

**STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION**

Agency of Natural Resources,
Petitioner,

v.

Windham Foundation, Inc.,
Respondent.

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Docket # 39-3-19 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on January 22, 2019, and filed with the Superior Court, Environmental Division, on March 11, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 14th day of March 2019.

A handwritten signature in blue ink, appearing to read "Tom Walsh", is written over a horizontal line.

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.

**WINDHAM FOUNDATION, INC.,
Respondent**

VIOLATIONS

1. Vermont Underground Storage Tank Rule (VUSTR) §8-505(h): Failure to maintain documentation of weekly release detection monitoring
2. VUSTR §8-509(a): Failure to maintain documentation of monthly inspections

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 Windham Foundation, 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 that operates Grafton Village Cheese Company, LLC, located at 533 Townshend Road in Grafton, VT, SPAN # 24907910634 (the facility).
2. The facility has one 2000-gallon UST that is subject to a UST Operating Permit issued by the Agency on May 1, 2018.
3. On August 29, 2018, Agency personnel with the UST Program inspected the facility.
4. During the inspection, Agency personnel observed the following:
 - a) Weekly leak detection monitoring documentation was not being maintained as required by VUSTR §8-505(h);

- b) By failing to maintain documentation of weekly leak detection monitoring, the Respondent violated VUSTR §8-505(h).
 - c) Documentation of the UST monthly inspections were not being maintained as required by VUSTR §8-509(a);
 - d) By failing to maintain documentation of the UST monthly inspections, the Respondent violated VUSTR §8-509(a).
5. On September 18, 2018, the Agency issued a Notice of Alleged Violation (NOAV) informing the Respondent of the violations observed at the facility and providing specific compliance directives.
 6. As of September 27, 2018, the Respondent has returned the facility to full compliance with the VUSTR.
 7. Respondent admits the factual findings described above, solely for purposes of resolving this case.
 8. The Agency alleges that the above conduct constitutes violations of VUSTR §8-505(h) and VUSTR §8-509(a).

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 \$5,000.00. Payment shall be made in twenty-four (24) monthly installments as follows: The initial payment of \$400.00 shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order by signature of the Environmental Court (effective date). All subsequent payments of \$200.00 shall be received no later than the first 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
Environmental Compliance Division
Agency of Natural Resources
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. Respondent shall comply with the UST Operating Permit and any other applicable permit and environmental law, in the construction, operation, and maintenance of Respondent's facility.
- E. 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.
- F. 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 their business.
- G. 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.
- H. 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.
- I. 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.

- J. 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.
- K. This Assurance is subject to the provisions of 10 V.S.A. Sections 8007 and 8020.

SIGNATURES

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

Further, I, Elizabeth Bankowski, the undersigned, hereby state under oath that I am the President of Windham Foundation, Inc. and an authorized representative of Windham Foundation, Inc., and 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 Grafton Vermont, this 22nd day of January 2019.

By: Elizabeth Bankowski
Elizabeth Bankowski, President
Windham Foundation, Inc.

STATE OF VERMONT

COUNTY OF Windham, ss.

At Grafton Vermont, this 22nd day of January 2019,
the above-signatory personally appeared and swore to the truth of the foregoing. Before me,

Betsy Kelley
Notary Public
Term expires: 1/31/21

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

Dated at Montpelier, Vermont, this 30 day of January 2019.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: Emily Boedecker
Emily Boedecker, Commissioner
Department of Environmental Conservation