

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.

CONSENT ORDER AND FINAL JUDGMENT ORDER

The parties in this matter, Plaintiff State of Vermont Agency of Natural Resources and Defendants JAM Fuel, LLC, d/b/a JAM Fuels, and Joshua A. Marcell, have filed a Stipulation for the Entry of Consent Order and Final Judgment Order. Based upon that Stipulation and pursuant to 10 V.S.A. § 8221, 10 V.S.A. Chapter 159, and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

VIOLATIONS

1. Plaintiff, State of Vermont, alleges in the Complaint that Defendants violated 10 V.S.A. Chapter 159, the Vermont Hazardous Waste Management Regulations (VHWMR), and the Vermont Aboveground Storage Tank Rules as follows:

- a. Defendants failed to inspect tank systems prior to initial delivery to the Residence, on or about February 21, 2018, in violation of Vermont Aboveground Storage Tank Rule § 9-306(b)(3).

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- b. Defendants released hazardous materials (fuel oil) at the Residence on or about February 21, 2018, in violation of 10 V.S.A. § 6616.
- c. 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.
- d. 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).
- e. 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).

2. Defendants admit the factual allegations of the Complaint solely for purposes of resolving this case, and neither admit nor deny liability for the alleged violations but agree to the entry of this Consent Order and Final Judgment Order to resolve this matter. Defendants agree that each of the violations alleged in the Complaint is deemed proven and established as a "prior violation" in any future State proceeding considering Defendant's compliance record, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

## PENALTIES

3. For the violations described above, Defendants shall pay a civil penalty of twenty thousand, two hundred and fifty dollars (\$20,250.00).

4. Payment of the twenty thousand, two hundred and fifty dollar (\$20,250.00) civil penalty shall be made to the "State of Vermont" and shall be sent to: Melanie Kehne, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001.

5. Payment of twenty thousand, two hundred and fifty dollar (\$20,250.00) civil penalty shall be received by the State within 10 days of the issuance of this Order.

6. If Defendants fail to make timely payment of the full penalty amount, such failure shall constitute a violation of this Final Judgment Order and interest shall accrue on the unpaid balance at the rate of twelve percent (12%) per annum. Defendants shall be liable for costs, including reasonable attorneys' fees, incurred by the State to collect any unpaid penalty amount.

## INJUNCTIVE RELIEF

### *Environmental Contingency Fund Reimbursement*

7. Defendants have paid the State \$45,337.78 to reimburse the Environmental Contingency Fund for remediation costs incurred in this matter.

### *Registration as Hazardous Waste Generator*

8. 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.

### ***Tank Inspections***

9. 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.

### ***Reporting, Corrective Action, and Disposal***

10. 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:

- a. report immediately to the State any release that may amount to two or more gallons, or any volume even if under two gallons that impacts surface water or indoor air;
- b. take all actions necessary to ensure proper and timely corrective action; and
- c. dispose of hazardous materials such as oil-contaminated wastes properly and promptly.

### **OTHER PROVISIONS**

11. The parties waive: (a) all rights to contest or appeal this Consent Order and Final Judgment Order; and (b) all rights to contest the obligations imposed

upon Defendants under this Consent Order and Final Judgment Order in this or any other administrative or judicial proceeding involving the State of Vermont.

12. This Consent Order and Final Judgment Order is binding upon the parties and all their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including but not limited to any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, or their assigns under this Consent Order and Final Judgment Order.

13. Nothing in this Consent Order and Final Judgment Order shall 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 and Final Judgment Order.

14. This Consent Order and Final Judgment Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Judgment Order shall become final.

15. Any violation of this Consent Order and Final Judgment 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. Chapters 201 and 211.

16. The State of Vermont and this Court reserve continuing jurisdiction to ensure compliance this Final Judgment Order.

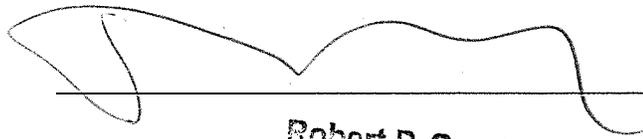
17. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described in the Complaint or in the Stipulation for the Entry of Final Judgment Order.

18. Nothing in this Consent Order and Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all other applicable federal, state, or local statutes, regulations, permits or directives.

19. This Consent Order and Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties hereto, or their legal representatives, and approved by this Court. Any representations not set forth in this Consent Order and Final Judgment 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.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Woodstock, Vermont, this 26<sup>th</sup> day of January, ~~2019~~ <sup>2020</sup>.

  
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The Hon. Robert P. Gersty, Jr.  
Superior Court Judge, Civil Division, Windsor Unit