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VERMONT  
ENVIRONMENTAL COURT

STATE OF VERMONT  
ENVIRONMENTAL COURT

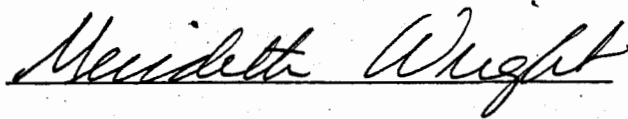
Agency of Natural Resources, )  
Petitioner, )  
v. )  
Robert Clark, )  
Respondent. )

Docket # 191-9-07 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on August 28, 2007, and filed with the Environmental Court on September 12, 2007, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007 (c).

Dated this 14th day of September 2007.



Merideth Wright,  
Environmental Judge

**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES**

**ENVIRONMENTAL COURT  
Docket No.**

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

v.

**ROBERT CLARK,  
Respondent**

**VIOLATIONS:**

1. Solid Waste Management Rule (SWMR) 6-302(d): Prohibited disposal of solid waste
2. Wetlands Rules §§6.2, 6.3 and 8: Failure to obtain a Conditional Use Determination (CUD) prior to conducting an activity in a Class II wetland
3. SWMR 6-302(a) & Air Pollution Control Regulation 5-201: Prohibited Open Burning

**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 Robert Clark (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondent is a resident of Orange, Vermont.
2. On or about April 14, 2005, Environmental Enforcement Officer Patrick Nevers (EEO Nevers) received a complaint that construction and demolition debris (C&D) was being dumped onto

property owned by Respondent, located in Orange, Vermont (the site). The site is not a certified, solid waste management facility.

3. EEO Nevers inspected the site and observed a pile of C&D consisting primarily of drywall, roofing, insulation and lumber, approximately four to five feet tall, twenty feet long and ten feet wide. The pile was located on a freshly-filled portion of Respondent's backyard adjacent to a wet area.
4. EEO Nevers also observed other scattered solid waste at the site, including aluminum siding, window frames, two propane tanks, tires, glass, and metal. Respondent subsequently cleaned up and properly disposed of this solid waste.
5. In addition, EEO Nevers observed a burn pile containing partially burned C&D.
6. On April 16, 2005, EEO Nevers spoke with Respondent who confirmed that he was filling in a half-acre section of his backyard. Respondent stated that he was in the process of backfilling this area with primarily gypsum board and scrap wood.
7. Further investigation by EEO Nevers and Wetlands Ecologist Erin Haney confirmed that the site, including the area described in paragraph 6, is contiguous to and hydrologically connected to a mapped Class II wetland identified on the Vermont Significant Wetland Inventory Map.
8. EEO Nevers found that the C&D originated from the demolished Mad River Valley Health Center.
9. On April 21, 2005, EEO Nevers, Haney and James Surwilo from the Solid Waste Management program inspected Respondent's property. During the inspection, EEO Nevers observed a burn pit located adjacent to the C&D pile. It contained partially melted plastic containers, electrical

parts, metal and wiring. Respondent later confirmed that the materials were from the recent renovations to his house.

10. Respondent subsequently cleaned up and properly disposed of the illegally disposed C&D.
12. By disposing of solid waste outside of a certified facility, Respondent violated SWMR §6-302(d).
13. By conducting activity in a Class II wetland without first obtaining a Conditional Use Determination, Respondent violated Wetlands Rules §§6.2, 6.3 and 8.
14. By open burning household solid waste and C&D, Respondent violated SWMR §6-302(a) and Air Pollution Control Regulation §5-201.

#### AGREEMENT

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

- A. For the violations described above, Respondent shall pay a total penalty of \$1,500.00. Payment shall be made in twelve (12) monthly payments of \$125.00 each as follows: October 1, 2007; November 1, 2007; December 1, 2007; January 1, 2008; February 1, 2008; March 1, 2008; April 1, 2008; May 1, 2008; June 1, 2008; July 1, 2008; August 1, 2008; and September 1, 2008. Respondent may pay the entire amount owed at any time. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Ms. Becky Buchanan, Administrative Assistant  
Environmental Enforcement Division  
Agency of Natural Resources  
103 South Main Street / Cannery  
Waterbury, VT 05671-4910

In the event Respondent fails to make any payment on time as set forth above, the Secretary shall have the authority to accelerate all the remaining payments and make them due and payable immediately. The decision to invoke this acceleration provision shall be in the sole discretion of the Secretary, and a decision not to invoke this provision shall not be deemed a waiver of the provision's future use.

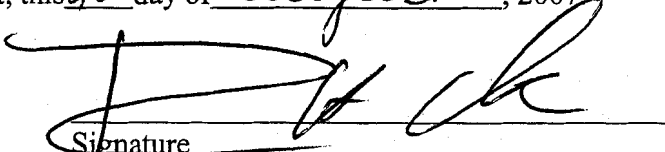
- B. By no later than thirty (30) consecutive calendar days following the effective date of this Assurance, Respondent shall remove any solid waste, including any residual ashes from illegally burned materials, which may remain on his property. Respondent shall dispose of these materials in a certified, solid waste management facility.
- C. By no later than forty-five (45) consecutive calendar days following the effective date of this Assurance, Respondent shall submit to the Agency all receipts for the disposal of materials specified in paragraph B.
- D. Agency personnel may inspect the site subsequent to clean-up, in order to confirm it has been cleaned-up in compliance with this Assurance, upon receipt of 48-hour notice.
- F. Respondent shall comply with the Air Pollution Control Regulations, Wetlands Rules, Solid Waste Management Rules and all other applicable environmental laws and regulations in the operation of his property and/or business.
- G. 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 hereinabove.

- H. 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 his business.
- 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. In the event that such order is vacated, the Assurance shall be null and void.
- J. The 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 the Respondent fully complies with the agreements set forth above.
- K. 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.
- L. 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.
- M. This Assurance is subject to the provisions of 10 V.S.A. Section 8007.

SIGNATURES

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

Dated at Orange, Vermont, this 28 day of August, 2007

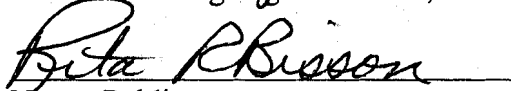
  
Signature

Printed Name: Robert A. Clark

Address: 368 US RT 302  
East Barre VT 05649

STATE OF VERMONT  
COUNTY OF Orange, SS.

At Orange, Vermont this 28th day of August, 2007 the above signatory personally appeared and swore to the truth of the foregoing. Before me,

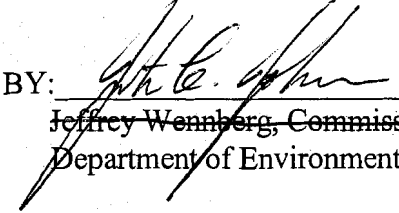
  
Notary Public

Term Expires: 2-10-2011

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

Dated at Waterbury, Vermont, this 7<sup>th</sup> day of September, 2007.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY:   
~~Jeffrey Wennberg, Commissioner~~ JUSTIN JOHNSON, Deputy Commissioner  
Department of Environmental Conservation