

STATE OF VERMONT
WINDSOR COUNTY, SS.

WINDSOR SUPERIOR COURT
DOCKET NO. 693-10-08 Wrcv

STATE OF VERMONT)
AGENCY OF TRANSPORTATION)
AND)
AGENCY OF NATURAL RESOURCES,)
)
Plaintiffs)
v.)
)
JOHN F. HENNESSEY, JR.)
)
Defendant.)

PARTIAL JUDGMENT ORDER

Based on the Motion for Summary Judgment filed by the State of Vermont, Agency of Transportation and Agency of Natural Resources ("State"), the State's Statement of Undisputed Material Facts, and this Court's findings of Undisputed Facts in its Decision on Motion for Summary Judgment dated March 9, 2010, and the Court having granted summary judgment in favor of the State against Defendant John F. Hennessey, Jr. in its March 9, 2010 Decision, it is ORDERED and ADJUDGED that:

1. Defendant is liable for violating the State of Vermont's environmental statutes and regulations at his property at 138 Cummings Road in Chester, Vermont (hereinafter "the site") as follows:
 - a. operation of a junkyard at the site without a license in violation of 24 V.S.A. §§ 2242 and 2251 (2008) prior to July 1, 2009, and operation of a salvage yard at the site without a certificate of registration in violation of 24 V.S.A. § 2242 and 2251 since July 1, 2009;
 - b. storing and/or disposing of solid waste at the site outside of a certified solid waste management facility in violation of Vermont Solid Waste Management Rules § 6-302(d);
 - c. the illegal storage of hazardous waste at the site in violation of Vermont's Hazardous Waste Management Regulations §§ 7-103 and 7-306(c); and
 - d. the release of hazardous materials, such as waste oil, diesel fuel, hydraulic oil and gear oil, at the site in violation of 10 V.S.A. § 6616.

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2. Defendant is liable for the State's costs of \$2,994.18 incurred for the investigation of the release of hazardous materials and unlabeled drums at the site, plus pre-judgment interest at a rate of 12% from November 3, 2009 through the date of this order pursuant to 10 V.S.A. § 6615(a)(1).

3. Defendant is permanently enjoined pursuant to 10 V.S.A. § 8221 from doing the following:
 - a. accepting any junk at the site unless and until he obtains all required approvals and certifications;
 - b. storing junk at the site (other than, as described below in paragraph 4, junk currently stored at the site which must be removed by November 30, 2011) unless and until he obtains all required approvals and certifications;
 - c. accepting, treating, or disposing of solid waste at the site unless and until he obtains all required approvals and certifications;
 - d. storing solid waste at the site (other than, as described below in paragraph 4, solid waste currently stored at the site which must be removed by November 30, 2011) unless and until he obtains all required approvals and certifications; and
 - e. accepting, treating, storing or disposing of hazardous waste at the site unless and until he obtains all required approvals and certifications.

4. Defendant is permanently enjoined and ordered pursuant to 10 V.S.A. § 8221 to remove all junk materials and solid waste from the site by November 30, 2011, unless all necessary licenses, certificates and approvals are obtained for the site in the interim, pursuant to the following requirements:
 - a. fifty percent of the junk materials and solid waste shall be removed by November 30, 2010;
 - b. the remaining fifty percent of junk materials and solid waste shall be removed by November 30, 2011; and
 - c. Defendant shall establish that any materials remaining at the site after November 30, 2011 are not junk materials or solid waste.

5. Defendant shall provide the State with the right to enter the site during normal business hours to conduct inspections of the site and to conduct such investigations as may be necessary to monitor compliance with the orders of the Court in this matter and compliance with applicable Vermont regulations.

6. Defendant is ordered to pay \$50 per day for every day that Defendant is not in compliance with the terms of the injunctive relief set forth in this order.

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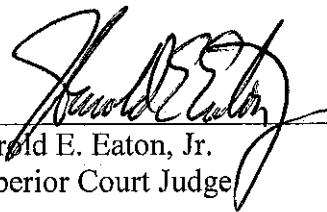
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This order resolves all of the State's claims against Defendant in this matter except for the State's claim for an assessment of civil penalties for Defendant's violations described in paragraph 1 of this order. Given Defendant's failure to fully comply with this Court's previous preliminary injunction orders directing compliance with Vermont's laws governing the management of hazardous and solid waste and the operation of junk yards and salvage yards, it will serve the interests of justice to make permanent the injunctive relief granted in this Court's previous orders, as well as to make final the Court's judgment that Defendant is liable for the State's costs described in paragraph 2 of this order, and that Defendant is liable for the violations described in paragraph 1 of this order.

Therefore, pursuant to V.R.C.P. Rule 54(b), the Court has determined that there is no just reason to delay entry of judgment with respect to the State's claims adjudicated by paragraphs 1 through 6 of this order, and the Court directs entry of this order as a judgment in favor of the State and against Defendant.

Date: 4/9/10

By: 
Harold E. Eaton, Jr.
Superior Court Judge

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