



**State of Vermont**

Agency of Natural Resources – Office of General Counsel  
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*Agency of Natural Resources*

May 16, 2017

Judith C. Whitney, Clerk  
Vermont Public Service Board  
112 State Street  
Montpelier, VT 05620-2701

**Re: Docket No. 8791 - Vermont Gas Systems, Inc.  
Investigation Regarding Harsh Sunflower Plants**

Dear Ms. Whitney:

The Vermont Agency of Natural Resources (Agency) submits the following comments in response to the Proposal for Decision (PFD) issued by Hearing Officer Tousley on May 2, 2017 in the above matter. The Agency does not request oral argument before the Public Service Board (Board).

On August 23, 2016, the Board opened this investigation to determine whether Vermont Gas Systems, Inc. (VGS) violated the 2013 Final Order and CPG issued in Docket No. 7970, by taking a threatened plant species during pipeline construction, and, “if so, whether it is appropriate to order any remedial action, impose a penalty, or take any other steps authorized by law.”<sup>1</sup> The Board stayed the investigation until the Agency had completed its own investigation and enforcement action under the Agency’s independent enforcement authority pursuant to 10 V.S.A. § 5403, the state endangered species law.

On December 29, 2016, the Agency informed the Board that the Agency had resolved its independent civil enforcement action through an Assurance of Discontinuance (AOD) and requested that the Board lift the stay in this matter. On April 14, 2017, VGS, on behalf of itself, the Agency and the Department of Public Service (Department), filed a Stipulated Proposal for Decision (Stipulated PFD). In its cover letter transmitting the Stipulated PFD, VGS acknowledged the Agency’s recommendation and request that the \$6,000.00 payment agreed to in the Stipulated PFD be directed to the New England Wildflower Society (NEWS). VGS indicated its agreement to this request.<sup>2</sup> The Agency, by separate letter, indicated its support for the \$6,000.00 payment amount to resolve the CPG violations and confirmed its recommendation and request that this amount go to NEWS “to be utilized to further the seed collection and banking work funded in part by the Supplemental Environmental Project (SEP) approved as part of

<sup>1</sup> Docket 8791, Order dated 8/23/2016, at 1.

<sup>2</sup> Letter from Debra L. Bouffard, Esq., to Judith C. Whitney, Clerk of the Board, dated April 14, 2017, at 1.

the Agency's separate enforcement action."<sup>3</sup> The Agency included a copy of the SEP description with its letter to the Board.

The hearing officer's May 2 PFD recommends that the Board impose a civil penalty in the amount of \$25,000.00 on VGS "for violation of the 2013 Final Order and CPG."<sup>4</sup> Hearing Officer Tousley based this recommendation on his conclusion that VGS "failed to observe the terms of the ANR MOU and obtain a permit before taking 77 harsh sunflower plants."<sup>5</sup>

The Agency respectfully requests that, should the Board adopt the findings and conclusions of the PFD and establish an amount to be paid by VGS for the violations, whether the recommended \$25,000.00 or any other amount, that the Board approve and order payment of the first \$6,000.00 to NEWS as a remedial measure to fund the seed collection and banking work described in the SEP.<sup>6</sup> This would be consistent with the Agency's recommendation and request, as agreed to by VGS, at the time of the filing of the Stipulated PFD. The \$10,828.00 funding of the SEP by VGS resulting from the AOD covers a portion of the costs of the seed collection and banking work by NEWS. An additional \$6,000.00 for this work would provide benefits to RTE plant resources.

Providing additional funds to enable RTE plant seed collection and banking in Vermont is "a meaningful remedy that is reasonably related to the violations at issue."<sup>7</sup> It would also be consistent with the Board's order opening this investigation,<sup>8</sup> and recent Board precedent which acknowledged that the public interest is served by remedial measures combined with civil penalties.<sup>9</sup>

The Agency has discussed this proposal with the Department and I am authorized to represent that the Department supports this approach.

Respectfully submitted,  
State of Vermont Agency of Natural Resources



By: Donald J. Einhorn, Esq.  
Copy: Service List

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<sup>3</sup> Letter from Donald J. Einhorn, Esq., to Judith C. Whitney, Clerk of the Board, dated April 14, 2017.

<sup>4</sup> Docket 8791, proposal for Decision dated 5/2/2017, at 13.

<sup>5</sup> Id.

<sup>6</sup> For example, if the Board were to adopt the hearing officer's \$25,000.00 recommendation, then \$6,000.00 would be paid NEWS as a remedial measure, and the remaining \$19,000.00 would be paid as a civil penalty.

<sup>7</sup> Docket 7871, Order dated 10/10/2013, at 6.

<sup>8</sup> The purpose of which is to determine, in part, whether it is "appropriate to order any remedial action, impose a penalty, or take any other steps authorized by law." Docket 8791, Order dated 8/23/2016, at 1.

<sup>9</sup> Docket 8889, Order dated 1/13/2017, at 4.