

STATE OF VERMONT
SUPERIOR COURT
ENVIROMENTAL DIVISION

ANR v Timberlake Associates, LLP & C-Store Contracting, LTD

21-ENV-00014

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on on this the 12th day of January, 2021 and filed with the Superior Court, Environmental Division, on on this 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: 3/9/2021 8:18 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.

**TIMBERLAKE ASSOCIATES, L.L.P. AND
C-STORE CONTRACTING, LTD.,
Respondents**

VIOLATIONS

1. Vermont Hazardous Waste Management Rule (VHWMR) §7-303: Hazardous waste determination
2. VHWMR §7-304(b): Maintain an up-to-date Vermont Hazardous Waste Handler Site ID Form
3. VHWMR §7-309(a): Maintain and operate facilities to minimize the possibility of fire, explosion or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water
4. VHWMR §7-309(a)(4): Familiarize emergency responders with facility layout, properties of hazardous waste, and associated hazards
5. VHWMR §7-311(f): Clear marking of hazardous waste storage
6. VHWMR §7-311(d)(1): Maintain a list of all hazardous waste in storage
7. VHWMR §7-806: Proper storage of used oil
8. VHWMR §7-812(c)(1)(A): Evaluate used oil burned on-site

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 Timberlake Associates, L.L.P. and C-Store Contracting, LTD. (Respondents), hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondents own and operate a Truck Depot facility located at 36 San Remo Drive, South Burlington, Vermont, SPAN # 60018813753 (the Facility).
2. The Facility is a hazardous waste generator, EPA ID VTD988366845.

3. On February 28, 2019, Agency personnel conducted a hazardous waste compliance inspection at the Facility. At the time of inspection, the Facility was notified as a Conditionally Exempt Generator (CEG) of hazardous waste. During the inspection, Agency personnel observed the following:
 - a. One unlabeled, partially filled 55-gallon drum located in the short-term storage area and oil-saturated sorbent on the Facility floor. By failing to make a hazardous waste determination for the contents of drum and oil-saturated sorbent, Respondents violated VHWMR §7-303.
 - b. The operations of the Facility, including accepting hazardous waste from other CEG facilities under the same ownership, requires notification as a Small or Large Quantity Generator. By failing to maintain an up-to-date Vermont Hazardous Waste Handler Site ID Form filed with the Secretary that accurately describes current waste activity and waste generation, Respondents violated VHWMR §7-304(b).
 - c. Multiple cigarette butts on the floor of the Facility's short-term storage area near gasoline and water mixtures and two containers of used antifreeze waste stored outdoors in a snowbank. By failing to maintain and operate the Facility to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste to the environment, Respondents violated VHWMR §7-309(a).
 - d. The Facility had not established arrangements to familiarize police departments, fire departments, and emergency response teams with the layout of the facility and associated hazards, places where the facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes. By failing to establish arrangements with emergency response organizations, Respondents violated VHWMR §7-309(a)(4).
 - e. One 55-gallon drum containing a water and gasoline mixture in the Facility's short-term storage area without a secure lid and proper labeling. By failing to properly label and maintain closed a container used for the storage of hazardous waste, Respondents violated §7-311(f).
 - f. The Facility was not maintaining an inventory of hazardous waste in the short-term storage area. By failing to maintain a list of all hazardous waste currently in the short-term storage area, Respondents violated VHWMR §7-311(d)(1).

- g. Four open and unlabeled five-gallon buckets of used oil located throughout the Facility and four storage tanks of used oil without labeling. By failing to properly label and keep closed all containers of used oil, Respondents violated VHWMR §7-806.
 - h. Used oil burned for energy recovery at the Facility had not been evaluated to determine if it meets the used oil fuel specification for total halogens. By failing to initially test the used oil for total halogens, Respondents violated VHWMR §7-812(c)(1)(A).
- 4. As of May 23, 2019, Respondents had corrected all the hazardous waste violations identified above at the Facility.
 - 5. Respondents admit the factual findings described above, solely for purposes of resolving this case.
 - 6. The Agency alleges that the above conduct constitutes violations of VHWMR §§7-303, 7-304(b), 7-309(a), 7-309(a)(4), 7-311(f), 7-311(d)(1), 7-806, and 7-812(c)(1)(A).

AGREEMENT

Based on the foregoing Statements of Facts and Description of Violations, the parties agree as follows:

- A. For the violations described above, Respondents shall pay a total penalty of \$20,000.00. Payment shall be made in twenty (20) monthly installments as follows: The initial payment of \$1,000.00 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 (Environmental Division) (effective date). All subsequent payments of \$1,000.00 shall be received no later than the first calendar day of each consecutive month thereafter. Payment shall be made 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

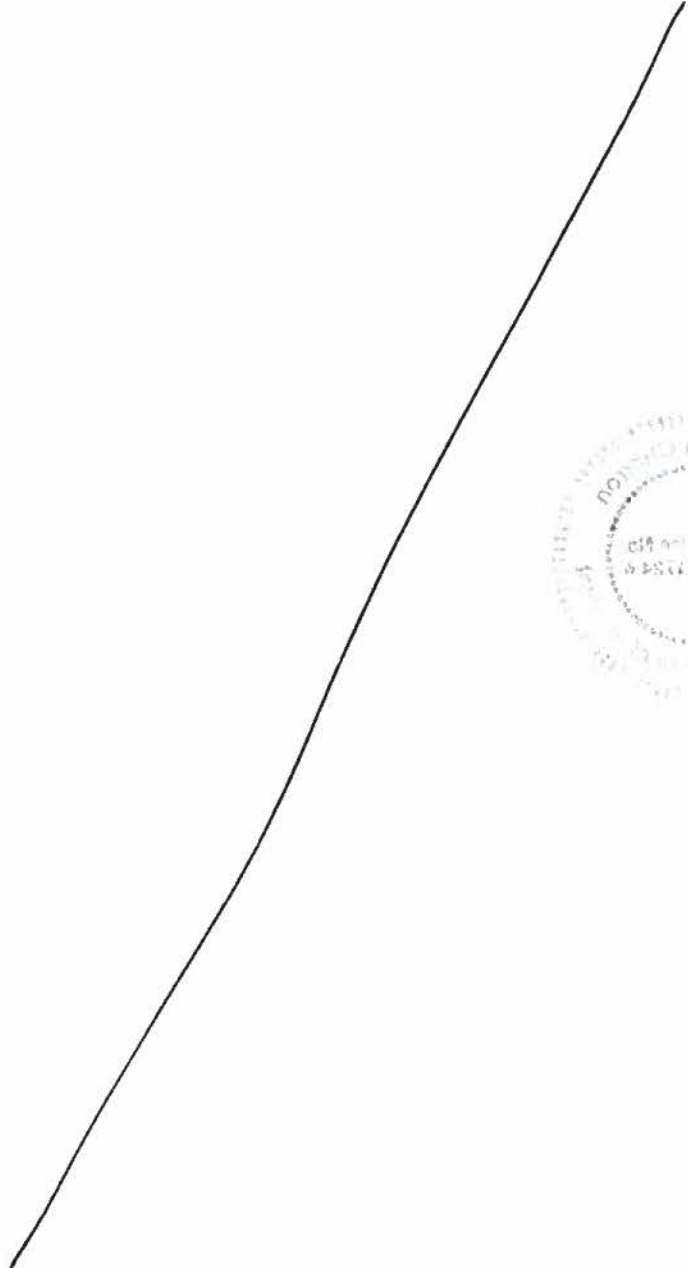
In the event Respondent fails to make any payment on time as set forth above, the Secretary shall have the authority to accelerate all the remaining payments and make them due and payable immediately. The decision to invoke this acceleration provision shall be in the sole discretion of the Secretary, and a decision not to invoke this provision shall not be deemed a waiver of the provision's future use.

- B. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above in order to resolve all outstanding disputes.
- C. Respondents agree that the violations alleged are deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of Respondents’ 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 Respondents’ on-going obligation to comply with all other federal, state, or local statutes, regulations, or directives applicable to the Respondents in the operation of their business.
- F. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Division. When so entered by the 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. Respondents 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 Respondents fully comply 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 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.

Signature page to follow

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SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, David Simendinger, the undersigned, hereby state under oath that I am a Partner of Timberlake Associates, L.L.P. and an authorized representative of that entity, that I have the power to contract on behalf of Timberlake Associates, L.L.P., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at So. Burlington Vermont, this 12th day of January, 2020.

TIMBERLAKE ASSOCIATES, L.L.P.

By: [Signature]
David Simendinger, Partner

STATE OF VERMONT
COUNTY OF Chittenden, SS.

At So. Burlington, Vermont, this 12th day of January, 2020, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,

[Signature]
Notary Public State of Vermont

Printed Name: Samantha Charron

Commission No. 1570011724

My Commission Expires: 1/31/21



The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, David Simendinger, the undersigned, hereby state under oath that I am the President of C-Store Contracting, LTD. and an authorized representative of that entity, that I have the power to contract on behalf of C-Store Contracting, LTD., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at So. Burlington, Vermont, this 12th day of January, 2020.

C-STORE CONTRACTING, LTD.

By: [Signature]
David Simendinger, Partner

STATE OF VERMONT
COUNTY OF Chittenden, SS.

At So. Burlington, Vermont, this 12th day of January, 2020, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,



[Signature]
Notary Public State of Vermont

Printed Name: Samantha Charron

Commission No. 1570011724

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 29th day of January 2021, ~~2020~~ XXXX

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: [Signature]
Peter Walke, Commissioner
Department of Environmental Conservation