

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.

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties' filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties' Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, 3 V.S.A. § 157, and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

RESOLUTION OF VIOLATIONS

1. Plaintiff, State of Vermont, has alleged violations of 10 V.S.A. Chapter 159, the Vermont Solid Waste Management Rules, Act 250 (10 V.S.A. Chapter 151), the Act 250 Rules, and the terms and conditions of permits issued by the Agency of Natural Resources (ANR) and the Natural Resources Board (NRB), by the Chittenden Solid Waste District (Defendant) as set forth in Paragraphs 31-34 of the parties' Pleadings by Agreement. Defendant admits the factual allegations set forth

in Paragraphs 1-30 of the Pleadings by Agreement solely for purposes of resolving this case, and neither admits nor denies liability for the alleged violations but agrees to the entry of this Consent Order and Final Judgment Order to resolve this matter. Defendant agrees that each of the violations alleged in Paragraphs 31-34 of the Pleadings by Agreement 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.

PAYMENTS TO THE STATE

2. Defendant shall pay a civil penalty of seventy-eight thousand dollars (\$78,000.00).

3. Defendant shall pay three-hundred ninety-three dollars and twenty-four cents (\$393.24) to reimburse the NRB its enforcement costs.

4. Defendant shall pay a total of \$322,000 to account for the economic benefit that accrued to Defendant from avoiding costs of properly recycling the glass. Defendant shall pay \$100,000 of the \$322,000 concurrently with the penalty, and shall pay the remaining \$222,000 to fund a Supplemental Environmental Project, as described below.

5. Payment of the \$78,000 civil penalty and \$100,000 economic benefit restitution shall be made by certified check payable to “State of Vermont,” and shall be received by the State at the following address no later than fourteen (14) calendar days after the date of this Order:

Melanie Kehne, Assistant Attorney General

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

6. Payment of the \$393.24 cost reimbursement shall be made by certified check payable to “State of Vermont,” and shall be received by the State at the address in the preceding paragraph no later than fourteen (14) calendar days after the date of this Order.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

7. In addition to the payments set forth above, Defendant shall also contribute two hundred twenty-two thousand dollars (\$222,000) to fund a Supplemental Environmental Project (SEP). The SEP shall be carried out by a third-party project implementer to benefit the public and shall be subject to approval of the Defendant and ANR, the NRB, and the Attorney General.

8. Within thirty (30) days of the date of this Order, Defendant shall submit to the State a SEP proposal(s) and proposed SEP agreement(s) that complies with ANR’s SEP Policy, for review and approval.

9. Payment of the \$222,000 to fund a SEP shall be made by certified check in no more than six (6) installments and received by the third-party project implementer(s) as follows:

- a. \$37,000 no later than 90 days after the date of this Order.
- b. \$37,000 no later than 150 days after the date of this Order.
- c. \$37,000 no later than 210 days after the date of this Order.
- d. \$37,000 no later than 270 days after the date of this Order.
- e. \$37,000 no later than 330 days after the date of this Order.

f. \$37,000 no later than 390 days after the date of this Order.

10. If any SEP payment identified above is not made in the timeframe specified in Paragraph 9, that amount shall be converted to a civil penalty and shall be immediately due and payable to the State of Vermont. Defendant shall make said payment by certified check made payable to the “State of Vermont” and received by the State at the address specified in Paragraph 5 above.

11. Defendant agrees that funds directed to a SEP are not tax deductible and consequently shall not deduct, nor attempt to deduct any SEP expenditures from Defendant’s taxes. Further, in the event Defendant publishes by any means, directly or indirectly, the identity or result of the SEP that Defendant has funded, the Defendant shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Vermont Attorney General, Agency of Natural Resources, and Natural Resources Board.

OTHER PROCEEDINGS AND RELIEF

12. Within fourteen (14) days of this Order, Defendant shall withdraw its Solid Waste Certification Amendment Applications CH920-2020-11 and CH940-2020-3, and its Categorical Disposal Certification Application CH935-2020-58, without prejudice.

13. Within fourteen (14) days of this Order, Defendant shall move to voluntarily dismiss its appeal from the Act 250 Jurisdictional Opinion (Re: Chittenden Solid Waste District JO, Docket No. 114-10-19 Vtec), with prejudice.

The Jurisdictional Opinion finding Act 250 jurisdiction shall remain in force and effect.

14. Within thirty (30) days of this Order, Defendant shall submit a stabilization plan for the large pile of glass over the slope at the end of Redmond Road next to its closed landfill to ANR for its review and approval. Defendant shall comply with the terms of the plan as approved by ANR.

15. Defendant shall not dispose of glass at the properties subject to Pleadings by Agreement without first obtaining all necessary State permits and approvals.

16. Defendant shall disclose to and be transparent with the public and haulers going forward regarding how it manages glass sent to its Materials Recovery Facility (MRF) for recycling. This shall include but not be limited to the steps set forth in the following paragraph.

17. Within thirty (30) days of this Order, Defendant shall submit to ANR for review and approval clear, conspicuous, and accurate information explaining what happens to glass accepted for recycling at the MRF and how processed glass from the MRF is managed generally, for publication as set forth below. Defendant may submit and ANR may approve different versions of this information for the different publication methods.

- a. Defendant shall post the approved information in a prominent location on its website within thirty (30) days of ANR approval.
- b. Defendant shall include the approved information in the next email and print newsletter or other mailing Defendant sends to its customers.

- c. Defendant shall post the approved information at sites where it accepts materials for recycling within thirty (30) days of ANR approval.
- d. Defendant shall include the approved information and/or explain where to find it online on the recycling posters or brochures it provides to its customers.

OTHER PROVISIONS

18. 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.

19. Defendant agrees that each of the violations alleged in Paragraphs 31-34 of the Parties' Pleadings by Agreement 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.

20. Defendant shall not be subject to further enforcement and or liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of the Order, provided that the Defendant fully complies with the terms of this Consent Order.

21. This Consent Order is binding upon the parties and all their successors and assigns.

22. Nothing in this Consent 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.

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

24. 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.

25. 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 circumstances set forth herein.

26. 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. The State reserves all rights, claims and interests not expressly waived herein.

27. 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. 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.

28. The Court hereby finds, based on the representations of the parties, that the parties have negotiated this Consent Order 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 of Vermont's interest.

29. The Court hereby enters this Consent Order as an Order of the Court and Final Judgment in this case.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Burlington, Vermont, this ___ day of _____, 2021.

Honorable Superior Court Judge