

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
Docket No.

STATE OF VERMONT, AGENCY OF
OF NATURAL RESOURCES,
Plaintiff,

v.

DAVID HOWRIGAN, PEGGY HOWRIGAN,
RONALD PARADIS, and LYNN PARADIS,
Defendants.

PLEADINGS BY AGREEMENT

The parties 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 Natural Resources (ANR) is an agency of the State of Vermont created through 3 V.S.A. § 2802.
2. At the time of the events described below, David and Peggy Howrigan (collectively, "Howrigan Defendants") operated a dairy farm leased from Ronald and Lynn Paradis at 1553 State Park Road in Franklin, Vermont (hereinafter "the property" or "the farm").
3. Ronald and Lynn Paradis (collectively, "Paradis Defendants") are the owners of the real property located at 1553 State Park Road in Franklin, Vermont, and reside in Enosburg Falls, Vermont.
4. David and Peggy Howrigan are residents of Fairfield, Vermont.

Statutory and Regulatory Structure

5. 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.

6. Title 10 section 1259(a) 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. Title 10 section 1251(8), a "person" includes "any individual; partnership; company; corporation; association; joint venture; trust; [or] municipality."

8. Title 10 section 1251(3) provides that a "discharge" is "the placing, depositing, or emission of any wastes, directly or indirectly, into . . . the waters of the State."

9. Title 10 section 1251(12) provides that "waste" is "effluent, sewage or any substance or material, liquid, gaseous, solid or radioactive, including heated liquids, whether or not harmful or deleterious to waters."

10. Title 10 section 1251(13) 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."

11. 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. 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.

Facts Relating to Defendants

12. At the time of the violations described below, the Howrigan Defendants' farm facilities, including the facility leased from the Paradis Defendants, were subject to Agency of Agriculture, Food, and Markets (AAFM) regulations as a Medium Farm Operation (MFO) permit for a maximum of 699 mature dairy cows and 999 youngstock or heifers.

13. At the time of the violations described below, the farm was comprised of features including a manure pit (Main Pit), silage bunks, a heavy use/driveway area, and a milking barn.

14. The Howrigan Defendants operated the farm with a herd of approximately 340 mature dairy cows and 65 youngstock or heifers.

15. The farm is situated near waters of the State as water flows from an unnamed stream ("the stream") on the property, and eventually into the Missisquoi River.

16. Defendants do not have a permit from the Secretary of ANR to discharge any waste into waters of the State.

May 3, 2018 Inspection

17. On May 3, 2018, AAFM investigated the farm.

18. Defendant David Howrigan was present throughout AAFM's investigation.

19. AAFM observed manure seeping from the ground around the toe of the slope near the Main Pit at the farm. AAFM did not observe manure to be overtopping the Main Pit, but did observe a path where manure had previously overtopped and run down its side. AAFM observed manure at the base of the Main Pit and saw the manure flowing over the farm road, through the corn field, and into the stream on the property.

20. AAFM observed silage leachate from the bunks and spoiled feed and other agricultural wastes from the heavy use/driveway area flowing into a ditch along the south and west sides of the Main Pit. The silage leachate and other agricultural waste flowed through the ditch and entered the stream on the property.

21. AAFM alerted Defendant David Howrigan that the silage leachate and other agricultural wastes entering the ditch, and eventually the stream, needed to be fixed.

April 5, 2019 Inspection

22. On April 5, 2019, ANR investigated the farm.

23. ANR met with Defendant Ronald Paradis, who gave ANR permission to access the property. ANR also met with an employee of the Howrigan Defendants during the investigation.

24. Defendant Ronald Paradis noted that he was aware the Main Pit had recently overtopped during the winter.

25. ANR observed evidence of the Main Pit recently overtopping and evidence of the route traveled by the overtopped manure. ANR observed evidence that the manure had recently flowed through the ditch and toward the stream. ANR observed frozen manure on both upper banks of the stream.

26. ANR's observations indicated that a manure discharge of a significant volume had recently occurred.

April 25, 2019 Investigation

27. On April 25, 2019, AAFM investigated the farm in response to a complaint regarding an overtopping Manure Pit at the property.

28. AAFM alerted Defendant David Howrigan of the investigation. Defendant David Howrigan stated that he would not be at the facility, but an employee of his would be there. AAFM met the Howrigan Defendants' employee upon arriving at the farm.

29. AAFM walked around to the north and then west side of the Main Pit. From the northwest side of the Main Pit, AAFM observed several paths where manure had previously overtopped and ran down the toe of the slope of the Pit.

30. AAFM observed manure flowing over the top of the Main Pit wall in three locations. AAFM observed that the manure overflow path only flowed down the pit wall approximately 10-20 feet. AAFM observed these previous paths of manure to have reached the ditch at the outlet of the farm road culvert.

31. AAFM inspected the silage bunks and driveway/heavy use area, and observed silage leachate and other agricultural wastes from the production area

entering the ditch near the Main Pit, flowing through the ditch, and entering the stream to the north side of the Main Pit.

32. AAFM called Defendant David Howrigan after the inspection. AAFM recommended that he transfer manure to any other functioning pit that still had capacity. AAFM also recommended that Defendant David Howrigan contact the UVM Farm Viability program to work on a management strategy that addressed the water quality concerns.

April 29, 2019 Inspection

33. On April 29, 2019, ANR conducted a follow-up inspection of the farm.

34. An employee of the Howrigan Defendants allowed ANR access to the property.

35. ANR began its investigation in the main barnyard by the silage bunks. ANR observed silage leachate flowing from the silage bunks and entering the ditch. ANR followed the flow of the leachate in the ditch down around the side of the pit to where the ditch enters the culvert. On the other side of the culvert, ANR observed the leachate exiting and then flowing a few feet into the stream.

36. ANR discussed a potential solution with the Howrigan Defendants' employee, who agreed to divert the ditch into a field away from the surface water by the end of the week.

37. ANR's follow-up inspections through July, 2019, revealed Defendants failed to act to prevent further discharges of waste to the stream on the property.

Alleged violation of 10 V.S.A. § 1259(a) prohibition against unpermitted discharges to waters of the State

38. The State alleges that the above conduct constitutes a violation of 10 V.S.A. § 1259(a).

DEFENDANTS' RESPONSE TO THE ALLEGED VIOLATION

Defendants answer the preceding allegations as follows:

39. Defendants admit the factual allegations set forth in paragraphs 1-4 and 12-37 solely for purposes of resolving this case.

40. Without formally admitting or denying liability, Defendants agree to this settlement of the above violation alleged in paragraph 38 in order to resolve this case.

41. Defendants agree that the violation alleged above is deemed proven and established as a "prior violation" in any future State proceeding considering Defendants' compliance record, including but not limited to permit proceedings and enforcement actions for penalties calculated pursuant to 10 V.S.A. § 8010.

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DATED at Montpelier, Vermont, this 22nd day of August, 2023.

Respectfully submitted,

STATE OF VERMONT

CHARITY R. CLARK
ATTORNEY GENERAL


By: 

Megan R.H. Hereth
Assistant Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-4605
megan.hereth@vermont.gov

DATED at Middlebury, Vermont, this 17th day of August, 2023.

DAVID HOWRIGAN, PEGGY HOWRIGAN

By: _____


Peter Langrock
Langrock Sperry & Wool, LLP
Attorneys at Law
111 Pleasant St
P.O. Drawer 351
Middlebury, VT 05753-0351
(802) 388-6356
plangrock@langrock.com

DATED at _____, Vermont, this _____ day of _____, 2023.

RONALD PARADIS, LYNN PARADIS

By: _____

Robert B. Hemley
Jeffrey O. Polubinski
Gravel & Shea PC
76 St. Paul Street, 7th Floor
P.O. Box 369
Burlington, VT 05401
(802) 658-0220
rhemley@gravelshea.com
jpolubinski@gravelshea.com

DATED at _____, Vermont, this ____ day of _____, 2023.

DAVID HOWRIGAN, PEGGY HOWRIGAN

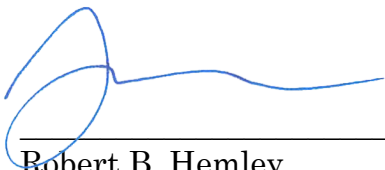
By: _____

Peter Langrock
Langrock Sperry & Wool, LLP
Attorneys at Law
111 Pleasant St
P.O. Drawer 351
Middlebury, VT 05753-0351
(802) 388-6356
plangrock@langrock.com

DATED at Burlington, Vermont, this 3rd day of August, 2023.

RONALD PARADIS, LYNN PARADIS

By: _____



Robert B. Hemley
Jeffrey O. Polubinski
Gravel & Shea PC
76 St. Paul Street, 7th Floor
P.O. Box 369
Burlington, VT 05401
(802) 658-0220
rhemley@gravelshea.com
jpolubinski@gravelshea.com