

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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ATTORNEY GENERAL'S OFFICE
BUSINESS OFFICE

PLEADINGS BY AGREEMENT

Plaintiff Vermont Department of Environmental Conservation, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendants Mad River Car Wash and Marc DiMario hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

A. THE STATE'S ALLEGATIONS

The Parties

1. Vermont Department of Environmental Conservation (DEC) is a state agency with offices in Montpelier, Vermont. As part of its operations, DEC oversees and regulates underground storage tanks and permits. DEC is an agency established by statute within the Agency of Natural Resources (ANR) under 3 V.S.A. § 2837.

2. Mad River Car Wash, Inc. (MRCW) is a car wash business located in Waitsfield, Vermont. Marc DiMario is the owner of MRCW.

Statutory and Regulatory Structure

3. DEC administers an underground storage tank (UST) program pursuant to the UST Rules and 10 V.S.A. Chapter 59. Under the UST Rules, all Category 1 tanks must be monitored weekly and monthly per Rules 8-506 and 8-509, and weekly inspection records must be maintained per Rule 8-505.¹
4. Under 10 V.S.A. § 8221, the Attorney General is authorized to bring enforcement actions in superior court to enforce Vermont’s environmental laws, including violations of Chapter 59 (Underground Storage Tanks), and all “rules, permits, assurances, or orders implementing” such laws.
5. Under 10 V.S.A. § 8002(9), a “violation” is defined as “noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permit, assurances, or orders.” Chapter 59 is a statute identified in 10 V.S.A. § 8003.

Facts relating to Defendants

6. Defendant MRCW is a for-profit car wash. MRCW has a 2,000 gallon Category 1 underground storage tank on its property containing heating oil used for hot water in its car wash operations (hereafter “the UST”).

¹ The Vermont Underground Storage Tank Rules are available online at: <https://dec.vermont.gov/sites/dec/files/wmp/UST/UST-Rules.pdf>

7. MRCW's UST is subject to a UST Operating Permit issued by DEC on July 1, 2018 (hereafter, the "Permit"). The Permit requires compliance with all applicable requirements of the UST Rules.
8. From August 2019 through September 2020, DEC inspectors conducted several site visits and confirmed that MRCW repeatedly failed to conduct its leak detection monitoring of the UST. For example:
 - a. On August 6, 2019, a DEC inspector found that inspection records had been filled out for inspections that had not yet occurred;
 - b. On November 26, 2019, Defendant DiMario admitted to a DEC inspector that he had not been conducting weekly leak detection monitoring of the UST;
 - c. From January-February 2020, a DEC inspector found that the access to the UST had not been shoveled or plowed thereby preventing any monitoring or inspections from occurring; and
 - d. On September 16, 2020, a DEC inspector found that weekly inspections had not occurred.
9. During the above inspections, a DEC inspector explained the requirements and importance of conducting UST monitoring to Defendant DiMario.

The State's position

10. The State alleges that the above conduct constitutes a violation of Underground Storage Tank Rules 8-506 and 8-509, by not conducting weekly and monthly inspection and monitoring of the UST.

B. DEFENDANTS' RESPONSE TO THE ALLEGATIONS

11. Defendants admit the factual findings described above in ¶¶ 2, 6-9, solely for purposes of resolving this case.
12. Without formally admitting wrongdoing or liability, Defendants agree to this settlement of the violations alleged above in order to resolve all outstanding disputes.
13. Defendants further agree that each of the violations alleged in paragraph 10 above is deemed proven and established as a “prior violation” in any future state proceeding considering Defendants’ compliance record(s), including but not limited to future administrative or judicial enforcement actions for civil penalties calculated under Title 10, and permit proceedings.

*****SIGNATURES APPEAR ON NEXT PAGE*****

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: _____

