

STATE OF VERMONT

SUPERIOR COURT

Windsor Unit

CIVIL DIVISION

Docket No.

STATE OF VERMONT, NATURAL)
RESOURCES BOARD, AND AGENCY)
OF NATURAL RESOURCES)
Plaintiffs,)
)
v.)
)
VERMONT PACKINGHOUSE, LLC, AND)
CURRAN-BIRGE REAL ESTATE, LLC)
Defendants.)

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:

VIOLATIONS

1. Plaintiffs, State of Vermont, Agency of Natural Resources and Natural Resources Board, have alleged violations of Act 250 Land Use Permit 2S1314-1 and the Multi-Sector General Permit (MSGP) #3-9003, Parts 1.4 and 1.6, as set forth in paragraphs 41 through 45 of the parties' Pleadings by Agreement. Defendants admit the factual allegations set forth in paragraphs 1 through 40 of the Pleadings

by Agreement solely for purposes of resolving this case, and neither admit nor deny liability for the alleged violations but agree to the entry of this Consent Order and Final Judgment Order to resolve this matter. Defendants agree that each of the violations alleged in paragraphs 41 through 45 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.

PENALTIES

2. For the violations described above, Defendants shall pay a civil penalty of thirty-seven thousand dollars (\$37,000) no later than thirty (30) days after the date this Order is issued.

3. The civil penalty payment required by this Order shall be made to the “State of Vermont” and shall be sent to Melanie Kehne, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001.

4. If Defendants fail to make payment as set forth in the preceding paragraphs, such failure shall constitute a breach of this Consent Order and Final Judgment 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

5. Within sixty (60) days of the issuance of this Order, Defendants shall submit to ANR a Notice of Intent and Stormwater Pollution Prevention Plan

sufficient to obtain coverage under MSGP 3-9003, or a Certification of No Exposure warranting exclusion in accordance with MSGP 3-9003, Sections 1.4 and 1.6.

6. The parties waive: (a) all rights to contest or appeal this Consent Order and Final Judgment Order; and (b) all rights to contest the obligations imposed upon Defendants under this Consent Order and Final Judgment Order in this or any other administrative or judicial proceeding involving the State of Vermont.

7. This Consent Order and Final Judgment Order is binding upon the parties and all their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including but not limited to any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, or their assigns under this Consent Order and Final Judgment Order.

8. Nothing in this Consent Order and Final Judgment 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 and Final Judgment Order.

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

10. Any violation of this Consent Order and Final Judgment 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.

11. The State of Vermont and this Court reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.

12. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.

13. Nothing in this Consent Order and Final Judgment Order shall be construed as having relieved, modified, or in any manner affected each Defendant's obligations to comply with all other applicable federal, state, or local statutes, regulations, permits or directives.

14. This Consent Order and Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement 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.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at _____, Vermont, this _____ day of _____, 2022.

The Hon. _____
Superior Court Judge, Civil Division, Windsor Unit