

STATE OF VERMONT

**SUPERIOR COURT
Washington Unit**

**CIVIL DIVISION
Docket No. _____**

STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
Plaintiff,)
)
v.)
)
HIGHLANDS FUEL DELIVERY, L.L.C.,)
doing business as IRVING ENERGY,)
Defendant)

CONSENT AGREEMENT AND FINAL ORDER

WHEREAS, the above-named Plaintiff and Defendant (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, Defendant is 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 Defendant violated:
(i) Aboveground Storage Tank Rules §§ 306(b)(2); 306(c), by not inspecting fuel tank systems; and (ii) 10 V.S.A. § 6616 for releasing hazardous material (fuel oil);

WHEREAS, the Parties have stipulated 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, Defendant agrees to this settlement of the violations alleged above in order to resolve all outstanding disputes.
2. Defendant agrees 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. For the violations described above, Defendant shall pay a civil penalty of \$9,500 within 10 days of this signed Order, 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 Defendant.

4. If Defendant fails to pay the \$9,500 amount, then 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. Defendant shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

OTHER PROVISIONS

5. Defendant waives: (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.
6. 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.
7. This Consent Order is binding upon the parties and all their successors and assigns.
8. 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.
9. 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.

10. 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.
11. 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 13th day of June, 2022.

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 Portsmouth, New Hampshire this 20th day of June, 2022.

HIGHLANDS FUEL DELIVERY, LLLC
doing business as IRVING ENERGY,



Gregory B. Poitras
Secretary
June 20, 2022

By: _____
[name/title], authorized agent

Approved as to form:



By: _____
Gregory B. Poitras
U.S. General Counsel
Irving Oil

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ORDER AND FINAL JUDGMENT

Based on the Pleadings by Agreement and the terms of the Consent Agreement of the Parties, the Court enters this ORDER and FINAL JUDGMENT.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Montpelier, Vermont this ___ day of June, 2022.

Hon. Robert Mello
Washington Superior Court Judge