

STATE OF VERMONT
WASHINGTON COUNTY, SS.

SUPERIOR COURT
DOCKET NO.

STATE OF VERMONT AGENCY)
OF NATURAL RESOURCES,)
)
Plaintiff)
)
v.)
)
)
C & S WHOLESALE GROCERS,)
INC.)
)
)
Defendant.)

PLEADINGS BY AGREEMENT

NOW COMES the State of Vermont, Agency of Natural Resources, by and through the Office of the Attorney General William H. Sorrell, and defendant, C & S Wholesale Grocers, Inc. (“C & S” or “Defendant”), by their respective undersigned counsel, and hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

THE STATE’S ALLEGATIONS

1. Plaintiff, the State of Vermont, Agency of Natural Resources, is a state agency with offices in Waterbury, Vermont.
2. C & S Wholesale Grocers, Inc. (“C & S” or “Defendant”), is a corporation organized under the laws of the State of New Hampshire with its principal place of business in Keene, New Hampshire. C & S owns and operates a

distribution facility located in the Town of Brattleboro, Windham County, Vermont (“the facility”).

3. The Agency of Natural Resources (“ANR”) conducted inspections of the facility on December 5, 6, 10, 20 and 21, 2007, January 18, 2008 and July 2, 2008.

4. During the December 5, 6, 10, 20 and 21, 2007 and January 18, 2008 inspections, ANR found the following:

- a. numerous containers at the facility held uncharacterized waste material that was potentially hazardous;
- b. numerous containers of hazardous waste had been stored for longer than 90 days; daily inspection and inventory records discovered in a trailer used to store hazardous waste indicated that some hazardous wastes had been stored at the facility for up to 12 years;
- c. the Vermont Hazardous Waste Handler Site ID Form on file for the facility was not up-to-date; specifically, the form did not identify all wastes generated by the facility and did not provide accurate facility contact information;
- d. copies of required Land Disposal Restriction notices were not available at the time of the inspection;
- e. no contingency plan was being maintained by C & S;
- f. C & S did not maintain a hazardous waste training program for facility personnel;
- g. at the time of the inspection, trailers used to store hazardous waste were not equipped with required preparedness and prevention equipment;
- h. the required preparedness and prevention arrangements had not been made with local authorities; also, no records were available documenting that such arrangements had been refused by local authorities;
- i. on December 14, 2007, C & S shipped antifreeze waste without the use

- of a manifest; in addition, it was determined that C & S had not been using a hazardous waste manifest to ship spent parts washing fluid;
- j. hazardous wastes were accumulating outside in unmarked containers;
 - k. hazardous wastes were being stored on the ground and on surfaces that were not impervious;
 - l. hazardous waste containers were located outside and not within a structure that sheds rain and snow;
 - m. containers of hazardous waste were frozen;
 - n. spill and fire control equipment were not available at either of the two trailers being used to store hazardous wastes;
 - o. numerous containers of hazardous waste were stored such that hazardous waste labels were not visible;
 - p. required aisle space was not maintained between hazardous waste containers;
 - q. an inventory of hazardous waste in storage was not being maintained;
 - r. daily inspections of short-term hazardous waste storage areas were not being conducted;
 - s. "Danger - Hazardous Waste Storage Area-Authorized Personnel Only" signs were not posted at the trailers being used to store hazardous waste;
 - t. "No Smoking" signs were not posted at the trailers being used to store hazardous waste;
 - u. numerous containers of hazardous waste were not properly marked with the generator's name, address, and EPA identification number; the name and hazardous waste identification code(s) of the hazardous waste stored therein; the date when the container was first used to accumulate or store hazardous waste and the following language, "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency;"
 - v. containers holding hazardous waste were in poor condition;

- w. a number of corroded steel drums held hazardous waste;
- x. a number of hazardous waste containers were observed to be open and stored in a manner that could cause them to rupture or leak;
- y. Although C & S had stored hazardous waste on-site for longer than 90 days, C & S had not obtained a hazardous waste storage facility certification from the Secretary of ANR;
- z. no completed copies of manifests were available for review;
- aa. C & S had not submitted an annual/biennial report since submitting the 1995 Vermont Annual Report on October 22, 1996;
- bb. numerous containers of used oil were not closed or managed in a manner to prevent a release; marked, stored on impervious surface; within a structure that sheds rain or snow, or protected from freezing;
- cc. two above-ground storage tanks holding used oil were not marked with the words "Used Oil," and were not equipped with secondary containment;
- dd. a pile of waste cathode ray tubes were not marked as universal waste.
- ee. At some point, C & S met the threshold as a large quantity generator under Vermont's Environmental Protection Rules

5. During the July 2, 2008 inspection, ANR found the following:

- a. no weekly leak detection documentation could be provided for the two diesel USTs that are monitored by the electronic monitoring system;
- b. The STP sump lids had visible cracks and were not secured tight as designed by the manufacturer;
- c. spill buckets for the diesel tanks and used oil tank contained several inches of fuel, water, or debris;
- d. a facility diagram was not visible from the tanks, and the used oil tank was not properly identified;
- e. the annually required line leak detector testing was overdue;
- f. inventory records were not available for the diesel tanks;

- g. no documentation of overfill prevention was available for the 2000 gallon waste oil tank;
- h. C&S had not submitted a Self-Certification compliance report.

6. Under sections 7-303 and 7-308(b)(1) of Vermont's Environmental Protection Rules, a large quantity generator must determine if any waste generated is a hazardous waste.

7. The failure of C & S to determine if numerous containers at the facility held hazardous waste violated sections 7-303 and 7-308(b)(1) of Vermont's Environmental Protection Rules.

8. Under section 7-308(b)(2) of Vermont's Environmental Protection Rules, a large quantity generator can store hazardous waste no longer than 90 days from the date when the waste first started to accumulate.

9. By storing hazardous waste longer than 90 days, C & S violated section 7-308(b)(2) of Vermont's Environmental Protection Rules.

10. Under sections 7-308(b)(3) and 7-304(b) of Vermont's Environmental Protection Rules, a large quantity generator must maintain an up-to-date Vermont Hazardous Waste Handler Site ID Form that accurately describes current waste activity and waste generation and obtain an identification number.

11. By failing to maintain an up-to-date Vermont Hazardous Waste Handler Site ID Form that accurately describes current waste activity and waste generation and obtain an identification number, C & S violated sections 7-308(b)(3) and 7-304(b) of Vermont's Environmental Protection

Rules.

12. Under section 7-308(b)(4) of Vermont's Environmental Protection Rules, a large quantity generator must make copies of required Land Disposal Restriction notices available on-site.

13. By failing to make copies of required Land Disposal Restriction notices available on-site, C & S violated section 7-308(b)(4) of Vermont's Environmental Protection Rules

14. Under section 7-308(b)(9) of Vermont's Environmental Protection Rules, a large quantity generator must maintain a written contingency plan.

15. By failing to maintain a written contingency plan, C & S violated section 7-308(b)(9) of Vermont's Environmental Protection Rules.

16. Under section 7-308(b)(10) of Vermont's Environmental Protection Rules, a large quantity generator must maintain a training program for facility personnel.

17. By failing to maintain a training program for facility personnel, C & S violated section 7-308(b)(10) of Vermont's Environmental Protection Rules.

18. Under section 7-309(a)(j) of Vermont's Environmental Protection Rules, small and large quantity generator facilities must be maintained and operated to minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste

constituents to air, soil, groundwater, or surface water which could threaten human health or the environment

19. By failing to maintain a training program for facility personnel, C & S violated section 7-309(a)(j) of Vermont's Environmental Protection Rules.

20. Under section 7-309(a)(4) of Vermont's Environmental Protection Rules, small and large quantity generator facilities must make preparedness and prevention arrangements with local authorities.

21. By failing to make preparedness and prevention arrangements with local authorities, C & S violated section 7-309(a)(4) of Vermont's Environmental Protection Rules

22. Under section 7-309(b)(6) of Vermont's Environmental Protection Rules, small and large quantity generator facilities shall not transport or offer for transport a hazardous waste for off-site treatment, storage, recycling, disposal or use without completing the generator's portion of the hazardous waste manifest.

23. By transporting or offering for transport a hazardous waste for off-site treatment, storage, recycling, disposal or use without completing the generator's portion of the hazardous waste manifest, C & S violated section 7-309(b)(6) of Vermont's Environmental Protection Rules.

24. Under sections 7-310(a)(3) & (5) of Vermont's Environmental Protection Rules, small and large quantity generators may accumulate as

much as one cubic yard of non-liquid hazardous waste not defined as hazardous in 40 CFR Part 261 (i.e., waste regulated as hazardous by Vermont), one quart of acutely hazardous waste, or 55 gallons of any other hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without obtaining certification as a storage facility provided that the container is both located within a structure that sheds rain and snow and upon an impervious surface, and the container is marked with the words "Hazardous Waste" and other words that identify the contents.

25. By storing wastes governed by sections 7-310(a)(3) & (5) of Vermont's Environmental Protection Rules outside in unmarked containers, C & S violated sections 7-310(a)(3) & (5) of Vermont's Environmental Protection Rules.

26. Under § 7-311(a)(1) of Vermont's Environmental Protection Rules, generators must accumulate and store hazardous waste upon an impervious surface except for spill cleanup debris that is generated in response to an emergency action.

27. By storing hazardous wastes on the ground and on surfaces that were not impervious, C & S violated section 7-311(a)(1) of Vermont's Environmental Protection Rules.

28. Under § 7-311(a)(2) of Vermont's Environmental Protection

Rules, hazardous waste containers may be placed out-of-doors only if they are within a structure that sheds rain and snow.

29. By storing hazardous wastes outside of any structure, C & S violated section 7-311(a)(2) of Vermont's Environmental Protection Rules.

30. Under § 7-311(a)(4) of Vermont's Environmental Protection Rules, hazardous wastes subject to freezing and expansion may not be stored in containers or aboveground tanks unless mechanical or physical means are employed to prevent freezing.

31. By storing hazardous wastes outside without any mechanical or physical means to prevent freezing, C & S violated section 7-311(a)(4) of Vermont's Environmental Protection Rules.

32. Under § 7-311(a)(5) of Vermont's Environmental Protection Rules, spill and fire control equipment shall be available in the immediate vicinity of each short-term storage area.

33. By storing hazardous wastes without spill and fire control equipment in the immediate vicinity of each short-term storage area, C & S violated section 7-311(a)(5) of Vermont's Environmental Protection Rules.

34. Under § 7-311(b)(2) of Vermont's Environmental Protection Rules, containers of hazardous waste must be stored such that the hazardous waste labeling is visible.

35. By storing hazardous waste stored such that hazardous waste labels were not visible, C & S violated section 7-311(b)(2) of Vermont's

Environmental Protection Rules.

36. Under § 7-311(b)(3) of Vermont's Environmental Protection Rules, aisle space between rows of containers must be sufficient to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation. In no circumstance shall the aisle space be less than twenty-four inches wide.

37. By failing to maintain required aisle space between hazardous waste containers, C & S violated section 7-311(b)(3) of Vermont's Environmental Protection Rules.

38. Under § 7-311(d)(1) of Vermont's Environmental Protection Rules, small and large quantity generators shall maintain, at a location apart from the short-term storage area, a list of all hazardous waste currently in storage. For generators storing hazardous waste in containers, the list shall identify each container being stored and the type of hazardous waste held by each container. Any waste being accumulated within a short-term storage area must be included on the list of hazardous waste in storage.

39. By failing to maintain inventory of hazardous waste in storage, C & S violated section 7-311(d)(1) of Vermont's Environmental Protection Rules.

40. Under § 7-311(d)(2) of Vermont's Environmental Protection Rules, Small and large quantity generators shall conduct daily inspections during regular business days of each short-term storage area.

41. By failing to conduct daily inspections during regular business days of each short-term storage area, C & S violated section 7-311(d)(2) of Vermont's Environmental Protection Rules.

42. Under § 7-311(e)(1) of Vermont's Environmental Protection Rules, small and large quantity generators must post a sign at each short-term hazardous waste storage area, which must be visible from at least 25 feet with the legend, "Danger-Hazardous Waste Storage Area-Authorized Personnel Only."

43. By failing to post a sign at each short-term hazardous waste storage area, C & S violated section 7-311(e)(1) of Vermont's Environmental Protection Rules.

44. Under § 7-311(e)(2) of Vermont's Environmental Protection Rules, small and large quantity generators storing ignitable waste must also post a sign at each short-term hazardous waste storage area, which must be visible from 25 feet with the legend, "No Smoking."

45. By failing to post a sign at each short-term hazardous waste storage area with potentially ignitable waste, with the legend, "No Smoking," C & S violated section 7-311(e)(2) of Vermont's Environmental Protection Rules.

46. Under § 7-311(f)(1) of Vermont's Environmental Protection Rules, with the exception of satellite accumulation containers managed in accordance with § 7-310(a), containers, and packages used for the storage of

hazardous wastes shall be clearly marked from the time they are first used to accumulate or store waste. Such marking shall include: the generator's name, address, and EPA identification number; the name and hazardous waste identification code(s) of the hazardous waste stored therein; the date when the container was first used to accumulate or store hazardous waste and the following language, "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency."

47. By failing to properly mark containers, and packages used for the storage of hazardous wastes, C & S violated section 7-311(f)(1) of Vermont's Environmental Protection Rules.

48. Under § 7-311(f)(2) of Vermont's Environmental Protection Rules, if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this section.

49. By failing to transfer the hazardous waste from containers which are not in good condition to a container that is in good condition, or to manage the waste in some other way that complies with the requirements of this section, C & S violated section 7-311(f)(2) of Vermont's Environmental Protection Rules.

50. Under § 7-311(f)(3) of Vermont's Environmental Protection

Rules, the owner or operator of a facility must use a container made of or lined with materials that will not react with and are otherwise compatible with the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

51. By failing to use containers made of or lined with materials that will not react with and are otherwise compatible with the hazardous waste to be stored, so that the ability of the containers to contain the waste is not impaired, C & S violated section 7-311(f)(3) of Vermont's Environmental Protection Rules.

52. Under § 7-311(1)(4) of Vermont's Environmental Protection Rules, a container holding hazardous waste must always be closed during storage except when it is necessary to add or remove waste, and a container holding hazardous waste must not be opened, handled or stored in a manner that may rupture the container or cause it to leak.

53. By using open containers and containers that were stored in a manner that may rupture the container or cause it to leak, C & S violated section 7-311(1)(4) of Vermont's Environmental Protection Rules.

54. Under § 7-504(a) of Vermont's Environmental Protection Rules, certification from the Secretary is required to treat, store, dispose, or accept any hazardous waste for over 90 days.

55. By failing to obtain certification from the Secretary to treat, store, dispose, or accept any hazardous waste for over 90 days, C & S violated

section 7-504(a) of Vermont's Environmental Protection Rules.

56. Under § 7-702(b)(5) of Vermont's Environmental Protection Rules, any generator who transports or offers for transport hazardous waste to a designated facility using a manifest shall retain a signed copy of the manifest for at least three years from the date of initial shipment or until receipt of a completed copy.

57. By failing to retain a signed copy of the manifest for transport of hazardous waste to a designated facility for at least three years from the date of initial shipment or until receipt of a completed copy, C & S violated section 7-702(b)(5) of Vermont's Environmental Protection Rules.

58. Under § 7-708(a) of Vermont's Environmental Protection Rules, every large quantity generator shall submit a biennial report, on USEPA Form 8700-13A provided by the Secretary. The report shall be submitted on or before March 1 of each even numbered year and shall describe all hazardous waste activity in the previous calendar year. The report shall accurately describe the composition, quantity, and destination of each hazardous waste stream generated and shall include a compilation of the data contained in all manifests prepared in such year.

59. By failing to submit a biennial report once C&S met the threshold as a large quantity generator, C & S violated section 7-708(a) of Vermont's Environmental Protection Rules.

60. Under §§ 7-806(b)(1) & (2), (5) and (8) of Vermont's

Environmental Protection Rules, containers holding used oil shall be kept closed at all times, except when adding or removing used oil; a container holding used oil must not be opened, handled or stored in a manner which may rupture the container or cause a release. If a container begins to leak, the used oil must immediately be transferred from the leaking container to a container that is in good condition, or the used oil shall be managed in some other way that complies with the requirements of this section; containers holding used oil must be labeled or marked with the words "Used Oil" such that the label or marking is visible; containers holding used oil must be stored on an impervious surface; a container holding used oil may be stored out-of-doors only if the container is placed within a structure that sheds rain and snow; and a container holding a mixture of used oil and water shall be placed within a structure that protects the container from freezing.

61. By storing used oil used oil in containers that were not: closed, managed in a manner to prevent a release, marked, stored on impervious surface, within a structure that sheds rain or snow, or protected from freezing, C & S violated sections 7-806(b)(1) & (2), (5) and (8) of Vermont's Environmental Protection Rules.

62. Under §§ 7-806(d)(2) & (4) of Vermont's Environmental Protection Rules, above-ground storage tanks holding used oil shall be clearly marked with the words "Used Oil," and above-ground storage tanks holding used oil that are located out-of-doors must be equipped with secondary

containment as specified in 40 CFR §§ 279.45(e) and (f).

63. By failing to mark two above-ground storage tanks holding used oil with the words "Used Oil," and failing to equip the tanks with secondary containment, C & S violated sections 7-806(d)(2) & (4) of Vermont's Environmental Protection Rules.

64. Under §§ 8-503(a) & (b) of Vermont's Environmental Protection Rules, a diagram shall be displayed in a location that is protected from the weather and readily visible to any carrier delivering regulated substance to an underground storage tank system at the facility. The diagram shall identify: the relative location of each underground storage tank and fill pipe; the regulated substance stored in each underground storage tank, and the capacity and diameter of each underground storage tank. The fill pipe of each underground storage tank shall be marked or labeled to clearly identify the material stored in that tank.

65. By failing to display a diagram and to identify the used oil tank and fill pipe, C & S violated sections 8-503(a) & (b) of Vermont's Environmental Protection Rules.

66. Under § 8-503(c) of Vermont's Environmental Protection Rules, all spill containment devices required under § 8-406 shall be kept free of liquids and debris; prior to accepting any delivery of regulated substance, the permittee or tank owner shall verify that the spill containment device is free of liquid and debris; any liquid that collects within a spill containment device

during or immediately after a delivery of regulated substance shall be removed prior to departure of the delivery vehicle.

67. By failing to keep the spill buckets for the diesel tanks and used oil tank free of liquids and debris, C & S violated section 8-503(c) of Vermont's Environmental Protection Rules.

68. Under § 8-503(e) of Vermont's Environmental Protection Rules, the permittee or owner of any tank that never receives more than 25 gallons of regulated substance at one time, and never is more than 90 percent full must: measure the level of liquid in the tank to the nearest 1/8 of an inch, and convert that measurement to volume using a tank chart that correspond with the dimensions of the tank being measured; check the volume of liquid in the tank at least once per week or more frequently as necessary to ensure that the volume never exceeds 90 percent of the tank's capacity, and maintain a record in accordance with §§ 8-502(d)

69. By failing to conduct overfill prevention activities as required by § 8-503(e) of Vermont's Environmental Protection Rules, C & S violated § 8-503(e) of Vermont's Environmental Protection Rules.

70. Under § 8-505(f) of Vermont's Environmental Protection Rules, all permittees or tank owners shall maintain a record of release detection monitoring activities in accordance with §§ 8-502(d) and (e). This record shall document: information about the method of release detection used and the specific tank(s) and/or piping being monitored; all monitoring results,

including any indication that a release may have occurred; all calibrations, maintenance and repairs of release detection equipment that is permanently located at the facility, for tank water checks: whether or not water is detected in the tank; if water is detected, the volume of water present in the tank.

71. By failing to provide weekly leak detection for the two diesel USTs that are monitored by the electronic monitoring system, C & S violated § 8-505(f) of Vermont's Environmental Protection Rules.

72. Under § 8-506(b)(1) of Vermont's Environmental Protection Rules, the permittee or tank owner of each category one and category two underground storage tank system shall maintain records in accordance with §§ 8-502(d) and (e) which document the volume of regulated substance in the tank at the beginning and end of each operating day, and the amount of regulated substance added to and/or removed from the tank during that day, and verify that all receipts for deliveries of regulated substance are accurate with respect to the amount of regulated substance added to the tank by measuring the level of liquid in the tank, both before and after the delivery, to the nearest one-eighth of an inch.

73. By failing to maintain inventory records for the diesel tanks, C & S violated § 8-506(b)(1) of Vermont's Environmental Protection Rules.

74. Under § 8-506(c)(1) of Vermont's Environmental Protection Rules, any tank with an interstitial space shall be monitored using one of the following methods: electronic monitoring, manual gauging, or interstitial

monitoring shall be conducted at least weekly.

75. By failing to conduct weekly leak detection monitoring for the 2,000 gallon waste oil tank, C & S violated § 8-506(c)(1) of Vermont's Environmental Protection Rules.

76. Under § 8-507(a)(1) of Vermont's Environmental Protection Rules, any underground piping connected to category one or category two underground storage tanks that routinely contains a regulated substance shall be monitored for a release as follows: piping with secondary containment, and all piping sumps, shall be monitored using interstitial monitoring as specified under subsection (b)(1).

77. By failing to electronically monitor the submersible turbine pump (STP) sumps for the diesel tanks or the visually monitor the used oil piping sump, C & S violated § 8-507(a)(1) of Vermont's Environmental Protection Rules.

78. Under § 8-507(a)(5) of Vermont's Environmental Protection Rules, each automatic line leak detector required for pressurized piping under § 8-405(e) shall be tested in accordance with the manufacturer's recommendations at the time of installation and at least annually thereafter.

79. By failing to conduct the annually required line leak detector testing, C & S violated § 8-507(a)(5) of Vermont's Environmental Protection Rules.

80. Under § 8-509(a) of Vermont's Environmental Protection Rules,

the permittee shall, on a schedule which shall be determined by the Secretary, inspect each category one underground storage tank system for compliance with these rules.

81. By failing to inspect each category one underground storage tank, C & S violated § 8-509(a) of Vermont's Environmental Protection Rules.

82. Under § 8-509(c) of Vermont's Environmental Protection Rules, Permittees shall report the results of inspections conducted pursuant to subsection (a) of this section by completing the "Inspection Report" form provided by the Secretary, signing the form, and submitting the form to the Secretary by an established date.

83. By failing to report the results of inspections by December 31, 2007, C & S violated § 8-509(c) of Vermont's Environmental Protection Rules.

84. Pursuant to 10 V.S.A. § 8221(b)(6), the defendant is potentially liable for civil penalties of not more than \$85,000 for the initial violations of Vermont's Environmental Protection Rules and \$42,500.00 for each day that the violation continues.

DEFENDANT'S RESPONSES TO THE ALLEGED VIOLATIONS

The defendant answers the preceding allegations as follows:

85. C & S admits the allegations set forth in paragraphs 1-84.

86. The State and C & S have agreed to resolve the alleged violations set forth herein through a Stipulation for Entry of Consent Order,

which has been executed by the parties and is being filed in this action together with these Pleadings by Agreement.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

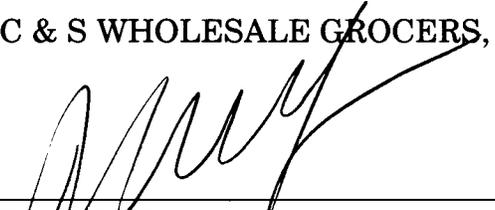
Dated: 6/08/09

By: 

John Beling
Assistant Attorney General
Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

C & S WHOLESALE GROCERS, INC.

Dated: 06/03/09

By: 

Peter D. Van Oot
Downs Rachlin Martin PLLC
P.O. Box 9
28 Vernon Street, Suite 501
Brattleboro, VT 05302-0009