

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ANR v Champlain Valley Plumbing & Heating

22-ENV-00047

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 28th day of February, 2022 and filed with the Superior Court, Environmental Division, on the 5th day of May, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 5/6/2022 3:49 PM 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.

**CHAMPLAIN VALLEY PLUMBING & HEATING, INC.,
D/B/A CHAMPLAIN VALLEY FUELS,
Respondent**

VIOLATION

1. 10 V.S.A. § 6616 and Vermont Hazardous Waste Management Regulation § 7-302(c): Prohibited release of hazardous materials
2. 10 V.S.A. § 6617 and Vermont Hazardous Waste Management Regulations § 7-105(a)(1) and § 7-105(a)(2)(A): failure to report a release of hazardous material and take appropriate immediate actions

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (the “Secretary”) of the Agency of Natural Resources (the “Agency”) and Champlain Valley Plumbing & Heating, Inc., d/b/a Champlain Valley Fuels (the “Respondent”) hereby enter into this Assurance of Discontinuance (the “Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns and operates a fuel delivery business located at 125 Monkton Road, Bristol, Vermont.
2. On January 26, 2021, Respondent delivered fuel oil to a 3,000-gallon underground storage tank (“UST”) at the Benson Village School located at 32 School Street in Benson, Vermont.
3. Due to an error in calculating the capacity of the UST, between 10-30 gallons of fuel oil was released to the environment when the UST was overfilled.
4. Respondent informed the school principal of the release that same day and performed some remediation activities over the ensuing week. Respondent removed between 5-20 gallons of

oily water and up to 12 oil-contaminated absorbent pads. The release was not reported to the Agency until March 15, 2021, when school administrators notified the Agency.

5. Remediation activities occurred at the site on March 18, 2021, resulting in the removal and proper disposal at a certified solid waste facility of approximately 32.91 tons of petroleum-contaminated soils. Because of structural and weather concerns, however, remediation activities ceased before the full extent of the release was determined.
6. The Agency alleges that the above conduct constitutes violations of 10 V.S.A. §§ 6616 and 6617 and Vermont Hazardous Waste Management Regulations § 7-105(a)(1), § 7-105(a)(2)(A), and § 7-302(c).
7. Respondent admits the factual findings described above, solely for purposes of resolving this case.

AGREEMENT

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

- A. For the violation described above, Respondent shall pay a total penalty of \$9,000.00.

Payment shall be made in three (3) monthly installments of \$ 3,000.00, unless earlier paid in full. The first monthly payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance. All subsequent payments shall be made no later than the fifteenth (15th) 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 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

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.** No later than May 1, 2022, Respondent shall submit to the Agency for its review and approval a plan to investigate the maximum extent of contamination and groundwater impacts, based on the findings and recommendations detailed in the December 1, 2021, report of Murray & Masterson Environmental Services, LLC. No later than June 1, 2022, Respondent shall implement the investigation in accordance with the approved investigation work plan. Within sixty (60) days of the completion of the investigation (unless the Agency approves in writing an extension of the deadline), Respondent shall submit to the Agency for its review and approval a report detailing the findings and conclusions of the investigation and providing recommendations for follow-up remediation activities based on these findings. Respondent shall remediate the contamination in compliance with the terms and conditions of the approved remediation work plan, including any schedules and deadlines stated therein.
- 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.** 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 in the operation of its business.

- F.** This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division (the “Effective Date”). 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.
- G.** 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 this Assurance, provided that Respondent fully complies with the agreements set forth herein.
- H.** This Assurance is limited to the release and hazardous materials identified in Paragraphs 2-3 and the response actions identified in Paragraphs 4-5. If new facts or conditions not expressly identified in this Assurance concerning the extent of risk or hazard or environmental or human health impact presented at the site, the Agency shall retain the right to require implementation by Respondent of different or additional corrective action measures in accordance with 10 V.S.A. § 6615b and the Investigation and Remediation of Contaminated Properties Rule, including all locations potentially affected by the site.
- 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 the agreements 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 follow.]

SIGNATURES

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

Further, I William J. Heffernan, the undersigned, hereby state under oath that I am the President of Champlain Valley Plumbing & Heating, Inc., that I am an authorized representative of Champlain Valley Heating & Plumbing, 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 Bristol, Vermont, this 28 day of Feb. 2022.

CHAMPLAIN VALLEY PLUMBING & HEATING, INC.

By: William J. Heffernan
William J. Heffernan, President

STATE OF VERMONT
COUNTY OF Adison, SS.

At Bristol, Vermont this 28 day of Feb, 2022, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,



Christine Lathrop
Notary Public State of Vermont
Printed Name Christine Lathrop
Commission No. 157.0002474
My Commission Expires 1/31/2023

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

Dated in Montpelier, Vermont, this 9th, day of March 2022.

SECRETARY, AGENCY OF NATURAL RESOURCES

By:  _____

Peter Walke, Commissioner
Department of Environmental Conservation