

STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CIVIL DIVISION
Docket No. 21-CV-00886

STATE OF VERMONT, AGENCY
OF NATURAL RESOURCES
Plaintiff,

v.

JACQUELINE DESMARAIS and
447 HORSESHOE ROAD, LLC,
Defendants.

FINAL JUDGMENT ORDER

The parties in this matter have filed a Stipulation for the Entry of Final Judgment Order, and pursuant to 10 V.S.A. § 8221 and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

PENALTIES

1. For the violations described above, Defendants shall pay a civil penalty of twenty-six thousand two hundred fifty dollars (\$26,250) as follows:
 - a. Defendants shall pay \$2,250 no later than fourteen (14) days after this Order is issued.
 - b. Defendants shall pay the remaining \$24,000 in monthly payments of \$1,000 per month for 24 months, with the first such payment due no later than thirty (30) days after the date this Order is issued, and subsequent payments due the last day of each month.

2. The civil penalty payments required by this Order shall be made online through the Office of the Vermont Attorney General's payment portal at:

<https://appengine.egov.com/apps/vt/ago/onlinepayment>.

3. If Defendants fail to make any payment as set forth in the preceding paragraphs, such failure shall constitute a breach of this Final Judgment Order, the entire unpaid balance shall become due immediately, and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, beginning the first day after the payment becomes due. Defendants shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

4. Defendants are jointly and severally liable for the civil penalty obligations under this Final Judgment Order.

CORRECTIVE ACTIONS

5. Within thirty (30) days of the date this Order is issued, Defendant 447 Horseshoe Road, LLC shall submit to ANR proof of proper disposal of all vehicles, junk, scrap, and other materials removed from 447 Horseshoe Road (the Property) to date (disposal slips, scale receipts, etc.), and the complete Phase I Environmental Assessment report for the Property.

6. Within thirty (30) days of the date this Order is issued, Defendant 447 Horseshoe Road, LLC shall:

- a. Apply for a Certificate of Approved Location (COAL) from the Town of Berkshire for the salvage yard, and submit a complete application for a

Salvage Yard Permit to ANR within 15 days of COAL issuance, or

- b. Cease all salvage yard operations immediately and submit a cleanup and remediation plan to ANR for review and approval. The plan must provide for complete removal and lawful disposal of all junk, junk motor vehicles, and related fluids and materials within two years. The plan may include use of a mobile crusher in accordance with 24 V.S.A. §2248(d). Defendant shall complete the cleanup in accordance with the plan as approved by ANR.
7. Defendant 447 Horseshoe Road, LLC shall pursue the permit application or cleanup plan process with due diligence, and comply with any ANR requests for additional information or action on the site quickly and completely.
8. Defendant 447 Horseshoe Road, LLC shall authorize ANR access to the Property for inspection to ascertain compliance with any court orders and applicable environmental laws; comply with any ANR requests, including any regarding submission of a corrective action plan to ANR for approval if hazardous materials releases are found; and comply with the ANR Investigation and Remediation of Contaminated Properties Rule.
9. If either the municipal Certificate of Approved Location or the salvage yard permit sought pursuant to Paragraph 6(a) of this Order is denied, and the denial becomes final, then Paragraph 6(b) shall apply immediately upon denial becoming final, such that salvage yard operations must cease immediately and the cleanup and remediation plan is due within thirty (30) days of the final denial.

10. Within fourteen (14) days of the date this Order is issued, Defendant 447 Horseshoe Road, LLC shall provide ANR a Certificate of Good Standing as proof that it has been reinstated to active status as a Vermont LLC, and shall maintain active status and good standing as a Vermont LLC until its full civil penalty is paid in accordance with Paragraph 1 and, if the Property is not permitted under Paragraph 6(a) of this Order, until the Property is fully cleaned up as provided in Paragraph 6(b) of this Order. Any failure to maintain active status as an LLC shall constitute a violation of this Final Judgment Order, the entire unpaid balance of the penalty amount shall become due immediately, and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, beginning the first day after the payment becomes due. Defendant shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount under this provision.

OTHER PROVISIONS

11. The violations alleged in the Amended Complaint are deemed proved and established as one "prior violation" in any future state proceeding that requires consideration of either Defendant's past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.

12. The parties waive: (a) all rights to contest or appeal this Final Judgment Order; and (b) all rights to contest the obligations imposed upon Defendants under this Final Judgment Order in this or any other administrative or judicial proceeding involving the State of Vermont.

13. This Final Judgment Order is binding upon the parties and all their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including but not limited to any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, or their assigns under this Final Judgment Order.

14. Nothing in this Final Judgment 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 Final Judgment Order.

15. This Final Judgment Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Judgment Order shall become final.

16. Any violation of this Final Judgment 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.

17. The State of Vermont and this Court reserve continuing jurisdiction to ensure compliance with this Final Judgment Order.

18. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described in the Amended Complaint or in the Stipulation for the Entry of Final Judgment Order.

19. Nothing in this Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all other applicable federal, state, or local statutes, regulations, permits, or directives.

20. This Final Judgment 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 Final Judgment 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.

21. The Court finds based on the representations of the parties that the parties have negotiated this Final Judgment Order in good faith, that implementation of this Order will avoid prolonged litigation between the parties, and that this Order is fair, reasonable, and in the State of Vermont's interest.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED: December 1, 2023



The Hon. Samuel Hoar, Jr.
Superior Court Judge, Civil Division, Franklin Unit