

STATE OF VERMONT
SUPERIOR COURT
ENVIROMENTAL DIVISION

NRB v Curran Birge Real Estate Partnership, LLC & Vermont Packinghouse, LLC

21-ENV-00025

ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 23rd day of February, 2021 and filed with the Superior Court, Environmental Division, on the 7th day of April, 2021, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically Signed: 4/8/2021 10:37 AM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Tom Walsh" with a stylized flourish at the end.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division
Docket No. _____

Natural Resources Board,)
 Petitioner)
)
 v.)
)
 Curran-Birge Real Estate)
 Partnership, LLC,)
)
 and)
)
 Vermont Packinghouse, LLC)
 Respondents.)

ASSURANCE OF
DISCONTINUANCE

VIOLATION

1. Failure to comply with Land Use Permit #2S1314-1, Condition 3(b):

Deliveries may occur on Sunday 12-6 p.m., 6 a.m. to 6 p.m. Monday through Thursday, and 6 a.m. to Noon on Friday. No animals are allowed on site on Saturdays or Sunday mornings unless a bona fide emergency exists. With regard to emergencies, the only allowable exception to the condition above, is a circumstance clearly beyond the control of the delivering facility and their driver. All deliveries should be scheduled to arrive within the allowable time frames above, that drivers shall communicate with the receiving facility to ensure that arrival times are coordinated to be within the allowable window.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (“Board”) and Curran-Birge Real Estate Partnership, LLC, and Vermont Packinghouse, LLC (hereinafter, collectively “Respondents”) hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. This Assurance of Discontinuance applies to lands identified in Book 495, page 51 of the land records of the Town of Springfield, Vermont, where the deed to the land or the permit is recorded.
2. Respondent, Curran-Birge Real Estate Partnership, LLC, owns a total of 8.25+/- acres, including the Vermont Packinghouse facility, a slaughterhouse and meat processing facility in the Town of Springfield, Vermont (the "Project Tract"). The Project Tract is located at 25 Fairbanks Road in North Springfield with School Property Account Number (SPAN) #606-190-10303.
3. Respondent, Vermont Packinghouse, LLC, operates the slaughterhouse and meat processing facility located on the above referenced tract of land. Said facility is subject to Land Use Permit #2S1314-1.
4. On August 1, 2017, the District 2 Environmental Commission issued Land Use Permit #2S1314-1, specifically authorizing an expansion to the front of the building and an increase in the maximum number of sheep, cows or hogs that can be processed per day to 160 hogs, 80 cows, or 160 sheep *as well as amending the hours and conditions under which live animals can be delivered*, stored and slaughtered on the property.
5. Permit condition 3(b) of Land Use Permit #2S1314-1 requires that: *Deliveries may occur Sunday 12-6 p.m., 6 a.m. to 6 p.m. Monday through Thursday, and 6 a.m. to Noon on Friday. No animals are allowed on site on Saturdays or Sunday mornings unless a bona fide emergency exists.*
6. Between the dates of July 7, 2019 and August 30, 2020, photographic and video evidence indicates that eight (8) deliveries occurred on Saturdays and Sundays outside of permitted delivery hours as summarized in Table 1 (attached).
7. Respondents have failed to comply with condition 3(b) of Land Use Permit #2S1314-1.
8. On May 16, 2018, the Superior Court, Environmental Division issued a Citation and Order (Docket #17EC00359) against the Respondents for failure to abide by permitted hours of operation. This citation provides prior history of exceeding the permitted hours of operation (condition 3(b) of Land Use Permit #2S1314-1). See Attachment 1.

9. On November 29, 2018, the Superior Court, Environmental Division issued a Citation and Order (Docket #18EC00448) against the Respondents for failure to abide by permitted hours of operation. This citation provides prior history of exceeding the permitted hours of operation (condition 3(b) of Land Use Permit #2S1314-1). See Attachment 2.
10. Respondents admit the factual findings described above, solely for purposes of resolving this case.
11. The Board alleges that the above conduct constitutes a failure to comply with Land Use Permit #2s1314-1, Condition 3(b).
12. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed claims and is in the public interest.

AGREEMENT

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

- A. *Respondents shall comply with Permit series #2S1314.*
- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay, by separate checks, the following:
 1. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$8,250.00**, for the violations noted herein, by check made payable to the "State of Vermont."
 2. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,461.47.00**, to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
 3. the amount of **\$15.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Springfield land records, by check made payable to the "Town of Springfield, Vermont."
- C. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above to resolve all

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outstanding disputes.

- D. Respondents agree that the violations alleged are deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of Respondents’ past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- E. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall mail the Board notarized, written acknowledgement of receipt of the Court’s Order.
- F. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201
- G. Respondents are jointly and severally liable for all obligations under this Assurance.
- H. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondent’s reported income for tax purposes or attempt to obtain any other tax benefit from such payment.
- I. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- J. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents’ continuing obligation to comply with applicable state or local statutes, regulations or directives.
- K. 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 pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- L. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set

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forth herein, provided that the Respondents fully complies with this Assurance.

- M. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- N. This Assurance sets forth the complete agreement of the parties, and except as provided herein, 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.
- O. 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 have no legal force or effect.
- P. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- Q. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.


SIGNATURES

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

Dated at Chester, Vermont, this 23 day of Feb, 2021.

Curran-Birge Real Estate Partnership, LLC

By


Duly Authorized Agent

STATE OF VERMONT

COUNTY OF Windsor, ss.

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BE IT REMEMBERED that on the 23rd day of February, 2021, personally appeared Mark Curran, as the duly authorized agent of Curran-Birge Real Estate Partnership, LLC signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of Curran-Birge Real Estate Partnership, LLC and that s/he has the authority to contract on behalf of Curran-Birge Real Estate Partnership, LLC and that s/he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.



Before me,

[Signature]

Notary Public

My Commission Expires: 1/31/23

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

Dated at 2/23/21, Vermont, this 23 day of February, 2021.

Vermont Packinghouse, LLC

By

[Signature]

Duly Authorized Agent

STATE OF VERMONT
COUNTY OF Windsor, ss.

BE IT REMEMBERED that on the 23 day of February, 2021, personally appeared William Kuhnert, as the duly authorized agent of Vermont Packinghouse, LLC signer and sealer of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of Vermont Packinghouse, LLC and that s/he has the authority to contract on behalf of Vermont Packinghouse, LLC and that s/he has been duly authorized to enter into the

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foregoing Assurance on behalf of that entity.

Before me,



Notary Public

My Commission Expires



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

Dated in Montpelier, Vermont, this 29 day of March, 2021

Natural Resources Board

By:



Diane B. Snelling, Chair