

VT SUPERIOR COURT
WASHINGTON UNIT
STATE OF VERMONT

SUPERIOR COURT
Washington Unit

DW
2018 APR 10 P 3:45

CIVIL DIVISION
Docket # 480-7-10 Wncv

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES

FILED

v.

PARKWAY CLEANERS, et al.

ENTRY

The court ruled on remedies in this case on January 22, 2018 and ordered the State to submit a form of judgment, subject to objections by Defendants Richard S. Daniels and Hazen Street Holdings, Inc. The State submitted a proposed final judgment and Defendants' objections are fully briefed.

Defendants argue that the State is not entitled to a mandatory injunction and the proposed injunction is flawed because it refers to documents (rules) outside its four corners and is too nonspecific. It also argues that neither 10 V.S.A. § 6615 nor § 8221 authorize injunctive relief, and § 8221 is unconstitutionally vague.

The court declines to rule on these issues in any detail. The court already has ruled that the State is entitled to a mandatory injunction. Sections 6615, 6615b, and 8221 amply warrant it. At issue is not whether there should be an injunction, but its terms. To the extent that the injunction must lack the specificity that otherwise would be required of a typical injunction, that is due to the nature of Mr. Daniels' statutory obligations and his failure to satisfy them. The purpose of the mandatory injunction is to require him to comply with his statutory obligations.

The court is not persuaded by Defendants' objections that there is any need to modify the proposed judgment filed by the State.

So ordered.

Dated at Montpelier, Vermont this 10th day of April 2018.

Mary Miles Teachout
Mary Miles Teachout
Superior Court Judge

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dw
2018 APR 10 P 3:45

CIVIL DIVISION
Docket No. 480-7-10 Wncv

STATE OF VERMONT)
AGENCY OF NATURAL RESOURCES;)
Plaintiff,)
)
v.)
)
PARKWAY CLEANERS; PAUL D.)
GENDRON; SANDRA L. GENDRON;)
PAUL D. GENDRON and SANDRA L.)
GENDRON doing business as)
PARKWAY CLEANERS; FOURNIER)
CLEANERS; HAROLD N. FOURNIER;)
PEGGY J. FOURNIER; HAROLD N.)
FOURNIER and PEGGY J. FOURNIER)
doing business as FOURNIER)
CLEANERS; and RICHARD S.)
DANIELS; and HAZEN STREET)
HOLDINGS, INC.,)
Defendants.)

FILED

STATE OF VERMONT'S FINAL JUDGMENT ORDER

Final judgment is hereby entered in the above-captioned action. It is ORDERED, ADJUDGED, and DECREED as follows:

1. In accordance with the Court's August 5, 2014 summary judgment ruling, Defendants Richard S. Daniels and Hazen Street Holdings, Inc. (Defendants) are adjudged liable to the State of Vermont as current owners of a contaminated property pursuant to 10 V.S.A. § 6615(a)(1) with respect to releases of hazardous materials at and from the former Parkway Cleaners property, 7 Union Street, Hartford, Vermont (the Site).

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109 State Street
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2. In accordance with this Court's January 19, 2018 Findings of Fact, Conclusions of Law, and Order, and the attached Exhibit A, the State is awarded judgment against Defendants in the total amount of \$4,497.81, consisting of:

- the principal amount of \$60,859.73 for reimbursement of past State costs
- plus \$42,212.08 in prejudgment interest through March 10, 2014
- minus \$100,000 for the March 10, 2014 payment from the Fournier defendants
- plus \$1,426 in prejudgment interest from that date through January 19, 2018.

Within 30 days of issuance of this Order, Defendants shall reimburse the State of Vermont a total of \$4,497.81.

3. Defendants shall perform site investigation and corrective action, compliant with 10 V.S.A. § 6615b and all requirements of the July 2017 Investigation and Remediation of Contaminated Properties Rule (IROCP Rule), to address contamination from releases of hazardous materials at and from the Site, including all locations potentially affected by contamination from the Site, as follows:

- a. within 60 days of this Order, Defendants "shall provide the Secretary" of the Agency of Natural Resources (Secretary) "with a site investigation work plan" compliant with Subchapter 3 of the IROCP Rule for the Secretary's review (IROCP Rule §§ 35-301(b), 35-303(c)(1));
- b. "no later than 60 days from the date of the Secretary's approval [of the site investigation work plan], unless an alternate implementation timeline is approved by the Secretary," Defendants "shall implement an approved site investigation work plan" compliant with Subchapter 3 of the IROCP Rule (IROCP Rule § 35-304(b));

- c. “within 90 days of receipt of final laboratory data, or within an alternate schedule approved by the Secretary,” Defendants shall submit the “site investigation report” compliant with Subchapter 3 of the IROCP Rule to the Secretary (IROCP Rule § 35-305(a)), and then, if necessary, provide any follow-up information required for the Secretary to “determin[e] that the site investigation report contains all the information required in § 35-305(b)” (IROCP Rule § 35-306(b));
- d. within 60 days of completing all site investigation requirements, Defendants “shall evaluate corrective action alternatives” by submitting an Evaluation of Corrective Action Alternatives compliant with Subchapter 5 of the IROCP Rule to the Secretary for review (IROCP Rule § 35-503(a));
- e. “within 30 days of the Secretary’s response” to the Evaluation of Corrective Action Alternatives, Defendants shall “provide the Secretary with a response to any comment provided by the Secretary including a revised corrective action alternative or a corrective action plan for the selected alternative” (IROCP Rule § 35-504(c));
- f. “within 90 days of the [Secretary’s] approval” of the corrective action plan selected and approved by the Secretary, “or in accordance with a schedule approved by the Secretary,” Defendants “shall . . . implement[]” the approved “corrective action plan” compliant with Subchapter 5 of the IROCP Rule (IROCP Rule § 35-506(e)); and
- g. “within 90 days of completing the construction of any remedy, as applicable, or in accordance with the schedule approved in the corrective

action plan,” Defendants “shall . . . submit[]” a “corrective action completion report” compliant with Subchapter 5 of the IROCP Rule to the Secretary for review (IROCP Rule § 35-507(a)).

4. The Agency shall retain the right to require further investigation by Defendants in the event of the discovery of any previously unknown condition at the Site or the receipt of any new information concerning the extent of risk or hazard or environmental impact presented at the Site and to determine based on such a condition or such information that the CAP is not sufficiently protective of human health or the environment. In addition, in the event of such a determination, the Agency shall retain the right to require implementation by Defendants of different or additional corrective action measures in connection with the Site. Nothing in this Order shall be deemed to limit the authority of the State to take any appropriate action it may deem necessary to protect human health or the environment or to prevent, abate, or respond to an actual or threatened release of hazardous materials.

5. Nothing in this Order shall relieve Defendants of any obligation they may have under federal, state, or local law to obtain a permit or other approval for any activity undertaken as part of implementing this Order or the CAP.

6. Nothing in this Order shall relieve defendants Parkway Cleaners, Paul D. Gendron, and Paul D. Gendron doing business as Parkway Cleaners, from the Default Judgment Order that has already been issued against them in this case.

7. This Court shall retain continuing jurisdiction over the subject matter of this action and the parties: (a) to enforce the terms and conditions of this Order; (b) to

resolve any disputes between the parties concerning the application of this Order; and
(c) to provide further relief as may be appropriate.

8. Any violation of this Order is a failure to comply with a court order and may result in the imposition of injunctive relief and penalties, including for contempt, as set forth in 10 V.S.A. Chapters 159, 201, and 211.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

Dated: April 10, 2018

Mary Miles Teachout
Hon. Mary Miles Teachout, Presiding Judge

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VT SUPERIOR COURT
WASHINGTON UNIT

DW
2018 APR 10 P 3:58

ENTRY REGARDING MOTION

State of Vermont vs. Parkway Cleaners et al

480-7-10 Wncv

FILED

Title:

Motion to Withdraw as Attorney,

No. 44

Filed on: April 5, 2018

Filed By: Landis-Marinello, Kyle H., Attorney for:
party 1 Co-counsel

Response: NONE

Granted Compliance by _____

Denied

Scheduled for hearing on: _____ at _____; Time Allotted _____

Other

.....
.....
.....
.....
.....

May Miles Teasdale
Judge

April 10, 2018
Date

Date copies sent to: 4/10-18

Clerk's Initials DW

Copies sent to:
Attorney Nicholas F. Persampieri for Plaintiff State of Vermont Agency of Natural Resources
Defendant Sandra L. Gendron

es

Attorney William F. Ellis for Third-Party Defendant Town of Hartford

Attorney Mark G. Hall for Interested Person Harold N. Fournier

Attorney Mark G. Hall for Interested Person Peggy J. Fournier

a Fournier
Attorney Mark G. Hall for Interested Person Harold N. Fournier and Peggy J. Fournier d/b/

Attorney Kyle H. Landis-Marinello for party 1 Co-counsel

Attorney Merritt S. Schnipper for party 10 Co-counsel

Attorney Merritt S. Schnipper for party 11 Co-counsel

Attorney R. Bradford Fawley for Defendant Richard S. Daniels

Attorney R. Bradford Fawley for Defendant Hazen Street Holdings, Inc.