

Administrative Citation
30 V.S.A. §§ 30 (h)
Issue Date: June 11, 2018
Citation No. 1000

Certificate of Public Good held by: GSPP Gilman, LLC
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GSPP Gilman, LLC, self-reported a violation of the terms and conditions of its Certificate of Public Good (CPG), issued in Docket No. 8725, dated March 3, 2017, under section 248 of Title 30.

Following its investigation, the Department of Public Service determined that the CPG holder did commit the following acts in violation of Vermont Law, Statute, Rule, or Permit: 30 V.S.A. §§ 248, CPG Docket No. 8725 issued on March 3, 2017, Condition 3 (Construction, operation, and maintenance of the Project shall be in accordance with the plans and evidence as submitted in this proceeding.)

Description:

Gilman Landfill Solar Project is a 2.1 MW solar electric generation project located on a closed landfill in the Village of Gilman (Lunenburg) on the Vermont/New Hampshire border.

1. In letters dated January 29, 2018, and February 1, 2018 Timothy M. Eustace, an attorney from Gravel & Shea representing GSPP Gilman, LLC (CPG Holder) reported to the Vermont Agency of Natural Resources (ANR) and the Public Utility Commission (PUC) that the CPG holder had exceeded the limits of disturbance per the conditions of the CPG.
2. Gravel & Shea reported that the site contractor had “inadvertently” cleared an area (2.8 acres +/-) outside the limits of disturbance.
3. The CPG holder contacted Ben Oxender, TCE Landscape Architectural Services of Trudell Consulting Engineers, Inc. to inspect and evaluate the area reported to have been inadvertently cleared and to prepare a mitigation plan. [Exhibit 1 “Oxender”](#) is TCE Landscape Architectural Services report.
4. On March 20, 2018, Hal Cohen, Department of Public Service (Department) Specialist, made a field visit to the site. He was joined by Mark Kane from SE Group, a consultant and expert witness for the Department of Public Service (the same expert witness used by the Department in the CPG proceeding). At the site were representatives of the CPG holder, Michael Andrews, Project Manager and Ben Oxender, landscape architect.

5. The group walked the site to view the three areas that were mistakenly cleared. The solar site is situated at a landfill and industrial area in the Village of Gilman. The site has two sections where panels are going to be placed. The south site is atop the plateau of the closed landfill. The north site is smaller than the south site. The area where the unauthorized cutting occurred is in the north site, below the plateau at a lower elevation and is closer to River Road and Baptist Church Road in Gilman and near a few residences.
6. The largest cleared area (about 2.3 acres) is outside the disturbance limit and is a 50-foot swath cut along the property line. However, the CPG order indicates that clearing would take place the project line. The area cleared had contained primarily small shrubs and some conifer saplings. The shrubs did provide some screening for the residences and from the road. There still exists significant screening (full grown evergreens) between the residences and road and the project, although there are some gaps in screening.
7. Additionally, two smaller areas were cleared. One area is north of the proposed array, about 0.52 acres. The second is a very small area, 0.04 acres east of the array. [Exhibit 2 “SE Group”](#) contains the Department of Public Service’s consultant’s report and recommendations for remediation of this site.

Assessed Penalty

Factors for consideration:

1. *Extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers.* Harm is primarily aesthetic because the area that was clear cut introduced somewhat more exposure to the project when viewed from the River Road or residential properties in the area. The vegetation cut by GSPP Gilman, LLC ‘s contractor was primarily small shrubs and some conifer saplings.
2. *Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.* GSPP Gilman, LLC self-reported the violation, through its attorney, and ceased construction pending discussions with the Department and the Agency of Natural Resources. There is no reason to believe this violation was intentional.
3. *Economic benefit if any.* There does not appear to be any economic benefit to GSPP Gilman, LLC.
4. *The length of time that the violation existed.* The violation occurred on or about October 16, 2017 and the CPG holder claimed to have immediately ceased all work at the site and conducted an investigation. The violation was reported to ANR on January 29, 2018, and to the PUC on February 1, 2018. The remediation plan restores the site to a similar level of screening with native species within one year of the violating act.
5. *The deterrent effect of the penalty.* The Department has carefully considered the potential deterrent effect of a penalty. When considered together with the expected cost of remedial action, the Department concludes that a nominal penalty provides sufficient deterrence.
6. *Economic resources of the respondent.* GSPP Gilman, LLC is an affiliate of Green Street Power Partners/Green Street Solar Projects, headquartered in Stamford, CT. Green Street Power Partners (GSPP) finances, develops, owns and operates, 8MW of solar energy

systems for businesses throughout the northeast. GSPP continues to experience rapid growth with 32 MW of commercial and community solar projects under construction and appears to have significant resources. The Department considers GSPP's financial resources more than adequate to bear the cost of remediation and a nominal penalty.

7. *Respondent's record of compliance.* The Department is unaware of any other violations by GSPP Gilman, LLC.
8. *Other aggravating or mitigating factors.* The Department is unaware of any aggravating factors. In mitigation of the offense, the CPG holder ceased work upon discovering the violation, promptly developed a remedial plan, self-reported the violation, and has fully cooperated with the investigation. Absent these mitigating factors the Department would seek to impose a larger penalty.

For these reasons, the Department of Public Service concludes that a **nominal penalty of \$500.00** is appropriate.

Remedial Action

Remedial action **is warranted**. The Department of Public Service generally accepts the remediation plan proposed by the CPG holder, attached as [Exhibit 3](#), with the following caveats and requirements:

1. Install the entirety of the proposed plantings in the cleared, larger, 2.3-acre area along River Road.
2. Install the proposed plantings in a more strategic fashion; focusing on areas where the adjacent natural vegetation is particularly thin or where the inadvertent clearing generated increased visibility towards River Road and/or adjacent residential properties.
3. In the two smaller cleared areas north of the array, 0.52 acres and east of the array, 0.04 acres, allow vegetation to grow up naturally.
4. Avoid any future disturbance in these areas. Maintenance for the proposed plantings is required.
5. Submit a completed remediation plan to the Department for approval before work begins.
6. The CPG holder shall notify the Department once the planting has been installed. The Department (or its contractor) will visit the site and confirm adherence to the plan.
7. The Department requires that, for a three-year period following the installation of the plantings, a vegetation monitoring plan be in place, whereby the CPG holder will provide written and photographic documentation and attest to the continued health and effectiveness of the installed plantings.

The public shall have an opportunity of 30 days for public comment on this draft citation.

Investigated by Hal Cohen, Specialist, Consumer Affairs and Public Information



Investigator Signature

6/8/18
Date

Administrative Citations

The Department of Public Service, following an investigation of a potential violation of a Certificate of Public Good (CPG) and making a determination that a violation exists, may issue an administrative citation to the CPG holder ([30 V.S.A §§ 30](#)). The administrative citation shall state the nature of the violation, provide evidence supporting the existence of the violation, request that the CPG holder remediate the violation or pay a civil penalty (or both), and (if applicable) explain why remedial action is requested.

The Department shall file a copy of the administrative citation with the CPG holder, each municipality in which the facility/project is located, each adjoining property owner, the complainant (if any), and each party to the proceeding in which the CPG was issued. The Department shall also file a copy with the Public Utility Commission (Commission) and post the draft on the Department's website.

The public shall have an opportunity of 30 days for public comment on the draft citation, which shall be listed on the citation.

After the public comment period closes, the Department:

- Shall provide the CPG holder and the Commission with a copy of each comment received
- May, within 15 days of the close of the comment period, file a revised draft citation with the Commission. The revised draft may be an agreed settlement between the CPG holder and the Department with a request for Commission approval

The Commission may open a proceeding to investigate the alleged violation. If so, the Commission shall open such a proceeding within 25 days of the close of the comment period, or the filing of a revised draft citation, whichever is later.

If the Commission does not open an investigation the Department may issue a final administrative citation to the CPG holder. Within 30 days of receipt, the CPG shall holder shall take one of the following actions:

- Request a hearing before the Commission
- Pay the civil penalty and agree to perform the remedial action (if any was requested), and submit to the Department for approval a plan for compliance with the remedial action
- Decline to contest the existence of the alleged violation and request a hearing with the Commission on either the proposed penalty, the remedial action, or both. If this action is taken the CPG holder may agree to either the penalty or remedial action and seek a hearing on the penalty or action it disagrees with

If a hearing is requested the Commission shall open a proceeding and conduct a hearing on the alleged violation, remedial action and/or civil penalty. A penalty determined after such hearing shall not exceed \$5,000.00.

If the CPG holder pays the penalty, no further penalties shall be assessed for the same violation unless it is continuing or repeated. If the CPG holder agrees to take the remedial action but fails to do so, this shall constitute a separate violation.