or less than one acre if part of a common plan of development, without first obtaining a permit from the Secretary.
24. Pursuant to General Permit 3-9020 (2008) § 4.1(C), as incorporated by authorizations ## 5714-9020 and 5714-9020.1, Respondents are responsible for selecting, installing and implementing erosion prevention and sediment controls that minimize or eliminate pollutants in any stormwater discharge from the construction site in accordance with the requirements of the General Permit.
25. Pursuant to General Permit 3-9020 (2008) § 4.1(I), as incorporated by authorizations ## 5714-9020 and 5714-9020.1, Respondents are responsible for ensuring that each contractor involved in land disturbance activities is familiar with the terms and conditions of the EPSC Plan submitted with a permittee's notice of intent for moderate risk construction activity and that each contractor's activities are carried out in accordance with the EPSC Plan.
26. The Agency alleges that the above conduct constitutes violations of 10 V.S.A. § 1264(c)(4) and General Permit 3-9020 §§ 4.1(C) and (I).
27. Respondent admits the factual findings described above, solely for the purposes of resolving this case.

AGREEMENT

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

A. For the violations described above, Respondents shall pay a penalty of ten-thousand five-hundred dollars (\$10,500.00) no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order by signature of the Superior Court, Environmental Division (“Effective Date”) of this Order.

Payment shall be made by either:

1. Check made payable to “Treasurer, State of Vermont” and forwarded to:

Administrative Services Coordinator
Environmental Compliance Division - Enforcement
Agency of Natural Resources
1 National Life Drive, Davis 3
Montpelier, VT 05620-3803

Or

2. Credit card or electronic check payment through the Agency’s online system at:

https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

B. Respondents shall no later than thirty (30) consecutive calendar days following the Effective Date of this order achieve full compliance and continue to comply with all provisions of General Permit 3-9020 and authorization # 5714-9020.1.

C. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above in order to resolve all outstanding disputes.

D. The parties agree that this Assurance, upon acceptance by the Superior Court, Environmental Division, shall fully resolve and result in the dismissal of the pending Administrative Order filed in the Superior Court, Environmental Division, in Docket No. 22-ENV-00074, for this matter.

- E. Respondents agree 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.
- F. 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.
- G. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondents’ on-going obligation to comply with all other federal, state, or local statutes, regulations, or directives applicable to the Respondent in the operation of their business.
- H. 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. In the event that such order is vacated, this Assurance shall be null and void.
- I. The Respondents 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 Respondents fully comply with the agreements set forth above.
- J. 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 be of no legal force or effect.
- K. 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.

L. This Assurance is subject to the provisions of 10 V.S.A. §§8007 and 8020.

[Signatures on following pages.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Richard Colton, the undersigned, hereby state under oath that I have the power to contract on behalf of Windy Wood Housing LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Barre, Vermont, this 28th day of October, 2022.

WINDY WOOD HOUSING LLC

By: Richard Colton
Richard Colton

STATE OF VERMONT

COUNTY OF Washington, SS.

At Barre Town, Vermont this 28th day of October, 2022,
the above signatory personally appeared, signed, and swore to the foregoing, before me,

Jennifer Bushway
Notary Public State of Vermont

Jennifer Bushway
Printed Name

Commission No. 157.0013581

My Commission Expires: 1/31/2023

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Dean Gravel, the undersigned, hereby state under oath that I have the power to contract on behalf of Gravel Construction, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Hardwick, Vermont, this 28 day of October, 2022.

GRAVEL CONSTRUCTION, INC.

By: Dean A. Gravel
Dean Gravel

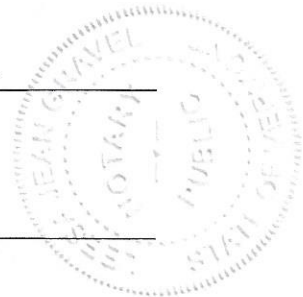
STATE OF VERMONT

COUNTY OF Caledonia, SS.

At Hardwick, Vermont this 28 day of October, 2022, the above signatory personally appeared, signed, and swore to the foregoing, before me,

Leesa Gravel
Notary Public State of Vermont

Leesa Gravel
Printed Name



Commission No. 157.0010886

My Commission Expires: 1/31/2023

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

Dated in Montpelier, Vermont, this 10th , day of November _____, 2022.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: *John Beling*
John Beling, Commissioner
Vermont Department of Environmental Conservation