

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
Docket No. Frcv

STATE OF VERMONT, AGENCY OF
NATURAL RESOURCES,
Plaintiff,

v.

KANE'S SCENIC RIVER FARMS, LLC,
Defendant.

PLEADINGS BY AGREEMENT

The State of Vermont, Agency of Natural Resources, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant Kane's Scenic River Farms, LLC, by and through Gravel & Shea PC, hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

THE STATE'S ALLEGATIONS

The State's Allegations: The Parties

1. The Agency of Natural Resources ("ANR") is an agency of the State of Vermont created through 3 V.S.A. § 2802.
2. Kane's Scenic River Farms, LLC ("Defendant"), is an operator of Kane's Scenic River Farms, which is a dairy farming operation that includes real property and farming operations at 5893 VT Route 105 in Sheldon, Vermont ("the Farm").
3. The real property at 5893 VT Route 105 in Sheldon, Vermont is comprised of two or more parcels. Most or all of the production area for

the Farm is on a parcel owned by the Thomas J. Kane Family Trust, with Nancy and Thomas Kane as Family Trustees. A smaller parcel to the south and west of the production area is owned in part by Aaron Kane.

The State's Allegations: Legal Framework

ANR Water Pollution Regulation

4. ANR regulates the protection of Vermont's waters, the permitting and management of discharges, maintenance of water quality, and control of water pollution under 10 V.S.A. Chapter 47.
5. Section 1259(a) 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]."
6. Under 10 V.S.A. § 1251, a "person" includes "any individual; partnership; company; corporation; association; joint venture; trust; [or] municipality."
7. Pursuant to 10 V.S.A. § 1251(3), a "discharge" is "the placing, depositing or emission of any wastes, directly or indirectly, into . . . waters of the State."
8. In 10 V.S.A. § 1251(12), "waste" is defined as "effluent, sewage or any substance or material, liquid, gaseous, solid or radioactive, including heated liquids, whether or not harmful or deleterious to waters."

9. Section 1251(13) of Title 10 provides that “waters” include “all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it.”

Civil Action

10. 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. Among other things, the court may grant injunctive relief, order compliance activities, and assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

The State’s Allegations: Facts Relating to Defendant

The Farm

11. The Farm houses approximately 1000 mature dairy cows and 50 youngstock.

12. Among other features, the Farm includes a silage storage area on the northwest end of the production area (“big bunk”); at times, a silage storage area on the eastern end of the production area (“dry cow bunk”); a big manure pit directly southeast of the big bunk; a dry cow manure pit at the southern end of the production area; and several barns.

13. The Farm's cow pits were originally designed and construction was supervised by the United States Department of Agriculture Natural Resources Conservation Service.
14. VT Route 105 runs generally along the south side of the Farm. The Missisquoi Valley Rail Trail ("Rail Trail") runs generally parallel to Route 105, between Route 105 and the Missisquoi River ("the River").
15. The Missisquoi River, a water of the State as defined in 10 V.S.A. § 1251(13), flows along VT Route 105 just south of the Farm.

March 2016 Discharge

16. On March 16, 2016, ANR received a complaint via its Environmental Compliance Division webpage regarding manure flowing from a culvert under the Rail Trail, near the Farm.
17. Environmental Enforcement Officer (EEO) Ted Cantwell visited the Farm on March 17, 18, and 21, 2016.
18. On March 17, 2016, EEO Cantwell observed manure-laden water flowing from a culvert under Route 105 and the Rail Trail, into a channelized surface water and to the Missisquoi River, about 500 feet downgradient from the culvert.
19. After observing the discharge into the River, EEO Cantwell then walked back up the embankment, crossed Route 105, and travelled into the

farmyard at the Farm. He noted that there was a small wetland swale area just southeast of the dry cow pit.

20. EEO Cantwell made a second visit to the Farm on March 18, 2016.

During this visit, north of the swale area, he observed liquid flowing out of a pipe, which was coming from the big silage bunk area. The liquid, which contained silage leachate, flowed and converged with the swale area.

21. The swale area contained liquid manure and silage leachate.

22. The leachate-and-manure-laden liquid from the swale area flowed through a short, channelized surface water to the culvert, then down to the Missisquoi River as described in paragraph 18.

23. Generally, silage leachate and manure contain high levels of nutrients, including phosphorus.

24. On or about March 18, 2016, Aaron Kane dug a hole in the swale area where the silage leachate and liquid manure was collecting. This revealed an approximately 1" black plastic pipe through which liquid manure was flowing into the swale area. The manure was coming from the adjacent dry cow pit.

25. On or about March 18, 2016, Aaron Kane folded the pipe and wrapped it with metal wire in order to stop the flow.

26. According to EEO Cantwell, Aaron Kane stated that he was aware that he had some silage leachate leaking into the wet swale area, but that he was not aware of his pit leaking. He said he had been working with the Agency of Agriculture to correct the silage leachate issue but that it had not been fixed yet. He seemed genuinely shocked about the manure discharge.

The Missisquoi River and Lake Champlain

27. The Missisquoi River is part of the Lake Champlain watershed. The River flows into the Missisquoi Bay of Lake Champlain.

28. In the section of River that flows past the Farm—from the mouth to the Tyler Branch—the River is stressed from nutrients, sediment, and turbidity. This means that, though the River currently meets Vermont Water Quality Standards, pollutants prevent it from attaining the highest water quality.

29. The Missisquoi Bay is impaired by phosphorus, which means that it does not meet Vermont Water Quality Standards. It has one of the highest concentrations of phosphorus of any segment of Lake Champlain.

The State's Allegations: Violation

30. By discharging leachate-and-manure-laden water from the Farm to the Missisquoi River on two or more days in March 2016, Defendant violated

10 V.S.A. § 1259(a). Defendant did not have a permit from ANR for this discharge of waste to waters of the State.

DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATION

Defendant answers the preceding allegations as follows:

31. Without formally admitting or denying wrongdoing or liability for violations alleged, for the sole purpose of resolving this dispute, Defendant admits to the factual allegations detailed above (paragraphs 11-26).
32. Defendant claims it had no knowledge of any manure pit discharge and worked with EEO Cantwell and others to investigate and/or address the discharge on March 18, 2016.
33. Without formally admitting or denying wrongdoing or liability, Defendant agrees to the attached settlement of the violation alleged above in order to resolve this dispute.
34. Defendant agrees that the violation alleged is deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Defendant's past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.

DATED at Montpelier, Vermont this 14th day of Sept, 2018.

Respectfully submitted,

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:

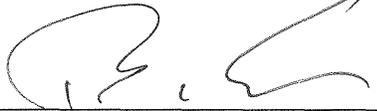


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DATED at Burlington, Vermont this 10th day of September, 2018.

KANE'S SCENIC RIVER FARMS, LLC,

By:



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