STATE OF VERMONT

SUPERIOR COURT | CIVIL DIVISION

FRANKLIN UNIT | Docket No. Frcv

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

v.

LEACH FARMS, INC.,
Defendant.

PLEADINGS BY AGREEMENT

The State of Vermont, Agency of Agriculture, Food and Markets, and Agency of Natural Resources, by and through Vermont Attorney General William H. Sorrell, and Defendant Leach Farms, Inc. hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

THE STATE'S ALLEGATIONS

The Parties

1. The Agency of Agriculture, Food and Markets (AAFM) and the Agency of Natural Resources (ANR) are state agencies created through 3 V.S.A. § 212(2) and 3 V.S.A. § 2802, respectively.
2. Leach Farms, Inc. ("Defendant") is a Vermont-based domestic profit corporation. Allen Leach and William Leach are listed as the corporate officers with the Vermont Secretary of State.

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3. Defendant is the owner of the real property at 4785 Boston Post Road in Enosburg Falls, Vermont.

4. Defendant operates a dairy farm at the 4785 Boston Post Road property.

Statutory and Regulatory Structure

5. 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.

6. The regulation of agricultural wastes as related to waters of the State occurs through 6 V.S.A., Chapter 215.

7. The AAFM and ANR cooperate and coordinate their respective efforts relating to agricultural water quality pursuant to 6 V.S.A. § 4810(b).

8. 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]."

9. Pursuant to Title 10, section 8221, the State may bring an action in superior court to enforce Vermont's environmental laws, including violations of chapter 47.

10. 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."

11. 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

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

12. Under Vermont's AAPs, section 4.05(a), "[a]ll agricultural wastes including, but not limited to, chemicals, petroleum products, containers, and carcasses shall be properly stored, handled and disposed of, so as to minimize adverse water quality impacts."

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. 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.

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Facts relating to Defendant and Factual Allegations

15. On November 19, 2013 at approximately 2 p.m., a witness observed three manure-spreading farm vehicles of Leach Farms near the Bogue Branch Brook (Bogue Brook), east of the intersection of Bogue Road and Boston Post Road (roughly south of Defendant's farm at 4785 Boston Post Road).

16. The three vehicles were: (1) a white truck with a silver hydraulic tipping manure spreader tank; (2) a green John Deere tractor pulling a red manure spreader/tank; and (3) a red Freightliner truck with a mounted green spreader tank. They are used in connection with Defendant's farming operations at the 4785 Boston Post Road property.

17. On November 19, 2013, the three spreaders were observed backing up to a tractor that had its manure pump inserted to the Bogue Brook. Each of the three spreaders was observed taking water from the Bogue Brook into its tank and then moving to a location approximately 100 yards downstream from the pump.

18. At the downstream location, each of the three spreaders discharged manure-laden water from its tank back into the Bogue Brook, apparently using the process to rinse out the spreader tanks.

19. The witness videotaped the November 19, 2013 discharges. Attachment A (video of discharges).

20. Each of the three spreaders were observed doing two such discharge-rinses on November 19, 2013. *See* Attachment A at: (a) white truck: 2:20 minutes (min.) and

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10:20 min.; (b) green John Deere tractor: 4:15 min. and 13:28 min.; and (c) red truck: 7:15 min. and 14:05 min. (times are approximate).

21. The John Deere tractor and the Freightliner truck were then observed travelling on the Bogue Road and Boston Post Road to Defendant's farm at 4785 Boston Post Road.

22. The Bogue Brook is a branch of the Missisquoi River. The Missisquoi River flows into Lake Champlain. Bogue Brook is a water of the state.

23. On January 3, 2014, Environmental Enforcement Officer (EEO) Ted Cantwell of ANR met with Allen Leach at the 4785 Boston Post Road property.

24. During the meeting with EEO Cantwell, Mr. Leach admitted that Defendant had routinely used the Bogue Brook pump and discharge process of manure-laden water into Bogue Brook to rinse out the spreader tanks. He stated that this had been the practice for years.

25. Mr. Leach admitted that on November 13, 2013, he was the driver of the red Freightliner truck. He stated that William Leach was driving the white truck and an employee of Defendant, Jesse Elwood, was driving the John Deere tractor.

26. Defendant does not have a permit from the Secretary of ANR or from the Secretary of Agriculture to discharge from the three spreaders into the Bogue Brook on November 13, 2013.

Violations

27. By discharging manure-laden water from the white truck with the silver hydraulic tipping manure spreader tank into the Bogue Brook on November 13, 2013 without a permit from the Secretary of ANR, Defendant violated 10 V.S.A. § 1259(a).

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28. By discharging manure-laden water from the green John Deere tractor with the red manure spreader/tank into the Bogue Brook on November 13, 2013 without a permit from the Secretary of ANR, Defendant violated 10 V.S.A. § 1259(a).

29. By discharging manure-laden water from the red Freightliner truck with the mounted green spreader tank into the Bogue Brook on November 13, 2013 without a permit from the Secretary of ANR, Defendant violated 10 V.S.A. § 1259(a).

30. By discharging manure-laden water from the white truck with the silver hydraulic tipping manure spreader tank into the Bogue Brook on November 13, 2013 without a permit from the Secretary of ANR, Defendant violated sections 4.01(a) and 4.05(a) of the Vermont AAPs.

31. By discharging manure-laden water from the green John Deere tractor with the red manure spreader/tank into the Bogue Brook on November 13, 2013 without a permit from the Secretary of ANR, Defendant violated sections 4.01(a) and 4.05(a) of the Vermont AAPs.

32. By discharging manure-laden water from the red Freightliner truck with the mounted green spreader tank into the Bogue Brook on November 13, 2013 without a permit from the Secretary of ANR, Defendant violated sections 4.01(a) and 4.05(a) of the Vermont AAPs.

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATIONS

Defendant answers the preceding allegations as follows:

33. Defendant admits the allegations set forth in paragraphs 1-32.

Office of the ATTORNEY GENERAL
109 State Street
Montpelier, VT 05609

DATED at Montpelier, Vermont this 30th day of September, 2014.

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
(802) 828-3186

DATED at Enosburg Falls, Vermont this 27 day of Sept., 2014.

LEACH FARMS, INC.

By: Allen Leach pres.
Allen Leach, President
Leach Farms, Inc.
4785 Boston Post Road
Enosburg Falls, Vermont

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