

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. -20 Cncv

STATE OF VERMONT,
AGENCY OF NATURAL RESOURCES
and NATURAL RESOURCES BOARD,
Plaintiffs,

v.

CHITTENDEN SOLID WASTE DISTRICT,
Defendant.

PLEADINGS BY AGREEMENT

The State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., and Defendant Chittenden Solid Waste District, by and through its undersigned counsel, submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

I. THE STATE'S ALLEGATIONS

The Parties

1. Plaintiff Vermont Agency of Natural Resources (ANR or Agency) is a state agency established pursuant to 3 V.S.A. § 2802, with offices in Montpelier, Vermont.
2. Plaintiff Vermont Natural Resources Board (NRB) is an independent administrative board established pursuant to 10 V.S.A. § 6021 to administer Act 250, 10 V.S.A. Chapter 151, with offices in Montpelier, Vermont.
3. Defendant Chittenden Solid Waste District (CSWD) is a union municipal district created pursuant to 24 V.S.A. § 4862 to manage solid waste generated by its

member municipalities in Chittenden County, Vermont. CSWD member municipalities are: Bolton, Burlington, Charlotte, Colchester, Essex, Essex Junction, Hinesburg, Huntington, Jericho, Milton, Richmond, Shelburne, South Burlington, St. George, Underhill, Westford, Williston, and Winooski.

Factual Allegations

4. CSWD owns and operates solid waste management facilities in Williston, Vermont, including a closed landfill and composting facilities. CSWD also owns a Materials Recovery Facility (MRF) for processing recyclables, and contracts out its operation.
5. As part of its recycling program, CSWD receives glass from within the district and from outside the district for processing at the CSWD MRF.
6. CSWD is responsible for the management of glass materials processed at the MRF.
7. In 2013, CSWD used approximately 2,186 tons of glass processed at its MRF to repair a depression in the closed landfill cap without a permit or permit amendment from ANR or the NRB.
8. From February 2016 through March 2018, CSWD deposited approximately 15,029 tons of glass processed at its MRF on a slope at the end of Redmond Road next to its closed landfill without a permit or permit amendment from ANR or the NRB.
9. From May 2014 through August 2016, CSWD used approximately 734 tons of glass processed at its MRF as a subbase for compost rows in the south field of

the compost area.

10. Until March 2018, CSWD reported to ANR that the processed glass described herein had been “transferred off-site” for “local projects.”
11. ANR’s “Acceptable Uses for Processed Glass Aggregate” policy, promulgated in August 1994 and last amended on January 1, 2002, defines processed glass that meets certain quality requirements as “Processed Glass Aggregate” (PGA), and authorizes certain uses of PGA without prior authorization from ANR. The PGA Policy exempts the specified uses of PGA from the Solid Waste Management Rules, not Act 250.
12. To constitute PGA under the ANR PGA Policy, processed glass must contain no more than 1% deleterious materials by mass and must meet other quality requirements. It is the State’s position that glass processed by the CSWD MRF has not consistently met PGA quality standards for deleterious materials, so CSWD’s placement of processed glass in the landfill cap, subbase of compost rows, and over the slope by the closed landfill did not comply with the ANR PGA Policy. In 2017, CSWD tested samples from the large pile of glass it deposited over the slope. Some of the samples met PGA quality standards for deleterious material and some of the samples did not.
13. The ANR PGA Policy authorizes processed glass that meets the PGA quality requirements to be used in the following “Roadway, Trail, Parking Lot, Sidewalk Applications:”
 - a. Base course: layer(s) of specified material supporting a surface course

- b. Subbase: layer(s) of specified material placed on a subgrade to support a base or surface course
 - c. Embankments: a portion of a fill section situated between the existing ground and the subgrade.
14. It is the State's position that CSWD's placement of processed glass in the landfill cap, subbase of compost rows, and over the slope by the closed landfill does not comply with the ANR PGA Policy because these uses are not exempt uses under the ANR PGA Policy.
15. It is the State's position that CSWD avoided costs of recycling glass processed at its MRF by depositing it in the landfill cap, subbase of the compost rows, and over the slope by the closed landfill.
16. The MRF is subject to ANR Solid Waste Management Facility Certification No. CH954. Condition 1 of CH 954 requires compliance with the terms of the permit and Vermont Solid Waste Management Rules.
17. The compost area is subject to ANR Solid Waste Management Facility Certification No. CH940. Condition 1 of CH 940 requires compliance with the terms of the permit and Vermont Solid Waste Management Rules. Condition 2 of CH 940 requires that an amendment be obtained for any material or substantial alteration or addition to the project.
18. CSWD's closed landfill in Williston, Vermont is subject to Solid Waste Management Facility Certification CH920. Condition 1 of CH 920 requires compliance with the terms of the permit and Vermont Solid Waste Management

Rules. Condition 2 of CH 920 requires that an amendment be obtained for any material or substantial alteration or addition to the project.

19. The MRF and CSWD lands are subject to Act 250 permit series 4C0400.

Other Proceedings

20. On or about August 9, 2019, the Natural Resources Board District 4 Coordinator issued Jurisdictional Opinion 4-271, which concluded that an Act 250 permit amendment was required for CSWD's depositing of glass over the slope by the closed landfill and at the compost site. On or about September 23, 2019, the Coordinator issued Jurisdictional Opinion 4-271(Reconsideration) denying CSWD's reconsideration request filed on or about September 5, 2019.

21. On or about October 3, 2019, CSWD appealed the Jurisdictional Opinion to the Superior Court, Environmental Division pursuant to 10 V.S.A. Ch. 220. This appeal, *In re Chittenden County Solid Waste District JO*, Docket No. 114-10-19 Vtec, remains pending.

22. CSWD filed applications with ANR to amend CH 920 and CH 940 to authorize the prior disposal of glass processed at the MRF in the compost area and under the landfill cap. ANR notified CSWD that these applications were incomplete by letter dated May 7, 2020. CSWD later completed these applications. On August 20, 2020, ANR issued notice of draft decisions on Solid Waste Certification Amendments CH920-2020-11 and CH940-2020-3. ANR then held a public meeting on October 29, 2020. The two Solid Waste Certification Amendment applications remain pending.

23. October 30, 2020, CSWD filed an application for a categorical certification to authorize the prior disposal of glass over the slope by the closed landfill. This application, CH935-2020-58, remains pending.

Statutory and Regulatory Framework

24. ANR regulates solid waste pursuant to 10 V.S.A. Chapter 159 and the Vermont Solid Waste Management Rules.

25. Vermont Solid Waste Management Rule § 6-302(d) generally prohibits the disposal of solid waste outside of a certified facility.

26. Vermont Solid Waste Management Rule § 6-1208(a) requires an owner or operator of a solid waste management facility to report on the destination of all solid wastes managed by the facility.

27. The NRB regulates certain types of development in Vermont pursuant to 10 V.S.A. Chapter 151 (Act 250) and the Act 250 Rules.

28. Any material change to a permitted development must obtain a permit amendment under Act 250 Rule 34(A).

29. The State is authorized by 10 V.S.A. §§ 8221 and 8003(a) to bring an action in superior court, civil division, to enforce violations of Vermont's environmental laws, including Chapters 151 (Act 250) and 159 (solid waste) and the Solid Waste Management Rules.

30. Vermont's civil environmental enforcement statute, 10 V.S.A. § 8221, authorizes the court to, among other things: order injunctive relief; order remedial actions; order reimbursement from any person who caused governmental expenditures

for the investigation, abatement, mitigation, or removal of a hazard to human health or the environment; and to assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

II. ALLEGED VIOLATIONS

31. Defendant disposed of glass processed at the MRF on a slope by its closed landfill, outside of a certified facility in violation of Vermont Solid Waste Management Rule § 6-302(d) and without a permit or permit amendment in violation of Act 250.
32. Defendant disposed of glass processed at the MRF at its compost facility, outside a certified facility in violation of Vermont Solid Waste Management Rule § 6-302(d), without a Certification amendment in violation of Certification Conditions 1 and 2, and without a permit or permit amendment in violation of Act 250.
33. Defendant disposed of glass processed at the MRF in the landfill cap, outside a certified facility in violation of Vermont Solid Waste Management Rule § 6-302(d), without a Certification amendment in violation of Certification Conditions 1 and 2, and without a permit or permit amendment in violation of Act 250.
34. Defendant failed to accurately report on the destination of the processed glass, in violation of Vermont Solid Waste Management Rule § 6-1208(a).


III. DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

35. Defendant admits the factual allegations set forth in paragraphs 1-30 solely for purposes of resolving this case.
36. Without formally admitting or denying liability, Defendant agrees to this settlement of the violations alleged in paragraphs 31-34 above, in order to resolve this case.
37. Defendant agrees that each of the violations alleged in paragraphs 31-34 above is deemed proven and established as a "prior violation" in any future 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.

DATED December 29, 2020 at Montpelier, Vermont.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 
Melanie Kehne (ERN 2561)
Justin Kolber (ERN 4320)
Assistant Attorneys General
109 State Street
Montpelier, VT 05609
(802) 828-5531
melanie.kehne@vermont.gov

DATED December 23, 2020 at Williston, Vermont.

CHITTENDEN SOLID WASTE
DISTRICT

By: 
Sarah Reeves
Executive Director

APPROVED AS TO FORM:


Thomas R. Melloni, Esq.
Paul Frank + Collins P.C.
1 Church Street
Burlington, VT 05401
(802) 658-2311
tmelloni@pfclaw.com

Counsel for Defendant