

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION


ANR v. 2849 Mill Brook Road, LLC

24-ENV-00087

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 16th day of August, 2024 and filed with the Superior Court, Environmental Division, on the 3rd day of October, 2024, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed October 18, 2024 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.

**2849 MILL BROOK ROAD LLC,
Respondent**

VIOLATIONS

1. Vermont Water Supply Rule § 7.5.1: failing to make the water storage tank accessible for evaluation
2. Vermont Water Supply Rule Appendix A, Part 12.2.6.1: failing to maintain a grade around Well 1 that prevents damage and minimizes the potential for contamination
3. Authorization to Operate Subject to the 2020 General Operating Permit for Class 1A and 1B Transient Non-Community Water Systems, Permit No. 849-20.0: failure to resolve deficiencies identified during a sanitary survey

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency”) and 2849 Mill Brook Road 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 public drinking water system in Fayston, Vermont, that serves approximately 130 users through 2 service connections (the “Water System”).
2. The Water System (WSID #VT0000849) qualifies as a Public Transient Non-Community Water System under the Vermont Water Supply Rule (the “VWSR”).
3. On January 17, 2020, the Agency issued Respondent Authorization to Operate Subject to the 2020 General Operating Permit for Class 1A and 1B Public Transient Non-Community Drinking Water Systems No. 849-20.0 (the “Permit”). Paragraph 1 of the Permit requires compliance with the terms and conditions of the 2020 General Operating Permit (the “General Permit.”)

4. During a routine sanitary survey on October 11, 2022, Agency personnel from the Drinking Water and Groundwater Protection Division observed boxes piled on top of the finished water storage tank, preventing access to and inspection of critical components of the tank such as the drain, overflow, vent piping, and hatch.
5. Agency personnel also observed a depression surrounding Well 1 and moss growing on the bottom of the well casing, indicating that surface water runoff had been collecting around the well and casing.
6. VWSR § 7.5.1 states that “all public water systems must comply with the Sanitary Survey provisions of 40 C.F.R. 141.401,” subsection (c) of which states that “the sanitary survey must include an evaluation of the ... finished water storage.”
7. VWSR Appendix A, Part 12.2.6.1 states that “each well shall be finished to prevent damage to the well and minimize the potential for contamination.”
8. On October 27, 2022, the Agency issued Respondent a letter summarizing the findings of the sanitary survey and directing Respondent to resolve the identified deficiencies. Respondent and the Agency communicated about the status of the sanitary deficiencies various times during 2023.
9. Section III.D of the General Permit requires that Respondent “resolve all deficiencies identified during a sanitary survey and send the Secretary written correspondence confirming that the deficiencies have been resolved by the deadlines established by the Secretary.”
10. Respondent graded the soil around Well 1 in August of 2023 but did not inform the Agency despite requests for documentation.
11. On December 5, 2023, the Agency sent Respondent a Notice of Alleged Violation (“NOAV”), directing Respondent to address the deficiencies immediately.
12. To date, Respondent has not resolved all deficiencies identified during the sanitary survey and sent the Agency written confirmation of resolution.
13. The Agency alleges that the above conduct constitutes violations of VWSR § 7.5.1, VWSR Appendix A, Part 12.2.6.1, and Authorization to Operate Subject to the 2020 General Operating Permit for Class 1A and 1B Public Transient Non-Community Drinking Water Systems No. 849-20.0
14. 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 (as defined in Paragraph G).

B. Respondent shall bring the Water System into compliance with the VWSR, including by performing the following actions:

1. No later than thirty (30) consecutive calendar days following the Effective Date, Respondent shall submit to the Drinking Water and Groundwater Protection Division photographic documentation confirming to the Agency’s satisfaction the following:
 - i. The presence and location of the finished water storage tank’s overflow, drain, and vent;
 - ii. That the overflow, drain, and vent of the finished water storage tank are covered with 24-mesh noncorrodible screens and meet the requirements of Appendix A §11.8.2 of the VWSR;
 - iii. That the finished water storage tank access hatch has a sanitary cover with a rubber gasket to prevent insects or debris from entering the tank; and
 - iv. The interior condition of the finished water storage from a vantage point

looking directly down into the open tank.

2. No later than thirty (30) consecutive calendar days following the Effective Date, Respondent shall submit to the Drinking Water and Groundwater Protection Division photographic documentation confirming to the Agency's satisfaction that the soils around Well 1 are stabilized and uneroded such that the grading was successful in ensuring that surface water drains away from the well casing.
 3. Within forty-five (45) consecutive calendar days of satisfying Paragraphs B(1) and B(2), Respondent shall complete the directed public notice and submit a copy of the issued/posted public notice with completed delivery certification form to the Drinking Water and Groundwater Protection Division.
- 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.

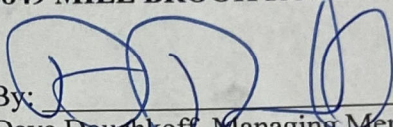
[Signatures on following pages.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Dave Douchkoff, the undersigned, hereby state under oath that I am the Managing Member of 2849 Mill Brook Road LLC, that I have the power to contract on behalf of 2849 Mill Brook Road LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Waitsfield, Vermont, this 16th day of August 2024.

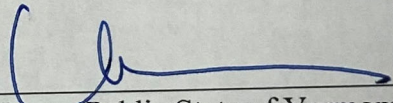
2849 MILL BROOK ROAD LLC

By: 
Dave Douchkoff, Managing Member

STATE OF VERMONT

COUNTY OF WASHINGTON, ss.

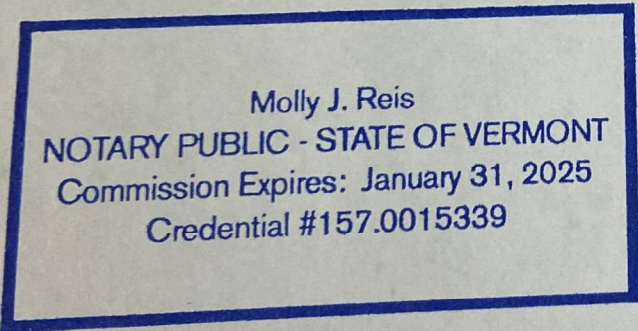
At Waitsfield, Vermont, this 16th day of August 2024, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,


Notary Public State of Vermont

Printed Name MOLLY REIS

Commission No. 157.0015339

My Commission Expires 1/31/2025



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

Dated at Montpelier, Vermont, this 3rd day of September, 2024.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: Jason M. Batchelder
Jason Batchelder, Commissioner
Department of Environmental Conservation