

VERMONT SUPERIOR COURT  
WASHINGTON CIVIL DIVISION

STATE OF VERMONT )  
Agency of Natural Resources )  
Plaintiff, )  
 ) Civil Action  
v. ) Docket No. \_\_\_\_\_  
 )  
REGINALD RIENDEAU )  
Defendant. )  
 )

**STATE'S MOTION FOR PRELIMINARY INJUNCTION  
AND MEMORANDUM IN SUPPORT OF MOTION**

The State of Vermont, by and through the Office of the Attorney General, moves for a preliminary injunction, pursuant to V.R.C.P. 65, 10 V.S.A. §§ 1274(a) and 8221, and 3 V.S.A. § 157, requiring Defendant to remediate his logging operation site in Albany, Vermont to stop ongoing unpermitted discharges, and prevent future discharges, to waters of the state.

**Memorandum of Law**

Defendant Reginald Riendeau's failure to follow Vermont's Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont (AMP's) at his logging operation site has resulted and continues to result in unpermitted discharges into waters of the state in violation of 10 V.S.A. § 1259(a). Despite repeated efforts by the Agency of Natural Resources (ANR) since at least January 2012 to work with Defendant to achieve compliance, Defendant has not complied. Absent injunctive relief now requiring remediation, there will be future discharges, particularly from fall and winter

precipitation. Defendant has also violated 10 V.S.A. § 2625 by heavy cutting 40 acres or more without filing a notice of intent to cut and obtaining an authorization to proceed.

## **I. Factual Background**

Defendant Reginald Riendeau co-owns approximately 253 acres located off of Shuteville Road in Albany (the Property) on which he conducted a logging operation sometime after purchasing the Property in September 2010. On December 9, 2011, Richard Greenwood, a State Lands Forester with the Department of Forests, Parks and Recreation (the Department), visited the Property to investigate a potential heavy cut. During this visit Greenwood observed that Defendant's logging activities had impacted an unnamed stream on the eastern portion of the Property (Eastern Stream). *See* Affidavit of Richard Greenwood ¶ 5. On December 19, 2011, Greenwood returned to the Property and confirmed several water quality violations. Greenwood specifically observed that inadequate skidder crossings allowed runoff to enter the Eastern Stream in many locations, woody logging debris was left in the stream, and no seeding or mulching had been done, resulting in heavy sedimentation. *Id.*

On or about January 4, 2012, the Department sent a letter to Defendant detailing at least twelve locations where discharges occurred as a result of Defendant's failure to implement AMP's. The letter informed Defendant that the Department had conducted a heavy cut investigation of the harvested area

of the Property and that the results of the investigation suggested that approximately 107 acres had been heavy cut. On January 10, 2012, ANR issued a Notice of Alleged Violation (NOAV) to Defendant pursuant to 10 V.S.A. § 8006. The NOAV enclosed the January 4<sup>th</sup> letter, and alleged that Defendant had failed to properly implement AMP's and caused discharges into state waters without a permit in violation of 10 V.S.A. § 1259(a). The NOAV directed Defendant to complete remedial work to address the discharges by June 30, 2012, and requested a written response from Defendant. No response was ever received.

On December 5, 2012, Greenwood returned to the Property and observed water flowing through skid trails and skidder ruts and into the Eastern Stream, inadequate skidder crossings, and no seeding or mulching at any of the skidder crossings—all of which the January 2012 NOAV and letter had requested to be fixed. *See Greenwood Aff.* ¶ 7. On December 6, 2012, the Department sent another letter documenting the Property's condition and requesting a formal written plan for remediation by spring of 2013. *Id.* ¶ 8. No written response was received, but Defendant was aware of the problems, and said he was going to fix them. *Id.* ¶ 9.

On July 17, 2013, Greenwood and Environmental Enforcement Officer (EEO) Reginald Smith visited the parts of the Property identified on previous

visits and again walked the Eastern Stream and observed the same conditions.<sup>1</sup> Specifically, Greenwood observed that: (a) stream crossings were inadequate; (b) no seeding or mulching had been done; (c) waterbars had failed or were nonexistent; (d) logging debris remained within the streambed; and (e) many skid trails were rutted and not filled in or smoothed out. *Id.* ¶ 10. As a result of Defendant's failure to comply with the AMP's, sediment and runoff would flow directly to the stream. *Id.* Greenwood then walked an additional skid road for the first time in the western part of the Property. He discovered another failed skidder crossing at Lamphean Brook, inadequate waterbars, and no seeding or mulching; any runoff during heavy rain would travel directly to Lamphean Brook. *Id.* ¶ 11. Greenwood noted that Lamphean Brook must be inspected for § 1259 violations just as had been done on the eastern portion of the Property. *Id.*

During the July 17, 2013 site visit, Department staff also observed that Defendant appeared to have heavy cut on the western side of Lamphean Brook. *Id.* ¶ 16. This is in addition to the 107 acres that the Department had investigated in December 2011. *Id.*

On October 1, 2013, EEO Smith returned to the Property, and viewed the Eastern Stream and a portion of Lamphean Brook. He observed that Defendant had not done any remediation since the July 17, 2013 visit, that new waterbars had not been constructed, woody debris had not been removed, and seeding and mulching had not been done. Affidavit of Reginald Smith ¶ 3. Smith also

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<sup>1</sup> On each of his site visits, Greenwood also took photos and identified map points of locations where AMP's had not been followed. These are referenced in, and attached to, the Greenwood Affidavit.

observed that discharges into Lamphcan Brook are continuing during rain storms. *Id.* ¶ 4.

## II. Legal Standards

In environmental enforcement actions brought under 10 V.S.A. § 8221, a preliminary injunction “*shall be obtained* upon a showing that there is a probability of success on the merits” and that a violation exists. 10 V.S.A. § 8221(c)(1) (emphasis added). “In such an action, the [State] need not demonstrate immediate and irreparable injury, loss or damage.” *Id.* § 8221(c)(2).<sup>2</sup>

Section 8221 authorizes the Attorney General to bring enforcement actions for violation of any of the provisions of law specified in § 8003(a). Those provisions include: (1) the Vermont Water Pollution Control statute (10 V.S.A. § 1259) (prohibiting any discharge into waters of the state without a permit); and (2) the provision regulating heavy cutting (10 V.S.A. § 2625) (prohibiting cutting 40 acres or more of timber below the “C-line” stock, as defined by the U.S. Department of Agriculture, without filing a notice of intent to conduct such cutting). A “violation” includes “noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permits, assurances, or orders.” 10 V.S.A. § 8002(9).

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<sup>2</sup> Even independent of § 8221, the State would not need to show irreparable harm to obtain preliminary relief. It must show only that the violation was substantial and knowing. *See Town of Sherburne v. Carpenter*, 155 Vt. 126, 131-32, 582 A.2d 145, 149 (1990) (injunction would issue in favor of the municipality unless zoning violation was “so insubstantial that it would be unjust and inequitable to require the removal of an offending structure through a mandatory injunction”). The violation here is neither insubstantial nor innocent. Further, it is resulting in ongoing environmental harm.

### III. The State Is Entitled To A Preliminary Injunction

An injunction requiring immediate remedial measures and compliance with § 1259 is appropriate because water quality violations exist and the State is likely to succeed on the merits. *See* 10 V.S.A. § 8221(c). Defendant continues to violate the statutory scheme by failing to correct ongoing discharges to waters of the state even after repeated letters and a NOAV detailing how to comply. Defendant has not submitted a remediation plan as requested several times. Department staff has repeatedly observed the following failures to follow the AMP's, resulting in unpermitted discharges:

- Stream crossings, if constructed at all, were poorly constructed and failed to keep skidder vehicles out of the stream;
- Stream crossings have not been seeded and mulched;
- Waterbars have failed or are nonexistent;
- Logging debris remains in the streambed in several areas; and
- Skid trails are rutted, and have not been filled in and smoothed out.

*See* Greenwood Aff. ¶ 10. Absent remediation now, there will be future discharges as a result of fall and winter precipitation. *Id.* ¶ 15. Further, some discharges are ongoing, as observed in the most recent site visit on October 1, 2013. Smith Aff. ¶ 4. Injunctive relief is thus warranted now.

In addition, the State is entitled to a preliminary injunction requiring immediate remedial measures and compliance with § 2625(b) because violations exist and the State is likely to succeed on the merits. *See* § 8221(c). Defendant

violated § 2625 by heavy cutting without filing a notice of intent and obtaining an authorization to proceed. Greenwood Aff. ¶ 16. It appears that Defendant has recently conducted another heavy cut. *See id.* Defendant's apparent repeated cutting of timber in violation of § 2625 warrants immediate relief now. Defendant should be ordered to provide notice to the Department before conducting any future logging in Vermont so that the Department may monitor Defendant's logging activities for compliance with state law.

#### IV. Relief Requested

The State respectfully requests that the Court grant the State's Motion and issue a preliminary injunction requiring the following:

A. Defendant shall implement the following remedial measures at the

Property to protect water quality:

- (1) Remove debris and woody material from streambeds;
- (2) Install functioning waterbars on skid roads;
- (3) Fill in and smooth out any rutted skid trails<sup>3</sup>;
- (4) Seed and mulch on 25 feet of either side of water crossings; and
- (5) Take such other measures as necessary to prevent sediment, silt, and any runoff from discharging into waters on the Property.

B. In light of the Defendant's prolonged and repeated failures to implement the AMP's and remedial measures, despite being given

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<sup>3</sup> Items # 1-3 should be ordered to be done immediately, and by November 1, 2013, before fall rains and winter precipitation would exacerbate discharges. *See Greenwood Aff.* ¶ 15.

numerous opportunities, the remedial work at the Property shall be performed by a private forestry consultant retained by Defendant within 10 days of the Order, subject to the approval of the Department; the consultant shall submit a written plan to the Department for the remediation required in (A) above and upon approval, perform such remediation at the Property; and the consultant shall also inspect and document additional areas along Lamphean Brook and the Eastern Stream to confirm if other areas (not already identified in the attached Affidavits and map points) require additional remediation, and if so, include such areas in the written plan submitted to the Department for approval. *See Greenwood Aff. ¶¶ 12-15.*

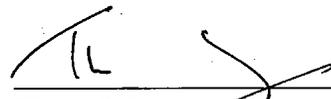
- C. Based on Defendant's repeated water quality violations and apparent heavy cutting, Defendant shall provide 30 days written notice to the Department of all future logging activities throughout Vermont prior to commencing such activities.
- D. Such other preliminary and other relief as the Court deems appropriate to implement the above.

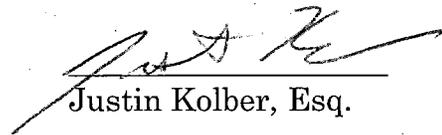
Dated October 10, 2013 in Montpelier, Vermont.

STATE OF VERMONT

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