

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ANR v. North Bennington Hydroelectric, LLC

23-ENV-00095

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 14th day of July, 2023 and filed with the Superior Court, Environmental Division, on the 24th day of August, 2023, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed October 3, 2023 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is written in a cursive, slightly slanted style.

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.

**NORTH BENNINGTON HYDROELECTRIC LLC,
Respondent**

VIOLATION

1. Water Quality Certification, Condition B: failure to provide required conservation flow in the primary bypass channel
2. Water Quality Certification, Condition C: failure to provide required spillage over the primary dam

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency”) and North Bennington Hydroelectric LLC (“Respondent”) hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns and operates the North Bennington Hydroelectric Project (formally known as the Vermont Tissue Hydroelectric Project) located on the Walloomsac River in the Town of Bennington, Vermont (the “Facility”).
2. The Facility is subject to an Agency Water Quality Certification, last amended on December 7, 2016, and a Federal Energy Regulatory Commission (“FERC”) license, last amended on January 25, 2017. Respondent acquired the FERC license on September 23, 2021, and began operations in October 2021.
3. Condition B of the Water Quality Certification requires that Respondent provide in the primary bypass channel a conservation flow equal to 60 cfs, or inflow if less, from June 1 through

September 30 and a conservation flow equal to 114 cfs, or inflow if less, from October 1 through May 31.

4. Condition C of the Water Quality Certification requires Respondent provide at all times one inch of spillage over the crest of the primary dam (equal to 6 cfs).
5. On May 18, 2022, Agency staff visited the Facility and observed the passage of less than the required conservation flow in the primary bypass reach. Agency staff also observed that water was not being spilled over the crest of the primary dam.
6. Agency staff confirmed these observations after reviewing streamflow data downstream of the Facility and operations data at the Facility from October 1, 2021, through May 18, 2022. The Agency concluded that the Facility was noncompliant with conservation flow and spillage requirements at several times during each month of operation.
7. The failure to provide spillage over the dam was the result of a faulty temperature sensor in the transducer. Respondents addressed the equipment malfunction by replacing the sensor. Respondent also acknowledged a misunderstanding of the conservation flow requirements of the Water Quality Certification and took corrective actions to rectify the issues.
8. The Agency alleges that the above conduct constitutes violations of Conditions B and C of Respondent's Water Quality Certification.
9. 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 Violation, the parties agree as follows:

- A. For the violation described above, Respondent shall pay a total penalty of \$ 6,750.00. 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 Agency's online system at:
https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

Payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance.

- B. No later than thirty (30) consecutive calendar days following the Effective Date of this Assurance, Respondent shall update the rating curves for Unit 1 and Unit 2 to reflect the relationship between kilowatts (kw) and cubic feet per second (cfs).
- C. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violation alleged above in order to resolve all outstanding disputes.
- D. Respondent agrees that the violation alleged is 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. 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 hereinabove.
- F. 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.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order 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, the Assurance shall be null and void.

- H. 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 that the Respondent fully complies with the agreements set forth above.
- 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 Environmental Division of the Superior Court. 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 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.
- K. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

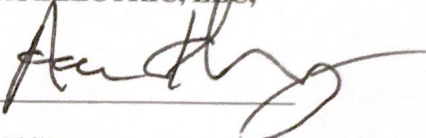
[Signatures on following pages.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Arion Thiboumery, the undersigned, hereby state under oath that I am the General Manager of North Bennington Hydroelectric LLC, that I have the power to contract on behalf of North Bennington Hydroelectric LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Barre, Vermont, this 14th day of July 2023.

**NORTH BENNINGTON
HYDROELECTRIC, LLC,**

By: 

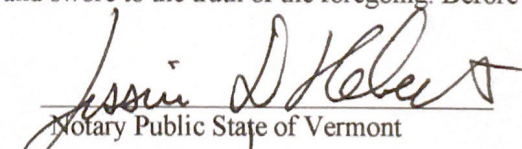
Arion Thiboumery, General Manager

STATE OF VERMONT

COUNTY OF Washington, ss.

At Barre, Vermont, this 14th day of July 2023, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,

Jessica D Hebert
Notary Public State of Vermont
Commission # 157.0014135
Commission Expires 1/31/25


Notary Public State of Vermont

Printed Name Jessica. D. Hebert

Commission No. 157. 0014135

My Commission Expires 1/31/25

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

Dated at Montpelier, Vermont, this 25th day of July, 2023.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: *John Beling*
John Beling, Commissioner
Department of Environmental Conservation