

STATE OF VERMONT

Superior Court

Environmental Division  
Docket No.

NATURAL RESOURCES  
BOARD,  
Petitioner

v.

POULIN GRAIN, INC.,  
Respondent.

ASSURANCE OF  
DISCONTINUANCE

VIOLATION

1. Failure to abide by approved hours of operation; Condition 5 of Land Use Permit 8B0503;
2. Failure to seek a permit amendment in violation of Act 250 Rule 34(A) (Material Change).

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and Poulin Grain, Inc., ("Respondent") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Land Use Permit series 8B0503 applies to the lands identified in Book O-244 , Page 96, and Book O-274, Page 98, of the land records of Bennington, Vermont, as the subject of deeds to Whitman Feed Store and Arthur and Kathy Whitman, respectively, and also identified by School Property Account Number (SPAN) 051-138-64539 and 051-138-64558; and Book 88, Pages 319-320, and Book 123, Pages 595-597, of the land records of Shaftsbury, Vermont, as the subject of Land Use Permits 8B0503 and 8B0503-2, respectively, and also identified by SPAN 573-254-11732.
2. Condition 5 of Land Use Permit 8B0503 states, "Hours of operation of the processing plant/conveyors or delivery trucks entering the new facility shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday."
3. On September 25, 2018, the Vermont Superior Court, Environmental Division, issued a Judgment Order, incorporating a Civil Citation, in favor of the Board, finding that Respondent had violated Condition 5 of Land Use Permit 8B0503 on the following date. Respondent paid the "wavier amount" of \$750 associated with the Civil Citation.

- Thursday July 15, 2018 at 11:18 PM.
4. On July 29, 2019, the Vermont Superior Court, Environmental Division, issued a Judgment Order, incorporating a Civil Citation, in favor of the Board, finding that Respondent had violated Condition 5 of Land Use Permit 8B0503 on the following dates. Respondent paid the “wavier amount” of \$1,500 associated with the Civil Citation.
    - Tuesday September 18, 2018 at 10:40PM
    - Friday September 28, 2018 at 5:46AM
    - Thursday November 1, 2018 at 8:24PM
    - Wednesday November 14, 2018 at 9:02PM
    - Thursday November 15, at 6:35AM
    - Friday November 23, 2018 at 8:41PM
    - Monday January 14, 2019 at 9:37PM
    - Monday February 4, 2019 at 9:53PM
    - Tuesday February 5, 2019 at 10:54PM
    - Tuesday February 12, 2019 at 8:19PM
    - Friday February 22, 2019 at 10:26PM
    - Wednesday February 27, 2019 at 10:00PM
    - Sunday March 3, 2019 at 11:39AM
  5. See Table 1 (pages 6-8), attached hereto, and fully incorporated herein, which details 25 separate violations of Condition 5 of Land Use Permit 8B0503.
  6. Respondent has failed to comply with Condition 5 of Land Use Permit 8B0503.
  7. Act 250 Rule 34(A) states that: *“A permit amendment shall be required for any material change to a permitted development...”*
  8. Respondent failed to obtain a permit amendment for the changes outlined herein with respect to the hours of operation/ Condition 5 of Land Use Permit 8B0503.
  9. Respondent admits the factual findings described above, solely for purposes of resolving this case.
  10. The Board alleges that the above conduct constitutes a violation of Condition 5 of Land Use Permit 8B0503, and Act 250 Rule 34(A).
  11. 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. *Respondent shall comply with Permit series #8B0503.*
- 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 **\$24,000.00**, 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 **\$1,437.36**, 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 **Bennington** land records, by check made payable to the "Town of **Bennington** Vermont."
  4. the amount of **\$15.00**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the **Shaftsbury** land records, by check made payable to the "Town of **Shaftsbury** Vermont."
- C. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violations alleged above to resolve all outstanding disputes.
- D. Respondent agrees that the violations alleged are 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 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 Respondent 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. Respondent 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.
- H. 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.
- I. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with applicable state or local statutes, regulations or directives.
- J. 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.
- K. Pursuant to 10 V.S.A. § 8007(d), the Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondent fully complies with this Assurance.
- L. 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.
- M. 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.
- N. 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.
- O. 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.

P. 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.

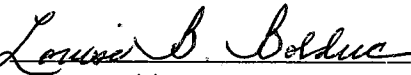
Dated at Newport, Vermont, this 14 day of November, 2019.

  
\_\_\_\_\_  
JOSH POULIN, Individually

POULIN GRAIN, INC.  
By   
\_\_\_\_\_  
BY: JOSH POULIN

STATE OF VERMONT  
COUNTY OF Orleans, ss.

BE IT REMEMBERED that on the 14<sup>th</sup> day of November, 2019, personally appeared **JOSH POULIN**, individually and as the duly authorized agent of **POULIN GRAIN, INC.**, 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 **POULIN GRAIN, INC.** and that he has the authority to contract on behalf of **POULIN GRAIN, INC.**, and that he has been duly authorized to enter into the 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 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Natural Resources Board

By: \_\_\_\_\_  
Diane B. Snelling, Chair

**Table 1. Poulin, Bennington & Shaftsbury – work outside of permitted hours  
 7/2/19 – 9/9/19**

No.	Day	Date	Time	Type	Activity
1	Tue	7/02/19	11:18 pm	video	Comment from complainant "They just turned off the lights, a truck just pulled in." Hard to see clearly in this video.
2	Mon	7/08/19	09:35 pm	video	Truck lights pulling up to grain feeder, brake sounds.
3	Thur	7/11/19	08:15 pm	photo	No trucks visible, grain feeder obscured by tree leaves
		7/11/19	08:15 pm	video	Facility lights on, truck lights flashing through tree leaves
4	Fri	7/12/19	05:42 am	photo	End of truck barely visible by third window under grain feeder
		7/12/19	05:42 am	video	End of truck barely visible by third window under grain feeder, employee truck parked with lights on
		7/12/19	05:55 am	video	A man in a small truck backs out
		7/12/19	05:56 am	video	*Poulin Grain truck is backing up towards municipal road from grain feeder
5	Tues	7/16/19	06:38 am	video	Loud metal banging sounds, truck brake sounds
6		7/16/19	09:28 pm	video	Facility and exterior lights on, grain falling/sliding sounds
		7/16/19	09:42 pm	video	Truck visible under grain feeder, grain falling/sliding sounds
7	Fri	7/19/19	04:30 am	video	Poulin Grain Truck pulling out of facility
8	Fri	7/19/19	06:58 pm	video	Two Poulin trucks are lined up waiting to pull up to grain feeder
		7/19/19	07:02 pm	video	Two Poulin trucks are lined up waiting, grain falling/sliding sounds
		7/19/19	07:09 pm	video	Two Poulin trucks lined up waiting, grain falling/sliding sounds
		7/19/19	07:13 pm	video	Truck backing up onto municipal road, backup alarm sounds
9	Tues	7/23/19	10:03:03 pm	video	Exterior lights on, truck lights parked under grain feeder, grain falling/sliding sounds
		7/23/19	10:03:40 pm	video	Warehouse door closing, truck lights parked under grain feeder, grain falling/sliding sounds, man closes facility door
		7/23/19	10:04 pm	video	Truck parked under grain feeder, grain falling/sliding sound, man walks to car
		7/23/19	10:22 pm	video	Truck enters facility, pulls up to grain feeder, grain falling sound
10	Thur	7/25/19	09:02 pm	video	Truck enters facility, exterior lights on, under grain falling/sliding sounds
11	Tues	7/30/19	07:32 pm	video	Truck enters facility, brake sounds – (man's voice talking with Erika)
		7/30/19	07:34 pm	video	Two Poulin trucks entering the facility, one pulls up to grain feeder.
12	Wed	7/31/19	09:51 pm	video	Exterior lights on, grain falling/sliding sound
13	Mon	8/05/19	08:49 pm	video	Exterior lights on, grain falling/sliding sound

		8/05/19	08:50 pm	video	" " " "
		8/05/19	08:57 pm	video	Blurry, pointing down, video turned on by mistake
		8/05/19	09:21 pm	video	Exterior lights on, grain falling/sliding sound - (man's voice talking with Erika)
<b>14</b>	Mon	8/12/19	08:32 pm	video	Truck lined up for grain feeder, truck idling sounds
		8/12/19	08:34 pm	photo	Blurry photo, mistake
		8/12/19	08:34 pm	video	Truck lined up for grain feeder, idling and grain falling/sliding sounds
		8/12/19	08:36:13 pm	video	Truck departing facility, brake sounds, passing waiting truck
		8/12/19	08:36:53 pm	video	Two idling trucks side by side, grain falling/sliding sounds
		8/12/19	08:37 pm	video	" " " "
		8/12/19	08:57:06 pm	photo	Bright light shining through window from feedstore
		8/12/19	08:57:20 pm	video	Bright light shining through window from feedstore, truck idling sounds
		8/12/19	08:58:10 pm	photo	Bright light
		8/12/19	08:58:19 pm	video	Bright light, multiple trucks visible in background parked waiting
		8/12/19	09:03 pm	video	Truck backing out of facility, backup alarm sounds, loud
		8/12/19	09:36 pm	video	Idling truck waiting for grain feeder, grain falling/sliding sound
<b>15</b>	Tues	8/13/19	07:59 pm	video	A truck lined up to receive grain, bangs and grain falling sounds
		8/13/19	09:21 pm	video	Two trucks lined up to receive grain, door open to facility
<b>16</b>	Fri	8/16/19	07:46 pm	video	Truck lined up to receive grain, another under feeder
		8/16/19	07:47:09 pm	video	Truck lined up, another under feeder, grain falling/sliding sounds
		8/16/19	07:47:54 pm	video	Truck lined up, another under feeder, sound of grain falling/sliding, beeping sounds
<b>17</b>	Sun	8/18/19	09:43 pm	video	Truck entering facility, pulling up to grain feeder
<b>18</b>	Tues	8/20/19	10:28 pm	video	A truck lined up, grain falling/sliding sounds
<b>19</b>	Thur	8/22/19	08:37 pm	video	A truck lined up to receive grain, idling sounds
		8/22/19	08:38 pm	video	A truck lined up to receive grain, idling sounds
		8/22/19	08:56 pm	video	Truck backing out of facility, VERY LOUD, repositioning under feeder
<b>20</b>	Sun	8/25/19	09:07:11 pm	video	A truck lined up waiting for feeder, idling sound, people walking
		8/25/19	09:07:55 pm	video	A truck lined up waiting for feeder, grain falling/sliding, truck brakes

		8/25/19	09:32 pm	video	Metal pounding sounds
		8/25/19	09:33 pm	video	Idling truck, pounding sounds
21	Mon	8/26/19	09:14 pm	video	Idling truck, metal pounding sounds
22	Tues	9/3/19	05:25 am	video	Truck parked by grain feeder, grain sliding sound, idling truck
		9/3/19	05:27 am	video	Car entering facility, lights visible of parked truck, " " "
23	Thur	9/5/19	09:57 pm	video	Facility lights on
		9/5/19	09:58 pm	video	Facility lights on, truck idling sound
24	Sun	9/8/19	07:28 pm	video	Truck pulls in and up to grain feeder <sup>25</sup>
25	Mon	9/9/19	07:57 pm	video	Truck parked, waiting for grain feeder, humming sound
		9/9/19	07:58 pm	video	Truck parked, waiting for grain feeder, grain falling/sliding sound
		9/9/19	09:09 pm	video	Facility lights on
		9/9/19	09:11 pm	video	Facility lights on, man standing, truck sounds from vicinity of grain feeder
25		65			<b>TOTAL episodes &amp; videos or photos submitted</b>