

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.

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties, Plaintiff, the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Defendant, Vermont Agency of Natural Resources (“ANR” or “the Agency”), Department of Environmental Conservation (“DEC”), filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221 and the Court’s inherent equitable powers, it is hereby ADJUDGED and ORDERED as follows:

ADJUDICATION OF HAZARDOUS WASTE MANAGEMENT VIOLATIONS

1. On January 7, 10, and 14, 2011, certain ANR staff, assigned to report directly to the Attorney General’s Office (“AGO-directed staff”), conducted inspections (“the inspections”) of the Agency’s R.A. LaRosa Environmental Laboratory (“the lab”) at the state office complex in Waterbury, Vermont. During the inspections, the

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

Attorney General's Office ("Attorney General") found violations of the following Vermont Hazardous Waste Management Rules and Vermont law:

- Sections 7-303 and 7-308(b) – Hazardous waste determination;
- Sections 7-308(b)(2)(A) and (B) – Storage of hazardous waste;
- Sections 7-308(b)(3) and 7-304(b) – Hazardous Waste Handler Site ID Form;
- Section 7-708 – Biennial report;
- Section 7-308(b)(9) – Written contingency plan;
- Section 7-309(a)(4) – Arrangements with local authorities;
- Section 7-308(b)(10) – Employee training;
- Section 7-309(a) – Preparedness and Prevention;
- Sections 7-310(a)(5), (6), (7), and (8) – Satellite accumulation of hazardous waste;
- Section 7-311(b)(2) – Labeling;
- Section 7-311(b)(3) – Operating standards;
- Section 7-311(d)(1) – Inventory;
- Section 7-311(d)(2) – Inspection;
- Section 7-311(e)(2) – Security (no smoking signage);
- Section 7-311(f)(1) – Marking;
- Section 7-311(f)(4)(B) – Container storage;
- Section 7-311(f)(4)(C)(iii) – Incompatibles/storage;
- Section 7-504(a) – Facility certification;
- Section 7-912(d)(6) – Universal waste – mercury containing devices;

- Section 7-912 (e)(7) – Universal waste – labeling and marking;
 - Section 7-912(f)(1) – Accumulation time limits; and
 - 10 V.S.A. § 6616 – Release of Hazardous Materials.
2. Defendant is adjudged liable for these violations.

PENALTIES

3. For the violations described above, Defendant shall pay a civil penalty of eighty-five thousand dollars (\$85,000.00) and shall also pay thirty thousand dollars (\$30,000.00) to fund a Supplemental Environmental Project (“SEP”).
4. No later than sixty (60) days after the entry of this Consent Order as a Final Judgment Order by the signature of the Court (“effective date of this Order”), payment of the eighty-five thousand dollar (\$85,000.00) civil penalty shall be made to the “State of Vermont” and shall be sent to the Office of the Attorney General at the following address: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
5. Unless otherwise agreed in writing by the parties, the SEP shall be for the purpose of creating a contingency fund managed by the Vermont Solid Waste District Managers Association to be utilized to provide services to stabilize or handle highly hazardous wastes when such waste is collected at a household hazardous waste collection event organized by a local solid waste planning entity. The final plans for the SEP shall be subject to the approval of the Attorney General, and shall be fully funded by Defendant no later than one hundred eighty (180) days following the effective date of this Order.

6. If, at the close of the one hundred eighty (180) consecutive calendar days, any of the thirty thousand dollars (\$30,000.00) allocated for the SEP has not been funded by Defendants, that unfunded amount shall be converted to a civil penalty and shall be immediately due and payable to the State of Vermont.
7. Defendant agrees that in the event Defendant publishes by any means, directly or indirectly, the identity or result of the SEP Defendant has funded, Defendant shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Attorney General.
8. Failure to make any penalty payment as required by paragraphs 3 and 4, including any portions of the SEP funds which are converted to civil penalties as described in paragraph 6, shall constitute a breach of this Consent Order, and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, provided however, that Defendant shall have a 10 day grace period to cure any late payment.

INJUNCTIVE RELIEF

9. Due to the flooding of the lab following Tropical Storm Irene in August of 2011, the lab has been displaced and at the time of filing has not been relocated to a permanent location.
10. During its displacement, the lab expects to operate at the University of Vermont (“UVM”). If the lab operates at UVM during this interim period, the lab shall comply with all approved laboratory management practices and procedures being implemented by UVM and incorporated by reference in HWMR 7-109(c). Defendant shall provide a copy of the approved laboratory management practices and procedures being implemented at UVM to the Attorney General. In the event

the lab operates at a location other than UVM, Defendant shall notify the Attorney General and provide written management practices and procedures of that location for review prior to operation at that location. Defendant shall implement the written management practices and procedures as modified and approved by the Attorney General and AGO-directed staff.

11. Defendant shall notify the Attorney General in writing when a date certain is determined for moving the lab to a permanent location and shall provide the address for the permanent location.
12. No later than thirty (30) days prior to the commencement of lab operations at the permanent location, Defendant shall submit a Compliance Plan for the lab to the Attorney General for approval. The Compliance Plan shall be sent to the Attorney General at the address listed in paragraph 4. Defendant will implement the Compliance Plan as modified and approved by the Attorney General and AGO-directed staff prior to the commencement of lab operations at the permanent location.
13. The Compliance Plan shall, *inter alia*, include the following:
 - Identification of all waste-generating processes;
 - Identification of possible Pollution Prevention opportunities;
 - Revision of “Hazardous Waste Handler Site ID Form” as necessary;
 - Identification of employees responsible for hazardous waste management (DEC lab, other DEC Program labs);
 - Identification of all satellite accumulation areas, personnel responsible for management;
 - Creation of a plan for managing unused (and no longer needed) lab chemicals (in labs and chemical stockroom);
 - Clarification of responsibilities for managing labs/rooms operated by other DEC programs (e.g., APCD, WQ, WW);
 - Establishment of a regular waste shipment schedule with transporter (to ensure that storage time limits are not exceeded);
 - Development of a protocol for moving waste to short-term storage room (by DEC lab, other DEC Program labs);

- Development of a short-term storage room inventory and inspection forms and identify person(s) responsible for completing;
- Development of a drain disposal policy (working w/ municipality);
- Establishment of a sufficient training plan/schedule for employees; and
- Creation/establishment of necessary contingency plan(s).

14. Upon relocation of the lab to a permanent location, Defendant shall hire an independent contractor to review the hazardous waste practices of the lab. The identity of the independent contractor shall be subject to the approval of the Attorney General. The independent contractor shall review the hazardous waste practices of the lab to ensure that such practices are consistent with the Vermont Hazardous Waste Management Rules. The results of the independent contractor's review shall be simultaneously reported to Defendant and the Attorney General. Defendant shall submit a proposed independent contractor to the Attorney General for approval no later than thirty (30) days from the identification of the permanent location as provided in paragraph 11 above.

15. The independent contractor hired by Defendant pursuant to paragraph 14 shall perform additional bi-annual reviews of the hazardous waste practices of the lab for two (2) years after the date that the lab moves to a permanent location. The results of these reviews shall also be simultaneously reported to Defendant, the Attorney General, and AGO-directed staff. In the event that Defendant wishes to hire a different independent contractor than the one approved pursuant to paragraph 14, it shall be responsible for submitting the name of a new proposed independent contractor to the Attorney General for approval no later than thirty (30) days prior to the bi-annual review.

16. In addition, Defendant also agrees to prepare and submit quarterly reports for the two (2) years after the date that the lab moves to a permanent location, to the Attorney General and AGO-directed staff that summarize information about wastes generated (identifying waste-generating activity, waste types, description, applicable hazardous waste codes, quantity generated per month, etc.).

OTHER PROVISIONS

17. Defendant hereby waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendants under Paragraphs 3 through 16 of this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont or the Attorney General.
18. This Consent Order is binding upon Defendant and its successors and assigns.
19. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.
20. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.
21. Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.
22. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendant.

23. This Consent Order may be altered, amended, or otherwise modified only by written agreements signed by the parties hereto or their legal representatives and incorporated into an order issued by the Vermont Superior Court, Civil Division, Washington Unit. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.
24. Defendants shall not be liable for additional civil penalties with respect to the specific facts described herein or in the Complaint or Stipulation for the Entry of Consent Order and Final Judgment Order occurring before the effective date of the Order provided that Defendant fully comply with the terms of the Consent Order set forth above.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Montpelier, Vermont this ___ day of _____, 2011.

Hon. Michael S. Kupersmith
Vermont Superior Court Judge
Civil Division, Washington Unit

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