

STATE OF VERMONT

SUPERIOR COURT

CIVIL DIVISION

RUTLAND UNIT

Docket No.

Rdcv

STATE OF VERMONT, AGENCY OF)
AGRICULTURE, FOOD and MARKETS,)
and AGENCY OF NATURAL)
RESOURCES,)
Plaintiff,)

v.)

WILLIAM and ROBIN HANFIELD,)
Defendants.)

COMPLAINT

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and pursuant to 6 V.S.A. § 4812(c), 10 V.S.A. § 8221 and the general equitable jurisdiction of the Court, hereby makes the following complaint against William and Robin Hanfield:

ALLEGATIONS

The Parties

1. The Agency of Agriculture, Food and Markets (AAFM) and the Agency of Natural Resources (ANR) are agencies of the State of Vermont created through 3 V.S.A. § 212(2) and 3 V.S.A. § 2802, respectively. The principal situs of the State of Vermont is Montpelier in Washington County.
2. William and Robin Hanfield ("Defendants") are the owners of the real property at 1022 Wheeler Road in Brandon, Vermont.

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3. Defendants are engaged in agricultural operations, i.e. the operation of a dairy farm, at the property.

Statutory and Regulatory Structure¹

4. The protection of Vermont's waters, the permitting and management of discharges, maintenance of water quality, and control of water pollution is regulated through 10 V.S.A., Chapter 47.
5. The regulation of agricultural wastes as related to waters of the State occurs through 6 V.S.A., Chapter 215.
6. The AAFM and ANR cooperate and coordinate their respective efforts relating to agricultural water quality pursuant to 6 V.S.A. § 4810(b).
7. Section 1259(a) in Chapter 47 of Title 10 provides, in part, that “[n]o person shall discharge any waste, substance or material into waters of the state ... without first obtaining a permit for that discharge from the secretary [of ANR].”
8. Pursuant to 10 V.S.A. § 8221, the State may bring an action in superior court to enforce Vermont's environmental laws, including violations of Chapter 47.
9. Pursuant to 6 V.S.A. § 4810(a)(1), the Secretary of AAFM has adopted Accepted Agricultural Practices (AAPs) to “address activities which have a potential for causing pollutants to enter the groundwater and waters of the state.”
10. Under Vermont's AAPs, section 4.01(a), “[a]gricultural operations shall not create any direct discharge of wastes into the surface waters of the State from a discrete

¹ The Vermont Legislature passed comprehensive water quality legislation in Act 64, signed into law by Governor Shumlin on June 16, 2015. The relevant law and all statutes referenced in this Complaint are to the law applicable during the period of the alleged violations and prior to the enactment of Act 64.

conveyance such as, but not limited to, a pipe, ditch, or conduit without a permit from the Secretary of ANR.”

11. Under Vermont’s AAPs, section 4.01(b), “[b]arnyards, manure storage areas, animal holding areas and production areas shall be managed or controlled to prevent runoff of wastes to adjoining waters, groundwater or across property boundaries.”
12. Under Vermont’s AAPs, section 4.02(d), “[w]aste management systems shall be managed and maintained so as to prevent discharges or structural failures.”
13. Vermont’s AAPs, section 2.20, define “wastes” as including but not limited to “sediments, minerals (including heavy metals), plant nutrients, pesticides, organic wastes (including livestock waste, mortalities, compost, feed and crop debris), waste oils, pathogenic bacteria and viruses, thermal pollution, silage runoff, untreated milkhouse waste and any other waste compound or material which is determined by the Secretary of ANR to be harmful to the waters of the State, or other wastes as defined in 10 V.S.A. § 1251(12).”
14. Vermont’s AAPs, section 4.03(c), prohibits the spreading of manure between December 15 and April 1 (Winter Spreading Ban) unless the Secretary of AAFM grants an exemption due to an “emergency situation.”
15. Section 4812(c) of Title 6 provides that whenever the Secretary of AAFM believes that any person engaged in farming is in violation of the agricultural water quality laws of Title 6, Chapter 215, or the rules adopted thereunder, an action may be brought in the name of the agency in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation.

The court may issue temporary or permanent injunctions, and other relief as may be necessary to curtail any violations.

Facts relating to Defendants

16. On or about December 17, 2014, two days after the Winter Spreading Ban began, Defendants requested an exemption from AAFM to permit them to continue spreading manure even though the Winter Spreading Ban had already gone into effect.
17. An inspector from AAFM visited Defendants' farm on December 18, 2014 to review the exemption request. During this visit, the inspector observed the manure pit at the farm overflowing and made a referral to ANR's Department of Environmental Conservation (DEC) for possible discharges to waters of the state.
18. On or about December 19, 2014, AAFM denied Defendants' request to continue spreading and Defendants were advised to transfer waste from the pit to allow for additional capacity.
19. An Environmental Enforcement Officer (EEO) visited the farm on December 26, 2014 and observed that the manure pit had overtopped, but did not observe a discharge to waters of the state at that time.
20. Later that same day, December 26, 2014, an inspector from AAFM visited the farm and observed the overtopped manure pit and an active discharge to waters of the state. Specifically, the AAFM inspector observed the flow of manure-laden water from the pit, along a driveway, to a ditch running south along Wheeler Road, into a culvert and into a pasture where it eventually flowed into an unnamed tributary of

the Neshobe River, a water of the State of Vermont. *See* Attachment 1 (ANR Atlas Map) (red line is estimated flow path from manure pit to waters of the state); Attachment 2 (photos 12/26/14); *see also* Attachment 3 (Application for Emergency Order) at Affidavit of Lowkes ¶ 5.

21. Also during his visit to the farm on December 26, 2014, the AAFM inspector observed evidence of the manure pit overtopping on the south side of the pit, evidenced by dried manure observed on the nearby grass. *See* Attachment 4 (photo 12/26/14).
22. On December 30, 2014, an EEO visited the farm and observed conditions to be the same as reported by the AAFM inspector on December 26, 2014, including a discharge of manure-laden water along the same pathway from the farm to the waters of the state. The EEO took photographs at the farm on December 30, 2014. *See* Attachment 5 (photos 12/30/14).
23. DEC filed an *Application for an Emergency Order* (Application) in Vermont Superior Court, Environmental Division. *See* Attachment 3 (Application for an Emergency Order). The Application argued that Defendants violated 10 V.S.A. § 1259 and its prohibition on discharges to waters of the state without a permit. *Id.*
24. The Vermont Superior Court, Environmental Division granted DEC's Application on January 2, 2015 and issued an Emergency Order. *See* Attachment 6 (Emergency Order).
25. The Emergency Order required that Defendants "cease the discharge of manure from the manure pit on the property and in so doing drop the level of manure in the pit a

minimum of one foot below the top of the pit (one foot of freeboard). [Defendants] shall accomplish this by pumping manure from the pit and moving it to alternative storage.” Attachment 6 at 2. This provision of the Emergency Order was to occur “[w]ithin 72 hours of receipt of” the Order. *Id.*

26. The Emergency Order also required Defendants to maintain “at least one foot of freeboard in the pit (manure level one foot below the top of the pit)” and “no later than fifteen... calendar days following receipt of this Order, empty the manure pit by pumping and trucking the manure from the pit to create sufficient capacity to store manure for the remainder of the winter spreading ban.” *Id.* at 2-3.
27. The Order also permitted ANR personnel to inspect the facility for compliance with the Order or related laws, rules or permits. *Id.* at 3.
28. DEC and AAFM jointly inspected Defendants’ manure pit on January 9, 2015 and observed that no manure had been removed from the pit and a discharge of manure-laden water from the pit to waters of the state was observed. *See Attachment 7* (photos 1/9/15)
29. DEC inspected Defendants’ manure pit on January 13, 2015 and determined that some of the manure had been removed, but the pit was still not in compliance with the Emergency Order.
30. On January 15, 2015, an AAFM inspection of Defendants’ manure pit confirmed that the Emergency Order had been complied with, the pit had been lowered to create one foot of freeboard space, and no discharge to waters of the state was occurring.

31. Subsequent inspections by DEC through early June found no discharge from Defendants' manure pit, though not all manure had been removed from the pit.
32. During visits to the site by AAFM, a pipe running from Defendants' milk house was observed as not being properly connected to the farm's manure pit.
33. Defendants do not have a permit from the Secretary of ANR to discharge any waste into waters of the state.

COUNT ONE – Unpermitted discharge to waters of the state (10 V.S.A. §1259(a) -- December 26, 2014)

34. Paragraphs 1-33 are incorporated by reference and realleged.
35. By discharging manure-laden water from their overtopped manure pit to waters of the State of Vermont, i.e. an unnamed tributary of the Neshobe River, on December 26, 2014 without a permit from the Secretary of ANR, Defendants violated 10 V.S.A. § 1259(a).

COUNT TWO – Unpermitted discharge to waters of the state (10 V.S.A. §1259(a) -- December 30, 2014)

36. Paragraphs 1-35 are incorporated by reference and realleged.
37. By discharging manure-laden water from their overtopped manure pit to waters of the State of Vermont, i.e. an unnamed tributary of the Neshobe River, on December 30, 2014 without a permit from the Secretary of ANR, Defendants violated 10 V.S.A. § 1259(a).

COUNT THREE – Unpermitted discharge to waters of the state (10 V.S.A. § 1259(a) – January 9, 2015)

38. Paragraphs 1-37 are incorporated by reference and realleged.

39. By discharging manure-laden water from their overtopped manure pit to waters of the State of Vermont, i.e. the unnamed tributary of the Neshobe River, on January 9, 2015, without a permit from the Secretary of ANR, Defendants violated 10 V.S.A. § 1259(a).
40. This discharge occurred after the entry of the Emergency Order by the Vermont Superior Court, Environmental Division on January 2, 2015.

COUNT FOUR – Violation of Vermont’s Accepted Agricultural Practices (Section 4.01 (a))

41. Paragraphs 1-40 are incorporated by reference and realleged.
42. By creating a direct discharge of waste into the surface waters of the state, i.e. the unnamed tributary of the Neshobe River, from a discrete conveyance, i.e. a ditch or conduit, without a permit from the secretary of ANR, on December 26 and 30, 2014 and January 9, 2015, Defendants violated section 4.01(a) of the Vermont AAPs.

COUNT FIVE – Violation of Vermont’s Accepted Agricultural Practices (Section 4.01 (b))

43. Paragraphs 1-42 are incorporated by reference and realleged.
44. By failing to manage and control the farm’s manure pit to prevent the runoff of waste to adjoining waters and across property boundaries, including December 26 and 30, 2014 and January 9, 2015 when discharges to waters of the state were observed, Defendants violated section 4.01(b) of the Vermont AAPs.

COUNT SIX – Violation of Vermont’s Accepted Agricultural Practices (Section 4.01 (d))

45. Paragraphs 1-44 are incorporated by reference and realleged.

46. By allowing the farm's manure pit to overtop on December 26 and 30, 2014, and January 9, 2015, and by failing to properly connect the milk house pipe to the manure pit, Defendants failed to manage and maintain the farm's waste management system so as to prevent discharges or structural failures in violation of section 4.01(d) of the Vermont AAPs.

RELIEF SOUGHT

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests that the Court award the following relief:

1. An Order adjudicating Defendants liable for the violations of Vermont statutes and regulations set forth above in counts one through six;
2. An Order requiring that Defendants will follow all applicable Vermont statutes and regulations at their farm, including that they will manage the manure pit properly and so as to not overflow;
3. An Order requiring that Defendants: (i) hire an outside consulting engineer to review the construction, use and capacity of the manure pit and milk house waste system, including whether the manure pit meets Natural Resource Conservation Standards (NRCS) standards; (ii) provide the consultant's findings and recommendation to AAFM; and (iii) make any alterations or construction to the manure pit and milk house waste system deemed necessary by AAFM in order for the manure pit and milk house waste system to comply with Vermont statutes and regulations;
4. An Order that Defendants limit the use of the manure pit to on-site generated waste only, i.e. manure, milk house waste and water, until AAFM has reviewed the

consulting engineer's report and necessary changes, if any, have been made to the manure pit to the satisfaction of AAFM;

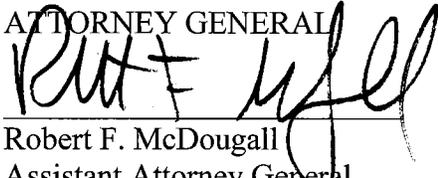
5. An Order levying civil penalties against Defendants on the title 10 violations in accordance with 10 V.S.A. § 8221(b)(6); and
6. An Order requiring Defendants to reimburse the State for its costs and expenses in investigating and prosecuting this action; and
7. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 8th day of October, 2015.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

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