

STATE OF VERMONT  
SUPERIOR COURT  
ENVIRONMENTAL DIVISION

ANR v. J. Hutchins, Inc.

22-ENV-00025

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 14th day of January, 2022 and filed with the Superior Court, Environmental Division, on the 3rd day of March, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 3/9/2022 8:44 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. HUTCHINS, INC.  
Respondent**

**VIOLATIONS**

1. Air Pollution Control Permit to Construct and Operate (“ANR Permit”) #AOP-18-015, Condition 23: Filterable and Total Particulate Matter Emissions Limits
2. ANR Permit #AOP-19-014 Condition 23: Filterable and Total Particulate Matter Emissions Limits
3. ANR Permit #AOP-19-014 Condition 36: Combustion Efficiency Testing
4. ANR Permit #AOP-19-014 Condition 40: Operation and Maintenance Plan
5. Land Use Permit #7R1377 Condition 10: Exterior Lighting Installation and Shielding
6. Land Use Permit #7R1377 Condition 11: Hours of Operation

**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 J. Hutchins, Inc. (“Respondent”), hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. Respondent owns and operates a Hot Mix Asphalt Plant, Aggregate Crushing and Screening Plant located at 928 VT Route 58 in Irasburg, Vermont (“Facility”).
2. On June 26, 2018, the Agency issued ANR Permit #AOP-18-015 to Respondent for the construction and operation of the Facility (“2018 Permit”).

3. 2018 Permit Condition 23 limited filterable particulate matter emissions from the Facility's fabric filter dust collector to 0.020 grains per dry standard cubic foot ("gr/dscf") at a rate of 3.2 pounds per hours ("lbs/hr"), and total particulate matter emissions to 0.04 gr/dscf at a rate of 6.3 lbs/hr.
4. Respondent tested the Facility particulate matter emissions on October 3 and 4, 2018.
5. The 2018 test results revealed Facility filterable particulate matter emissions of 0.065 gr/dscf at a rate of 7.1 lbs/hr. Total Facility particulate matter emissions were 0.067 gr/dscf at a rate of 7.3 lbs/hr.
6. On January 18, 2019, the Agency issued a Notice of Alleged Violation ("NOAV") directing Respondent to take necessary corrective actions to reduce particulate emissions from the Facility fabric filter and perform a retest of the filterable and total particulate matter emissions by no later than July 1, 2019.
7. On April 24, 2019, the Agency issued ANR Permit #AOP-19-014 to Respondent for the construction and operation of the Facility ("2019 Permit").
8. 2019 Permit Condition 23 limits filterable particulate matter emissions from the Facility's fabric filter dust collector to 0.020 gr/dscf and total particulate matter emissions to 0.04 gr/dscf.
9. 2019 Permit Condition 36 requires Respondent to complete testing of the exhaust gases from the Facility rotary dryer exhaust for combustion efficiency no later than seven (7) days following startup each spring.
10. 2019 Permit Condition 40 requires Respondent to develop and implement an operation and maintenance plan ("O&M Plan") for the Facility within one-hundred eighty (180) days after issuance of the initial Facility permit (the 2018 Permit).
11. On July 9, 2019, Agency staff conducted an inspection of the Facility.

12. The Agency inspection found that the Facility combustion efficiency testing has not been conducted at the spring startup as required by 2019 Permit Condition 36.
13. The Agency inspection found that the Facility O&M Plan had not been developed and implemented as required by 2019 Permit Condition 40.
14. On July 16, 2019, the Agency issued an NOAV directing Respondent to conduct Facility combustion efficiency testing and submit the results to the Agency by no later than July 30, 2019, and to submit an O&M Plan to the Agency by no later than August 15, 2019.
15. Respondent tested Facility particulate matter emissions on July 31 and August 1, 2019.
16. The 2019 test results revealed Facility filterable particulate matter emissions of 0.10 gr/dscf and total particulate matter emissions of 0.11 gr/dscf.
17. On October 2, 2019, the Agency issued an NOAV directing Respondent to take necessary corrective actions to reduce particulate emissions from the Facility fabric filter and perform a particulate emissions retest once the corrective actions are completed, and to cease operation of the Facility by no later than November 4, 2019 until compliance with 2019 Permit Condition 23 could be demonstrated.
18. The Agency alleges that the conduct described above constitutes violations of the 2018 Permit Condition 23 and 2019 Permit Condition 23, Condition 36, and Condition 40.
19. On June 22, 2017, District Environmental Commission #7 issued Land Use Permit #7R1377 (“Act 250 Permit”) to Respondent for the construction and operation of the Facility.
20. Act 250 Permit Condition 10 requires Facility exterior light fixtures to be mounted no higher than 24 feet above grade level and installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.

21. On October 2 and October 14, 2019, Natural Resources Board (“NRB”) staff conducted site visits at the Facility.
22. NRB staff observed six (6) unshielded lights installed on the Facility storage building.
23. NRB staff observed at least two (2) portable light towers each containing four (4) unshielded spotlights that were not identified in the Permit application positioned for use at the Facility.
24. Act 250 Permit Condition 11 prohibits Facility operations in excess of 6:00am to 6:00pm Monday through Saturday, excepting those hours may be exceeded up to one week per month for specific night paving jobs, and prohibiting operations on national holidays.
25. Respondent conducted operations in excess of the allowed hours of operations three (3) times in October 2018.
26. Respondent conducted operations during a national holiday on February 18, 2019 (President’s Day).
27. Respondent conducted operations in excess of the allowed hours of operations three (3) times in May 2019, excluding seven instances excepted for specific night paving jobs.
28. Respondent conducted operations in excess of the allowed hours of operations four (4) times in June 2019, excluding seven instances excepted for specific night paving jobs.
29. Respondent conducted operations in excess of the allowed hours of operations six (6) times in July 2019, excluding seven instances excepted for specific night paving jobs.
30. Respondent conducted operations in excess of the allowed hours of operations eleven (11) times in August 2019, excluding seven instances excepted for specific night paving jobs.

31. Respondent conducted operations in excess of the allowed hours of operations nine (9) times in September 2019, excluding seven instances excepted for specific night paving jobs.
32. Respondent conducted operations during a national holiday on October 14, 2019 (Columbus Day).
33. On October 11, 2019, the NRB issued an NOAV directing Respondent to immediately comply with the Act 250 Permit Condition 11, and replace all non-complying exterior light fixtures with permitted light fixtures by no later than November 30, 2019.
34. The Agency alleges that the conduct described above constitutes a violation of Act 250 Permit Condition 10 and Condition 11.
35. 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 Violations, the parties agree as follows:

A. Respondent shall pay a penalty in the amount of \$22,900.00 (\$18,500 penalty amount to resolve the Agency-specific violations, and \$4,400 penalty amount to resolve the NRB-specific violations) no later than thirty (30) consecutive days following the date this Assurance is entered as an Order by signature of the Superior Court, Environmental Division. Payment shall be made by either:

1. Check made payable to “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](https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment)

B. Pursuant to 10 V.S.A. §8010(e)(2), no later than thirty (30) consecutive calendar days following the effective date of this Assurance, Respondent shall submit to the Natural Resources Board the amount of \$4,547.97 to reimburse the costs of this enforcement action, by check made payable to the “State of Vermont.”

C. Respondent shall submit to the Natural Resources Board the amount of \$15.00 to reimburse the cost of recording this Assurance with the Town of Irasburg, by check made payable to “Town of Irasburg.” Payments made to the Natural Resources Board pursuant to paragraphs B and C shall be sent to the following address:

Natural Resources Board  
Attn: Legal Technicians  
10 Baldwin Street  
Montpelier, VT 05633-3201

- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an Order by signature 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, this Assurance shall be null and void.
- I. Respondent shall not be liable for additional civil or criminal penalties with respect to the facts described herein occurring before the Effective Date of the Assurance, provided that Respondent fully complies with the agreements set forth above.
- J. 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.



K. 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.

L. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

*[Signature pages follow]*

**SIGNATURES**

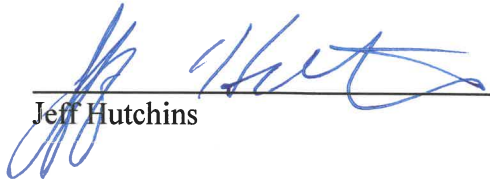
The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Further, I, Jeff Hutchins, the undersigned, hereby state under oath that I have the power to contract on behalf of J. Hutchins, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Burlington, Vermont, this 14 day of JAN, 2022.

**J. HUTCHINS, INC.**

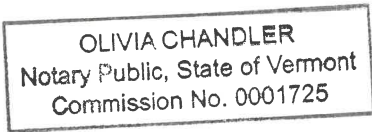
By:

  
\_\_\_\_\_  
Jeff Hutchins

STATE OF VERMONT  
COUNTY OF Chittenden, SS.

At Burlington, Vermont this 14<sup>th</sup> day of January, 2022,  
the above signatory personally appeared, signed, and swore to the foregoing, before me,

  
\_\_\_\_\_  
Notary Public State of Vermont



Olivia Chandler  
\_\_\_\_\_  
Printed Name


Commission No. 1725

My Commission Expires: 01/31/2023

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

Dated in Montpelier, Vermont, this 24th, day of January, 2022.

**SECRETARY, AGENCY OF NATURAL RESOURCES**

By:   
\_\_\_\_\_

Peter Walke, Commissioner  
Department of Environmental Conservation