

STATE OF VERMONT

**SUPERIOR COURT
ADDISON UNIT**

**CIVIL DIVISION
CASE NO.**

STATE OF VERMONT, AGENCY)
OF NATURAL RESOURCES,)
Plaintiff,)
)
v.)
)
GREEN MOUNTAIN POWER)
CORPORATION,)
Defendant.)

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties’ filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties’ Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, 3 V.S.A. § 157, and the Court’s inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

VIOLATIONS

1. The State of Vermont has alleged violations of 10 V.S.A. § 1259 and Lake Encroachment Permit #3353-LEP, as set forth in paragraphs 36 and 37 of the parties’ Pleadings by Agreement. Green Mountain Power Corporation (GMP) admits the factual allegations set forth in paragraphs 1 through 35 of the Pleadings by Agreement solely for purposes of resolving this case. GMP neither admits nor denies liability for the alleged violations but agrees to the entry of this Consent Order and Final Judgment Order (Consent Order) to resolve this matter. GMP agrees that the violations alleged in paragraphs 36 and 37 of the Pleadings by Agreement are deemed proven and established as a “prior violation” in any future State proceeding considering GMP’s

compliance record, including but not limited to permit proceedings and enforcement actions for penalties calculated pursuant to 10 V.S.A. § 8010.

RELIEF

2. GMP shall pay a civil penalty for the violations described above in the amount of fifty-seven thousand dollars (\$57,000).
3. GMP shall pay the civil penalty within thirty (30) days of the Court's entry of this Consent Order, through the Office of the Vermont Attorney General's online payment portal <https://appengine.egov.com/apps/vt/ago/onlinepayment> or by check payable to the "State of Vermont" and sent to: Melanie Kehne, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. If the State receives payment by check before the Court approves the Consent Order, the State shall hold the check(s) in security and not deposit until Court approval. If the Court rejects the Consent Order, the State shall return the check(s) to GMP.
4. If GMP fails to pay the penalty as set forth in the preceding paragraphs, such failure shall constitute a breach of this Consent Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. GMP shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.
5. GMP shall take the following remedial actions:
 - a. Plan and implement up to two sediment removal projects at GMP's Diversion Dam.
 - i. Within 120 days of the Court's entry of this Consent Order, GMP shall submit to ANR for review and approval a plan for up to two sediment removal projects to be conducted at the Diversion Dam, to include:
 - A. Removal of sediment from the Diversion Dam impoundment area using conventional excavation equipment; and
 - B. Establishing bypass flows from Sucker and Dutton Brooks around the work area via sandbags and pumps or gravity pipes, and installing

turbidity curtain, stone-check dams, silt fence, and/or filter-fabric to mitigate downstream releases of sediment.

- ii. The sediment removal project plans shall be subject to review and approval by Federal Energy Regulatory Commission (FERC), the U.S. Forest Service (USFS) and ANR. After such approval GMP shall apply for and obtain all other necessary regulatory approvals, including from, United States Army Corps of Engineers, and ANR. GMP shall provide notice to ANR of the last regulatory approval, including its date.
 - iii. In the event that ANR rejects a proposed plan, GMP shall revise the plan as directed and submit a revised plan to ANR no later than thirty (30) consecutive calendar days following any rejection, repeating the process as needed until the plan is approved.
 - iv. The first sediment removal project shall be completed within one year of receiving all such approvals. The sediment removal project(s) shall occur between July 1 and September 30, unless otherwise specified by ANR.
 - v. Following completion of the first sediment removal project, ANR may require a second sediment removal project if ANR in its sole discretion deems it to be necessary, after field observations to be conducted by ANR, GMP, FERC, and USFS (to the extent the USFS and FERC wish to participate), If required, the second sediment removal project shall be completed within two years after the first project sediment removal project, and Paragraphs (ii) – (iv) above shall apply.
- b. Plan and implement two high-flow sediment flushing events at Goshen Dam.
- i. Within sixty (60) days of the Court's entry of this Consent Order, GMP shall submit to ANR for review and approval a plan for two high-flow flushing events to redistribute sediment deposited in Sucker Brook, from the Goshen Dam outflow to Diversion Dam.
 - A. The plan shall include but not be limited to the rate and duration of each flushing event, taking into account downstream public safety, brook-channel dynamics, and the volume of water available in the reservoir.

- B. For the first event, GMP shall release at the maximum rate ANR approves, considering the recommendations of GMP's consultants and its engineer of record, and natural resource considerations including avoiding channel and/or bank erosion, and subject to FERC guidance on conduit safety. If feasible, the first flushing flow shall occur following the first removal of sediment from the Diversion Dam and in the same calendar year, between April 1 and May 31, unless otherwise specified by ANR.
- C. The second event shall occur:
1. Within four months of the first event if FERC approves a rate of 157 cubic feet per second (cfs), subject to the same process as the first event (see section b.i above). If the second event cannot be completed within four months of the first flushing event, then GMP shall complete the second event in calendar year 2025 with the rate to be set in the same manner, between April 1 and May 31, unless otherwise specified by ANR; or
 2. Within two years of the first event if FERC has approved a rate lower than 157 cfs, subject to the same process as the first event (see section b.i above). If feasible, the second event shall occur between April 1 and May 31 in calendar year 2025, unless otherwise specified by ANR.
- ii. GMP's plan for the sediment flushing events shall be subject to ANR review and approval, and shall obtain all necessary regulatory approvals, including from FERC and ANR.
 - iii. In the event that ANR rejects a proposed plan, GMP shall revise the plan as directed and submit a revised plan to ANR no later than thirty (30) consecutive calendar days following any rejection, repeating the process as needed until the plan is approved.

OTHER PROVISIONS

6. GMP waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon GMP under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.
7. This Consent Order is binding upon GMP and its successors and assigns. Any change in GMP's ownership, corporate, or other legal status, including but not limited to any transfer of assets, shall in no way alter the responsibilities of GMP or its successors and assigns under this Consent Order.
8. 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.
9. 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 final.
10. Any violation of this Consent Order shall be deemed 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 Title 10, Chapters 201 and 211.
11. The State of Vermont and this Court reserves continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the specific facts described in the Pleadings by Agreement and in the Stipulation for the Entry of Consent Order and Final Judgment Order.
12. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected GMP's obligations to comply with all other applicable federal, state, or local statutes, regulations, permits, or directives.
13. This Consent Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties hereto, or their legal representatives, and approved by this Court. Any 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.

14. GMP shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of this Consent Order, provided that GMP fully complies with the terms of this Consent Order.
15. The Court hereby finds, based on the representations of the parties, that the parties have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable, and in the State of Vermont's interest.
16. The Court hereby enters this Consent Order as an Order of the Court and Final Judgment in this case.

SO ORDERED and ENTERED as FINAL JUDGMENT.

DATED at Middlebury , Vermont, this 20th day of September, 2023.



David R. Fenster
Superior Court Judge, Civil Division, Addison Unit