



**STATE OF VERMONT**

**SUPERIOR COURT**

**ENVIRONMENTAL DIVISION  
Docket No.**

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

**v.**

**CUNNINGHAM'S FULL SERVICE STATION, LLC,  
Respondent**

**VIOLATIONS**

1. Vermont Underground Storage Tank Rules § 8-505(a) and 8-506: failure to perform weekly leak-detection monitoring of interstitial space of underground storage tanks
2. Vermont Underground Storage Tank Rules § 8-505(h): failure to document weekly leak-detection monitoring activities

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and Cunningham's Full Service Station, LLC (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 the owner of four 6,000-gallon underground storage tanks ("USTs") used in connection with its full-service auto business located at 204 Gale Street in Canaan, Vermont (the "Facility").
2. The USTs are subject to Permit No. SJ96-0229, dated January 2, 2018. Two USTs contain diesel fuel while the other two USTs contain gasoline.
3. The Permit requires that the USTs be operated in accordance with all applicable requirements of the Vermont Underground Storage Tank Rules (VUST Rules).

4. On July 26, 2018, Agency staff conducted a compliance inspection of the Facility.
5. During the site visit, Agency staff determined that Respondent was not performing weekly leak-detection monitoring of the interstitial space of each UST because the caps on the ports to the interstitial space could not be opened.
6. Respondent was not able to provide documentation demonstrating that the interstitial spaces of the USTs were being checked weekly for leaks.
7. The Agency alleges that the above conduct constitutes a violation of VUST Rules §§ 8-505(a) and (h) and 8-506.
8. The Agency issued Respondent a notice of alleged violation on July 30, 2018, directing Respondent to begin performing and documenting weekly leak-detection monitoring activities.
9. On September 4, 2018, Respondent filed documentation with the Agency demonstrating a return to compliance with weekly leak-detection monitoring requirements.
10. 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 \$5,000.00. Payment shall be made in twelve equal installments of \$416.67 unless earlier paid in full. The first monthly payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance. All subsequent payments shall be made no later than the fifteenth (15<sup>th</sup>) calendar day of each consecutive month thereafter.

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 2  
Montpelier, VT 05620-3803

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. 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.
- C. 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.
- D. 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.
- E. 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.

- F. 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.
- G. Respondent shall not be liable for additional civil or criminal penalties with respect to the specific sites and facts described herein occurring before the Effective Date of the Assurance, provided that Respondent fully complies with the agreements set forth above.
- H. 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.
- I. 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.
- J. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.



**SIGNATURES**

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Fred Cunningham, Jr., the undersigned, hereby state under oath that I am a Managing Member of Cunningham's Full Service Station, LLC, and an authorized representative of the Cunningham's Full Service Station, LLC, 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 Deerfield, <sup>NH</sup> Vermont, this 14 day of Dec., 2018.

**CUNNINGHAM'S FULL SERVICE STATION, LLC**

By:



Fred Cunningham, Jr., Managing Member

<sup>NH</sup>  
STATE OF ~~VERMONT~~  
COUNTY OF COOS, SS.

At Colebrook, <sup>NH</sup> Vermont this 14 day of Dec., 2018 the above signatory personally appeared and swore to the truth of the foregoing and acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Cunningham's Full Service Station, LLC. Before me,





Notary Public

Term Expires: 12-7-2021

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

Dated at Montpelier, Vermont, this 31, day of December 2018.

SECRETARY, AGENCY OF NATURAL RESOURCES

By: 

Emily Boedecker, Commissioner  
Department of Environmental Conservation