

STATE OF VERMONT

SUPERIOR COURT 2007-01-4 P 1:05  
Washington Unit

CIVIL DIVISION  
Docket No. 774-10-10

STATE OF VERMONT, AGENCY )  
OF NATURAL RESOURCES, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
VERMONT RAILWAY, INC., )  
 )  
 )  
Defendant. )

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

Plaintiff, the State of Vermont, Agency of Natural Resources ("ANR" or "State"), through the Office of the Attorney General, and Defendant, Vermont Railway, Inc. ("Vermont Railway" or "Defendant"), through the undersigned counsel, stipulate and agree as follows:

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; and

WHEREAS, the State alleges in the Pleadings by Agreement filed in this action ("Pleadings by Agreement") that Vermont Railway violated hazardous waste management regulations; and

WHEREAS, Vermont Railway has admitted in the Pleadings by Agreement that it committed hazardous waste management violations; and

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109 State Street  
Montpelier, VT  
05609

WHEREAS, under 10 V.S.A. § 8221, Vermont Railway is potentially liable for civil penalties as follows:

a) not more than \$50,000 for the initial violations of Vermont's Environmental Protection Rules and not more than \$25,000 for each day that the violation continues for violations prior to July 1, 2008; and

b) not more than \$85,000 for the initial violations of Vermont's Environmental Protection Rules and not more than \$42,500 for each day that the violation continues for violations on or after July 1, 2008; and

WHEREAS, the State considered the criteria in 10 V.S.A. § 8010(b) and (c) in arriving at the proposed penalty amount, including the length of time the violations existed and whether Vermont Railway had reason to know the violations existed; and

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

WHEREAS, the State and Vermont Railway agree that this settlement will avoid prolonged and complicated litigation between them;

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

1. The consent order which follows immediately below ("the Consent Order") may be entered by the Court;

2. The Consent Order has been negotiated by the State and Vermont Railway in good faith;

3. The State and Vermont Railway 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

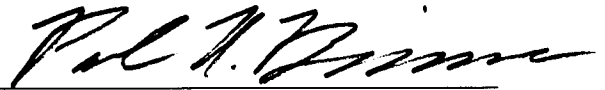
4. The Consent Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties' legal representatives and incorporated in an order issued by the Court.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

Dated: 10/29/10

By:



Paul R. Brierre  
Assistant Attorney General  
Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001

VERMONT RAILWAY, INC.

Dated: 10/28/10

By:



Eric R. Benson, Esq.  
Vermont Railway, Inc.  
One Railway Lane  
Burlington, VT 05401

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109 State Street  
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## CONSENT ORDER

Based upon the parties' Pleadings by Agreement in this action and the Stipulation for the Entry of Consent Order, and pursuant to 10 V.S.A. § 8221 and the court's inherent equitable powers, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

### ADJUDICATION OF HAZARDOUS WASTE VIOLATIONS

1. The Agency of Natural Resources ("ANR") conducted inspections of facilities owned by Vermont Railway, Inc. ("Vermont Railway" or "Defendant") in Burlington, Vermont ("Burlington facility") on July 15 and 30, 2008, and in Rutland, Vermont ("Rutland facility") on June 25 and July 2, 2008.

2. During the inspections of the Burlington facility referenced in paragraph 1 of this Consent Order, ANR found violations of the following Vermont Environmental Protection Rules: Section 7-308(b)(9) (maintain a written contingency plan); Section 7-308(b)(10) (maintain a training program); Section 7-310(b)(1)(A)(iv) (label hazardous waste containers); Section 7-311(a)(5) (maintain spill/fire control equipment); Section 7-311(d)(1) (maintain list of hazardous waste in short-term storage areas); Section 7-311(d)(2) (maintain log of daily inspections of short-term storage areas); Section 7-311(f)(1) (properly mark containers when hazardous waste is first stored); Section 7-806(d)(2) (label above-ground used oil storage tanks); Section 7-912(d)(5)(A)(i-ii) (manage universal waste lamps to prevent releases); and Section 7-912(f)(3) (date universal waste lamps).

3. During the inspections of the Rutland facility referenced in paragraph 1 of this Consent Order, ANR found violations of the following Vermont Environmental Protection Rules: Sections 7-303 and 7-308(b)(1) (determine if waste is hazardous waste); Section 7-308(b)(2) (store hazardous waste no more than 90 days); Section 7-308(b)(9) (maintain a written contingency plan); Section 7-308(b)(10) (maintain a training program); Section 7-309(a)(1) (minimize possibility of unplanned release); Section 7-309(a)(4) (make preparedness arrangements with local authorities); Section 7-311(a)(1) (store hazardous waste on impervious surface); Section 7-311(a)(2) (store hazardous waste within a structure); Section 7-311(a)(5) (maintain spill/fire control equipment); Section 7-311(b)(3) (maintain sufficient space between hazardous waste containers); Section 7-311(d)(1) (maintain list of hazardous waste in short-term storage areas); Section 7-311(d)(2) (maintain log of daily inspections of short-term storage areas); Section 7-311(e)(1) (post "hazardous waste" warning signs at short-term storage areas); Section 7-311(e)(2) (post "no smoking" warning signs at short-term storage areas); Section 7-311(f)(1) (properly mark containers when hazardous waste is first stored); Section 7-311(f)(4)(B) (properly store hazardous waste containers); Section 7-504(a) (obtain certification to store hazardous waste over 90 days); Section 7-702(b)(5) and (9) (retain copies of manifests for at least three years); and Section 7-806(b)(1), (2) & (5 – 8) (comply with used oil storage requirements).

4. Vermont Railway is adjudged liable for the violations listed in paragraphs 2 and 3 of this Consent Order pursuant to 10 V.S.A. § 8221.

## PENALTIES

5. For the violations described above, Vermont Railway shall pay a civil penalty of \$70,000 as follows:

a) one (1) payment of \$5,833.37 due within five (5) business days of entry of this Consent Order as an Order by signature of the Court ("effective date of this Order") or the first day of the month following the effective date of this Order, whichever is later; ten (10) payments of \$5,833.33 each due on the first day of the following ten (10) months; and one (1) payment of \$5,833.33 due on the first day of the following month or the last business day falling on or before the three hundred sixty-fifth (365<sup>th</sup>) calendar day from the effective date of this Order, whichever is earlier; and

b) the payments shall be by check payable to "Treasurer, State of Vermont" and forwarded to:

Vermont Office of the Attorney General  
Environmental Protection Division  
109 State Street  
Montpelier, VT 05609-1001

6. Failure to make any payment as required by paragraph 5 shall constitute a breach of this Consent Order, and interest shall accrue on the entire unpaid balance at Twelve Per Cent (12%) per annum. In the event that any payment has not been made by the date due, the State may accelerate the remaining payments and declare the whole amount then owing under this Consent Order due and payable; provided however, that Vermont Railway shall

have a 10-calendar-day grace period to cure any late payment, except the payment due on or before the three hundred sixty-fifth (365<sup>th</sup>) calendar day from the effective date of this Order, by remitting the payment and the interest due.

### SUPPLEMENTAL ENVIRONMENTAL PROJECT

7. For the violations described above, Defendant shall also pay \$50,000 to fund a Supplemental Environmental Project ("SEP"). The SEP shall be subject to the approval of ANR, and shall be fully funded by Defendant no later than 180 days following the effective date of this Order. The payments shall be as follows:

a) one (1) payment of \$8,333.35 due within five (5) business days of the effective date of this Order or the first day of the month following the effective date of this Order, whichever is later; four (4) payments of \$8,333.33 each due on the first day of the following four (4) months; and one payment of \$8,333.33 due on the first day of the following month or the last business day falling on or before the one hundred eightieth (180<sup>th</sup>) calendar day from the effective date of this Order, whichever is earlier; and

b) the payments shall be by check payable to "State of Vermont, DEC SEP Fund" and forwarded to:

Department of Environmental Conservation  
Business Office  
103 South Main Street  
Waterbury, VT 05671

8. If, at the close of 180 days after the effective date of this Order, any

of the \$50,000 due to be paid to the State of Vermont, DEC SEP Fund has not been paid, that unpaid amount shall be converted automatically to a civil penalty and shall be immediately due and payable to the State of Vermont. Defendant shall make such payment by check, payable to the "Treasurer, State of Vermont" and forwarded to:

Vermont Office of the Attorney General  
Environmental Protection Division  
109 State Street  
Montpelier, VT 05609-1001

9. Failure to make any payment as required by paragraphs 7 and 8 shall constitute a breach of this Consent Order, and interest shall accrue on the entire unpaid balance at Twelve Per Cent (12%) per annum. In the event that any payment required by paragraph 7 above is not made by the date due, the State may accelerate the remaining payments and declare the whole amount then owing under this Consent Order due and payable to the State of Vermont, DEC SEP Fund; provided however, that Vermont Railway shall have a 10-calendar-day grace period to cure any late payment, except the payment due on or before the one hundred eightieth (180<sup>th</sup>) calendar day from the effective date of this Order, by remitting the payment and the interest due.

#### COMPLIANCE REQUIREMENTS

10. No later than sixty (60) calendar days following the effective date of this Order, Vermont Railway shall submit a work plan to complete the following for the Rutland facility:

- a) Perform groundwater sampling from monitoring wells MW-1, MW-2 and MW-4 through MW-7 every three months for one year for



analysis for volatile organic compounds using EPA Method 8021B and for metals using RCRA 8 Metals; groundwater sampling for metals shall use standard EPA approved Low Flow sampling procedures;

b) Perform groundwater sampling from monitoring wells MW-1, MW-2 and MW-4 through MW-7 every three months for one year for analysis for polynuclear aromatic hydrocarbons ("PAHs") using EPA Method 8270 with a detection limit lower than the Vermont Groundwater Enforcement Standards of 0.2 parts per billion ("ppb") for benzo(a)pyrene; and

c) Submit all groundwater data from the sampling required in paragraph 10(a) – (b) to ANR within 10 calendar days after Vermont Railway receives the laboratory reports with such data.

11. Within 60 days of ANR's written response to Vermont Railway's quarterly submissions of groundwater data required in paragraph 10 above, Vermont Railway shall, if directed by ANR, complete the following tasks for the Rutland facility:

a) Submit a work plan to implement further measures required by ANR to address any groundwater contamination; or

b) Develop and submit a corrective action plan ("CAP") pursuant to 10 V.S.A. § 6615b to remediate or monitor any groundwater contamination as required by ANR.

12. Upon receiving ANR's approval of the work plan or CAP required under paragraph 11 above, Vermont Railway shall implement the work plan or

the CAP, including any modifications to the work plan or the CAP directed by ANR.

13. No later than (60) calendar days following the effective date of this Order, Vermont Railway shall submit a report documenting any remediation performed on any visible contamination of soils and free product, including such contaminated soils and free product observed during ANR's inspections on June 25 and July 2, 2008. The report required by this subparagraph shall:

- a) document the areal extent of remediation of contaminated soils and free product;
- b) document the quantity of contaminated soils excavated and free product removed for off-site disposal, including copies of manifests for the shipment and off-site disposal of contaminated soils and free product and any associated materials utilized to remove the free product;
- c) describe the contaminated soils and free product and any other materials included in the shipments for off-site disposal; and
- d) include current photographs of the area from which contaminated soils and free product were removed for off-site disposal.

14. No later than sixty (60) calendar days following the effective date of this Order, Vermont Railway shall develop and submit to ANR for review and approval a plan to prevent releases of hazardous materials from operation and maintenance activities at each facility located in Vermont at which Vermont Railway is a "generator," as that term is defined in section 7-103 of the Vermont Environmental Protection Rules. The plan required by this paragraph shall

include:

a) Management and operational procedures and measures designed to minimize hazardous material spills, including but not limited to:

i) Installing appropriate liquid collection devices for tracks in all areas where maintenance, fueling and other hazardous material liquid transfer operations occur;

ii) Identifying appropriate types and uses of absorbent materials;

iii) Developing standard operating procedures for maintenance, fueling and other hazardous material liquid transfer operations for the purposes of preventing spills; and

iv) Conducting maintenance, fueling and other hazardous material liquid transfer operations only in locations where liquid collection devices are in place;

b) Emergency response procedures for containment and cleanup of hazardous materials in the event of a spill;

c) A training program for Vermont Railway employees on implementation of the plan; and

d) A schedule for implementation of the plan.

15. Upon receiving ANR's approval of the plan required under paragraph 14 above, Vermont Railway shall implement the plan, including any modifications to the plan directed by ANR.

**STIPULATED PENALTIES**

16. The following stipulated penalties shall be payable by Vermont Railway to the State of Vermont per violation per day for any noncompliance with the requirements set forth in paragraphs 10 through 15 of this Consent Order:

<u>Penalties Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 500.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 750.00	31 <sup>st</sup> day and beyond

17. Vermont Railway agrees to reimburse the State for costs and reasonable attorney's fees incurred by the State to enforce the terms of this Consent Order and to collect the stipulated penalties.

**MISCELLANEOUS PROVISIONS**

18. Vermont Railway hereby waives: 1) all rights to contest or appeal this Consent Order and the Pleadings by Agreement filed concurrently with this Consent Order; and 2) all rights to contest the obligations imposed upon Defendant under this Consent Order in this or any other administrative or judicial proceeding.

19. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.

20. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Vermont Railway's obligation to comply with all other federal, State, or local statutes, regulations, permits or

directives applicable to Vermont Railway in the operation of its business. The State reserves all rights, claims and interests not expressly waived herein.

21. Vermont Railway shall not be liable for additional civil or criminal penalties with respect to the specific violations described herein or in the Pleadings by Agreement filed concurrently with this Consent Order provided that Vermont Railway fully complies with the requirements and provisions set forth in this Consent Order.

22. This Consent Order is binding upon Defendant and its successors and assigns.

23. Nothing in this Consent Order may 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.

24. This 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 hereto or their legal representatives and incorporated in an order issued by the Superior Court, Washington Unit, Civil Division. Alleged 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.

25. This Consent Order shall become effective only after it is signed by the State and Vermont Railway and entered as an order of the Superior Court, Washington Unit, Civil Division. When it is signed by the Court, this Consent Order shall become a final judgment and a judicial order.

26. Any violation of this Consent 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. Chapter 211 and 12 V.S.A. § 122.

27. With respect to paragraphs 10 through 15 of this Consent Order, all correspondence from Vermont Railway to ANR shall be addressed to:

Vermont Department of Environmental Conservation  
Hazardous Waste Management Program  
Waste Management Division  
103 South Main Street, West Building  
Waterbury, VT 05671-0404

28. Except as provided in paragraph 27 of this Consent Order, all correspondence from Vermont Railway to the State regarding this Consent Order shall be addressed to:

Environmental Protection Division  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

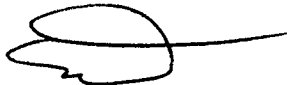
29. All correspondence from the State to Vermont Railway regarding this Consent Order shall be addressed to:

Eric R. Benson, Esq.  
Vermont Railway, Inc.  
One Railway Lane  
Burlington, VT 05401

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
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30. The Court hereby finds that this Consent Order has been negotiated by the State and Vermont Railway 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's interest. The Court hereby enters this Consent Order as an Order of the Court and final judgment.

Dated: 11/3/10

  
\_\_\_\_\_  
Honorable Geoffrey Crawford  
Superior Court Judge