

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. Wncv

STATE OF VERMONT,  
Plaintiff,

v.

VERMONT AGENCY OF NATURAL  
RESOURCES, DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,  
Defendant.

**PLEADINGS BY AGREEMENT**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Defendant Vermont Agency of Natural Resources, Department of Environmental Conservation, hereby submit these Pleadings by Agreement pursuant to Vermont Rule of Civil Procedure 8(g).

**THE STATE'S ALLEGATIONS**

1. The Vermont Attorney General's Office ("AGO") is an office of the State of Vermont located in Montpelier, Vermont.
2. The Vermont Agency of Natural Resources ("ANR" or "the Agency") is a state agency with offices in Waterbury, Vermont. The Department of Environmental Conservation ("DEC") is a department within ANR. The DEC is responsible for the operation of the R.A. LaRosa Environmental Laboratory ("the lab") at the state office complex in Waterbury, Vermont. The lab handles and stores hazardous waste as a part of its day-to-day operations.

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

***Statutory Scheme***

3. The storage and disposal of hazardous waste is regulated through 10 V.S.A., Chapter 159 and the Vermont Hazardous Waste Management Regulations (“HWMR”).

4. Pursuant to Title 10, section 8221, the State may bring an action in superior court to enforce Vermont’s environmental laws. The action shall be brought by the Attorney General in the name of the State.

***Facts relating to Defendant and Allegations***

5. In early January, 2011, the DEC contacted the AGO and reported possible violations by the lab.

6. Certain Agency staff were assigned to report directly to the AGO (“AGO-directed staff”). AGO-directed staff conducted inspections of the lab on January 7, 10 and 14, 2011.

7. During one or more of these inspections, AGO-directed staff found the following:

- a. At the time of the inspections, the lab was a large quantity generator.
- b. Defendant did not make hazardous waste determinations for various containers located at the lab. Furthermore, various solvent-contaminated wastes derived from water and soil sample extractions were routinely disposed down the drain and in the regular trash. The lab failed to determine if these wastes were hazardous.
- c. Numerous containers of hazardous waste were stored at the lab for longer than 90 days. Further, an inventory indicated that some of the hazardous waste had been in storage for at least several years.

- d. The lab's Vermont Hazardous Waste Handler Site ID Form did not accurately describe all waste types and quantities generated by the lab. At the time of the inspections, a lab representative stated that the form was not up-to-date.
- e. At the time of the inspections, the lab had never submitted a biennial report.
- f. No written contingency plan was maintained by the lab.
- g. The lab did not make the necessary arrangements with local authorities for emergency preparedness.
- h. The lab did not provide its employees with the required hazardous waste training.
- i. The lab was not managed to minimize the possibility of fire, explosions or unplanned sudden or non-sudden releases of hazardous waste.
- j. Satellite accumulation areas of hazardous waste were inadequately marked and managed.
- k. Numerous containers of hazardous waste were stored in a short-term storage area without proper labeling or in a manner such that labels were not visible.
- l. Required aisle space was not maintained between the hazardous waste containers stored in the hazardous waste storage room.
- m. An inventory list at the hazardous waste storage area was not accurate because it identified waste that had been shipped in June of 2006.
- n. Daily inspections of the hazardous waste storage room were not being conducted.
- o. A "no smoking" sign was not posted at the hazardous waste storage room.

- p. Numerous containers of hazardous waste at the lab were not properly marked.
- q. A number of hazardous waste containers in a short-term storage room were being stored in a manner that could cause them to rupture or leak.
- r. Containers of incompatible hazardous wastes were stored together in the same cabinet in the hazardous waste storage room.
- s. Despite not having a hazardous waste facility certification from the Secretary of the ANR, the lab stored hazardous waste on-site for longer than 90 days and disposed of various solvent-contaminated down the drain and via the regular trash.
- t. Mercury-containing probes and thermometers were being managed in a fashion that could result in a release to the environment. Further, the mercury-containing probes and thermometers were not being packaged in containers as required.
- u. Mercury-containing probes and thermometers were inadequately labeled or marked.
- v. At the time of inspections, a box of mercury-containing probes was observed in the hazardous waste storage room. An inventory list indicated that a box of probes had been stored in the hazardous waste storage room since December 2007.
- w. Various solvent-contaminated wastes resulting from water and soil sample extractions were routinely disposed of down the drain and via the regular trash.

8. Under sections 7-303 and 7-308(b) of the Vermont Hazardous Waste Management Rules ("HWMR"), any person, including large quantity generators of hazardous waste, who generates a waste shall determine if that waste is a hazardous waste.

9. By failing to determine if wastes located at the lab were hazardous wastes, the Defendant violated HWMR 7-303 and 7-308(b).

10. Pursuant to HWMR 7-308(b)(2)(A) and (B), a large quantity generator must store hazardous waste no longer than 90 days from the date when the waste first started to accumulate or 90 days from the date when the maximum amount allowed under HWMR 7-310 was reached.

11. By storing numerous containers holding hazardous waste longer than 90 days, from the day the waste started to accumulate and/or from the date when the maximum amount allowed was reached, Defendant violated HWMR 7-308(b)(2)(A) and (B).

12. Under HWMR 7-308(b)(3) and 7-304(b), large quantity generators of hazardous waste must maintain an up-to-date Vermont Hazardous Waste Handler Site ID Form and obtain an identification number.

13. Because the Vermont Hazardous Waste Handler Site ID Form on file with the Secretary (of ANR) at the time of the inspections was not up to date, i.e. it did not accurately describe all waste types and quantities generated by the lab, the Defendant violated HWMR 7-308(b)(3) and 7-304(b).

14. HWMR 7-708 requires that large quantity generators submit a biennial report accurately describing the composition, quantity, and destination of each hazardous waste stream generated.

15. By not submitting a biennial report for the lab, the Defendant violated HWMR 7-708.

16. Pursuant to HWMR 7-308(b)(9), large quantity generators must maintain a written contingency plan.

17. Because no contingency plan is maintained by the lab, Defendant violated HWMR 7-308(b)(9).

18. Under HWMR 7-309(a)(4), small and large quantity generators of hazardous materials must make arrangements with local officials for the potential need of the services of such local officials. Refusal of any authorities to enter into such arrangements must be documented.

19. Because the required arrangements for the lab had not been made with local authorities, and because no records were available to document refusal of such arrangements, the Defendant violated HWMR 7-309(a)(4).

20. HWMR 7-308(b)(10) requires that a large quantity generator must maintain a training program for facility personnel.

21. By not providing the required hazardous waste training program to lab personnel, the Defendant violated HWMR 7-308(b)(10).

22. Pursuant to HWMR 7-309(a), 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.

23. Because the lab needed to hire an environmental contractor to treat potentially reactive sodium azide waste solution on-site, under an emergency permit, before

that waste could be transported off-site for proper disposal; because potentially incompatible hazardous wastes were observed stored together in multiple locations; and because glass bottles of ignitable waste solvent were stored on the floor of the hazardous waste storage room within inches of the swing path of the room's metal door, the facility was not maintained and operated to minimize the possibility of fire, explosion or an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents.

Therefore, the Defendant violated HWMR 7-309(a).

24. Under HWMR 7-310(a)(5), (6), (7), and (8), containers located at hazardous waste satellite accumulation areas must be: marked with the words "Hazardous Waste" and other words that identify the contents of the waste; marked with a fill date; managed in accordance with the container management requirements of HWMR 7-311(b)(3) and 7-311(f)(4); and moved to the required short-term storage areas within three (3) days of becoming full.

25. By inadequately marking containers of hazardous waste, storing incompatible hazardous wastes within the same laboratory cabinet and not moving full containers of hazardous waste to the hazardous waste storage room within three (3) days of becoming full at the lab, the Defendant violated HWMR 7-310(a)(5), (6), (7), and (8).

26. Under HWMR 7-311(b)(2), small and large quantity generators must store containers of hazardous materials such that the hazardous waste labeling is visible.

27. Because numerous containers of hazardous waste were stored in a short-term storage area without proper labeling or in a manner such that labels were not visible at the lab, the Defendant violated HWMR 7-311(b)(2).

28. HWMR 7-311(b)(3) requires that aisle space between rows of containers in short-term storage areas 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.

29. By not maintaining the required aisle space between the hazardous waste containers stored in the hazardous waste storage room at the lab, Defendant violated HWMR 7-311(b)(3).

30. Pursuant to HWMR 7-311(d)(1), small and large quantity generators shall maintain a list of all hazardous waste currently in storage at a location apart from the short-term storage area.

31. By including waste that had been shipped in June 2006 on the inventory list current at the time of the inspections and failing to maintain an accurate list, Defendant violated HWMR 7-311(d)(1).

32. HWMR 7-311(d)(2) requires, in part, that small and large quantity generators conduct daily inspections during regular business days of each short-term storage area.

33. By failing to conduct daily inspections of the hazardous waste storage room at the lab, Defendant violated HWMR 7-311(d)(2).

34. Pursuant to HWMR 7-311(e)(2), small and large quantity generators storing ignitable waste must post a "No Smoking" sign at each short-term hazardous waste storage area.

35. By not posting a "No Smoking" sign at the hazardous waste storage room at the lab, Defendant violated HWMR 7-311(e)(2).

36. HWMR 7-311(f)(1) requires that 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.

37. Because the Defendant did not mark numerous containers of hazardous waste at the lab, Defendant violated HWMR 7-311(f)(1).

38. Under HWMR 7-311(f)(4)(B), 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.

39. By storing containers holding hazardous waste in a manner that could cause them to rupture or leak (e.g. multiple four liter glass bottles of waste acetone were stored on the floor in close proximity to swing path of metal door) at the lab, Defendant violated HWMR 7-311(f)(4)(B).

40. HWMR 7-311(f)(4)(C)(iii) requires that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby must be separated from the other such materials.

41. By storing containers of incompatible hazardous waste in the same cabinet at the lab, Defendant violated HWMR 7-311(f)(4)(C)(iii).

42. Under HWMR 7-504(a), facilities that treat, store, dispose or accept any hazardous waste require certification from the Secretary of the ANR.

43. By storing hazardous waste on-site for longer than 90 days and by disposing of solvent-contaminated wastes down the drain and via the regular trash and without proper certification, Defendant violated HWMR 7-504(a).

44. Pursuant to HWMR 7-912(d)(6), small and large quantity generators must manage universal waste mercury-containing devices in a way that prevents releases of any universal waste or component of a universal waste to the environment.

45. By storing mercury-containing probes at the lab in a fashion that could result in a release to the environment, the Defendant violated HWMR 7-912(d)(6).

46. HWMR 7-912(e)(7) requires that containers holding universal waste mercury-containing devices must be labeled or clearly marked with one of the following phrases: "Universal Waste-Mercury Device(s)," or "Waste Mercury Device(s)," or "Used Mercury Device(s)."

47. Because mercury-containing probes and thermometers were observed to not be labeled or marked at the lab as per HWMR 7-912(e)(7), Defendant violated HWMR 7-912(e)(7).

48. Under HWMR 7-912(f)(1), a small or large quantity generator may not accumulate universal waste for longer than one (1) year from the date the universal waste is generated.

49. Because an inventory list and observations during the site investigation indicated that mercury-containing probes had been stored in the hazardous storage room since December 2007 at the lab, Defendant violated HWMR 7-912(f)(1).

50. Pursuant to 10 V.S.A. § 6616, the release of hazardous materials into the surface or groundwater, or onto the land of the state is prohibited.

51. Defendant violated 10 V.S.A. § 6616 by disposing of various solvent-contaminated wastes down the drain and via the regular trash at the lab.

52. In March of 2011, the hazardous waste accumulated at the lab and observed during the inspections was transported by a Vermont-permitted hazardous waste transporter to a permitted hazardous waste treatment, storage, disposal facility.

**DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS**

Defendant answers the preceding allegations as follows:

53. Defendant admits the allegations set forth in paragraphs 1-52.

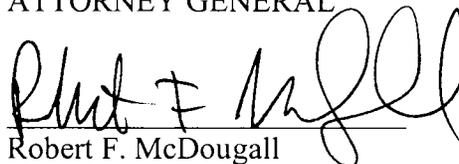
54. The AGO and Defendant have agreed to resolve the violations set forth herein through a Stipulation for Entry of Consent Order, which has been executed by the parties and is being filed in this action together with these Pleadings by Agreement.

DATED at Montpelier, Vermont this 9<sup>th</sup> day of November, 2011.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:

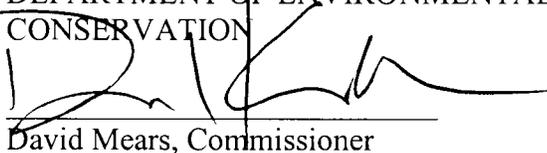


Robert F. McDougall  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
802.828.5506

DATED at Montpelier, Vermont this 9<sup>th</sup> day of November, 2011.

VERMONT AGENCY OF NATURAL RESOURCES,  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

By:

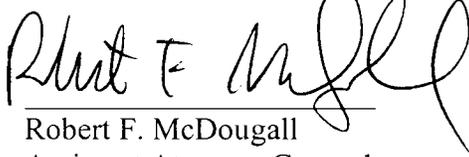


David Mears, Commissioner

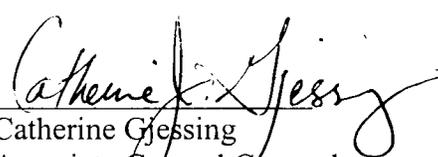
Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

Agency of Natural Resources,  
Department of Environmental Conservation  
103 South Main Street  
Waterbury, Vermont 05676

APPROVED AS TO FORM:



Robert F. McDougall  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, VT 05609



Catherine G. Jessing  
Associate General Counsel  
Agency of Natural Resources  
Department of Environmental Conservation  
103 South Main Street  
Waterbury Vermont 05676

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609