

**STATE OF VERMONT**

**SUPERIOR COURT**  
Windsor Unit

**CIVIL DIVISION**  
Docket No. 384-9-19 Wrcv

**STATE OF VERMONT**  
**AGENCY OF NATURAL RESOURCES,**  
Plaintiff,

v.

**JAM FUEL, LLC, d/b/a JAM FUELS, and**  
**JOSHUA A. MARCELL,**  
Defendants.

**STIPULATION FOR THE ENTRY OF  
CONSENT ORDER AND FINAL JUDGMENT ORDER**

The State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., and Defendants JAM Fuel, LLC, d/b/a JAM Fuels, and Joshua A. Marcell, by and through its undersigned counsel, hereby stipulate and agree to resolve this matter as follows:

WHEREAS, the State alleges in its Complaint that Defendants committed violations of 10 V.S.A., Chapter 159; the Vermont Hazardous Waste Management Regulations (VHWMR); and the Vermont Above Ground Storage Tank Rules;

WHEREAS, Defendants solely for purposes of resolving this case have admitted the factual allegations of the Complaint and, without formally admitting or denying liability, have agreed to the settlement of these violations of Vermont law, which violations shall qualify as "prior violations" for purposes of any future State action considering Defendants' compliance record;

WHEREAS, under 10 V.S.A. § 8221, Defendants are potentially liable for civil

penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation for each day the violation continued;

WHEREAS, the State considered the criteria in 10 V.S.A. §§ 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violations and that Defendants knew or had reason to know the violations existed;

WHEREAS, the Attorney General pursuant to 3 V.S.A., Chapter 7 has the general supervision of matters and actions in favor of the State, and may settle such matters as the interests of the State require;

WHEREAS, the Attorney General believes that this settlement is fair, reasonable, and in the State's interest as it upholds the statutory regime of 10 V.S.A., Chapter 159, in which the violations occurred; and

WHEREAS, this Stipulation for Entry of Consent Order and Final Judgment Order has been negotiated by the State and Defendants in good faith and its implementation resolving this matter will avoid prolonged litigation between the parties;

NOW, THEREFORE, the State and Defendants hereby stipulate and agree as follows:

1. The attached Consent Order and Final Judgment Order may be entered by the Court;
2. As part of the settlement of this matter pursuant to the Consent Order and Final Judgment Order, Defendants admit the facts as alleged in the

Complaint.

3. As part of the settlement of this matter, Defendants agree to pay a civil penalty of \$20,250 (twenty thousand and two hundred and fifty dollars) and the following injunctive relief:
  - a. Defendant JAM Fuel, LLC has registered as a hazardous waste generator, including payment of the seventy-five-dollar (\$75.00) registration fee, and agrees to keep this registration up to date in accordance with the VHWMR.
  - b. Defendants shall conduct all tank inspections in compliance with § 9-306 of the Aboveground Storage Tank Rule, which requires, *inter alia*, that inspections be conducted by a certified inspector, utilizing the Agency inspection checklist, and in accordance with the Aboveground Storage Tank Rule inspection standards. This includes not only an inspection before and after the first delivery to newly installed aboveground storage tanks but also pre-delivery inspections for a company's first time delivering to existing aboveground storage tanks.
  - c. Defendants shall comply with reporting, corrective action, and disposal requirements of Ch. 159 and the VHWMR, and shall, in the event of a release, do the following in accordance with the VHWMR:
    - i. report immediately to the State any release that may amount to two or more gallons, or any release of any volume even if under two gallons that impacts surface water or indoor air;
    - ii. take all actions necessary to ensure proper and timely corrective action; and
    - iii. dispose of hazardous materials such as oil-contaminated wastes properly and promptly.
4. The State and Defendants hereby waive all rights to contest or appeal the Consent Order and they shall not challenge, in this or any other proceeding, the validity of any of the terms of the Consent Order or of this Court's

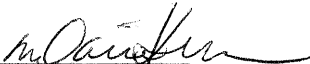
jurisdiction to enter the Consent Order; and

5. The Consent Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties and approved by the Court.

DATED at Montpelier, Vermont this 19<sup>th</sup> day of December 2019.

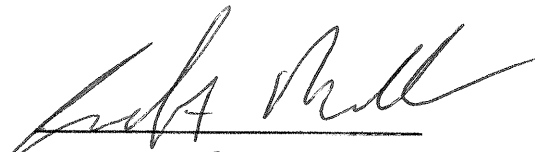
STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

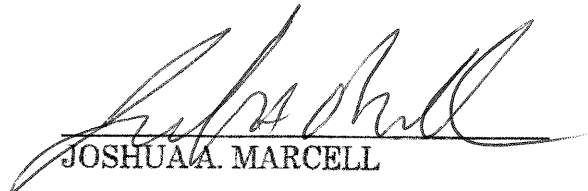
By:   
Melanie Kehne  
Assistant Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5531  
melanie.kehne@vermont.gov  
ERN 2561

DATED at 12-13-19, Vermont, this \_\_\_\_\_ day of December 2019.

JAM FUEL, LLC d/b/a JAM FUELS

By:   
Title: owner

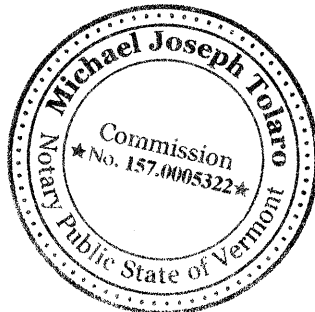
DATED at 12-13-19, Vermont, this 13 day of December 2019.

  
JOSHUA A. MARCELL

STATE OF VERMONT  
COUNTY OF WINDSOR, SS.

BE IT REMEMBERED that on the 13<sup>th</sup> day of December 2019, **Joshua A. Marcell**, who is known to me or who satisfactorily established his identity to me, personally appeared and signed and executed the foregoing instrument on his own behalf and as the duly authorized agent of **JAM Fuel, LLC**, and acknowledged the same to be his free act and deed and the free act and deed of **JAM Fuel, LLC**, and that he has the authority to contract on behalf of **JAM Fuel, LLC**, and that he has been duly authorized to enter into the foregoing instrument on behalf of that entity.

Before me,



*Michael Tolaro*

Notary Public

Commission Expires: 1-31-21

Approved as to form:

*Thomas P. Simon*

Thomas P. Simon, Esq.  
Attorney for Defendants  
McCormick, Fitzpatrick,  
Kasper & Burchard, P.C.  
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