

STATE OF VERMONT
SUPERIOR COURT
ENVIROMENTAL DIVISION

ANR v Nelson Dairies West, LLC

20-ENV-00029

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 6th day of October, 2020 and filed with the Superior Court, Environmental Division, on the 23rd day of November, 2020, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 11/25/2020 8:22 AM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

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

v.

**NELSON DAIRIES WEST, LLC,
Respondent**

VIOLATION

1. 10 V.S.A. § 1259(a): Unpermitted discharge to waters of the State

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“ANR”) and Nelson Dairies West, 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 owns and operates a Large Farm Operation (“LFO”) located at 371 Montagne Road in St. Albans, Vermont (the “Property”).
2. On November 7, 2019, employees from the Agency of Agriculture, Food and Markets (“AAF”) visited the LFO for a routine inspection. While on the Property, AAF employees observed leachate and agricultural waste flowing over the apron on the easterly side of Feed Bunk 2 and being conveyed through a swale where it discharged to an unnamed stream on the Property.
3. Following AAF’s site visit, Respondent constructed an earthen berm parallel to the unnamed stream in an attempt to contain the runoff from Feed Bunk 2.
4. On November 22, 2019, ANR staff visited the Property and observed the berm located parallel to and approximately 6 feet from the unnamed stream. Leachate was pooling against the berm

but was not redirected to a treatment or containment area. Narrow channels of liquid were beginning to emerge from the berm and flow toward the unnamed stream.

5. Under 10 V.S.A. § 1259(a), no person may discharge any waste, substance, or material into waters of the State without first obtaining a permit from the Secretary of the Agency of Natural Resources for that discharge.
6. The ANR alleges that the above conduct constitutes a violation of 10 V.S.A. § 1259(a).
7. Respondent admits the factual findings described above solely for purposes of resolving this case.

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violation, the parties agree as follows:

- A. For the violation described above, Respondent shall pay a total penalty of \$ 5,875.00. Payment shall be by either:

1. 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 3
Montpelier, VT 05620-3803

Or

2. Credit card or electronic check payment through the Agency’s online system at:
https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

Payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance.

- B. Respondent shall eliminate the discharge of waste to state waters from Feed Bunk 2 and implement corrective measures in accordance with the following:

1. No later than fifteen (15) consecutive calendar days following the Effective Date of this Assurance, Respondent shall submit to the ANR for its review and approval a proposed Interim Corrective Action Plan (“Interim Plan”) to address the discharge of waste from Feed Bunk 2 to state waters until a permanent solution can be implemented.
 - i. The Interim Plan shall be implemented no later than November 30, 2020.
 - ii. The ANR shall have sole discretion in approving the Interim Plan. In the event that the ANR rejects a proposed Interim Plan, Respondent shall revise the Plan as directed and submit a revised Interim Plan to the ANR no later than five (5) consecutive calendar days following any rejection, repeating the process as needed until an Interim Plan is approved.

2. No later than March 1, 2021, Respondent shall submit to the ANR for its review and approval a proposed Permanent Corrective Action Plan (“Permanent Plan”) that eliminates the discharge of waste from Feed Bunk 2 to state waters.
 - i. The Permanent Plan shall be completed no later than September 15, 2021.
 - ii. The ANR shall have sole discretion in approving the Permanent Plan. In the event that the ANR rejects a proposed Permanent Plan, Respondent shall revise the Plan as directed and submit a revised Permanent Plan to the ANR no later than fifteen (15) consecutive calendar days following any rejection, repeating the process as needed until an Permanent Plan is approved.
 - iii. No later than seven (7) consecutive calendar days following completion of the Permanent Plan, Respondent shall notify the ANR and obtain written confirmation of completion to the ANR’s satisfaction.

- C. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violation alleged above in order to resolve all outstanding disputes.
- D. Respondent agrees that the violation alleged is 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.
- E. The State of Vermont and the ANR 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.
- G. 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, 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 Division of the Superior 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. §§ 8007 and 8020.

[Signatures on following pages.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Jacob Bourdeau, the undersigned, hereby state under oath that I am the Managing Member of Nelson Dairies West, LLC, that I have the power to contract on behalf of Nelson Dairies West, LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Sheldon, Vermont, this 6 day of October 2020.

NELSON DAIRIES WEST, LLC

By: Jacob Bourdeau
Jacob Bourdeau, Managing Member

STATE OF VERMONT

COUNTY OF Franklin, ss.

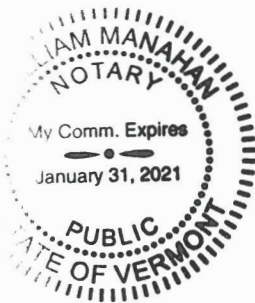
At Sheldon, Vermont, this 6 day of October 2020, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,

William Manahan
Notary Public State of Vermont

Printed Name William Manahan

Commission No. 157.0006411


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 22nd day of October, 2020.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: 

Peter Walke, Commissioner
Department of Environmental Conservation