

STATE OF VERMONT
SUPERIOR COURT
ENVIROMENTAL DIVISION

ANR v Cushing & Sons, Inc.

21-ENV-00015

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 18th day of January, 2021 and filed with the Superior Court, Environmental Division, on the 5th day of March, 2021, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 4/5/2021 1:36 PM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "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.

**CUSHING & SONS, INC.,
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 (“Agency” or “ANR”) and Cushing & Sons, Inc. (“Respondent”) hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent is a New Hampshire corporation that has provided licensed water well drilling services in New England since 1972. It has a principal place of business in Keene, New Hampshire.
2. Respondent uses chlorinated water in the normal course of well drilling. It chlorinates water by mixing chlorine and water in the tank on the company water truck.
3. On June 19, 2020, Respondent was drilling a water well on residential property located on Ellison Road in Hartland, Vermont.
4. To make chlorinated water for the work, Respondent added chlorine to the tank on its water truck and proceeded to withdraw water from nearby Harlow Brook, at a location on Quechee Road.

5. While withdrawing water from the Brook, Respondent became distracted by traffic congestion and attempted to resolve the issues by directing traffic. Meanwhile, the tank in the water truck overfilled, resulting in a discharge of chlorinated water into Harlow Brook.
6. Approximately 50-100 gallons of chlorinated water discharged into the Brook. The discharge is estimated to have a chloride concentration of 25-50 mg/L, while chloride concentrations as low as 0.029 mg/L have been shown to be lethal to trout.
7. Respondent departed the site and did not report the discharge to the Agency.
8. On June 20, 2020, Agency staff visited Harlow Brook and documented the following impacts between the discharge point and 300 feet downstream: (a) 23 dead brook trout ranging in size from 8 inches to less than 2 inches, (b) 38 dead slimy sculpin ranging in size from 4 inches to less than 2 inches, and (c) 3 dead salamanders. Agency staff also noted that water quality was normal and at least 1 living brook trout was present.
9. 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 ANR for that discharge.
10. The ANR alleges that the above conduct constitutes a violation of 10 V.S.A. § 1259(a).
11. Since the discharge, Respondent has changed its business practices to minimize the potential for future accidental releases of chlorinated water. Respondent adopted a formal operating procedure entitled “Chlorine Use and Safety Protocols.” These safety protocols emphasize environmental protection and highlight the need to follow safety instructions and use precaution when handling chlorine. They prohibit the introduction of chlorine into the water truck tank before the addition of water or while the truck is in the vicinity of any waterways. They further require the implementation of certain traffic-manage practices during water withdrawal and establish consequences for instances of noncompliance.
12. Respondent’s employees have been trained on the new protocols, which are available on the company water trucks. The new protocols are also part of regular employee training.
13. 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 \$ 12,750.00.

Payment shall be made 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 ANR’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 maintain a formal operating procedure consistent with the “Chlorine Use and Safety Protocols,” dated January 15, 2021, in order to minimize the potential for future accidental discharges of chlorinated water used in well drilling operations.

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

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Bart Cushing, the undersigned, hereby state under oath that I am the President of Cushing & Sons, Inc., that I have the power to contract on behalf of Cushing & Sons, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Sunny, NH this 18th day of JANUARY 2021.

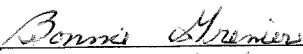
CUSHING & SONS, INC.

By: 
Bart Cushing, President

STATE OF NEW HAMPSHIRE

COUNTY OF Cheshire, ss.

At Sunny, NH this 18th day of JANUARY 2021,
the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,


Notary Public State of New Hampshire

Printed Name Bonnie Greenier


Commission No. N/A

My Commission Expires 6/31/22

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

Dated at Montpelier, Vermont, this 29th day of January, 2021.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: 

Peter Walke, Commissioner
Department of Environmental Conservation