

**STATE OF VERMONT
ENVIRONMENTAL COURT**

**LAND USE PANEL of the
NATURAL RESOURCES BOARD,**
Petitioner

v.

Docket No.

AGRI-MARK, INC.,
Respondent

VIOLATION

Use of unauthorized truck routes in violation of Condition No. 16 of Land Use Permit #5W0870-13, as modified by Land Use Permit Amendment #5W0870-13-EB.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Agri-Mark, 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 dairy cooperative that owns and operates a manufacturing plant in Cabot, Vermont, subject to Land Use Permit #5W0870, as amended.
2. On August 20, 1993, Condition No. 16 of Land Use Permit #5W0870-13, was amended by Land Use Permit Amendment #5W0870-13-EB (The Permit).
3. Condition No. 16 of The Permit reads, in pertinent part: "The Permittee shall divert all loaded trucks from SA #1 (also known as the Lower Walden Road or South Walden Road) to SA #3 (the Walden Heights Road)."
4. Beginning in January of 2008 through August 2, 2008, Respondent's loaded trucks traveled approximately 1,500 times on SA #1, South Walden Road, in violation of Condition No. 16 of The Permit, described above.

AGREEMENT

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

- A. Respondent shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Seven Thousand Five-Hundred U.S. Dollars (\$7500.00) for the violations noted herein. Payment shall be by check made payable to "Treasurer, State of Vermont," which shall be sent to:

Denise Wheeler, Business Manager
Vermont Natural Resources Board
National Life Records Center
National Life Drive
Montpelier, Vermont 05620-3201

Any payment by the Respondent pursuant to this Assurance is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondent shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondent's state or federal taxes.

- B. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- C. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondent.
- 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 pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- E. 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 described herein and about which the Land Use Panel has notice on the date the Court signs this 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 have 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. § 8007.

SIGNATURES

The provisions set forth in this Assurance are hereby agreed to and accepted. Further, I, JAMES M. PRATT, the undersigned, hereby state under oath that I am Sr. V.P. OPERATIONS of Agri-Mark, Inc., that I have the authority to contract on behalf of Agri-Mark, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

DATED at Montpelier, Vermont, this 5th day of November, 2008.

Agri-Mark, Inc.

By: 

BE IT REMEMBERED that on the 5th day of NOVEMBER, 2008, personally appeared JAMES M. PRATT, signer of the foregoing instrument who is/are known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed and the free act and deed of Agri-Mark, Inc.

Before me,


Notary Public

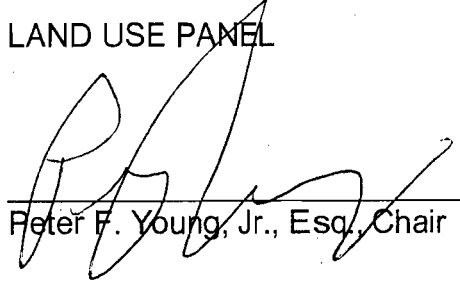
My Commission Expires: 02-10-11

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

DATED at Montpelier, Vermont, this 6th day of Nov., 2008.

LAND USE PANEL

By:



Peter F. Young, Jr., Esq., Chair