

STATE OF VERMONT  
SUPERIOR COURT  
ENVIRONMENTAL DIVISION

ANR v Rail View Dairy, LLC

22-ENV-00111

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on September 21, 2022, and filed with the Superior Court, Environmental Division, on the 9th day of November, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed November 10, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

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.**

**RAIL VIEW DAIRY, LLC,  
Respondent**

**VIOLATIONS**

1. 10 V.S.A. §1259(a): Unpermitted discharge into waters of the State

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. §8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency”) and Rail View Dairy, LLC (“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 large farm operation located at 535 Daniels Road, New Haven, Vermont, SPAN # 432-135-11195 (“LFO”).
2. The LFO milking barn heavy use area and barnyard adjacent to the milking barn drain to a ditch (“South Ditch”) that discharges to a tributary to Little Otter Creek.
3. The Little Otter Creek tributary is a water of the State.
4. A mortality compost pile was located at the edge of a field southwest of the LFO production area and within 75 feet east of a surface water and adjoining a ditch that was a conveyance to the surface water.

5. The surface water is a water of the State.
6. On September 9, 2021, Agency staff conducted an inspection of the LFO (“September Inspection”).
7. At the September Inspection, Agency staff observed runoff containing manure and sand pooling near the barnyard and milking barn heavy use areas, and in the South Ditch leading to the Little Otter Creek tributary.
8. Agency staff observed milking barn heavy use area and barnyard runoff flowing through the South Ditch and discharging into the Little Otter Creek tributary.
9. Respondent did not have a permit for the observed discharge.
10. On September 20, 2021, the Agency issued a Notice of Alleged Violation directing Respondent to develop and submit an interim plan to mitigate the barnyard discharge by October 4, 2021, and to contact the Agency by October 14, 2021 to establish a schedule to permanently eliminate or permit the discharge.
11. On October 7, 2021, Agency staff conducted an inspection of the LFO (“October Inspection”).
12. During the October Inspection, Agency staff observed no structural changes made to the milking barn heavy use and barnyard areas to mitigate the discharge.
13. Agency staff observed the continued presence of manure and sand in the South Ditch.
14. Agency staff observed mortality compost leachate in the surface water near the mortality pile.
15. Respondent did not have a permit for the observed discharge.
16. On October 12, 2021, the Agency issued an NOAV directing Respondent to relocate the mortality compost pile to ensure that it does not discharge to surface waters or conduits to surface waters.
17. The Agency alleges that the above conduct constitutes violations of 10 V.S.A. §1259(a).

18. In March 2022, Respondent relocated the mortality compost pile to an area of the LFO that ensures that it will not discharge to waters of the State.
19. In March 2022, Respondent installed an interim clay dam near the milking barn heavy use and barnyard areas that diverts runoff away from the South Ditch and waters of the State.
20. In March 2022, Respondent signed a *Manure and Wastewater Handling and Storage Plan* developed by the United States Department of Agriculture Natural Resources Conservation Service for the LFO containing permanent compliance proposals, including plans to address operations and maintenance, waste storage and transfer, heavy use area protection, and runoff diversion.
21. Respondent admits the factual findings described above, solely for purposes of resolving this case.

## AGREEMENT

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

A. For the violations described above, Respondent shall pay a total penalty of \$13,000.00 no later than sixty (60) 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 “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](https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment)

B. Respondent will store mortalities at a location where leachate will not discharge to the waters of the State.

C. Respondent will implement all components and requirements of the LFO’s *Manure and Wastewater Handling and Storage Plan* dated March 3, 2022 (“Permanent Plan”) no later than November 1, 2023, unless it obtains a written extension in advance of the deadline from the Vermont Department of Environmental Conservation, Concentrated Animal Feeding Operation Program (“CAFO Program”) due to extenuating and unanticipated circumstances beyond Respondent’s control. Respondent will notify the CAFO Program upon completion of all components and requirements of the Permanent Plan.

D. Respondent will provide training in the implementation and monitoring requirements of the Operations and Maintenance Plans contained in the Permanent Plan to all LFO workers by November 1, 2023 and repeated annually as needed.

- E. Respondent will conduct annual LFO worker training on the loading and transfer of manure and feed to minimize the tracking of manure and feed in the LFO production area. The training will establish a “clean as you go” practice to prevent tracking agricultural waste.
- F. Respondent will visually inspect LFO production areas, including heavy use areas and clean water diversions, on a weekly basis. Any deficiencies found as a result of the inspections will be corrected as soon as possible. Respondent will maintain records documenting the inspections, and those records will be kept on site for a minimum of five years
- G. Starting on the Effective Date and until completion of all components and requirements of the Permanent Plan, Respondent will engage in the following interim compliance practices:
  - 1. Respondent will make readily available all materials needed to prevent runoff from entering clean water diversions and surface waters, such as clay stockpiles, and have appropriate equipment to install those materials as needed to prevent contaminated runoff from entering clean water diversions and surface waters
  - 2. Respondent will submit photo documentation of the visual inspections described in Paragraph F, including the barnyard, barnyard clay dam, and the South Ditch, to the CAFO Program on a monthly basis no later than the first (1st) day of each month. Photo documentation may be forwarded via email or text message.
- H. All notices and reporting will be forwarded to:

Clarice Cutler, Program Manager  
Watershed Management Division, Concentrated Animal Feeding Operation Program  
Vermont Department of Environmental Conservation  
1 National Life Drive, Davis 3  
Montpelier, VT 05620-3522  
(802) 490-6181  
Clarice.Cutler@vermont.gov
- I. 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.

- J. 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.
- K. 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.
- L. 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 their business.
- M. Agency staff shall be granted access to the LFO at all reasonable times to assess and ensure compliance with all conditions of this Assurance.
- N. This Assurance shall become effective only after it is signed by all 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.
- O. The 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.
- P. 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.

Q. 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.

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

*[Signatures on following pages.]*




**SIGNATURES**

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Mark Livingston, the undersigned, hereby state under oath that I have the power to contract on behalf of Rail View Dairy, LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at New Haven, Vermont, this 21<sup>st</sup> day of September, 2022.

**RAIL VIEW DAIRY, LLC**

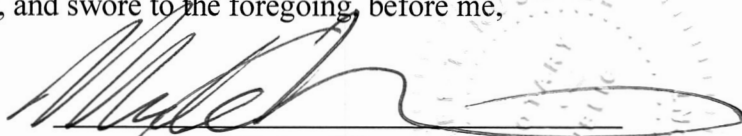
By:   
Mark Livingston

STATE OF VERMONT

COUNTY OF ADDISON, SS.

At NEW HAVEN, Vermont this 21<sup>st</sup> day of September, 2022,  
the above signatory personally appeared, signed, and swore to the foregoing, before me,

Michael T. Russell  
Notary Public State of Vermont  
Commission Expires: 1/31/2023  
Commission #: 0003317

  
Notary Public State of Vermont

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Commission No.

\_\_\_\_\_  
My Commission Expires:

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

Dated in Montpelier, Vermont, this 7th, day of October, 2022.

**SECRETARY, AGENCY OF NATURAL RESOURCES**

By: John Beling  
John Beling, Commissioner  
Vermont Department of Environmental Conservation