

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. Wncv

STATE OF VERMONT,)
Plaintiff,)
)
v.)
)
)
COUNTY WASTE AND RECYCLING)
SERVICE, INC., doing business as)
ACE CARTING,)
Defendant.)

PLEADINGS BY AGREEMENT

Plaintiff, State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant County Waste and Recycling Service, Inc., d/b/a Ace Carting ("Defendant"), hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

THE STATE'S ALLEGATIONS

The Parties

1. The Vermont Agency of Natural Resources (Agency) is an agency of the State of Vermont with enforcement authority over environmental permitting requirements including the requirement in 10 V.S.A. § 6607a(a) that commercial waste haulers obtain a permit before transporting waste. 10 V.S.A. § 8221(a) requires Agency civil enforcement actions to be "brought by the Attorney General in the name of the State."

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2. The Vermont Attorney General represents the State of Vermont in civil causes “in which the State is a party or is interested when, in his or her judgment, the interests of the State so require,” including for violations of 32 V.S.A. § 5954(b), which requires commercial waste haulers to file copies of their quarterly franchise tax returns with the Agency. 3 V.S.A. § 157.
3. County Waste and Recycling Service, Inc., doing business as Ace Carting, is a State of New York foreign profit corporation transacting its waste hauling business in this State of Vermont. County Waste is registered as a solid waste removal business in the State of Vermont.

Statutory and Regulatory Structure

Title 10

4. Title 10, Chapter 159 of the Vermont Statutes grants the Agency of Natural Resources authority to regulate solid waste, hazardous waste, and hazardous materials.
5. Title 10 section 6607a(a) states as follows:

A commercial hauler desiring to transport waste within the State shall apply to the Secretary for a permit to do so, by submitting an application on a form prepared for this purpose by the Secretary and by submitting the disclosure statement described in section 6605f of this title. These permits shall have a duration of five years and shall be renewed annually. The application shall indicate the nature of the waste to be hauled. The Secretary may specify conditions that the Secretary deems necessary to assure compliance with State law.
6. Title 10 section 6607a(b)(1)(B) defines “[c]ommercial hauler” to include “any person that transports solid waste for compensation in a vehicle.”

7. Title 10 section 6607a(d) declares it “unlawful for any person to operate a motor vehicle subject to the provisions of this section upon any public highway in the State without first obtaining the permit from the Secretary, or to so operate without having in the vehicle a permit issued under this section.”
8. Pursuant to Title 10 section 8221, the Agency, through the Attorney General, may bring an action in superior court to enforce Vermont’s environmental laws, including violations of Chapter 159.

Title 32

9. Title 32, Subchapter 13 of the Vermont Statutes sets forth the franchise tax requirements on waste facilities and commercial haulers of solid waste.
10. Title 32 section 5952(3) regarding the quarterly “\$6.00 per ton of waste delivered”¹ franchise tax imposed by the State of Vermont provides:

(3) The tax shall be similarly imposed on waste shipped to an incinerator or other treatment facility or disposal facility that is located outside the State, without having been delivered to a transfer station located in this State. In this situation, the tax is imposed for each calendar quarter or part thereof upon the franchise or privilege of doing business of every person regulated under 10 V.S.A. § 6607a as a commercial hauler of solid waste. This tax shall not be imposed on waste exempt under subdivision (2) of this subsection.

¹ 32 V.S.A. § 5952(a)(1) states, “[a] tax is imposed for each calendar quarter or part thereof upon the franchise or privilege of doing business of every person required by 10 V.S.A. chapter 159 to obtain certification for a facility. The tax shall be imposed in the amount of \$6.00 per ton of waste delivered for disposal or incineration at the facility, regardless of the amount charged by the operator to recoup its expenses of operation, including the expense of this tax.”

11. Title 32 section 5954(b) regarding the quarterly filing of the return requires that “[c]opies of this return shall be filed with the Secretary of Natural Resources at the same time, or as otherwise required by the Secretary.”
12. Pursuant to Title 3 section 157, the Attorney General may appear for the State in civil causes “in which the State is a party or is interested when, in his or her judgment, the interests of the State so require,” including for violations of Title 32.

Factual Allegations

13. Defendant hauls solid waste and recyclables through and from Vermont.
14. In 2016 and the years prior, Defendant transported solid waste and recyclables throughout the State of Vermont without a commercial waste hauling permit from the State.
15. On March 3, 2016, the Vermont Agency of Natural Resource’s Solid Waste Compliance Chief, Barb Schwendtner, mailed a postcard titled, “Are you hauling waste in VT without a permit?” to Defendant with instructions for filing an application for a permit. The State did not receive a response to its postcard or an application from Defendant.
16. On July 20, 2016, Ms. Schwendtner conducted unrelated fieldwork from Fair Haven to Rupert, Vermont, and observed numerous of Defendant’s garbage toters and dumpsters throughout the area.

17. On July 22, 2016, the Agency issued a Notice of Alleged Violation to Defendant for transporting waste in Vermont without a permit.
18. On July 27, 2016, Defendant submitted to the State its commercial hauler application for a permit to transport waste throughout the State of Vermont. The State issued this permit on November 7, 2016, covering Defendant's vehicles hauling solid waste and recyclables throughout Vermont.
19. By letter dated August 30, 2016, in response to the Notice of Alleged Violation, Defendant indicated it had filed quarterly franchise tax forms and paid the related fees to the State of Vermont Department of Taxes since 2012. Defendant failed to file copies of these quarterly returns with the Vermont Agency of Natural Resources as required.
20. In September 2016, Defendant provided the State with access to its 2012-2016 franchise tax returns showing total waste tonnages for that timeframe.
21. By filing quarterly franchise tax forms and paying related fees, Defendant demonstrated it had been transporting solid waste in Vermont since 2012 without the required permit from the Agency.
22. No permit authorizing Defendant's transportation of solid waste was issued by the State to Defendant prior to November 7, 2016.

Violations

23. Defendant in January 2012 and continuing through December 2012 violated 10 V.S.A. § 6607a by transporting, without a permit from the State, solid waste in motor vehicles throughout the State of Vermont.
24. Defendant in January 2013 and continuing through December 2013 violated 10 V.S.A. § 6607a by transporting, without a permit from the State, solid waste in motor vehicles throughout the State of Vermont.
25. Defendant in January 2014 and continuing through December 2014 violated 10 V.S.A. § 6607a by transporting, without a permit from the State, solid waste in motor vehicles throughout the State of Vermont.
26. Defendant in January 2015 and continuing through December 2015 violated 10 V.S.A. § 6607a by transporting, without a permit from the State, solid waste in motor vehicles throughout the State of Vermont.
27. Defendant in January 2016 and continuing through November 2016 violated 10 V.S.A. § 6607a by transporting, without a permit from the State, solid waste in motor vehicles throughout the State of Vermont.
28. Defendant from the first quarter of 2012 continuing until the last quarter of 2016 violated 32 V.S.A. § 5954(b) by failing to file copies of its quarterly franchise tax returns with the Vermont Agency of Natural Resources.

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS


Defendant answers the preceding allegations as follows:

29. Defendant admits the factual allegations set forth in paragraphs 1-3 and 13-22 solely for purposes of resolving this case.
30. Without formally admitting or denying liability, Defendant agrees to this settlement of the above violations alleged in paragraphs 23-28 in order to resolve this case.
31. Defendant agrees that each of the violations alleged in paragraphs 23-28 above is deemed proven and established as a "prior violation" in any future State proceeding considering Defendant's compliance record, as well as the compliance record in Vermont of any and all of Defendant's successors, assigns, and affiliated companies, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

DATED at Montpelier, Vermont, this 6th day of February, 2018.

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:


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DATED at Rochester, New York, this 2nd day of February, 2018.

COUNTY WASTE AND RECYCLING
SERVICE, INC. d/b/a ACE CARTING

By: 

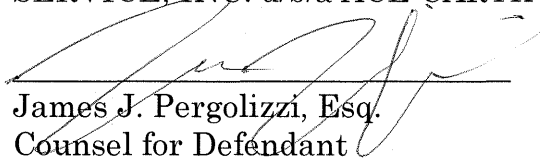
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DATED at Rochester, New York, this 2nd day of February, 2018.

COUNTY WASTE AND RECYCLING
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