

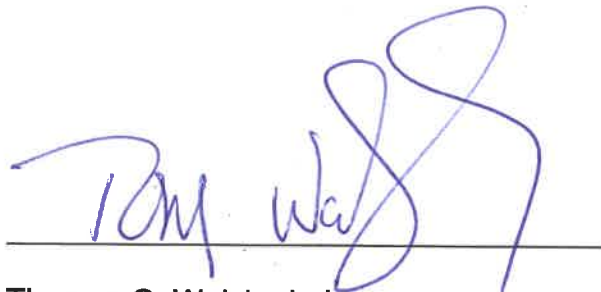
**STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION**

Agency of Natural Resources,)	
Petitioner,)	
)	
v.)	Docket # 26-2-19 Vtec
)	
Franklin Foods, INC.,)	
Respondent.)	

ORDER

The Assurance of Discontinuance signed by the Respondent on December 28th, 2018, and filed with the Superior Court, Environmental Division, on February 11th, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 14th day of February 2019.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

FRANKLIN FOODS, INC.
Respondent

VIOLATIONS

1. Pretreatment Discharge Permit #3-1055, Condition I.A: Exceedance of monthly average and maximum daily Biochemical Oxygen Demand (BOD₅) effluent limitations.
2. Pretreatment Discharge Permit #3-1055, Condition I.A: Failure to sample BOD₅ two times per week.
3. Pretreatment Discharge Permit #3-1055, Condition I.E.2: Failure to submit monthly Discharge Monitoring Reports (DMRs) by the 15th day of the following month.¹

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and Franklin Foods, Inc. (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 Vermont-registered corporation in the business of food production.
2. Respondent operates a food manufacturing plant in Enosburg Falls, Vermont. The plant produces cultured cream cheese and cream cheese-based products from milk and Tofutti®.
3. Respondent owns and operates a pretreatment facility for treating its process wastewater prior

¹ The requirements of Permit Condition I.E.2. correspond with the requirements of Condition I.F.2 in Franklin Foods, Inc.'s Pretreatment Discharge Permit #3-1055 that was in effect from January 17, 2012 until August 31, 2018.

to discharge to the Town of Enosburg Falls Wastewater Treatment Facility. The discharge is subject to Pretreatment Discharge Permit #3-1055 (Permit), which was initially issued by the Agency to Respondent on March 13, 2001 and renewed on November 20, 2006, January 17, 2012, and August 29, 2018 (permit effective date September 1, 2018).

4. Condition I.A of the Permit contains a daily maximum effluent limit for BODs of 375 pounds/day and a monthly average effluent limit for BODs of 275.5 pounds/day.
5. In 2015, Respondent exceeded the maximum day BODs discharge limitation three times (once in Apr., and twice in Oct.) in violation of Condition I.A.
6. In 2016, Respondent exceeded the maximum day BODs discharge limitation four times (once in July, once in Aug., and twice in Dec.) in violation of Condition I.A.
7. In 2017, Respondent exceeded the maximum day BODs discharge limitation four times (once in Jan. and three times in June) in violation of Condition I.A.
8. In 2018, Respondent exceeded the maximum day BODs discharge limitation seventeen times (twice in Feb., three times in Mar., once in Apr., four times in May, three times in June, twice in August, and twice in September) in violation of Condition I.A.
9. In 2016, Respondent exceeded the monthly average BODs limitation once (July) in violation of Condition I.A.
10. In 2017, Respondent exceeded the monthly average BODs limitation three times (June, Sept., and Oct.) in violation of Condition I.A.
11. In 2018, Respondent exceeded the monthly average BODs limitation six times (Jan., Feb., Mar., May, June, and August) in violation of Condition I.A.
12. By exceeding the maximum day and monthly average BODs discharge limitations, Respondent has violated Permit Condition I.A.
13. Permit Condition I.A includes the frequency of measurement of BODs, requiring BODs measurements be taken twice per week.
14. In 2015, Respondent failed to sample two times per week for eight weeks (Mar. 8-14, Mar. 29-Apr. 4, June 28-July 4, Aug. 30-Sept. 5, Sept. 20-26, Oct. 18-24, Nov. 1-7, and Nov. 29-Dec.5)

- in violation of Condition I.A.
17. In 2016, Respondent failed to sample two times per week for nine weeks (Jan. 3-9, Jan. 17-23, Feb. 14-20, Mar. 20-26, Apr. 17-23, May 22-28, Aug. 7-13, Aug. 28-Sept. 3, and Nov. 6-12) in violation of Condition I.A.
 18. In 2017, Respondent failed to sample BODs two times per week for eleven weeks (Jan. 8-14, Apr. 16-22, June 4-10, June 18-24, July 9-15, July 16-22, Sept. 17-23, Oct. 8-14, Oct. 29-Nov. 4, Nov. 5-11, and Dec. 24-30) in violation of Condition I.A.
 19. In 2018, Respondent failed to sample two times per week for six weeks (Dec. 31-Jan. 6, Feb. 11-17, Feb. 18-24, May 27-June 2, June 10-16, and Sept. 2-8) in violation of Condition I.A.
 20. By failing to sample BODs twice per week, Respondent violated Permit Condition I.A.
 21. Permit Condition I.E.2 contains instruction for submitting DMRs. The Permit Condition I.F.2. contains the same instruction for submitting DMRs under the permit effective from January 17, 2012 to August 31, 2018. Under both the current permit conditions and prior permit conditions, DMRs are due on the fifteenth day of each following month.
 22. In 2015, Respondent submitted five DMRs late (Feb., Aug., Oct., Nov., and Dec.) in violation of Condition I.F.2.
 23. In 2016, Respondent submitted three DMRs late (July, Sept., and Oct.) in violation of Condition I.F.2.
 24. In 2017, Respondent submitted seven DMRs late (Feb., Mar., Apr., May, June, Sept., and Nov.) in violation of Condition I.F.2.
 25. In 2018, prior to September 1, 2018, Respondent submitted four DMRs late (Feb., Mar., May, and June) in violation of Condition I.F.2.
 26. In 2018, after September 1, 2018, Respondent submitted one DMR late (Sept.) in violation of Condition I.E.2.
 27. By failing to submit timely monthly monitoring reports, Respondent violated Permit Condition I.F.2. in the permit effective from January 17, 2012 to August 31, 2018 and Permit Condition I.E.2. in the permit effective starting September 1, 2018.
 28. Agency staff conducted an inspection of the facilities and a review of the 2016-2017 reports in August 2017. Subsequently, the Agency sent Respondent a copy of the report, including violations, corrective actions, and an "unacceptable" rating, on October 11, 2017.

29. On October 18, 2017, Respondent submitted a written explanation to the Agency for the violations. The email also included steps Respondent planned to take to prevent future violations.
30. Despite steps taken by Respondent to avoid any future violations, violations did occur in subsequent months.
31. On March 21, 2018, the Agency sent Respondent a Notice of Alleged Violations (NOAV) via certified mail. The NOAV was delivered to the Enosburg Plant and signed for by a representative of Respondent on March 23, 2018.
32. The Agency did not receive a written response from Respondent to the March 21, 2018 NOAV, and subsequent to the March 21, 2018 NOAV, additional violations of Respondent's permit conditions occurred.
33. On August 2, 2018, Agency personnel conducted an inspection of the facilities and a review of the 2017-2018 reports. Subsequently, the Agency sent Respondent a copy of the report, including violations, corrective actions, an "unacceptable" rating, and a request for written response on August 28, 2018.
34. Respondent sent the Agency a written response on September 12, 2018 that outlines the corrective actions Respondent is undertaking and plans to undertake to come into compliance with the Permit. Respondent submitted supplemental information on November 8, 2018 in response to questions from the Agency. By a letter dated December 3, 2018, the Agency summarized Respondent's comprehensive corrective action plan and approved the plan.
35. Respondent admits the factual findings described above, solely for purposes of resolving this case.
36. The Agency alleges that the above conduct constitutes a violation of Discharge Permit #3-1055 Condition I.A and Condition I.F.2. in the permit effective from January 17, 2012 to August 31, 2018 and Condition I.E.2. in the permit effective starting September 1, 2018.

AGREEMENT

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

- A. For the violations described above, Respondent shall pay a total penalty of \$24,750.00. Payment shall be made as follows: \$5,000.00 shall be received no later than March 1, 2019; \$5,000.00 shall be received no later than April 1, 2019; \$5,000.00 shall be received no later than May 1, 2019; \$5,000 shall be received no later than June 1, 2019; and \$4,750.00 shall be received no later than July 1, 2019. Respondent is in no way prevented from paying the entire outstanding penalty amount earlier than the specified dates. 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

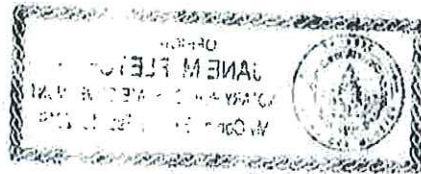
In the event Respondent fails to make any payment on time as set forth above, the Secretary shall have the authority to accelerate all the remaining payments and make them due and payable immediately. The decision to invoke this acceleration provision shall be in the sole discretion of the Secretary,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

- B. Respondent shall comply with Pretreatment Discharge Permit #3-1055 and any other applicable permit and environmental law in the operation, maintenance, and testing of its wastewater treatment facility.
- C. Respondent shall comply with the corrective action plan approved by the Agency's Watershed Management Division on December 3, 2018.
- D. 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.

- E. 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.
- 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 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.
- H. 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, this Assurance shall be null and void.
- I. 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.
- 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 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.

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

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, John Ovitt, the undersigned, hereby state under oath that I am the General Manager of Franklin Foods, Inc. and an authorized representative of Franklin Foods, Inc., 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 Enosburg Falls Vermont, this 28th day of December, 2018.

John B. Ovitt
John Ovitt

Printed Name: John Ovitt

Address: 68 East Street

Enosburg Falls, VT 05450

STATE OF VERMONT
COUNTY OF Franklin, SS.

At Enosburg Falls, Vermont this 28th day of December, 2018 the above signatory personally appeared and swore to the truth of the foregoing. Before me,




Jane Fletcher
Notary Public

Term Expires: Feb 10, 2019

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

Dated at Montpelier, Vermont, this 3 day of January, 2018.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: 
Emily Boedecker, Commissioner
Department of Environmental Conservation