

On Tuesday, December 29, 2020, 02:17:06 PM EST, Kehne, Melanie <melanie.kehne@vermont.gov> wrote:

Dear John,

We filed the attached Settlement Agreement documents today in Chittenden Superior Court in the CSWD environmental matter.

If there are any questions, please let me know. Thank you again for your interest in the case.

Best regards,

Melanie

Melanie Kehne

Assistant Attorney General

Office of the Attorney General

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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.

PLEADINGS BY AGREEMENT

The State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., and Defendant Chittenden Solid Waste District, by and through its undersigned counsel, submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

I. THE STATE'S ALLEGATIONS

The Parties

1. Plaintiff Vermont Agency of Natural Resources (ANR or Agency) is a state agency established pursuant to 3 V.S.A. § 2802, with offices in Montpelier, Vermont.
2. Plaintiff Vermont Natural Resources Board (NRB) is an independent administrative board established pursuant to 10 V.S.A. § 6021 to administer Act 250, 10 V.S.A. Chapter 151, with offices in Montpelier, Vermont.
3. Defendant Chittenden Solid Waste District (CSWD) is a union municipal district created pursuant to 24 V.S.A. § 4862 to manage solid waste generated by its

member municipalities in Chittenden County, Vermont. CSWD member municipalities are: Bolton, Burlington, Charlotte, Colchester, Essex, Essex Junction, Hinesburg, Huntington, Jericho, Milton, Richmond, Shelburne, South Burlington, St. George, Underhill, Westford, Williston, and Winooski.

Factual Allegations

4. CSWD owns and operates solid waste management facilities in Williston, Vermont, including a closed landfill and composting facilities. CSWD also owns a Materials Recovery Facility (MRF) for processing recyclables, and contracts out its operation.
5. As part of its recycling program, CSWD receives glass from within the district and from outside the district for processing at the CSWD MRF.
6. CSWD is responsible for the management of glass materials processed at the MRF.
7. In 2013, CSWD used approximately 2,186 tons of glass processed at its MRF to repair a depression in the closed landfill cap without a permit or permit amendment from ANR or the NRB.
8. From February 2016 through March 2018, CSWD deposited approximately 15,029 tons of glass processed at its MRF on a slope at the end of Redmond Road next to its closed landfill without a permit or permit amendment from ANR or the NRB.
9. From May 2014 through August 2016, CSWD used approximately 734 tons of glass processed at its MRF as a subbase for compost rows in the south field of

the compost area.

10. Until March 2018, CSWD reported to ANR that the processed glass described herein had been “transferred off-site” for “local projects.”
11. ANR’s “Acceptable Uses for Processed Glass Aggregate” policy, promulgated in August 1994 and last amended on January 1, 2002, defines processed glass that meets certain quality requirements as “Processed Glass Aggregate” (PGA), and authorizes certain uses of PGA without prior authorization from ANR. The PGA Policy exempts the specified uses of PGA from the Solid Waste Management Rules, not Act 250.
12. To constitute PGA under the ANR PGA Policy, processed glass must contain no more than 1% deleterious materials by mass and must meet other quality requirements. It is the State’s position that glass processed by the CSWD MRF has not consistently met PGA quality standards for deleterious materials, so CSWD’s placement of processed glass in the landfill cap, subbase of compost rows, and over the slope by the closed landfill did not comply with the ANR PGA Policy. In 2017, CSWD tested samples from the large pile of glass it deposited over the slope. Some of the samples met PGA quality standards for deleterious material and some of the samples did not.
13. The ANR PGA Policy authorizes processed glass that meets the PGA quality requirements to be used in the following “Roadway, Trail, Parking Lot, Sidewalk Applications:”
 - a. Base course: layer(s) of specified material supporting a surface course

- b. Subbase: layer(s) of specified material placed on a subgrade to support a base or surface course
 - c. Embankments: a portion of a fill section situated between the existing ground and the subgrade.
14. It is the State's position that CSWD's placement of processed glass in the landfill cap, subbase of compost rows, and over the slope by the closed landfill does not comply with the ANR PGA Policy because these uses are not exempt uses under the ANR PGA Policy.
15. It is the State's position that CSWD avoided costs of recycling glass processed at its MRF by depositing it in the landfill cap, subbase of the compost rows, and over the slope by the closed landfill.
16. The MRF is subject to ANR Solid Waste Management Facility Certification No. CH954. Condition 1 of CH 954 requires compliance with the terms of the permit and Vermont Solid Waste Management Rules.
17. The compost area is subject to ANR Solid Waste Management Facility Certification No. CH940. Condition 1 of CH 940 requires compliance with the terms of the permit and Vermont Solid Waste Management Rules. Condition 2 of CH 940 requires that an amendment be obtained for any material or substantial alteration or addition to the project.
18. CSWD's closed landfill in Williston, Vermont is subject to Solid Waste Management Facility Certification CH920. Condition 1 of CH 920 requires compliance with the terms of the permit and Vermont Solid Waste Management

Rules. Condition 2 of CH 920 requires that an amendment be obtained for any material or substantial alteration or addition to the project.

19. The MRF and CSWD lands are subject to Act 250 permit series 4C0400.

Other Proceedings

20. On or about August 9, 2019, the Natural Resources Board District 4 Coordinator issued Jurisdictional Opinion 4-271, which concluded that an Act 250 permit amendment was required for CSWD's depositing of glass over the slope by the closed landfill and at the compost site. On or about September 23, 2019, the Coordinator issued Jurisdictional Opinion 4-271(Reconsideration) denying CSWD's reconsideration request filed on or about September 5, 2019.
21. On or about October 3, 2019, CSWD appealed the Jurisdictional Opinion to the Superior Court, Environmental Division pursuant to 10 V.S.A. Ch. 220. This appeal, *In re Chittenden County Solid Waste District JO*, Docket No. 114-10-19 Vtec, remains pending.
22. CSWD filed applications with ANR to amend CH 920 and CH 940 to authorize the prior disposal of glass processed at the MRF in the compost area and under the landfill cap. ANR notified CSWD that these applications were incomplete by letter dated May 7, 2020. CSWD later completed these applications. On August 20, 2020, ANR issued notice of draft decisions on Solid Waste Certification Amendments CH920-2020-11 and CH940-2020-3. ANR then held a public meeting on October 29, 2020. The two Solid Waste Certification Amendment applications remain pending.

23. October 30, 2020, CSWD filed an application for a categorical certification to authorize the prior disposal of glass over the slope by the closed landfill. This application, CH935-2020-58, remains pending.

Statutory and Regulatory Framework

24. ANR regulates solid waste pursuant to 10 V.S.A. Chapter 159 and the Vermont Solid Waste Management Rules.

25. Vermont Solid Waste Management Rule § 6-302(d) generally prohibits the disposal of solid waste outside of a certified facility.

26. Vermont Solid Waste Management Rule § 6-1208(a) requires an owner or operator of a solid waste management facility to report on the destination of all solid wastes managed by the facility.

27. The NRB regulates certain types of development in Vermont pursuant to 10 V.S.A. Chapter 151 (Act 250) and the Act 250 Rules.

28. Any material change to a permitted development must obtain a permit amendment under Act 250 Rule 34(A).

29. The State is authorized by 10 V.S.A. §§ 8221 and 8003(a) to bring an action in superior court, civil division, to enforce violations of Vermont's environmental laws, including Chapters 151 (Act 250) and 159 (solid waste) and the Solid Waste Management Rules.

30. Vermont's civil environmental enforcement statute, 10 V.S.A. § 8221, authorizes the court to, among other things: order injunctive relief; order remedial actions; order reimbursement from any person who caused governmental expenditures

for the investigation, abatement, mitigation, or removal of a hazard to human health or the environment; and to assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

II. ALLEGED VIOLATIONS

31. Defendant disposed of glass processed at the MRF on a slope by its closed landfill, outside of a certified facility in violation of Vermont Solid Waste Management Rule § 6-302(d) and without a permit or permit amendment in violation of Act 250.
32. Defendant disposed of glass processed at the MRF at its compost facility, outside a certified facility in violation of Vermont Solid Waste Management Rule § 6-302(d), without a Certification amendment in violation of Certification Conditions 1 and 2, and without a permit or permit amendment in violation of Act 250.
33. Defendant disposed of glass processed at the MRF in the landfill cap, outside a certified facility in violation of Vermont Solid Waste Management Rule § 6-302(d), without a Certification amendment in violation of Certification Conditions 1 and 2, and without a permit or permit amendment in violation of Act 250.
34. Defendant failed to accurately report on the destination of the processed glass, in violation of Vermont Solid Waste Management Rule § 6-1208(a).


III. DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

35. Defendant admits the factual allegations set forth in paragraphs 1-30 solely for purposes of resolving this case.
36. Without formally admitting or denying liability, Defendant agrees to this settlement of the violations alleged in paragraphs 31-34 above, in order to resolve this case.
37. Defendant agrees that each of the violations alleged in paragraphs 31-34 above 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.

DATED December 29, 2020 at Montpelier, Vermont.


STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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DATED December 23, 2020 at Williston, Vermont.

CHITTENDEN SOLID WASTE
DISTRICT

By: 

Sarah Reeves
Executive Director

APPROVED AS TO FORM:



Thomas R. Melloni, Esq.
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Counsel for Defendant

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
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STATE OF VERMONT,
AGENCY OF NATURAL RESOURCES
and NATURAL RESOURCES BOARD,
Plaintiffs,

v.

CHITTENDEN SOLID WASTE DISTRICT,
Defendant.

**STIPULATION FOR THE ENTRY OF CONSENT ORDER
AND FINAL JUDGMENT ORDER**

The State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., and Defendant Chittenden Solid Waste District, by and through its undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, the State alleges in the Pleadings by Agreement filed in this action that Defendant committed 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 permits issued pursuant to those statutes and rules;

WHEREAS, Defendant solely for purposes of resolving this case has admitted the factual allegations of the Pleadings by Agreement and, without formally admitting or denying liability, has agreed to the settlement of these violations of Vermont law, which violations shall qualify as "prior violations" for purposes of any future State action considering Defendant's compliance record;

WHEREAS, the Attorney General pursuant to 3 V.S.A., Chapter 7 has the

general supervision of matters and actions in favor of the State, and may settle such matters as the interests of the State require;

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 State considered the criteria in 10 V.S.A. §§ 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violations and that Defendant knew or had reason to know the violations existed;

WHEREAS, the State believes that this settlement is fair, reasonable, and in the State's interest as it upholds the statutory purpose and intent of 10 V.S.A. Chapters 151 and 159, in which the violations occurred; and

WHEREAS, the Consent Order has been negotiated by the State and Defendant in good faith and that the implementation of this Consent Order will avoid prolonged and complicated litigation between the parties;

NOW, THEREFORE, the State and Defendant hereby stipulate and agree as follows:

1. The attached Consent Order may be entered by the Court;
2. The State and Defendant hereby waive all rights to contest or appeal the Consent Order and they shall not challenge, in this or any other proceeding, the validity of any of the terms of the Consent Order or of this

Court's jurisdiction to enter the Consent Order; and

3. The Consent Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties' legal representatives and approved by the Court.

DATED December 29, 2020 at Montpelier, Vermont.


STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 
Melanie Kehne (ERN 2651)
Justin Kolber (ERN 4320)
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DATED December 24, 2020 at Burlington, Vermont.

CHITTENDEN SOLID WASTE
DISTRICT

By: 
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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