

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

**SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff**

v.

**WILLIAM E. DAILEY, INC.,
Respondent**

VIOLATIONS

1. Air Pollution Control Permit to Construct and Operate #AOP-15-039, Condition 39:

Exceedance of total particulate matter emissions limit.

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 William E. Dailey, Inc. ("Respondent") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent is a Vermont-registered corporation which owns and operates a hot mix asphalt plant located at 1424 VT Route 7A in Shaftsbury, Vermont (the "Facility").
2. The Facility is subject to Air Pollution Control Permit to Construct and Operate #AOP-15-039, issued on March 18, 2016 (the "Permit").
3. Permit Condition 39 sets the following particulate matter emissions:
 - a. Volume of filterable particulate matter – while burning waste oil – 0.015 grains per dry standard cubic foot.

- b. Rate of filterable particulate matter emissions – while burning waste oil – 3.7 pounds per hour.
 - c. Volume of total particulate matter – 0.04 grains per dry standard cubic foot.
 - d. Rate of total particulate matter – 9.8 pounds per hour.
 - e. Volume of filterable particulate matter – 0.020 grains per dry standard cubic foot.
 - f. Rate of filterable particulate matter emissions – 4.9 pounds per hour.
4. Permit Condition 46 requires Respondent to perform emission testing, including testing for particulate matter, within 180 days after first burning waste oil in the hot mix asphalt plant and to perform routine emission testing every third calendar year thereafter in which waste oil is burned. If the Facility ceases burning waste oil, Permit Condition 46 requires Respondent to perform emission testing, including testing for particulate matter, every five years.
5. On August 29, 2017, Respondent conducted the emission testing required by Permit Condition 46. A representative from the Agency was present during this testing.
6. The results from the August 29, 2017 testing establish that Respondent's particulate matter emissions were:
- a. Volume of filterable particulate matter – 0.001 grains per dry standard cubic foot.
 - b. Rate of filterable particulate matter emissions – 0.2 pounds per hour.
 - c. Volume of total particulate matter – 0.0479 grains per dry standard cubic foot.
 - d. Rate of total particulate matter – 7.3 pounds per hour.
7. Respondent admits the factual findings described above, solely for purposes of resolving this case.
8. The Agency alleges that Respondent's volume of total particular matter exceeded the limit established by Permit Condition 39, which constitutes a violation of the Permit.

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 \$4,500.00.

Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Administrative Assistant
Compliance and Enforcement Division
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3803

Payment shall be received no later than thirty (30) consecutive calendar days following the date this Assurance is entered as an order by signature of the Environmental Court ("effective date").

- B. Respondent shall perform all necessary inspections and corrective actions to reduce total particulate matter emissions to below the emissions limit set in the Permit. Reducing emissions may include, in part, finding and sealing condensable organic vapor leaks.
- C. No later than September 1, 2018, Respondent shall retest for total particulate matter emissions to verify the emissions have been brought into compliance with the requirements of the Permit. The retest shall be conducted in conformance with the procedures set forth in Permit Conditions 46. At the Agency's election, it may attend the retest. Respondent shall also provide the Agency with the results of the retest.
- D. Respondent shall comply with the Permit in the operation of the Facility.
- E. 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.

- F. 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.
- G. 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.
- H. 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.
- I. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, this Assurance shall become a judicial order. In the event that such order is vacated, the Assurance shall be null and void.
- J. 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.
- K. 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 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.

L. 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.

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

(Two Signature Pages Follow)

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

Further, I ROBERT YARENKO (print name), the undersigned, hereby state under oath that I am the ASST. V.P. (print title) of William E. Dailey, Inc. and am an authorized representative of William E. Dailey, Inc., and that I have the power to contract on behalf of that entity, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at WHITE PLAINS, ^{NEW YORK}~~VERMONT~~, this 12 day of JUNE 2018.

William E. Dailey, Inc.

By:

Print Name:

Print Title:

^{NEW YORK}
STATE OF ~~VERMONT~~

COUNTY OF WESTCHESTER, ss.

At WHITE PLAINS, ^{NEW YORK}~~VERMONT~~, this 12 day of JUNE 2018 the above-signatory personally appeared and swore to the truth of the foregoing. Before me,

Joanne L. Dzibela
Notary Public, State of New York
Qualified in Putnam County
No. 01DZ6125880
Term Expires April 25, 2021

Joanne L. Dzibela
Notary Public

Term expires: 4/25/21

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

Dated at Montpelier, Vermont, this 5 day of July, 2018

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: Emily Boedecker
Emily Boedecker, Commissioner
Department of Environmental Conservation