

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No.

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff,

v.

JAM Fuel, LLC, d/b/a JAM Fuels, and
Joshua A. Marcell,
Defendants.

COMPLAINT

The State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., and pursuant to 10 V.S.A. §§ 8003(a) and 8221, and the general equitable jurisdiction of this Court, makes the following environmental enforcement complaint against JAM Fuel, LLC (d/b/a JAM Fuels) and Joshua A. Marcell:

I. ALLEGATIONS

Parties

1. Plaintiff Vermont Agency of Natural Resources (ANR) is a state agency established pursuant to 3 V.S.A. § 2802 and principally located in Washington County, Vermont.

2. Defendant JAM Fuel, LLC, doing business as “JAM Fuels,” is a manager-managed Vermont limited liability corporation, with a principal place of business at 5087 U.S. Route 5 in Ascutney, Windsor County, Vermont.

3. JAM Fuels specializes in the delivery of heating oil and diesel fuel.

4. Defendant Joshua A. Marcell is the owner and manager of JAM Fuels and resides in Windsor County, Vermont.

The Spill

5. On or about February 21, 2018, Defendant Joshua A. Marcell delivered #2 fuel oil on behalf of Defendant JAM Fuels to a private residence on Foster Avenue in Springfield, Vermont (the Residence).

6. This was the first time JAM Fuels delivered fuel oil to the tank system at this location. Another company usually delivered fuel oil to the Residence, but the Residence was running low on fuel oil and JAM Fuels could deliver sooner than the regular company.

7. Defendants did not inspect the tank system at the Residence prior to delivering fuel to the Residence for the first time.

8. The tank system at the Residence had two manifolded 138-gallon aboveground storage tanks in the basement.

9. During this delivery, Defendants caused a release of over thirty gallons of fuel oil at the Residence.

10. Oil was released from the vent pipe onto the ground outside the residence.

11. As a result of the spill, fuel oil seeped into the ground outside the Residence, flowed along and into portions of the outside foundation wall, into a

window well, through space in the concrete block wall, and into the basement of the Residence.

12. Defendant Marcell told the property owner that he had spilled about five gallons of fuel oil during the delivery and that the fuel was running into the Residence's basement.

13. At Defendant Marcell's request, the property owner picked up some oil absorbent material to soak up spilled oil in the Residence's basement.

14. When the property owner came home from work, he saw fuel oil in puddles on the floor of his basement and could smell fuel oil vapors in his house and basement. The property owner phoned Defendant Marcell, who returned to the Residence at approximately 7 p.m. on February 21, 2018 and assisted with cleanup.

15. Defendant Marcell removed oil-contaminated materials, including used absorbent and oil-soaked wood, from the Residence and placed them in his vehicle.

16. Defendants did not notify ANR that they had generated hazardous waste.

17. Defendants did not notify ANR of the release of fuel oil at the Residence.

18. Defendant Marcell asked the property owner not to report the spill to the State.

19. Fuel oil and fuel oil vapors can cause harmful impacts to human health, including nausea, dizziness, and headaches.

20. The property owner lost sleep and suffered headaches and respiratory problems due to the fuel oil vapors from the spill. The fuel oil vapors also contaminated his CPAP device, which is used for sleep apnea.

21. The property owner was forced to move out of his home for approximately two weeks, due to the fuel oil vapors.

Aftermath and Cleanup

22. On or about February 22, 2018, the property owner contacted ANR about the spill.

23. In response to the property owner's complaint, ANR Environmental Enforcement Officer (EEO) Tim McNamara commenced an investigation the same day, with a phone interview with the property owner, an in-person interview with Mr. Marcell at the JAM Fuels office, and a site visit to the Residence.

24. EEO McNamara gave Mr. Marcell a list of cleanup contractors from the ANR Department of Environmental Conservation (DEC) Waste Management and Prevention Division website and contact information for ANR/DEC Spill Team Program Manager Tim Cropley. He also informed Mr. Marcell that Mr. Cropley had said that a carbon air filtration system was required at the Residence to start addressing indoor air contamination.

25. Mr. Marcell hired a contractor, Environmental Products and Services of Vermont (EPSVT), and picked up a carbon filtration unit from EPSVT for the Residence on or about February 22, 2018.

26. EPSVT commenced work on at the Residence or about February 23, 2018, then stopped the same day due to a disagreement with Mr. Marcell over the cleanup plan and costs.

27. On or about February 23, 2018, DEC took over the cleanup and informed EPSVT that it was now working for DEC.

28. EPSVT returned to the Residence on February 27, 2018 to continue cleanup work. The same day, EPSVT discovered that the carbon air filtration unit had not been working since it was installed on February 22, 2018 because it had been installed backwards by Mr. Marcell. EPSVT reinstalled the unit on February 27, 2018 so it was working properly.

29. The evening of February 27, 2018, Mr. Marcell phoned EPSVT environmental scientist Jake Peirce with questions about the cleanup. When Mr. Peirce told Mr. Marcell that EPSVT was working for DEC, Mr. Marcell became verbally aggressive toward Mr. Peirce, yelling at him and repeatedly calling him a derogatory name.

30. Mr. Peirce delayed his return to the Residence the next morning due to fear that Mr. Marcell might show up at the Residence and cause problems. EEO McNamara notified the Springfield Police Department of the situation.

31. Mr. Marcell agreed to meet EEO McNamara for an interview at the Springfield Police station on or about March 1, 2018. During that interview, Mr. Marcell took a call from his wife, and put it on speaker. Mrs. Marcell asked why their BMW vehicle was parked at the lot at her work and if she could take it home. Mr. Marcell said that she could and advised her to keep the windows down because it stinks.

32. After the call with his wife, Mr. Marcell told EEO McNamara that he had put the oil-soaked boards and two five-gallon buckets of spill cleanup debris he had taken out of the basement at the Residence in the back of the BMW, and that they were still there. Mr. Marcell asked the EEO if he could burn the boards, and EEO McNamara reviewed hazardous waste disposal options and explained that Mr. Marcell had to notify ANR that he is a generator of hazardous waste.

33. The next day, March 2, 2018, EEO McNamara emailed Mr. Marcell with a link to the notification and registration form for generators of hazardous waste.

34. Despite this, Defendants did not provide the required notification as a generator of hazardous waste until the summer of 2019, on or about August 1, 2019.

35. At the Residence, EPSVT applied additional granular absorbent material, removed saturated wood and debris, and treated the basement floor and wall with a surfactant solution.

36. EPSVT conducted additional spill response and mitigation actions, including additional floor and wall treatment, removal of additional wood and debris, complete removal and replacement of the impacted concrete block wall, removal and disposal of petroleum-impacted soils, installation of a soil-vapor extraction system, and indoor air treatment and site restoration.

37. The Release resulted in impacts to the concrete basement floor, the cinderblock wall, subsurface soils and indoor air at the Residence. A total of 33.38 tons of petroleum-impacted soils were removed from the area around the exterior of the Residence for treatment. One drum of impacted absorbent material and building

materials and one cubic yard box of impacted concrete from the Residence was shipped for disposal.

38. On or about June 6, 2018, EPSVT reported that the majority of cleanup at the Residence is believed to have been completed, but that some indoor air quality impacts from residual fuel vapors might still be present.

39. On or about June 21, 2018, EPSVT completed follow-up work which included confirming that there were no detectable concentrations of fuel oil vapors in indoor air, decommissioning of the soil-vapor extraction system, and sealing those openings in the concrete floor with hydraulic cement.

40. ANR paid the costs of cleanup at the Residence out of the State of Vermont's Environmental Contingency Fund.

41. EPSVT submitted four invoices for its cleanup work at the Residence that have been paid from the ANR Environmental Contingency Fund:

- a. EPSVT Invoice #2091409, dated March 26, 2018, for \$8,076.15.
- b. EPSVT Invoice #2092044, dated March 31, 2018, for \$28,599.68.
- c. EPSVT Invoice #2092908, dated April 30, 2018, for \$3,908.95.
- d. EPSVT Invoice #2095901, dated July 31, 2018, for \$5,753.95.

42. Total cleanup costs from this spill, paid from the Environmental Contingency Fund to date, are \$46,338.73.

43. Respondents' insurer has reimbursed the State for cleanup costs paid from the Environmental Contingency Fund.

II. LEGAL FRAMEWORK

44. ANR regulates aboveground storage tanks pursuant to 10 V.S.A. § 1929a, 10 V.S.A. Chapters 59 and 159, and the Vermont Aboveground Storage Tank Rules.

45. Vermont Aboveground Storage Tank Rule 9-306(b)(3) requires inspection of a tank system prior to the initial delivery of fuel to the tank system when the tank owner switches carriers.

46. ANR regulates hazardous waste management pursuant to 10 V.S.A. Chapter 159 and the Vermont Hazardous Waste Management Regulations.

47. The release of hazardous materials is prohibited by 10 V.S.A. § 6616.

a. “Hazardous material” is defined at 10 V.S.A. § 6602(16)(A), in relevant part, as all petroleum and toxic, corrosive, or other chemicals included in petroleum, including crude oil or any fraction thereof.

b. “Release” is defined at 10 V.S.A. § 6602(17) as any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands into the State when damage may result to the public health, lands, waters, or natural resources in the jurisdiction of the State.

48. Title 10 V.S.A. § 6617 requires any person who has knowledge of a release and who may be subject to liability for a release to notify ANR immediately of a release or suspected release.

49. Vermont Hazardous Waste Management Regulation § 7-105(a)(1), in relevant part, requires a person in control of a release of hazardous material to take all appropriate immediate actions to protect human health and the environment, and to take any further cleanup actions as may be required by federal, state, or local officials, or corrective actions, so that the released material and related contaminated materials no longer present a hazard to human health or the environment.

50. Vermont Hazardous Waste Management Regulation § 7-105(a)(2)(A), in relevant part, requires the person or persons exercising control over waste resulting from a release of hazardous material to report the release to ANR immediately, if the release:

- a. Exceeds two gallons; or
- b. Is less than or equal to two gallons and poses a potential or actual threat to human health or the environment.

51. Vermont Hazardous Waste Management Regulation § 7-104(a) requires that any person who generates or transports hazardous waste, without a temporary identification number pursuant to subsection (d), notify the Secretary of such activity by accurately and completely filling out the Vermont Hazardous Waste Handler Site ID Form provided by ANR.

52. The State is authorized by 10 V.S.A. §§ 8221 and 8003(a) to bring an action in superior court, civil division, to enforce violations of Vermont's environmental laws, including Chapters 59 and 159, the Hazardous Waste Management Regulations, and the Aboveground Storage Tank Rules

53. Vermont's civil environmental enforcement statute, 10 V.S.A. § 8221, authorizes the court to, among other things: order injunctive relief; order remedial actions; order reimbursement from any person who caused governmental expenditures for the investigation, abatement, mitigation, or removal of a hazard to human health or the environment; and to assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

III. CLAIMS - Environmental Violations – 10 V.S.A. § 8221

The preceding paragraphs are realleged and incorporated by reference into each claim below.

1. Defendants failed to inspect tank systems prior to initial delivery to the Residence, on or about February 21, 2018, in violation of Vermont Above Ground Storage Tank Rule § 9-306(b)(3).
2. Defendants released hazardous materials (fuel oil) at the Residence on or about February 21, 2018, in violation of 10 V.S.A. § 6616.
3. Defendants failed to take adequate emergency action, in violation of Vermont Hazardous Waste Management Regulation § 7-105(a)(1), for their release of hazardous materials at the Residence.
4. Defendants failed to report the release of hazardous materials in excess of two gallons at the Residence on or about February 21, 2018, in violation of 10 V.S.A. § 6617 and Vermont Hazardous Waste Management Regulation § 7-105(a)(2)(A).

5. Defendants failed to notify the Agency of hazardous waste generation activity resulting from Defendants' release of hazardous materials at the Residence, in violation of Vermont Hazardous Waste Management Regulation § 7-104(a).

IV. REQUEST FOR RELIEF

The State of Vermont respectfully requests that the Court:

1. Find Defendants jointly and severally liable for the violations of Vermont statutes and regulations set forth above;
2. Order Defendants to pay civil penalties of no more than \$85,000 for each violation, and up to \$42,500 for each day that a violation continues, in accordance with 10 V.S.A. § 8221(b)(6); and
3. Order such other relief as this Court deems just and appropriate.

DATED September 19, 2019 at Montpelier, Vermont.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 
Melanie Kehne
Assistant Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-5531
melanie.kehne@vermont.gov
ERN 2561