

STATE OF VERMONT

SUPERIOR COURT
ADDISON UNIT

CIVIL DIVISION
CASE NO.

STATE OF VERMONT, AGENCY)
OF NATURAL RESOURCES,)
Plaintiff,)
)
v.)
)
GREEN MOUNTAIN POWER)
CORPORATION,)
Defendant.)

PLEADINGS BY AGREEMENT

The State of Vermont, Agency of Natural Resources, by and through Attorney General Charity R. Clark, and Defendant Green Mountain Power Corporation, by and through its undersigned counsel, submit these Pleadings by Agreement pursuant to Vermont Rule of Civil Procedure 8(g), concerning discharges to waters of the State under 10 V.S.A. § 1259 and violations of a Lake Encroachment Permit under Title 29, Chapter 11.

I. THE STATE'S ALLEGATIONS

The Parties

1. The Agency of Natural Resources (ANR) is a state agency established pursuant to 3 V.S.A. § 2802 with offices in Montpelier, Vermont.
2. Green Mountain Power Corporation (GMP) is a Vermont corporation with a principal place of business in Colchester, Vermont.

3. GMP owns and operates the Silver Lake Hydroelectric Project on a 25-acre parcel in Goshen, Vermont, and did so at the time of the events described below.

4. The Silver Lake Hydroelectric Project, as licensed by the Federal Energy Regulatory Commission (FERC), consists of: (a) the Goshen dam with a 60-foot-high, 680-foot-long earth embankment section, a 50-foot-wide concrete eastern spillway, and a 100-foot-wide concrete western spillway; (b) the 74-acre Sugar Hill storage reservoir with a normal water surface elevation of 1,763 feet; (c) a 14-foot-wide intake structure with wooden trash racks and a concrete gate; and (d) a 232-foot-long, 4-foot-square concrete outlet structure equipped with two 6-inch-diameter, two 8-inch-diameter, and one 10-inch-diameter, steel gate valves.

Statutory and Regulatory Framework

5. ANR regulates the protection of Vermont's waters, permitting and management of discharges, maintenance of water quality, and control of water pollution under Title 10, Chapter 47.

6. 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].”

7. Section 1251(8) of Title 10 defines “person” as “any individual; partnership; company; corporation; association; joint venture; trust ... or any other legal or commercial entity.”

8. Section 1251(3) of Title 10 defines “discharge” as “the placing, depositing, or emission of any wastes, directly or indirectly, into ... the waters of the State.”

9. Section 1251(12) of Title 10 defines “waste” as “effluent, sewage, or any substance or material, liquid, gaseous, solid, or radioactive, including heated liquids, whether or not harmful or deleterious to waters.”

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

11. ANR also manages lakes and ponds held in public trust by regulating encroachments in such public waters, pursuant to Title 29, Chapter 11.

12. ANR issued Lake Encroachment Permit # 3353-LEP to GMP on April 27, 2021. It provides, in part, that:

- i. “Erosion prevention and sediment control best management practices shall be utilized and maintained to prevent erosion and control sediment to minimize and prevent adverse impacts to water quality during construction of the authorized project.”
- ii. “Work shall stop immediately if visible turbidity occurs in the water as a result of construction activities and shall not recommence until the source of the turbidity is identified and corrected.”

13. Pursuant to sections 8003(a) and 8221 of Title 10, the State may bring a civil action in the Civil Division of Superior Court to enforce Vermont’s

environmental laws, including violations of Title 10, Chapter 47 and Title 29, Chapter 11. The Court may, among other things, order injunctive relief, order certain remedial and compliance actions, and assess civil penalties of up to \$85,000 per violation or up to \$42,500 per day for a continuing violation.

Facts

14. At the time of the events described below, GMP was performing the Goshen Dam Conduit Rehabilitation Project (the Project). The Project was required by FERC, which had directed GMP to perform repairs to the conduit and intake and outlet works at the Goshen Dam.

15. Goshen Dam is located on Sucker Brook, a water of the State.

16. On December 5, 2008, ANR issued a Section 401 Water Quality Certification (401 CERT) for the Project. The 401 CERT included a condition that ANR review and approve GMP's plan for the Project before beginning the Project.

17. On June 22, 2020, ANR issued Authorization to Discharge 8971-9020 for the discharge of stormwater runoff under Construction General Permit 3-9020 to GMP for the Project.

18. On March 5, 2021, pursuant to the review and approval condition in the 401 CERT, ANR issued a determination letter to GMP with conditions for sediment control, including a requirement that GMP regularly monitor turbidity and immediately take corrective action to address any increased turbidity.

19. On April 10, 2021, GMP began the Project with the start of a slow drawdown of the reservoir.

20. On April 27, 2021, ANR issued Lake Encroachment Permit 3353-LEP to GMP for the Project.

21. On May 5, 2021, FERC amended GMP's license for the Project, incorporating the sediment control conditions from ANR's March 5, 2021 determination letter.

22. On June 10, 2021, GMP informed ANR via e-mail that the turbidity levels at Goshen Dam had increased significantly, and thereafter GMP implemented several measures to attempt to address these conditions during June, including installation of check dams and a settling basin. In a June 15, 2021 email to GMP, ANR noted the increased turbidity and requested that more preventative measures be taken upstream and downstream to reduce the release of turbid, sediment-laden water downstream.

23. On June 12, 2021, GMP completed the drawdown to the 1,720 feet elevation.

24. On July 7, 2021, sediment-laden water had filled up and clogged the stop gate area at Goshen Dam and blocked the concrete conduit/outlet pipe. The wooden blocks that ordinarily help maintain the flow behind the stop gate had washed away.

25. GMP through its contractor released the stop gate for approximately two hours in an effort to reduce risks to dam safety. When the stoplogs were raised, the sediment that was trapped behind them discharged downstream into Sucker Brook.

26. On that same day, significant turbidity was observed in Sucker Brook below the Goshen Dam.

27. Additional unpermitted sediment was discharged to Sucker Brook on July 8 and 9, 2021, resulting from 1.5 more inches of rain.

28. The discharges from the Goshen Dam on July 7, 8, and 9, 2021 were unpermitted.

29. The sediment control measures undertaken at the site prior to and during the discharge events were ultimately not sufficient to prevent sediment discharges from occurring.

30. In the months leading up to the July 7th event, ANR communicated with GMP about its sediment control measures for the Project. Sucker Brook is a headwater mountain stream, and a spawning ground for wild brook trout (downstream of the dam) and brown trout (upstream of the dam). Its usual turbidity levels, measured in NTU (nephelometric turbidity units), are near zero.

31. As a result of the July 7th discharge, ANR documented NTU levels of 966 NTU at the Goshen Dam site, 542 NTU 200 meters downstream, and 152 NTU 1800 meters downstream. The amount of fine sediment deposited into these sections of the streambed was significant, averaging between 17-22 centimeters of additional sediment. Even though the turbidity conditions improved in the days after July 7th, the turbidity remained above normal background levels.

32. The damage from significantly elevated turbidity can be substantial. Sediment fills in the interstitial spaces between underwater rocks where brook trout spawning occurs, resulting in a loss of suitable habitat.

33. ANR confirmed the degraded aquatic habitat, the impacts to macroinvertebrates (particularly sediment intolerant taxa such as mayflies, caddisflies, and stoneflies), and the effect on brook trout spawning. For at least several months after the discharge incident, Sucker Brook continued to have elevated sediment deposition and degraded spawning grounds.

34. When GMP observed turbidity before and after the July 7 event, it made efforts to implement corrective measures to address these impacts.

35. GMP and ANR agree that further remediation is appropriate to redress continuing impacts, to include high flow flushing at the Goshen Dam to redistribute sediment, and sediment removal from GMP's Diversion Dam.

II. ALLEGED VIOLATIONS

Violation of 10 V.S.A. § 1259(a)

36. By discharging sediment into waters of the State without a permit on July 7, 2021, July 8, 2021, and July 9, 2021, GMP violated 10 V.S.A. § 1259(a).

Permit Violation – Lake Encroachment Permit #3353-LEP

37. By failing to have adequate sediment control measures during construction of the Project. and failing to identify and correct the source of the turbidity prior to recommencing construction, GMP violated Lake Encroachment Permit #3353-LEP.

III. GMP's RESPONSE TO THE ALLEGED VIOLATIONS

38. Solely for purposes of resolving this case, GMP admits the factual allegations set forth in paragraphs 1 through 35.

39. Without admitting or denying liability arising out of these facts and in order to resolve this case, GMP agrees to this settlement of the violations alleged in paragraphs 36 and 37.

40. GMP agrees that the violations alleged in paragraphs 36 and 37 are deemed proven through this Agreement and established as a "prior violation" for purposes of penalty assessment in any future state proceeding considering GMP's compliance record, including but not limited to permit proceedings and administrative or judicial enforcement actions for penalties calculated pursuant to 10 V.S.A. § 8010.

Dated at Montpelier, Vermont, this 10th day of June 2023.

STATE OF VERMONT

**CHARITY R. CLARK
ATTORNEY GENERAL**

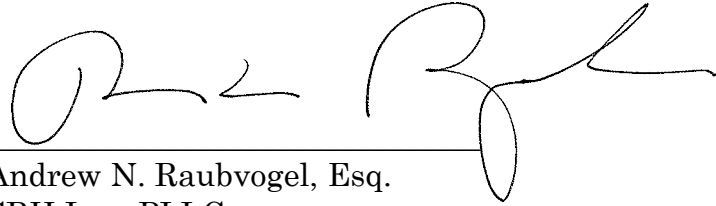
By: 

Melanie Kehne,
Assistant Attorney General
109 State Street
Montpelier, VT 05609
(802) 752-9138
melanie.kehne@vermont.gov

Dated at Burlington, Vermont, this 7th day of July 2023.

GREEN MOUNTAIN POWER CORP.

By:

A handwritten signature in black ink, appearing to read 'Andrew N. Raubvogel', written over a horizontal line.

Andrew N. Raubvogel, Esq.

SRH Law PLLC

91 College Street, Burlington, VT 05402

(802) 495-5413

araubvogel@srhlaw.com