



ANR v Commonwealth Dairy, LLC

Order

Based on the agreement of the parties in Paragraph I of the Assurance of Discontinuance filed on April 12, 2021, the Administrative Order in the above captioned matter issued by the Secretary of the Agency of Natural Resources on 10/23/2020 is hereby vacated.

The Assurance of Discontinuance signed by the Respondent on 03/8/2021, and filed with the Superior Court, Environmental Division, on April 12, 2021, is hereby entered as an Order of this Court, pursuant to 10 V.S.A. 8007(c), concluding this case.

Electronically Signed: 4/14/2021 9:07 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. 20-ENV-00018

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

v.

**COMMONWEALTH DAIRY, LLC,
Respondent**

VIOLATIONS

1. Pretreatment Discharge Permit No. 3-1530, Condition I.A.1.: Exceedance of daily maximum effluent flow limitation, daily maximum Biochemical Oxygen Demand (BOD) effluent limitation, and pH limitation
2. Pretreatment Discharge Permit No. 3-1530, Condition I.A.1.: Failure to collect samples in accordance with the permitted monitoring schedule
3. Pretreatment Discharge Permit No. 3-1530, Condition I.A.1., footnote (1): Failure to sequence samples so that all days of production in any given month are represented
4. Pretreatment Discharge Permit No. 3-1530, Condition I.B.2-4.: Failure to implement a Waste Management Plan
5. Pretreatment Discharge Permit No. 3-1530, Condition I.E.1.: Failure to utilize approved methods for sampling, preservation, handling, and analysis
6. Pretreatment Discharge Permit No. 3-1530, Condition I.E.2.: Failure to submit monitoring results
7. Pretreatment Discharge Permit No. 3-1530, Condition II.A.1.: Failure to notify Agency of facility modification and change in discharge
8. Pretreatment Discharge Permit No. 3-1530, Condition II.A.2.: Failure to notify Agency of non-compliance and corrective actions
9. Pretreatment Discharge Permit No. 3-1530, Condition II.A.3.a.: Failure to maintain treatment, control facilities, or systems in good working order and operate as efficiently as possible
10. Pretreatment Discharge Permit No. 3-1530, Condition II.A.3.b.: Failure to provide operating staff duly qualified to carry out the operation, maintenance, and testing functions required to ensure compliance with the permit
11. Pretreatment Discharge Permit No. 3-1530, Condition II.A.4.: Failure to calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at regular intervals to ensure accuracy of measurements
12. Pretreatment Discharge Permit No. 3-1530, Condition II.A.5.: Failure to maintain records and information resulting from the monitoring activities required by the permit for a minimum of three (3) years

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 Commonwealth Dairy, LLC (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 engaged in the business of yogurt production.
2. Respondent operates a yogurt production facility located at 3 Omega Drive in Brattleboro, Vermont, SPAN # 081-025-16761 (the facility).
3. The facility is subject to Pretreatment Discharge Permit No. 3-1530 (the permit).
4. Condition I.A.1. of the permit contains a daily maximum effluent limit for flow of 100,000 gallons per day, a daily maximum effluent limit for BOD of 800 pounds per day, and a pH limitation of 5.5 – 9.5 standard units. Condition I.A.1. of the permit further requires continuous monitoring of flow, bi-weekly monitoring of BOD, weekly monitoring of total suspended solids (TSS), monthly monitoring of oil and grease, and continuous monitoring of pH. Finally, Condition I.A.1. of the permit requires BOD and TSS samples to be sequenced such that all days of production in a given month are represented.
5. Respondent exceeded the effluent flow limit twice in October 2017; twice in May 2018; once in August 2018; once in September 2018; once in February 2019; once in July 2019; and once in June 2020, in violation of Condition I.A.1 of the permit.
6. Respondent exceeded the BOD effluent limit twice in December 2017; twice in January 2018; twice in February 2018; once in March 2018; once in April 2018; twice in May 2018; three times in June 2018; once in July 2018; once in August 2018; once in September 2018; once in October 2018; three times in December 2018; four times in January 2019; five times in February 2019; twice in March 2019; twice in April 2019; once in June 2019; once in July 2019; once in September 2019; three times in October 2019; three times in November 2019; three times in December 2019; twice in January 2020; once in February 2020; once in April 2020; and once in June 2020, in violation of Condition I.A.1. of the permit.
7. Respondent exceeded the pH limit twice in December 2017; seven times in January 2018; and once in August 2018, in violation of Condition I.A.1. of the permit.
8. Respondent failed to monitor for BOD once in September 2017; four times in December 2017; three times in January 2018; once in February 2018; once in March 2018; twice in May 2018;

- twice in September 2018; twice in February 2019; and twice in May 2019, in violation of Condition I.A.1. of the permit.
9. Respondent failed to monitor for TSS once in September 2017; once in November 2017; once in December 2017; once in January 2018; once in February 2018; once in March 2018; once in May 2018; once in June 2018; once in September 2018; and once in February 2019, in violation of Condition I.A.1. of the permit.
 10. Respondent failed to monitor for oil and grease once in September 2017, in violation of Condition I.A.1. of the permit.
 11. Respondent failed to sample BOD or TSS on the following production days: Friday, Saturday, and Sunday in October 2017; Friday, Saturday, and Sunday in November 2017; Tuesday, Friday, Saturday, and Sunday in December 2017; Friday, Saturday, and Sunday in January 2018; Sunday and Tuesday in February 2018; Wednesday, Saturday, and Sunday in March 2018; Wednesday, Friday, Saturday, and Sunday in April 2018; Wednesday, Friday, Saturday, and Sunday in May 2018; and Wednesday, Friday, Saturday, and Sunday in June 2018, in violation of Condition I.A.1. of the permit.
 12. Condition I.B. of the permit contains a requirement to implement the Waste Management Plan submitted to the Agency on August 30, 2011. Condition I.B. of the permit further requires the Waste Management Plan to be revised as necessary and submitted to the Agency. The most recent version of the Plan is dated August 22, 2018. Conditions I.B.1-4. of the permit define the specific content that the Waste Management Plan must include.
 13. Condition I.B.1. of the permit contains a requirement that the Waste Management Plan must define a person assigned each shift to inspect pretreatment facility operation, all waste generators, and have the authority to order correction of waste generation which may cause problems in the pretreatment facility.
 14. Condition I.B.2. of the permit contains a requirement that the Waste Management Plan define a method for proper disposal of any whey by-product and other high strength wastes that preclude discharge to the Brattleboro Wastewater Treatment Facility.
 15. Condition I.B.3. of the permit contains a requirement that the Waste Management Plan incorporate a spill containment tank that is operational at all times and large enough to contain and collect all high-strength wastes generated during spill events.
 16. Condition I.B.4. of the permit contains a requirement that the Waste Management Plan designates an employee responsible for implementing the Plan and arranging for the disposal

of high strength wastes. In addition, all employees shall be instructed of the proper procedures for waste minimization and handling of spills.

17. Respondent's Waste Management Plan, dated August 22, 2018, states, "Dry waste shall be collected in designated waste containers. The containers are to be emptied at minimum once per day into the outside dumpsters supplied by Triple T Trucking Inc., Brattleboro." The Waste Management Plan further states, "Shift leaders monitor all waste generating processes and all silos, storage tanks, and other areas of the facility for evidence of excess waste generation. Should they find excess waste generation or any abnormality that may affect the proper operation of the wastewater pretreatment operation, the shift leader will immediately shut down the operation responsible for the abnormality and the Production Manager will be notified. The Production Manager shall also notify Plant Manager and Quality Assurance Team. If spills occur within the plant, the material shall be captured before entering the drain and added to a BOD tote, and transferred to the whey tank. If a significant spill enters the wastewater system, the valve is to be closed manually and the effected water transported to an appropriate treatment facility."
18. During an inspection performed by Agency personnel on September 20, 2018, Respondent indicated that large amounts of dry-ingredients are introduced to the on-site wastewater treatment facility as a result of the dry-ingredient blending process. These dry ingredients include food products such as sugars, tapioca starch, gelatin, milk powder, and crystalline fructose. This operation introduces dry wastes to the on-site wastewater treatment facility that are then discharged to the Brattleboro Wastewater Treatment Facility, in violation of Condition I.B.2. of the permit.
19. In the July 26, 2018 notification of non-compliance for exceeding the BOD limit, Respondent explained that the exceedance was due to a larger than normal spill and insufficient employee training, in violation of Condition I.B.2., Condition I.B.3., and Condition I.B.4. of the permit.
20. On the May monthly Discharge Monitoring Report (DMR) submitted to the Agency on June 14, 2018, Respondent explained the cause of the BOD effluent limits exceedances on May 17, and May 22, 2018 were due to staffing changes, in violation of Condition I.B.4. of the permit.
21. On the June monthly DMR submitted to the Agency on July 13, 2018, Respondent explained the cause of the BOD effluent limit exceedances on June 7, June 21, and June 26, 2018 were due to inadequate staff training, in violation of Condition I.B.4. of the permit.

22. Condition I.E.1. of the permit contains requirements to utilize sampling, preservation, handling, and analytical methods approved under Code of Federal Regulations Title 40, Part 136.
23. Records, observed during an inspection performed by Agency personnel on September 20, 2018, indicate that Respondent failed to calibrate the pH probe on August 31, September 1, September 2, and September 4, 2018, in violation of Condition I.E.1. of the permit.
24. Laboratory reports from Phoenix Environmental Laboratories, Inc. indicate that Respondent failed to analyze BOD within the 48-hour hold time three times in January 2019, one time in February 2019, and two times in March 2019, in violation of Condition I.E.1. of the permit.
25. Condition I.E.2. of the permit contains requirements to submit monitoring results to the Agency by the 15th day of each month.
26. Records, observed during an inspection performed by Agency personnel on September 20, 2018, indicate that Respondent failed to report effluent monitoring results from December 12, 2017, December 18, 2017, and May 30, 2018 to the Agency, in violation of Condition I.E.2. of the permit. Analyses on December 12, 2017 and May 30, 2018 exceeded the BOD effluent limitation.
27. Condition II.A.1. of the permit contains requirements for Respondent to report any anticipated facility expansions, production increases, or process modifications which will result in new, different, or increased discharges of pollutants.
28. During an inspection performed by Agency personnel on September 20, 2018, Respondent reported that blending was added to the manufacturing process in early 2018 to accommodate the production of conventional yogurt. Blending occurs after pasteurization and involves the blending of dry ingredients into the yogurt product using a blending unit. The dry ingredients include sugars, tapioca starch, gelatin, milk powder, and crystalline fructose. Respondent reported that blending results in a large amount of dry ingredients on the production room walls and floor, which are then washed down the drain and introduced to the on-site wastewater treatment facility. The timeframe in which blending was added to the manufacturing process corresponds with the many effluent limit violations, cited in this Administrative Order. Respondent failed to notify the Agency of this process modification, in violation of Condition II.A.1. of the permit.
29. Condition II.A.2. of the permit contains requirements to notify the Agency within 24 hours of non-compliance with any condition of the permit and submit a written notification of non-compliance within 5 days.

30. Between September 2017 and July 2018, the Agency received one notification from Respondent of non-compliance with oil and grease monitoring on October 4, 2017 and one notification of non-compliance with BOD limits on July 26, 2018.
31. During this time period, Respondent failed to provide notice to the Agency of all other forty-six instances of non-compliance with flow, BOD, TSS, and pH limits and monitoring frequencies, cited in paragraphs five through nine above, in violation of Condition II.A.2. of the permit.
32. Condition II.A.3.a. of the permit contains a requirement that Respondent shall at all times, maintain in good working order and operate as efficiently as possible all treatment, control facilities, or systems used to achieve compliance with the terms and conditions of the permit.
33. Condition II.A.3.b. of the permit contains a requirement that Respondent shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance, and testing functions required to ensure compliance with the terms and conditions of the permit.
34. On the October monthly DMR submitted to the Agency on November 28, 2017, Respondent explained the cause of flow exceedances on October 8, and October 13, 2017 were due to malfunctioning systems, in violation of Condition II.A.3.a. of the permit.
35. In the October 4, 2017 notification of non-compliance for failing to collect the monthly oil and grease compliance sample, Respondent explained the violation was a result of new employees, in violation of Condition II.A.3.b. of the permit.
36. On the December monthly DMR submitted to the Agency on February 20, 2018, Respondent explained the cause of failing to collect BOD compliance samples on December 3, December 10, and December 24, 2018 were a result of a malfunctioned composite sampler, in violation of Condition II.A.3.a. of the permit.
37. On the December monthly DMR submitted to the Agency on February 20, 2018, Respondent explained the cause of pH exceedances on December 21, and December 25, 2018 were due to “programming errors” with the continuous pH monitoring equipment, in violation of Condition II.A.3.a. of the permit.
38. On the January monthly DMR submitted to the Agency on February 20, 2018, Respondent explained the cause of the BOD limit exceedances on January 2, January 10, and January 28, 2018 and missed BOD samples on January 14, 2018, were due to new employees, in violation of Condition II.A.3.b. of the permit.

39. On the April monthly DMR submitted to the Agency on May 11, 2018, Respondent explained the cause of the BOD limit exceedance on April 12, 2018 was due to improper operation of equipment by a new employee, in violation of Condition II.A.3.a. and Condition II.A.3.b. of the permit.
40. On the May monthly DMR submitted to the Agency on June 14, 2018, Respondent explained the cause of the flow limit exceedances on May 2, and May 8, 2018 and BOD limit exceedances on May 17, and May 22, 2018, were due to new employees, in violation of Condition II.A.3.b. of the permit.
41. On the June monthly DMR submitted to the Agency on July 13, 2018, Respondent explained the cause of the BOD limit exceedances on June 7, June 21, and June 26 were due to new employees that needed additional training, in violation of Condition II.A.3.b. of the permit.
42. In the August 22, 2018 notification of non-compliance for exceeding the Flow limitation, Respondent explained the August 7, 2018 exceedance was due to improper operation of equipment and malfunctioning equipment, in violation of Condition II.A.3.a. of the permit.
43. In the August 21, 2018 notification of non-compliance for exceeding the BOD limitation, Respondent explained the August 13, 2018 exceedance was due to improper maintenance procedures by staff, in violation of Condition II.A.3.a. of the permit.
44. In the September 27, and October 25, 2018 notifications of non-compliance for exceeding the BOD limitation, Respondent explained the September 12, and October 12, 2018 exceedances were due to improper operation of treatment equipment, in violation of Condition II.A.3.a. and Condition II.A.3.b. of the permit.
45. In the January 7, and January 8, 2019 notifications of non-compliance for exceeding the BOD limitation, Respondent explained the December 27, and December 28, 2018 exceedances were due to improper operation procedures, in violation of Condition II.A.3.a. of the permit.
46. In the January 10, 2019 notification of non-compliance for exceeding the BOD limitation, Respondent explained the December 30, 2018 exceedance was due to improper operation of treatment equipment, in violation of Condition II.A.3.a. and Condition II.A.3.b. of the permit.
47. Condition II.A.4. of the permit contains a requirement that Respondent shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at regular intervals to ensure accuracy of measurements.
48. Respondent is required to utilize the following pH calibration procedure in accordance with Condition II.A.4. of the permit: In lieu of daily calibration the continuous pH monitoring

system, Respondent shall compare a grab sample analyzed with a calibrated bench-top pH meter to the continuous pH monitoring result for that time to determine the accuracy of their continuous pH measurement system. If the pH results vary greater than ± 0.1 standard units, then Respondent shall recalibrate the continuous monitoring system to ensure the accuracy of measurements. This procedure was established with Respondent in the February 25, 2016; August 10, 2017; and September 20, 2018 inspections.

49. During the period of August 25 through September 9, 2018, Respondent's continuous pH monitoring record and grab sample result varied greater than ± 0.1 standard units four times in August and three times in September. On each of these occasions, Respondent indicated that the pH system was "out of calibration" and only recalibrated the system once in August, in violation of Condition II.A.4. of the permit.
50. During the period of August 25 through September 9, 2018, Respondent failed to calibrate the continuous pH monitoring system daily or compare a grab sample result to the continuous pH monitoring result once in August and three times in September, in violation of Condition II.A.4. of the permit.
51. During an inspection performed by Agency personnel on September 20, 2018, Respondent's bench-top pH meter could not be calibrated, in violation of Condition II.A.4. of the permit. This equipment is used to ensure Respondent's continuous pH monitoring system is making accurate measurements.
52. During an inspection performed by Agency personnel on August 10, 2017 and again on September 20, 2018, Respondent indicated that the composite sampler thermometer was not verified annually with a National Institute of Standards and Technology traceable thermometer, in violation of Condition II.A.4 of the permit. This procedure is required by the Agency to ensure samples are maintained at the preservation temperature (≤ 6 degrees Celsius) to ensure the accuracy of measurements.
53. Condition II.A.5. of the permit contains a requirement that Respondent retain the following records for a minimum of three years: all records and information resulting from the monitoring activities required by the permit, records of analyses, calibration and maintenance of instrumentation, and recordings from continuous monitoring instrumentation.
54. During an inspection performed by Agency personnel on August 10, 2017, Respondent's continuous pH and flow monitoring records were only maintained through January 9, 2017, in violation of Condition II.A.5. of the permit.

55. Condition I.B.4. of the permit contains a requirement that all employees shall be instructed on the proper procedures for waste minimization and handling of spills.
56. In the July 26, 2018 notification of non-compliance for exceeding the BOD limit, Respondent explained that the exceedance was due to a larger than normal spill and insufficient employee training.
57. Respondent failed to implement the training required in the Waste Management Plan, in violation of Condition I.B. of the permit.
58. On August 7, 2018, the Agency issued a Notice of Alleged Violation (NOAV) informing Respondent of the violations at the facility and providing specific compliance directives.
59. On August 10, 2017, Respondent submitted a revised Waste Management Plan to the Agency.
60. On August 22, 2018, the Agency received a response from Respondent to the August 7, 2018 NOAV. The response included corrective actions that Respondent proposed to implement to address the violations.
61. On September 20, 2018, Agency personnel performed an inspection of the facility and observed that the violations identified in the August 7, 2018 NOAV were continuing.
62. On November 21, 2018, the Agency issued the Inspection Report (2018 Inspection Report) informing Respondent of the violations found during the facility inspection and providing specific corrective actions.
63. To date, the Agency has not received a response from Respondent to the 2018 Inspection Report.
64. Respondent admits the factual findings described above, solely for purposes of resolving this case.
65. The Agency alleges that the above conduct constitutes violations of Pretreatment Discharge Permit No. 3-1530, Conditions I.A.1.; II.A.2.; and I.B.

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 \$25,000.00. Payment shall be by either:
 1. Check made payable to the “Treasurer, State of Vermont” and forwarded to:

Administrative Services Coordinator
Environmental Compliance Division - Enforcement
Agency of Natural Resources
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 date this Assurance is entered as an Order by signature of the Superior Court, Environmental Division (effective date).

- B. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondent shall retain a Vermont-registered professional engineer and qualified wastewater consultant to evaluate the facility. The evaluation shall include an assessment of the facility's current waste management procedures and wastewater treatment facility to determine if they are adequate to consistently and reliably achieve compliance with the terms and conditions of the permit. Further, the evaluation shall characterize the conditions and constituents which result in odor and hydrogen sulfide generation in the Town of Brattleboro collection system. Based off the evaluation, the Vermont-registered professional engineer and qualified wastewater consultant shall develop a written plan (Plan) identifying the methods Respondent will use to comply with the effluent limits (Condition I.A.1.) and operation and maintenance conditions (Condition II.A.3.) of the permit, including an implementation schedule of all proposed methods to achieve compliance with the permit. The Plan shall also identify methods to eliminate the odor and hydrogen sulfide causing conditions and/or constituents.
- C. No later than forty-five (45) consecutive calendar days following the effective date of this Order, Respondent shall have its engineer and consultant submit the results of the evaluation and Plan to the Agency for review and approval. In the event the Plan includes a design proposal for construction and installation of a treatment system necessary to comply with the permit, the Plan shall include a timeline for submittal of a basis of final design and timeline for construction, installation, and placement of the system into operation. Any construction installation activities and associated timelines shall be completed in accordance with the approved Plan.

- D. In the event the Agency rejects the proposed Plan, in whole or in part, Respondent shall have the engineer and consultant submit a revised Plan to the Agency no later than fourteen (14) consecutive calendar days following the date of rejection.
- E. An extension to any of the deadlines set forth in paragraphs B – D of this Order may be granted at the sole discretion of the Agency to address any difficult and unforeseen design or construction issues, inclement weather, or any other reasonable cause to be addressed. Any request for an extension shall be made prior to the expiration of the applicable deadline.
- F. Respondent shall comply with the Pretreatment Discharge Permit No. 3-1530 and any other applicable permit and environmental law, in the construction, operation, and maintenance of Respondent's facility.
- G. 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.
- H. 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.
- I. The parties intend that this agreement, upon acceptance by the Court, shall fully resolve and result in the dismissal of the pending Administrative Order filed in the Superior Court, Environmental Division, in Docket No. 20-ENV-00018, for this matter.
- J. 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.
- K. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected Respondent's on-going obligation to comply with all other federal, state, or local statutes, regulations, or directives applicable to Respondent in the operation of their business.
- L. 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 Environmental Division, this Assurance shall become a judicial order. In the event that such order is vacated, the Assurance shall be null and void.

- M. 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.
- N. 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.
- O. 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.
- P. 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, Diane Carhart, the undersigned, hereby state under oath that I am the Chief Financial Officer of Commonwealth Dairy, LLC and am an authorized representative of Commonwealth Dairy, 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 March 8, 2021, Rhode Island, this 8th day of March 2021.

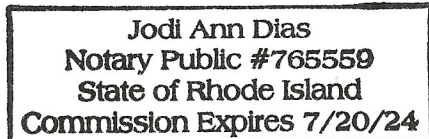
Commonwealth Dairy, LLC

By: Diane Carhart

Diane Carhart, CFO

STATE OF RHODE ISLAND
COUNTY OF NEWPORT

At Newport, Rhode Island, this 8 day of March 2021, the above signatory personally appeared, signed, and swore to the foregoing, before me,



[Signature]

Notary Public, State of Rhode Island

Printed Name Jodi Ann Dias

Commission No. 765559

My Commission Expires 07/20/2024

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

Dated at Montpelier, Vermont, this 12th day of March, 2021.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: [Signature]

Peter Walke, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

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

v.

**COMMONWEALTH DAIRY, LLC,
Respondent**

ADMINISTRATIVE ORDER

Having found that Commonwealth Dairy, LLC (Respondent) have committed violations as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS

1. Pretreatment Discharge Permit No. 3-1530, Condition I.A.1.: Exceedance of daily maximum effluent flow limitation, daily maximum Biochemical Oxygen Demand (BOD) effluent limitation, and pH limitation
2. Pretreatment Discharge Permit No. 3-1530, Condition I.A.1.: Failure to collect samples in accordance with the permitted monitoring schedule
3. Pretreatment Discharge Permit No. 3-1530, Condition I.A.1., footnote (1): Failure to sequence samples so that all days of production in any given month are represented
4. Pretreatment Discharge Permit No. 3-1530, Condition I.B.2-4.: Failure to implement a Waste Management Plan
5. Pretreatment Discharge Permit No. 3-1530, Condition I.E.1.: Failure to utilize approved methods for sampling, preservation, handling, and analysis
6. Pretreatment Discharge Permit No. 3-1530, Condition I.E.2.: Failure to submit monitoring results
7. Pretreatment Discharge Permit No. 3-1530, Condition II.A.1.: Failure to notify Agency of facility modification and change in discharge
8. Pretreatment Discharge Permit No. 3-1530, Condition II.A.2.: Failure to notify Agency of non-compliance and corrective actions
9. Pretreatment Discharge Permit No. 3-1530, Condition II.A.3.a.: Failure to maintain treatment, control facilities, or systems in good working order and operate as efficiently as possible
10. Pretreatment Discharge Permit No. 3-1530, Condition II.A.3.b.: Failure to provide operating staff duly qualified to carry out the operation, maintenance, and testing functions required to ensure compliance with the permit
11. Pretreatment Discharge Permit No. 3-1530, Condition II.A.4.: Failure to calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at regular intervals to ensure accuracy of measurements

12. Pretreatment Discharge Permit No. 3-1530, Condition II.A.5.: Failure to maintain records and information resulting from the monitoring activities required by the permit for a minimum of three (3) years

STATEMENT OF FACTS

1. Respondent is a Vermont-registered corporation engaged in the business of yogurt production.
2. Respondent operates a yogurt production facility located at 3 Omega Drive in Brattleboro, Vermont, SPAN # 081-025-16761 (the facility).
3. The facility is subject to Pretreatment Discharge Permit No. 3-1530 (the permit).
4. Condition I.A.1. of the permit contains a daily maximum effluent limit for flow of 100,000 gallons per day, a daily maximum effluent limit for BOD of 800 pounds per day, and a pH limitation of 5.5 – 9.5 standard units. Condition I.A.1. of the permit further requires continuous monitoring of flow, bi-weekly monitoring of BOD, weekly monitoring of total suspended solids (TSS), monthly monitoring of oil and grease, and continuous monitoring of pH. Finally, Condition I.A.1. of the permit requires BOD and TSS samples to be sequenced such that all days of production in a given month are represented.
5. Respondent exceeded the effluent flow limit twice in October 2017; twice in May 2018; once in August 2018; once in September 2018; once in February 2019; and once in July 2019, in violation of Condition I.A.1 of the permit.
6. Respondent exceeded the BOD effluent limit twice in December 2017; twice in January 2018; twice in February 2018; once in March 2018; once in April 2018; twice in May 2018; three times in June 2018; once in July 2018; once in August 2018; once in September 2018; once in October 2018; three times in December 2018; four times in January 2019; five times in February 2019; twice in March 2019; twice in April 2019; once in June 2019; once in July 2019; once in September 2019; three times in October 2019; three times in November 2019; three times in December 2019; twice in January 2020; and once in February 2020, in violation of Condition I.A.1. of the permit.
7. Respondent exceeded the pH limit twice in December 2017; seven times in January 2018; and once in August 2018, in violation of Condition I.A.1. of the permit.
8. Respondent failed to monitor for BOD once in September 2017; four times in December 2017; three times in January 2018; once in February 2018; once in March 2018; twice in May 2018; twice in September 2018; twice in February 2019; and twice in May 2019, in violation of

Condition I.A.1. of the permit.

9. Respondent failed to monitor for TSS once in September 2017; once in November 2017; once in December 2017; once in January 2018; once in February 2018; once in March 2018; once in May 2018; once in June 2018; once in September 2018; and once in February 2019, in violation of Condition I.A.1. of the permit.
10. Respondent failed to monitor for oil and grease once in September 2017, in violation of Condition I.A.1. of the permit.
11. Respondent failed to sample BOD or TSS on the following production days: Friday, Saturday, and Sunday in October 2017; Friday, Saturday, and Sunday in November 2017; Tuesday, Friday, Saturday, and Sunday in December 2017; Friday, Saturday, and Sunday in January 2018; Sunday and Tuesday in February 2018; Wednesday, Saturday, and Sunday in March 2018; Wednesday, Friday, Saturday, and Sunday in April 2018; Wednesday, Friday, Saturday, and Sunday in May 2018; and Wednesday, Friday, Saturday, and Sunday in June 2018, in violation of Condition I.A.1. of the permit.
12. Condition I.B. of the permit contains a requirement to implement the Waste Management Plan submitted to the Agency on August 30, 2011. Condition I.B. of the permit further requires the Waste Management Plan to be revised as necessary and submitted to the Agency. The most recent version of the Plan is dated August 22, 2018. Conditions I.B.1-4. of the permit define the specific content that the Waste Management Plan must include.
13. Condition I.B.1. of the permit contains a requirement that the Waste Management Plan must define a person assigned each shift to inspect pretreatment facility operation, all waste generators, and have the authority to order correction of waste generation which may cause problems in the pretreatment facility.
14. Condition I.B.2. of the permit contains a requirement that the Waste Management Plan define a method for proper disposal of any whey by-product and other high strength wastes that preclude discharge to the Brattleboro Wastewater Treatment Facility.
15. Condition I.B.3. of the permit contains a requirement that the Waste Management Plan incorporate a spill containment tank that is operational at all times and large enough to contain and collect all high-strength wastes generated during spill events.
16. Condition I.B.4. of the permit contains a requirement that the Waste Management Plan designates an employee responsible for implementing the Plan and arranging for the disposal

of high strength wastes. In addition, all employees shall be instructed of the proper procedures for waste minimization and handling of spills.

17. Respondent's Waste Management Plan, dated August 22, 2018, states, "Dry waste shall be collected in designated waste containers. The containers are to be emptied at minimum once per day into the outside dumpsters supplied by Triple T Trucking Inc., Brattleboro." The Waste Management Plan further states, "Shift leaders monitor all waste generating processes and all silos, storage tanks, and other areas of the facility for evidence of excess waste generation. Should they find excess waste generation or any abnormality that may affect the proper operation of the wastewater pretreatment operation, the shift leader will immediately shut down the operation responsible for the abnormality and the Production Manager will be notified. The Production Manager shall also notify Plant Manager and Quality Assurance Team. If spills occur within the plant, the material shall be captured before entering the drain and added to a BOD tote, and transferred to the whey tank. If a significant spill enters the wastewater system, the valve is to be closed manually and the effected water transported to an appropriate treatment facility."
18. During an inspection performed by Agency personnel on September 20, 2018, Respondent indicated that large amounts of dry-ingredients are introduced to the on-site wastewater treatment facility as a result of the dry-ingredient blending process. These dry ingredients include food products such as sugars, tapioca starch, gelatin, milk powder, and crystalline fructose. This operation introduces dry wastes to the on-site wastewater treatment facility that are then discharged to the Brattleboro Wastewater Treatment Facility, in violation of Condition I.B.2. of the permit.
19. In the July 26, 2018 notification of non-compliance for exceeding the BOD limit, Respondent explained that the exceedance was due to a larger than normal spill and insufficient employee training, in violation of Condition I.B.2., Condition I.B.3., and Condition I.B.4. of the permit.
20. On the May monthly Discharge Monitoring Report (DMR) submitted to the Agency on June 14, 2018, Respondent explained the cause of the BOD effluent limits exceedances on May 17, and May 22, 2018 were due to staffing changes, in violation of Condition I.B.4. of the permit.
21. On the June monthly DMR submitted to the Agency on July 13, 2018, Respondent explained the cause of the BOD effluent limit exceedances on June 7, June 21, and June 26, 2018 were due to inadequate staff training, in violation of Condition I.B.4. of the permit.

22. Condition I.E.1. of the permit contains requirements to utilize sampling, preservation, handling, and analytical methods approved under Code of Federal Regulations Title 40, Part 136.
23. Records, observed during an inspection performed by Agency personnel on September 20, 2018, indicate that Respondent failed to calibrate the pH probe on August 31, September 1, September 2, and September 4, 2018, in violation of Condition I.E.1. of the permit.
24. Laboratory reports from Phoenix Environmental Laboratories, Inc. indicate that Respondent failed to analyze BOD within the 48-hour hold time three times in January 2019, one time in February 2019, and two times in March 2019, in violation of Condition I.E.1. of the permit.
25. Condition I.E.2. of the permit contains requirements to submit monitoring results to the Agency by the 15th day of each month.
26. Records, observed during an inspection performed by Agency personnel on September 20, 2018, indicate that Respondent failed to report effluent monitoring results from December 12, 2017, December 18, 2017, and May 30, 2018 to the Agency, in violation of Condition I.E.2. of the permit. Analyses on December 12, 2017 and May 30, 2018 exceeded the BOD effluent limitation.
27. Condition II.A.1. of the permit contains requirements for Respondent to report any anticipated facility expansions, production increases, or process modifications which will result in new, different, or increased discharges of pollutants.
28. During an inspection performed by Agency personnel on September 20, 2018, Respondent reported that blending was added to the manufacturing process in early 2018 to accommodate the production of conventional yogurt. Blending occurs after pasteurization and involves the blending of dry ingredients into the yogurt product using a blending unit. The dry ingredients include sugars, tapioca starch, gelatin, milk powder, and crystalline fructose. Respondent reported that blending results in a large amount of dry ingredients on the production room walls and floor, which are then washed down the drain and introduced to the on-site wastewater treatment facility. The timeframe in which blending was added to the manufacturing process corresponds with the many effluent limit violations, cited in this Administrative Order. Respondent failed to notify the Agency of this process modification, in violation of Condition II.A.1. of the permit.
29. Condition II.A.2. of the permit contains requirements to notify the Agency within 24 hours of

non-compliance with any condition of the permit and submit a written notification of non-compliance within 5 days.

30. Between September 2017 and July 2018, the Agency received one notification from Respondent of non-compliance with oil and grease monitoring on October 4, 2017 and one notification of non-compliance with BOD limits on July 26, 2018.
31. During this time period, Respondent failed to provide notice to the Agency of all other forty-six instances of non-compliance with flow, BOD, TSS, and pH limits and monitoring frequencies, cited in paragraphs five through nine above, in violation of Condition II.A.2. of the permit.
32. Condition II.A.3.a. of the permit contains a requirement that Respondent shall at all times, maintain in good working order and operate as efficiently as possible all treatment, control facilities, or systems used to achieve compliance with the terms and conditions of the permit.
33. Condition II.A.3.b. of the permit contains a requirement that Respondent shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance, and testing functions required to ensure compliance with the terms and conditions of the permit.
34. On the October monthly DMR submitted to the Agency on November 28, 2017, Respondent explained the cause of flow exceedances on October 8, and October 13, 2017 were due to malfunctioning systems, in violation of Condition II.A.3.a. of the permit.
35. In the October 4, 2017 notification of non-compliance for failing to collect the monthly oil and grease compliance sample, Respondent explained the violation was a result of new employees, in violation of Condition II.A.3.b. of the permit.
36. On the December monthly DMR submitted to the Agency on February 20, 2018, Respondent explained the cause of failing to collect BOD compliance samples on December 3, December 10, and December 24, 2018 were a result of a malfunctioned composite sampler, in violation of Condition II.A.3.a. of the permit.
37. On the December monthly DMR submitted to the Agency on February 20, 2018, Respondent explained the cause of pH exceedances on December 21, and December 25, 2018 were due to “programming errors” with the continuous pH monitoring equipment, in violation of Condition II.A.3.a. of the permit.
38. On the January monthly DMR submitted to the Agency on February 20, 2018, Respondent explained the cause of the BOD limit exceedances on January 2, January 10, and January 28,

2018 and missed BOD samples on January 14, 2018, were due to new employees, in violation of Condition II.A.3.b. of the permit.

39. On the April monthly DMR submitted to the Agency on May 11, 2018, Respondent explained the cause of the BOD limit exceedance on April 12, 2018 was due to improper operation of equipment by a new employee, in violation of Condition II.A.3.a. and Condition II.A.3.b. of the permit.
40. On the May monthly DMR submitted to the Agency on June 14, 2018, Respondent explained the cause of the flow limit exceedances on May 2, and May 8, 2018 and BOD limit exceedances on May 17, and May 22, 2018, were due to new employees, in violation of Condition II.A.3.b. of the permit.
41. On the June monthly DMR submitted to the Agency on July 13, 2018, Respondent explained the cause of the BOD limit exceedances on June 7, June 21, and June 26 were due to new employees that needed additional training, in violation of Condition II.A.3.b. of the permit.
42. In the August 22, 2018 notification of non-compliance for exceeding the Flow limitation, Respondent explained the August 7, 2018 exceedance was due to improper operation of equipment and malfunctioning equipment, in violation of Condition II.A.3.a. of the permit.
43. In the August 21, 2018 notification of non-compliance for exceeding the BOD limitation, Respondent explained the August 13, 2018 exceedance was due to improper maintenance procedures by staff, in violation of Condition II.A.3.a. of the permit.
44. In the September 27, and October 25, 2018 notifications of non-compliance for exceeding the BOD limitation, Respondent explained the September 12, and October 12, 2018 exceedances were due to improper operation of treatment equipment, in violation of Condition II.A.3.a. and Condition II.A.3.b. of the permit.
45. In the January 7, and January 8, 2019 notifications of non-compliance for exceeding the BOD limitation, Respondent explained the December 27, and December 28, 2018 exceedances were due to improper operation procedures, in violation of Condition II.A.3.a. of the permit.
46. In the January 10, 2019 notification of non-compliance for exceeding the BOD limitation, Respondent explained the December 30, 2018 exceedance was due to improper operation of treatment equipment, in violation of Condition II.A.3.a. and Condition II.A.3.b. of the permit.
47. Condition II.A.4. of the permit contains a requirement that Respondent shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at regular

intervals to ensure accuracy of measurements.

48. Respondent is required to utilize the following pH calibration procedure in accordance with Condition II.A.4. of the permit: In lieu of daily calibration the continuous pH monitoring system, Respondent shall compare a grab sample analyzed with a calibrated bench-top pH meter to the continuous pH monitoring result for that time to determine the accuracy of their continuous pH measurement system. If the pH results vary greater than ± 0.1 standard units, then Respondent shall recalibrate the continuous monitoring system to ensure the accuracy of measurements. This procedure was established with Respondent in the February 25, 2016; August 10, 2017; and September 20, 2018 inspections.
49. During the period of August 25 through September 9, 2018, Respondent's continuous pH monitoring record and grab sample result varied greater than ± 0.1 standard units four times in August and three times in September. On each of these occasions, Respondent indicated that the pH system was "out of calibration" and only recalibrated the system once in August, in violation of Condition II.A.4. of the permit.
50. During the period of August 25 through September 9, 2018, Respondent failed to calibrate the continuous pH monitoring system daily or compare a grab sample result to the continuous pH monitoring result once in August and three times in September, in violation of Condition II.A.4. of the permit.
51. During an inspection performed by Agency personnel on September 20, 2018, Respondent's bench-top pH meter could not be calibrated, in violation of Condition II.A.4. of the permit. This equipment is used to ensure Respondent's continuous pH monitoring system is making accurate measurements.
52. During an inspection performed by Agency personnel on August 10, 2017 and again on September 20, 2018, Respondent indicated that the composite sampler thermometer was not verified annually with a National Institute of Standards and Technology traceable thermometer, in violation of Condition II.A.4 of the permit. This procedure is required by the Agency to ensure samples are maintained at the preservation temperature (≤ 6 degrees Celsius) to ensure the accuracy of measurements.
53. Condition II.A.5. of the permit contains a requirement that Respondent retain the following records for a minimum of three years: all records and information resulting from the monitoring activities required by the permit, records of analyses, calibration and maintenance

of instrumentation, and recordings from continuous monitoring instrumentation.

54. During an inspection performed by Agency personnel on August 10, 2017, Respondent's continuous pH and flow monitoring records were only maintained through January 9, 2017, in violation of Condition II.A.5. of the permit.
55. Condition I.B.4. of the permit contains a requirement that all employees shall be instructed on the proper procedures for waste minimization and handling of spills.
56. In the July 26, 2018 notification of non-compliance for exceeding the BOD limit, Respondent explained that the exceedance was due to a larger than normal spill and insufficient employee training.
57. Respondent failed to implement the training required in the Waste Management Plan, in violation of Condition I.B. of the permit.
58. On August 7, 2018, the Agency issued a Notice of Alleged Violation (NOAV) informing Respondent of the violations at the facility and providing specific compliance directives.
59. On August 10, 2017, Respondent submitted a revised Waste Management Plan to the Agency.
60. On August 22, 2018, the Agency received a response from Respondent to the August 7, 2018 NOAV. The response included corrective actions that Respondent proposed to implement to address the violations.
61. On September 20, 2018, Agency personnel performed an inspection of the facility and observed that the violations identified in the August 7, 2018 NOAV were continuing.
62. On November 21, 2018, the Agency issued the Inspection Report (2018 Inspection Report) informing Respondent of the violations found during the facility inspection and providing specific corrective actions.
63. To date, the Agency has not received a response from Respondent to the 2018 Inspection Report.

ORDER

Upon receipt of this Administrative Order, Respondent shall:

- A. Pay a penalty of \$45,940.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. 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

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by Respondent from the violations, and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

- B. Respondent shall immediately come into compliance with all Conditions of Pretreatment Discharge Permit No. 3-1530 and any Agency directives.
- C. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondent shall retain a Vermont-registered professional engineer and qualified wastewater consultant to evaluate the facility and develop a written plan (Plan) identifying the methods Respondent will use to comply with the effluent limits (Condition I.A.1.) and operation and maintenance conditions (Condition II.A.3.) of the permit. The evaluation shall include an assessment of the facility’s current Waste Management Plan and wastewater treatment facility to determine if they are adequate to achieve compliance with the terms and conditions of the permit.
- D. No later than forty-five (45) consecutive calendar days following the effective date of this Order, Respondent shall have its engineer and consultant submit the results of the evaluation and Plan to the Agency for review and approval. In the event the Plan includes a design proposal for construction and installation of a treatment system necessary to comply with , the Plan shall include a timeline for submittal of a basis of final design and timeline for construction, installation, and placement of the system into operation. Any construction

installation activities and associated timelines shall be completed in accordance with the approved Plan.

- E. In the event the Agency rejects the proposed Plan in whole or in part, Respondent shall have the engineer and consultant submit a revised Plan to the Agency no later than fourteen (14) consecutive calendar days following the date of rejection.
- F. Respondent shall comply with Pretreatment Discharge Permit No. 3-1530 and applicable State law in the operation of its facility.

**RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT**

The Respondent has the right to request a hearing on this Administrative Order before the Superior Court, Environmental Division, under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Division at the following addresses:

- 1. Secretary, Agency of Natural Resources
c/o: Enforcement and Litigation Section
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901
- 2. Clerk, Superior Court, Environmental Division
32 Cherry St. 2nd Floor, Suite 303
Burlington, VT 05401

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER


This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondent shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Division. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Environmental Division.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Montpelier, Vermont this 12th day of June, 2020.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 

Peter Walke, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

COMMONWEALTH DAIRY, LLC,
Respondent

Affidavit of Nicholas Giannetti

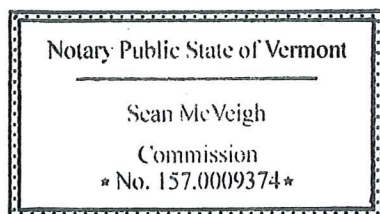
I, Nicholas Giannetti, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as the Pretreatment Coordinator in the Watershed Management Division of the Agency of Natural Resources.
3. Based upon personal observations, conversations with witnesses, and review of the relevant Watershed Management Division files, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at Montpelier, Vermont this 4th day of June, 2020.


Nicholas Giannetti - Affiant

At Montpelier, Vermont this 4th day of June, 2020, the above signatory personally appeared, signed, and swore to the foregoing, before me,




Notary Public State of Vermont

Printed Name Sean McVeigh

Commission No. 157.0009374

My Commission Expires 1.31.21