

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ANR v Mt. Mansfield Ski Club and Academy, Inc. & Walker Construction, Inc.

22-ENV-00020

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 10th day of December, 2021 and filed with the Superior Court, Environmental Division, on the 3rd day of February, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 2/4/2022 3:59 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.

**MT MANSFIELD SKI CLUB AND ACADEMY, INC. AND
WALKER CONSTRUCTION, INC.,
Respondents**

VIOLATIONS

1. 10 V.S.A. §1259(a) and Condition 2 of Authorization No. 8374-9020 under Stormwater General Permit No. 3-9020: failure to install or maintain required erosion prevention and sediment control (EPSC) measures
2. Stormwater General Permit No. 3-9020: failure of Principal Operator to obtain Permit Coverage as a Co-Permittee

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 Mt. Mansfield Ski Club and Academy, Inc. and Walker Construction, Inc. (collectively, the “Respondents”), hereby enter into this Assurance of Discontinuance (the “Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Mt. Mansfield Ski Club and Academy, Inc. (“MMSCA”) owns property located at 3576 Mountain Road, in Stowe, Vermont (“the Property”).
2. On May 30, 2019, MMSCA obtained Authorization No. 8374-9020 to Discharge Under Stormwater General Permit No. 3-9020 (“the Authorization”) for construction activities related to the removal of two buildings, site grading and construction of a new building, a

new driveway and paved parking lot, and associated utilities at 3576 Mountain Road in Stowe, Vermont (“the Project”).

3. MMSCA hired Walker Construction, Inc. (“Walker”) to conduct site preparation and construction activities on the Project. Walker is a Vermont-registered corporation that specializes in excavation, sitework and concrete construction.
4. Condition 2 of the Authorization required the implementation of erosion prevention and sediment control practices as specified by the Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control.
5. On September 17, 2019, Agency staff conducted a site visit to assess compliance with the Authorization and found Walker Construction working on the site. Agency staff observed that earth disturbing work was underway, and that all disturbed areas had exposed, un-stabilized soil. Some of the disturbed, un-stabilized soil was exposed on slopes adjacent to a drainage ditch along Mountain Road, and very close to a drainage ditch along Mountain Haus Drive with no protection provided by silt fence or other perimeter barriers.
6. During the September 17th site visit, Agency staff noted additional items of non-compliance including the failure to mark the site’s Limit of Disturbance, the late installation of a stabilized construction entrance, and improperly installed or maintained silt fence. Agency staff observed sediment tracked from the construction site onto the Drive from trucks leaving the site, as well as large amounts of dust being generated by construction vehicles. Staff also observed that portions of silt fence on the site had either failed completely, or were absent from areas downslope of disturbed soil, or were not maintained as required by removing accumulated sediment, or not installed correctly by joining two ends together to prevent gaps. Much of the silt fence was not trenched into the ground at the bottom as required, and large gaps were left where sediment had passed through to the opposite side because the fence material was not touching the ground.
7. On September 18, 2019, Agency staff contacted MMSCA via email and informed MMSCA that the Project site was not in compliance with the Stormwater Authorization. The September 18th email outlined the items of non-compliance (summarized in

Paragraphs 5 and 6 above) and requested MMSCA to take corrective action and provide photographic documentation to show corrective action was taken.

8. On September 24, 2019, MMA provided photos of corrective measures taken to address compliance of the site. The photos showed the Limits of Disturbance was marked, new sections of silt fence, a stabilized construction entrance/exit, and the placement of mulch to stabilize disturbed soil.
9. General Permit No. 3-9020 contains provisions regarding construction on sites where the owner of the construction site obtains coverage under the General Permit, however the owner is not the principal operator or the sole principal operator. In that instance, General Permit No. 3-9030 requires the principal operator to obtain coverage as a co-permittee.
10. Walker Construction was the principal operator of the Project, and therefore was required to obtain coverage prior to commencing construction. Walker did not apply for coverage until several months after construction had commenced. Site construction commenced in August of 2019 and Walker became a co-permittee on November 25, 2019.
11. The Agency alleges that the above conduct constitutes a violation of 10 V.S.A. § 1259(a), Condition 2 of Authorization No. 7797-9020 under Stormwater General Permit No. 3-9020, and the requirements of Stormwater General Permit No. 3-9020.
12. Respondents admit 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. For the violations described above, Respondents shall pay a total penalty of **\$10,200.00**. Payment shall be made in three (3) installments as follows: The first payment of **\$3,400.00** shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an Order of the Superior Court, Environmental Division; the second

payment of **\$3,400.00** shall be received no later than sixty (60) consecutive calendar days following the date this Assurance is entered as an Order of the Superior Court, Environmental Division; and the third payment of **\$3,400.00** shall be received no later than ninety (90) consecutive calendar days following the date this Assurance is entered as an Order of the Superior Court, Environmental Division.

Payments shall be made by either:

1. Check made payable to the “Treasurer, State of Vermont” and forwarded to:

Administrative Services Coordinator
Environmental Compliance Division
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

- 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.

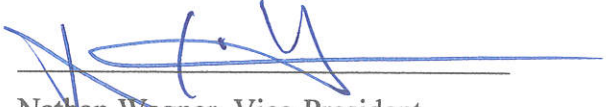
- E. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondents' on-going obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Respondents.
- F. This Assurance shall become effective only after it is signed by all parties and entered as an order by the Superior Court, Environmental Division (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.
- G. Respondents shall not be liable for additional civil or criminal penalties with respect to the specific sites and 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 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.
- 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.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Nathan Wagner, the undersigned, hereby state under oath that I am the Vice President of Walker Construction, Inc., and an authorized representative of that entity, that I have the power to contract on behalf of Walker Construction, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Stowe, Vermont, this 7th day of December 2021.

WALKER CONSTRUCTION, INC.

By: 
Nathan Wagner, Vice-President

STATE OF VERMONT
COUNTY OF Lamoille, SS.

At Stowe, Vermont this 7th day of December, 2021, the above signatory personally appeared and swore to the truth of the foregoing and acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed. Before me,




Notary Public

Term expires: 01/31/2023

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Igor Vanovac, the undersigned, hereby state under oath that I am the Executive Director of Mt. Mansfield Ski Club and Academy, Inc., and am an authorized representative of that entity, that I have the power to contract on behalf of Mt. Mansfield Ski Club and Academy, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

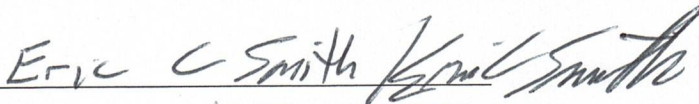
Dated at Stowe, Vermont, this 10th day of December 2021.

**MT MANSFIELD SKI CLUB AND
ACADEMY, INC.**

By: 
Igor Vanovac, Executive Director

STATE OF VERMONT
COUNTY OF Lamoille, SS.

At Stowe, Vermont, this 10 day of December, 2021, the above signatory personally appeared and swore to the truth of the foregoing and acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed. Before me,



Notary Public #157,0010571
Term expires: Jan 31, 2021



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

Dated in Montpelier, Vermont, this 20th, day of December 2021.

SECRETARY, AGENCY OF NATURAL RESOURCES

By:  _____

Peter Walke, Commissioner
Department of Environmental Conservation