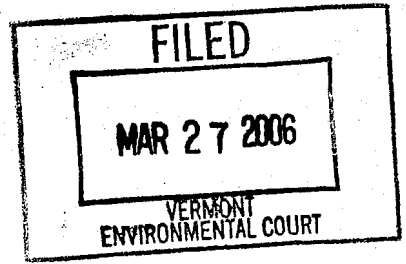


STATE OF VERMONT  
ENVIRONMENTAL COURT



Agency of Natural Resources, )  
Petitioner, )  
v. )  
Edward J. Downey, )  
Respondent. )

Docket # 63-3-06 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on March 3, 2006, and filed with the Environmental Court on March 24, 2006, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007 (c).

Dated this 27th day of March 2006.

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin,  
Environmental Judge

**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES**

**ENVIRONMENTAL COURT  
Docket No.**

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

**v.**

**EDWARD J. DOWNEY  
Respondent**

**VIOLATION:**

- i. Title 10 Chapter 47 § 1259(a); prohibited discharge of materials to waters of the state.

**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 Edward J. Downey (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 the property and resides at 1602 Route 114 in East Burke, VT.
2. In the winter of 2004 the low snowfall in the early part of the season caused the formation of irregular ice blockages in the unnamed brook behind Respondent's property. These blockages caused flooding of Respondent's property as well as that of his downstream neighbors.
3. On or about December 31, 2004 Respondent applied calcium chloride to melt ice on his property. While applying the calcium chloride Respondent's tractor became stuck on the ice near the unnamed brook. Respondent then applied a portion of a bag of calcium chloride in an effort to free his tractor.
4. Respondent's actions were witnessed and videotaped by his downstream neighbors.
5. As a result of Respondent's actions, some amount of calcium chloride was deposited into the unnamed brook which is a water of the state.

6. By allowing calcium chloride to enter into the unnamed brook behind his house, Respondent violated 10 V.S.A. § 1259(a), which prohibits the discharge of material to waters of the state without first obtaining a permit to do so.

#### AGREEMENT

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

- A. For the violations described above, Respondent shall pay a penalty of \$300. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Ms. Becky Buchanan, Administrative Assistant  
Agency of Natural Resources  
Department of Environmental Conservation  
103 South Main Street, 2 South  
Waterbury, VT 05671-0401

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.

- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.

G. 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.

H. This Assurance is subject to the provisions of 10 V.S.A. Section 8007.

**SIGNATURES**

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

Dated at St Johnsbury, Vermont, this 3 day of March, 2006.

Edward J. Downey  
Signature

Printed Name: Edward J Downey

Address: 1602 Route 114  
East Burke VT 05637

STATE OF VERMONT  
COUNTY OF CAROLINE, ss.

At St Johnsbury, Vermont, this 3 day of March 2006, Edward J. Downey personally appeared and swore to the truth of the foregoing. Before me,

[Signature]

Notary Public

Term expires: 2/10/07

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

Dated in Waterbury, Vermont, this 17<sup>th</sup> day of March 2005.

SECRETARY, AGENCY OF NATURAL RESOURCES

By: Jeffrey Wennberg  
Jeffrey Wennberg, Commissioner  
Department of Environmental Conservation