



STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION  
Docket No.

SECRETARY, VERMONT  
AGENCY OF NATURAL RESOURCES,  
Plaintiff

v.

MALCOLM F. DOWNING d/b/a  
DOWNING FORESTRY CONSULTING,  
Respondent

VIOLATIONS

1. 10 V.S.A. § 1259(a): Failure to follow Acceptable Management Practices (AMPs) resulting in a discharge of material to waters of the State without a permit.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Secretary (Secretary) of the Agency of Natural Resources (Agency) and Malcolm F. Downing d/b/a Downing Forestry Consulting (Respondent) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. The subject property ("Property") is located on Fellows Road in Guildhall, Span ID # 27008510055, is approximately 90.70 acres, and is owned by John Chessman ("Property Owner").
2. Respondent Malcolm F. Downing d/b/a Downing Forestry Consulting, pursuant to a contract entered into by him and the Property Owner to log the Property, was responsible for supervising logging operations on the Property.
3. Logging began in February 2015 and ended that year in April with Gary Downing, Respondent's brother, and others ("Loggers") doing the actual logging. There were no reported problems during that period of time.

4. Respondent had hip surgery in December of 2015 and as a result his activities were restricted.
5. Logging recommenced on the Property by the Loggers on or about February 2016 through November of that year.
6. During this period of time Respondent, as a result of his hip operation, failed to conduct on-site supervisory inspections.
7. Silt and logging slash constitute waste, materials, or substances as defined in 10 V.S.A. §1259(a).
8. On November 17, 2016, the Agency received a complaint from a relative of the Property Owner about the logging practices taking place on his Property.
9. On November 21, 2016, Agency personnel visited the Property and observed potential AMP violations, but snow conditions prevented Agency personnel from observing the extent of the AMP violations:
  - a. The Loggers crossed an unnamed perennial stream over an unstable bank at two locations without a bridge or culvert in place, in violation of AMP #9; and
  - b. Logging slash was present in the stream at the crossings, in violation of AMP #8.
10. On December 15, 2016, Agency personnel conducted a site visit and observed the same AMP violations that the Agency observed on November 21, 2016.
11. Respondent's failure to properly supervise the logging operation so that the Loggers failed to implement and follow the AMPs at the Property resulted in discharges of sediment to an unnamed perennial stream, which is a water of the State. There was no permit for the discharges.
12. On February 2, 2017, the Agency issued a Notice of Alleged Violation (NOAV) to the Loggers and the Property Owner concerning the AMP violations and resulting discharges to the unnamed perennial stream on the Property. The NOAV required specific remediation work be done by August 1, 2017 to bring the logging operation into compliance with the AMPs and prevent further discharges to the unnamed perennial stream.
13. On June 28, 2017, Agency personnel visited the Property and observed the following:
  - a. The Loggers crossed an unnamed perennial stream over an unstable bank at seven locations without a bridge or culvert in place, in violation of AMP #9;
  - b. The ruts created by the stream crossing approaches to the stream were actively silting

- the stream, in violation of AMP #7;
- c. Logging slash was present in the stream at the crossings, in violation of AMP #8; and
  - d. The Loggers had failed to install water diversions at least 25 feet from the seven stream crossings resulting in active silting to the stream, in violation of AMP #11.
14. On June 30, 2017, Agency personnel visited the Property and flagged the remediation work required by the NOAV.
  15. On August 2, 2017, Agency personnel walked the Property with Respondent's representative, Trevor Downing, and explained the flagging.
  16. On September 5, 2017, Agency personnel walked the Property with Respondent's representative, Casey Houghton, and explained the flagging.
  17. Respondent cooperated with the Agency in seeing that the required remediation work was completed.
  18. On September 25, 2017, Agency personnel inspected the Property and concluded that all remediation work required by the NOAV was completed.
  19. Respondent admits the factual findings described above, solely for purposes of resolving this case.
  20. The Agency alleges that the above conduct constitutes a violation of 10 V.S.A. §1259(a).

### 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 \$5,000.00.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Services Coordinator  
Agency of Natural Resources  
Environmental Compliance Division  
1 National Life Drive, Davis 3  
Montpelier, VT 05620-3803

Payment 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 Superior Court, Environmental Division (effective date).



- 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 Superior Court, Environmental Division. When so entered by the Superior Court, 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 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 Superior Court, 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.

Dated at Lunenburg, Vermont, this 21 day of Jan, 2020.

Malcolm F Downing  
Malcolm F. Downing d/b/a  
Downing Forestry Consulting

Printed Name: MALCOLM DOWNING

Address: PO BOX 33

LUNENBURG VT 05916

STATE OF VERMONT  
COUNTY OF Essex, SS.

At Lunenburg, Vermont this 21 day of Jan, 2020, the above signatory personally appeared, signed, and swore to the foregoing, before me,

PATRICIA A. SCOTT  
Notary Public, State of Vermont  
Commission No. 0001769  
My Commission Expires 11/31/21

Patricia Scott  
Notary Public State of Vermont

Printed Name Patricia Scott

Commission No. 0001769

My Commission Expires 1/31/21

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

Dated at Montpelier, Vermont, this 14 day of February, 2020.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: [Signature]  
Michael Snyder, Commissioner  
Department of Forests, Parks and Recreation