

STATE OF VERMONT
SUPERIOR COURT
ENVIROMENTAL DIVISION

ANR v J.A. Devos & Sons, Inc.

21-ENV-00029

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 25th day of February, 2021 and filed with the Superior Court, Environmental Division, on the 15th day of April, 2021, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 4/19/2021 11:28 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

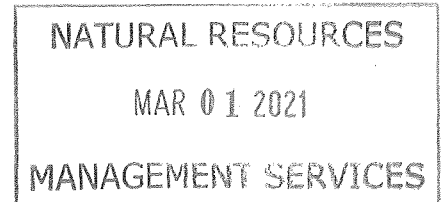
SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

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

v.

**J.A. DEVOS & SONS, INC.,
Respondents**



VIOLATIONS

1. Vermont Air Pollution Control Regulation §5-253.4(b)(3): Failure to connect gasoline tank truck to vapor balance equipment during unloading of gasoline; and
2. Vermont Air Pollution Control Regulation §5-253.5(c)(2)(i): Failure to properly connect vapor balance system hoses.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. §8007, the Secretary ("Secretary") of the Agency of Natural Resources ("Agency") and J.A. DeVos & Sons, Inc. ("Respondent") (collectively "Parties") 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 Vermont-registered corporation that owns and conducts business from 2263 Greenbush Road in North Ferrisburgh, Vermont.
2. In connection with its business, Respondent operates trucks and makes gasoline deliveries to gas stations in Vermont.
3. On the morning of October 21, 2019, the Agency received a complaint that there was an odor of gasoline fumes inside the Capitol Plaza Hotel in Montpelier, Vermont.
4. The Fastop Shell gas station and convenience store ("Gas Station") is located adjacent to the Capitol Plaza Hotel.

5. On October 21, 2019, Agency personnel responded to the Gas Station and was informed by the manager that the gasoline delivery truck driver did not connect to the vapor balance equipment when delivering gasoline that morning. The Gas Station manager also stated there was an odor of gasoline fumes inside the Gas Station's convenience store during the delivery.
6. The truck involved in the October 21 gasoline delivery at the Gas Station was owned and operated by the Respondent.
7. On October 23, 2019, Agency personnel spoke with a representative of the Respondent who stated that on October 21 the Respondent's gasoline delivery truck driver utilized a spare tank trailer that only has a vapor recovery fitting at the rear end of the trailer. The tank trailer used that morning lacked a second vapor recovery fitting located nearer the front of the tank trailer. The vapor recovery hose was not long enough to reach from the tank trailer's rear vapor recovery fitting to the vapor recovery fitting on the underground gasoline tank at the Gas Station.
8. On October 23, 2019, Agency personnel also spoke with the driver of the gasoline delivery truck who confirmed that the tank trailer he used to deliver gasoline to the Gas Station on October 21 only had a vapor recovery fitting at the rear end of the trailer. The driver indicated that because of the way he positioned the truck to avoid blocking traffic during his delivery the vapor recovery fitting on the tank trailer was too far away from the Gas Station's underground gasoline tank vapor fitting for the vapor hose to reach.
9. Respondent admits the factual findings described above, solely for purposes of resolving this case.
10. The Agency alleges that the above conduct constitutes violations of Vermont Air Pollution Control Regulations §§5-253.4(b)(3) & 5-253.5(c)(2)(i).

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violations, the Parties agree as follows:

- A. For the violation described above, Respondent shall pay a total penalty of \$9,000.00. 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). 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 Agency's online system at:

https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

- B. No later than thirty (30) consecutive calendar days following the effective date of this Assurance, Respondent shall submit to the Agency for review and approval a policy requiring the proper use of all gasoline vapor recovery equipment in accordance with §§5-253.4 & 253.5 of the Vermont Air Pollution Control Regulations.
- C. 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.
- D. 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.
- 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 herein above.
- 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 the 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.

- H. 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 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 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.
- 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.

[Remainder of page intentionally left blank. Signature page to follow.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, John A. DeVos, Jr., the undersigned, hereby state under oath that I am the President of J.A. Devos & Sons, Inc., and an authorized representative of J.A. Devos & Sons, Inc., 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 Fernsborough, Vermont, this 25 day of February, 2021.

J.A. Devos & Sons, Inc.

By: _____

John A. DeVos, Jr., President

STATE OF VERMONT
COUNTY OF Addison, SS.

At Fernsborough, Vermont this 25 day of February, 2021, the above signatory personally appeared, signed, and swore to the foregoing, before me,

Jennifer Willis
Notary Public State of Vermont

Printed Name Jennifer Willis

Commission No. 157,0008441

My Commission Expires 1/31/23

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

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

SECRETARY, AGENCY OF NATURAL RESOURCES

By: _____

Peter Walke, Commissioner

Department of Environmental Conservation