



**State of Vermont**

Agency of Natural Resources – Office of General Counsel

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*Agency of Natural Resources*

August 5, 2016

Judith C. Whitney, Clerk  
Vermont Public Service Board  
112 State Street  
Montpelier, VT 05620-2701

Re: Vermont Gas Systems, Inc., Addison Natural Gas Project  
Docket No. 7970  
Harsh Sunflower Taking

Dear Ms. Whitney:

The Agency responds to the Board's order dated July 28, 2016 seeking comments on the request by Kristin Lyons to supplement the pending petition for a show cause order as follows. The Agency previously filed comments on July 15, 2016 in response to the Board's order of July 8, concerning the segment of the Project's route through Geprags Park in Hinesburg. Today's response addresses a separate Project parcel in Monkton, referred to in this letter as the "Peyser parcel," where the taking of a state listed plant species is now alleged to have occurred.

It is the Agency's position that an unauthorized taking of the state threatened harsh sunflower (*Helianthus strumosus*) occurred on July 18, 2016 on the Peyser parcel when a contractor working for Vermont Gas Systems, Inc. (VGS) cut or severely trampled approximately 77 individual harsh sunflower plants. Additional plants were less severely trampled. VGS reported this incident to the Board on July 19,<sup>1</sup> the same day that the Agency became aware of the incident.

The Agency now provides the following comments and recommendations to the Board concerning this unauthorized taking.

1. **Unauthorized Taking.** As indicated above, the Agency contends there was an unauthorized taking of the state threatened harsh sunflower. This taking involves approximately 77 individual plants, of which 68 stems were observed to be cut and 9 stems were broken from trampling, as well as additional stems that were less severely trampled. The damaged plants were observed by the Agency's botanist during a site visit which took place on July 20, 2016. The taking was in violation of

<sup>1</sup> Letter from John St. Hilaire to Judith Whitney, dated July 19, 2016.

the state endangered species law, as VGS did not have a takings permit for these plants.<sup>2</sup>

2. **Avoidance Plan.** The Agency requested that VGS refrain from all activities on the Peyser parcel until VGS prepared, and submitted to the Agency for review and approval, a detailed avoidance plan in order to prevent further takings of the harsh sunflower. An avoidance plan was subsequently approved by the Agency on July 28, 2016. The major elements of the plan generally include requirements for training of all on-site workers in avoidance, demarcation of the sunflower plants, a detailed site plan depicting plant locations and construction activities, procedures to avoid harming the plants before, during and after HDD work on the site, and daily oversight and reporting by environmental compliance monitors. Agency staff performed a field inspection to confirm the plants were correctly demarcated in the course of reviewing the avoidance plan.
3. **CPG Violations.** VGS violated the terms of its certificate of public good (CPG) issued on December 23, 2013, specifically conditions 2 and 3.<sup>3</sup>
4. **Board Investigation.** The Agency requests that the Board open an investigation to impose penalties for violations of the CPG conditions pursuant to 30 V.S.A. § 30. At this time, the Agency is not requesting that the Board issue an order enjoining VGS from engaging in further activities provided VGS adheres to the terms of the harsh sunflower avoidance plan it developed for work at the Peyser parcel.
5. **Civil Enforcement Action.** The Agency intends to pursue a civil enforcement action against VGS for the unauthorized taking of the plants under the Agency's independent authority pursuant to 10 V.S.A. § 5403.

The unauthorized taking of the threatened plants is a very serious, and unfortunate, matter which requires the imposition of sanctions. The Agency acknowledges that VGS self-reported the occurrence and cooperated with the Agency in the development of an avoidance plan to ensure that the remaining plants would be protected from harm. These are all factors that ultimately may be considered in determining the amount of a penalty that the Board may impose under Section 30. The Agency looks forward to participating in such a penalty proceeding, should the Board determine to pursue one, and providing assistance to the Board in that process. The Agency is authorized to represent that the Department of Public Service joins in this request that the Board open an investigation pursuant to 30 V.S.A. § 30 for the purpose of imposing penalties.

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<sup>2</sup> 10 V.S.A. § 5403.

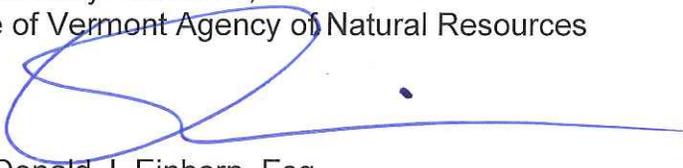
<sup>3</sup> Condition 2 of the CPG provides, in part, that: "Prior to proceeding with construction in any given area, Petitioner shall also obtain all other necessary permits and approvals required for the proposed construction activities in that area." Because VGS did not have a takings permit before working on the Peyser parcel, this condition was violated. Condition 3 of the CPG requires VGS to comply with the provisions of the MOUs it entered into, including the MOU with the Agency. Paragraph 11 of the MOU between the Agency and VGS speaks to the threatened plants on the Peyser parcel and provides that: "VGS will re-align the pipe if feasible to avoid the plant species. If the species cannot be avoided, VGS will obtain a Takings permit prior to construction." This provision was not complied with because the plants were not avoided and were taken without a permit.

## **Conclusion**

The Agency respectfully requests that the Board open an investigation pursuant to 30 V.S.A. § 30 for the purpose of imposing penalties against VGS for the CPG violations discussed above.

Thank you for the opportunity to submit comments.

Respectfully submitted,  
State of Vermont Agency of Natural Resources



By: Donald J. Einhorn, Esq.

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