

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. _____

STATE OF VERMONT, AGENCY)
 OF NATURAL RESOURCES,)
)
 Plaintiff,)
)
 v.)
)
)
 VERMONT RAILWAY, 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, Vermont Railway, Inc., 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 ("ANR"), is a state agency with offices in Waterbury, Vermont.
2. Vermont Railway, Inc. ("Vermont Railway" or "Defendant"), is a corporation organized under the laws of Vermont with its principal place of business in Burlington. Vermont Railway owns and operates a rail system

which includes yards located in the City of Burlington, Chittenden County, Vermont (“the Burlington facility”) and the City of Rutland, Rutland County, Vermont (“the Rutland facility”).

3. ANR conducted inspections of the Burlington facility on July 15 and 30, 2008.

4. During the July 15 and 30, 2008 inspections conducted at the Burlington facility, ANR found the following:

- a. The contingency plan that was being maintained by Vermont Railway did not meet the requirements of the Vermont Hazardous Waste Management Regulations;
- b. Vermont Railway did not maintain a hazardous waste training program for facility personnel;
- c. Not all drums containing hazardous wastes were labeled with the words “Hazardous Waste”;
- d. During the July 15, 2008 inspection, the outdoor short-term storage area used to store hazardous waste was not equipped with required spill and fire control equipment;
- e. Inventories of hazardous waste stored in the short-term storage areas were not accurate;
- f. Documentation of daily inspections of hazardous waste stored in the short-term storage areas was not up-to-date;
- g. Not all drums containing hazardous wastes were dated correctly;
- h. During the July 15, 2008 inspection, aboveground storage tanks holding used oil were not marked with the words “Used Oil”;
- i. Six boxes of waste lamps were not closed or stored in a manner to prevent breakage; and
- j. Vermont Railway was not able to demonstrate the length of time that the six boxes of waste lamps had been accumulating on-site;

5. ANR conducted inspections of the Rutland facility on June 25 and July 2, 2008.

6. During the June 25 and July 2, 2008 inspections conducted at the Rutland facility, ANR found the following:

- a. Numerous containers at various locations were described by Vermont Railway representatives as holding unknown waste material, showing that Vermont Railway failed to determine if the waste material in those containers was hazardous waste;
- b. Numerous containers of hazardous waste were stored in boxcars for longer than 90 days, and subsequent communication with Vermont Railway representatives indicates that these containers of waste material may have been stored in the boxcars since the 1960s;
- c. No contingency plan was being maintained by Vermont Railway for the Rutland facility;
- d. Vermont Railway did not maintain a hazardous waste training program for facility personnel;
- e. Boxcars used to store hazardous waste were not equipped with required preparedness and prevention equipment;
- f. The required preparedness and prevention arrangements had not been made with local authorities and no records were shown documenting that such arrangements had been refused by local authorities;
- g. Hazardous wastes were observed being stored on the ground and on surfaces that were not impervious;
- h. Hazardous waste containers were observed being stored out-of-doors and not within a structure that sheds rain and snow;
- i. Spill and fire control equipment were not available at either of the two boxcars being used to store hazardous wastes;
- j. Required aisle space was not maintained between the hazardous waste containers stored in the two boxcars;
- k. No inventory of hazardous waste stored in the two boxcars was maintained;

- l. Daily inspections of the boxcars used to store hazardous waste were not being conducted;
- m. "Danger - Hazardous Waste Storage Area - Authorized Personnel Only" signs were not posted at the boxcars being used to store hazardous waste;
- n. "No Smoking" signs were not posted at the boxcars being used to store hazardous waste;
- o. Numerous hazardous waste containers were not properly marked;
- p. A number of hazardous waste containers were stored in a manner that could cause them to rupture or leak;
- q. Although Vermont Railway had stored hazardous waste on-site for longer than 90 days, Vermont Railway had not obtained a hazardous waste storage facility certification from ANR;
- r. Vermont Railway did not maintain copies of signed manifests for at least three years from the date of initial shipment or until receipt of a completed copy at the Rutland facility;
- s. Vermont Railway did not have a system in place to determine if completed manifests were received within 35 days of the original shipment from the Rutland facility; and
- t. Numerous containers of used oil were not closed, managed in a manner to prevent a release, marked, stored on an impervious surface, stored within a structure that sheds rain or snow, or protected from freezing.

Burlington Facility

7. Vermont Railway's Burlington facility is a large quantity generator within the meaning of Vermont's Environmental Protection Rules.

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

9. By failing to maintain a written contingency plan as required by the Vermont Hazardous Waste Management Regulations at the Burlington facility, Vermont Railway violated section 7-308(b)(9) of Vermont's Environmental Protection Rules.

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

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

12. Under section 7-310(b)(1)(A)(iv) of Vermont's Environmental Protection Rules, small and large quantity generators may accumulate as much as one cubic yard of non-liquid hazardous waste that is 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 in a short-term storage area without obtaining certification as a storage facility, provided that the waste is brought directly from the point of generation to the short-term storage area by the end of each work shift (not to exceed 12 hours), and the waste has been collected in a shift accumulation container that is marked or labeled with the words "hazardous waste" and other words that identify the contents of the container.

13. By failing to label all drums containing hazardous wastes with the

words “hazardous waste” at the Burlington facility, Vermont Railway violated section 7-310(b)(1)(A)(iv) of Vermont’s Environmental Protection Rules.

14. Under section 7-311(a)(5) of Vermont’s Environmental Protection Rules, the spill and fire control equipment required under section 7-309(a)(1)(A) and (C) shall be available in the immediate vicinity of each short-term storage area.

15. By failing to place spill and fire control equipment in the immediate vicinity of each short-term storage area at the Burlington facility, Vermont Railway violated section 7-311(a)(5) of Vermont’s Environmental Protection Rules.

16. Under section 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.

17. By failing to maintain, at a location apart from the short-term storage area, a list of all hazardous waste currently in storage at the Burlington facility, Vermont Railway violated section 7-311(d)(1) of Vermont’s Environmental Protection Rules.

18. Under section 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. The inspections shall be recorded in a log that is kept at the facility for at least three years.

19. By failing to keep an up-to-date log of daily inspections of each short-term storage area at the Burlington facility, Vermont Railway violated section 7-311(d)(2) of Vermont's Environmental Protection Rules.

20. Under section 7-311(f)(1) of Vermont's Environmental Protection Rules, with the exception of satellite accumulation containers managed in accordance with section 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."

21. By failing to properly mark containers and packages used for the storage of hazardous waste at the Burlington facility, Vermont Railway violated section 7-311(f)(1) of Vermont's Environmental Protection Rules.

22. Under section 7-806(d)(2) of Vermont's Environmental Protection Rules, above-ground storage tanks holding used oil shall be clearly marked with

the words "Used Oil."

23. By failing to mark above-ground storage tanks holding used oil at the Burlington facility, Vermont Railway violated section 7-806(d)(2) of Vermont's Environmental Protection Rules.

24. Under section 7-912(d)(5)(A)(i-ii) of Vermont's Environmental Protection Rules, both small and large quantity handlers must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

25. By failing to manage universal waste lamps at the Burlington facility in a way that prevents releases of any universal waste or component of a universal waste to the environment, Vermont Railway violated section 7-912(d)(5)(A)(i-ii) of Vermont's Environmental Protection Rules.

26. Under section 7-912(f)(3) of Vermont's Environmental Protection Rules, a small or large quantity handler who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

27. By failing to date the universal waste lamps in storage at the Burlington facility, Vermont Railway violated section 7-912(f)(3) of Vermont's Environmental Protection Rules.

Rutland Facility

28. Vermont Railway's Rutland facility is a large quantity generator within the meaning of Vermont's Environmental Protection Rules.

29. 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.

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

31. 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.

32. By storing hazardous waste longer than 90 days at the Rutland facility, Vermont Railway violated section 7-308(b)(2) of Vermont's Environmental Protection Rules.

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

34. By failing to maintain a written contingency plan at its Rutland facility, Vermont Railway violated section 7-308(b)(9) of Vermont's Environmental Protection Rules.

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

36. By failing to maintain a training program for Rutland facility personnel, Vermont Railway violated section 7-308(b)(10) of Vermont's

Environmental Protection Rules.

37. Under section 7-309(a)(1) 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.

38. By failing to maintain and operate the Rutland facility 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, including the failure to maintain required preparedness and prevention equipment, Vermont Railway violated section 7-309(a)(1) of Vermont's Environmental Protection Rules.

39. 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. Refusal of any authorities to enter into such arrangements must be documented.

40. By failing to make preparedness and prevention arrangements with local authorities at the Rutland facility or document the refusal of local authorities to do so, Vermont Railway violated section 7-309(a)(4) of Vermont's Environmental Protection Rules.

41. Under section 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.

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

43. Under section 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.

44. By storing hazardous wastes outside of structures at the Rutland facility, Vermont Railway violated section 7-311(a)(2) of Vermont's Environmental Protection Rules.

45. Under section 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.

46. By storing hazardous wastes in two boxcars without spill and fire control equipment in the immediate vicinity of each of those short-term storage areas at the Rutland facility, Vermont Railway violated section 7-311(a)(5) of Vermont's Environmental Protection Rules.

47. Under section 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.

48. By failing to maintain required aisle space between hazardous waste containers in the two boxcars at the Rutland facility, Vermont Railway violated section 7-311(b)(3) of Vermont's Environmental Protection Rules.

49. Under section 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.

50. By failing to maintain inventory of hazardous waste in storage in the two boxcars serving as short-term storage areas at the Rutland facility, Vermont Railway violated section 7-311(d)(1) of Vermont's Environmental Protection Rules.

51. Under section 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.

52. By failing to conduct daily inspections of the two boxcars serving as short-term storage areas at the Rutland facility during regular business days,

Vermont Railway violated section 7-311(d)(2) of Vermont's Environmental Protection Rules.

53. Under section 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."

54. By failing to post a sign with the legend "Danger-Hazardous Waste Storage Area-Authorized Personnel Only" at each of the two boxcars serving as short-term hazardous waste storage areas at the Rutland facility, Vermont Railway violated section 7-311(e)(1) of Vermont's Environmental Protection Rules.

55. Under section 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."

56. By failing to post a sign with the legend, "No Smoking" at each of the two boxcars serving as short-term hazardous waste storage areas with ignitable waste at the Rutland facility, Vermont Railway violated section 7-311(e)(2) of Vermont's Environmental Protection Rules.

57. Under section 7-311(f)(1) of Vermont's Environmental Protection Rules, with the exception of satellite accumulation containers managed in

accordance with section 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."

58. By failing to properly mark containers and packages used for the storage of hazardous wastes at the Rutland facility, Vermont Railway violated section 7-311(f)(1) of Vermont's Environmental Protection Rules.

59. Under section 7-311(f)(4)(B) of Vermont's Environmental Protection Rules, 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.

60. By using containers that were stored in a manner that may rupture the container or cause it to leak at the Rutland facility, Vermont Railway violated section 7-311(f)(4)(B) of Vermont's Environmental Protection Rules.

61. Under section 7-504(a) of Vermont's Environmental Protection Rules, certification from ANR is required to treat, store, dispose, or accept any

hazardous waste for over 90 days.

62. By failing to obtain certification from ANR to treat, store, dispose, or accept any hazardous waste for over 90 days at the Rutland facility, Vermont Railway violated section 7-504(a) of Vermont's Environmental Protection Rules.

63. Under section 7-702(b)(5) and (9) of Vermont's Environmental Protection Rules, any generator who transports or offers for transport hazardous waste to a designated facility using a manifest shall (1) 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, and (2) determine whether completed manifests are returned within 35 days of shipment from the Rutland facility, and investigate those that are not pursuant to section 7-707 of Vermont's Environmental Protection Rules.

64. By failing to retain signed copies of manifests for at least three years from the date of initial shipment or until receipt of a completed copy at the Rutland facility, and by failing to have a system in place to determine if completed manifests were received within 35 days of the original shipment from the Rutland facility, Vermont Railway violated section 7-702(b)(5) and (9) of Vermont's Environmental Protection Rules.

65. Under section 7-806(b)(1), (2) & (5 – 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.

66. By storing used oil in containers that were not: closed, managed in a manner to prevent a release, marked, stored on an impervious surface, within a structure that sheds rain or snow, or protected from freezing at the Rutland facility, Vermont Railway violated section 7-806(b)(1), (2) & (5 – 8) of Vermont's Environmental Protection Rules.

67. Pursuant to 10 V.S.A. § 8221(b)(6), Vermont Railway is potentially liable for civil penalties as follows:

a) not more than \$50,000 for the initial violations of Vermont's Environmental Protection Rules and not more than \$25,000 for each day that the violation continues for violations prior to July 1, 2008; and

b) not more than \$85,000 for the initial violations of Vermont's Environmental Protection Rules and not more than \$42,500 for each day

that the violation continues for violations on or after July 1, 2008.

DEFENDANT'S RESPONSES TO THE ALLEGED VIOLATIONS

The Defendant answers the preceding allegations as follows:

68. Vermont Railway admits the allegations set forth in paragraphs 1 through 67 of this Pleadings by Agreement.

RESOLUTION OF VIOLATIONS BY PLAINTIFF AND DEFENDANT

69. ANR and Vermont Railway 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 this Pleadings by Agreement.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

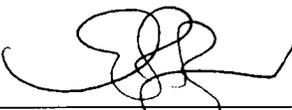
Dated: 10/29/10

By: 

Paul R. Brierre
Assistant Attorney General
Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

VERMONT RAILWAY, INC.

Dated: 10/28/10

By: 

Eric R. Benson, Esq.
Vermont Railway, Inc.
One Railway Lane
Burlington, VT 05401

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