

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. _____

STATE OF VERMONT,)
VERMONT DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
)
Plaintiff,)
)
v.)
)
MAD RIVER CAR WASH, INC.)
MARC DIMARIO)
)
Defendants.)

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MAR 25 '21

ATTORNEY GENERAL'S OFFICE
BUSINESS OFFICE

CONSENT AGREEMENT AND FINAL ORDER

WHEREAS, the above-named Plaintiff and Defendants (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, Defendants are potentially liable for civil penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation for each day the violation continued;

WHEREAS, the Pleadings by Agreement allege that Defendants violated Underground Storage Tank Rules 8-506 and 8-509, by not conducting weekly and monthly inspections of the Defendants' underground storage tank;

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 or denying wrongdoing or liability, Defendants agree to this settlement of the violations alleged above in order to resolve all outstanding disputes.
2. Defendants agree 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. Defendants shall conduct all weekly and monthly monitoring and inspections of its underground storage tank in compliance with its Permit and all applicable UST Rules.

PENALTY

4. For the violations described above, a penalty of \$16,000 is assessed as follows:
 - a. Defendants shall pay \$3,000 total (\$1,500 within 60 days of this Order, and \$1,500 within 120 days of this order), both payments 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 the State before the Court has approved the Consent Order, the State shall hold the check(s) in trust until approval. Should the Court reject the Consent Order, the State will return the check(s) to Defendants; and
 - b. The remainder of the penalty (\$13,000) shall be suspended due to Defendants’ demonstrated inability to pay.
5. For each year through 2023, no later than May 15th of each year, Defendants shall submit tax returns, including all schedules, to the State of Vermont at: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. If these documents or other information show a change in economic circumstances such that the State believes Defendants’ ability to pay the remaining \$13,000 penalty has increased, the State may petition the Court and the

Court may require such increased payment. Defendants shall produce their first tax return no later than May 15, 2021.

6. If Defendants fail to pay the \$3,000 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. Defendants shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

OTHER PROVISIONS

7. Defendants waive: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendants under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.
8. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendants.
9. This Consent Order is binding upon the parties and all their successors and assigns.
10. 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.

11. 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.
12. 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.
13. The Washington 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 8th day of March, 2021.

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 Waitsfield, Vermont this 24th day of March, 2021.

MAD RIVER CAR WASH, INC.

By: _____


Marc DiMario, Owner

MARC DIMARIO

By: _____

