

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. _____

STATE OF VERMONT,)
VERMONT DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
)
Plaintiff,)
)
v.)
)
VERMONT TECHNICAL COLLEGE)
)
Defendant.)

CONSENT AGREEMENT AND FINAL ORDER

WHEREAS, the above-named Plaintiff and Defendant (collectively, the “Parties”), have filed a Pleadings by Agreement pursuant to Rule 8(g) of the Vermont Rules of Civil Procedure;

WHEREAS, Plaintiff initiated this proceeding for the assessment of a civil penalty pursuant to 10 V.S.A. § 8221;

WHEREAS, under 10 V.S.A. § 8221, Plaintiff alleges Defendant is potentially liable for civil penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation;

WHEREAS, the Pleadings by Agreement allege that Defendant violated:
(a) 10 V.S.A. § 1259(a), by discharging waste into a state water without a permit;
and (b) Solid Waste Management Rule 6-703, by not reporting a discharge to ANR.

WHEREAS, the Parties have agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“Consent Order”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, based upon the Pleadings by Agreement and pursuant to 10 V.S.A. § 8221 and the Court’s inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

RESOLUTION OF VIOLATIONS

1. Without formally admitting wrongdoing or liability, Defendant agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.
2. VTC agrees that the violations alleged are deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of a past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
3. Defendant agrees that if it continues to use the Digester for field application of fertilizer then it shall update its Facility Management Plan on file with DEC to include a spill prevention plan, for DEC review and approval.
4. For the violations described above, Defendant shall:

- a. Pay \$10,000 within 15 days of this Order, via check payable to the “State of Vermont” and sent to: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. In the event that payment is received by Plaintiff before the Court has approved the Consent Agreement and Final Order, Plaintiff shall hold the check in trust until approval. Should the Court reject the Consent Order and Final Judgment Order, Plaintiff will return the check(s) to Defendant; and
 - b. Contribute \$40,000 to one or more Supplemental Environmental Projects (SEP), pursuant to 10 V.S.A. § 8007(b)(2). The SEP(s) shall be subject to the approval of both the Defendant and the Plaintiff, and shall be funded by the Defendant no later than 180 days from this Consent Order. Within 90 days from this Consent Order, Defendant shall submit its proposed SEP(s) to DEC for review.
5. If any of the \$40,000 has not been allocated by the Defendant after 180 days, or at Defendant’s election at any time, that amount shall be paid as a civil penalty, payable to the State in accordance with ¶ 4(a) above.
 6. If Defendant fails to pay the \$10,000 amount described in ¶ 4(a), such failure shall constitute a breach of this Consent Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. Defendant shall also be liable for costs incurred by the State, including reasonable attorney’s fees, to collect any unpaid penalty amount.

OTHER PROVISIONS

7. Defendant waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendant under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.
8. Compliance by Defendant with its obligations under this Consent Order shall constitute full compromise, settlement, satisfaction, and release of Defendant, its owners, members, employees, predecessors, successors, parents, subsidiaries, affiliated companies, officers, directors, agents, and assigns from all administrative, civil and/or criminal liability with respect to the specific facts described herein or in the Pleadings by Agreement.
9. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendant.
10. This Consent Order is binding upon the parties and all their successors and assigns.
11. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, the Consent Order shall be final.
12. 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. Chapters 201 and 211.

13. This Consent Order may only be altered, amended, or otherwise modified only by subsequent written agreements 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.

14. The Orange Civil Division of the Vermont Superior Court shall have jurisdiction over this Consent Order and the Parties for the purpose of enabling any of the Parties to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe the Consent Order, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions. The laws of the State of Vermont shall govern the Orders.

DATED at Montpelier, Vermont this 23rd day of September, 2020.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL



By:

Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-3186

DATED at Montpelier, Vermont this 24 day of September, 2020.

VERMONT TECHNICAL COLLEGE

By:

Littleton Tyler, Dean of Administration
[name/title]:



APPROVED AS TO FORM:



Justin E. Kolber
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609

Attorney for Plaintiff



Patricia K. Turley
General Counsel
Vermont State Colleges System
PO Box 7
Montpelier, VT 05601

Attorney for Defendant

ORDER AND FINAL JUDGMENT

Based on the Pleadings by Agreement and the terms of the Consent Agreement of the Parties, the Court enters this ORDER and FINAL JUDGMENT.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED 9/29/2020



Hon. Thomas Zonay
Orange Superior Court Judge

Vermont Superior Court
Filed 09/30/20
Orange Unit