

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
Docket No.

STATE OF VERMONT, AGENCY OF NATURAL
RESOURCES,
Plaintiff,

v.

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

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties filing Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties' Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221 and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

RESOLUTION OF VIOLATIONS

1. Defendants' alleged violation of 10 V.S.A. § 1259(a) on the farm at 1553 State Park Road in Franklin, Vermont, on May 3, 2018, April 5, 2019, April 25, 2019, April 29, 2019 as set forth by Plaintiffs in paragraph 38 of the parties' Pleadings by Agreement, 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.

PENALTIES

2. This Court adopts the State's assessed civil penalty for the violations in the amount of \$25,500.00.
3. Pursuant to the Stipulation between the parties, Defendants shall be responsible for payment of the civil penalty. \$20,000.00 of the assessed civil penalty shall be suspended due to Defendants' demonstrated inability to pay. The remaining \$5,500.00 shall be paid pursuant to paragraphs 4 and 5.

On or before **September 1, 2023, June 1, 2024, and June 1, 2025**, Defendants shall submit to Megan Hereth at the Vermont Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609, 1) copies of their tax returns redacted only for personally identifiable information and 2) a completed and signed financial affidavit in the form of Exhibit A to this Consent Order. If these documents or other information show a substantial change in financial circumstances that support Defendants' ability to pay a larger portion or the full \$25,500.00 assessed civil penalty, the State may request that the Court modify this Consent Order. If Defendants fail to timely submit either their tax returns or their financial affidavits as required, the State may pursue the full assessed civil penalty of \$25,500.00 and paragraph 5 shall apply to that amount then forward.

4. Pursuant to the Stipulation between the parties, the Howrigan Defendants shall pay \$500.00 and the Paradis Defendants shall pay \$5,000.00 within 90 days of Court approval of the Consent Order. Defendants shall submit

payments by check addressed to the “State of Vermont” and shall mail them to:

Megan Hereth, Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

5. In the event that Defendants fail to comply with paragraphs 3-4, such failure shall constitute a breach of this Final Judgment Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, beginning on the first day after the penalty becomes due. Defendants shall also be liable for costs incurred by the State, including reasonable attorney’s fees, to collect any unpaid penalty amount.

CORRECTIVE ACTIONS

6. Pursuant to the Stipulation between the parties, the Paradis Defendants shall perform and pay for the corrective actions required of this Consent Order.
7. The Paradis Defendants shall perform the following corrective actions at the farm at 1553 State Park Road in Franklin, Vermont:
 - a. By May 15, 2025, the Paradis Defendants shall implement to the satisfaction of the Vermont Agency of Natural Resources (ANR) a long-term plan approved by ANR (the Long-Term Plan) to permanently eliminate discharges of agricultural waste from the farm’s Main Pit, Heavy use/Driveway area, and Silage Bunks. The Paradis Defendants’ implementation of the Long-Term Plan, as further referred to herein,

shall include completion of all construction and modification of waste management systems. The Paradis Defendants shall complete implementation of the Long-Term Plan no later than May 15, 2025, unless ANR issues a written extension in advance of the deadline for unforeseen circumstances beyond the Paradis Defendants' control.

- b. By September 1, 2023, the Paradis Defendants shall submit a conceptual Long-Term Plan to ANR. By November 1, 2023, the Paradis Defendants shall submit a preliminary Long-Term Plan to ANR. The Paradis Defendants' preliminary Long-Term Plan shall detail the farm's plan for how it will manage manure and wastewater. By December 1, 2023, the Paradis Defendants shall submit a final Long-Term Plan to ANR.
- c. Within five (5) days of implementation of the Long-Term Plan, the Paradis Defendants shall provide ANR with notification that all requirements of the Long-Term Plan have been followed. Within sixty (60) days of implementation of the Long-Term Plan, the Paradis Defendants shall provide ANR with verification that all requirements of the Long-Term Plan have been followed. The Paradis Defendants' verification shall include documentation by a professional engineer for all Long-Term Plan work to the waste management systems at the farm. The Paradis Defendants' notice and verification shall be submitted to ANR's Concentrated Animal Feeding Operation Program

via email to ANR.WSMDCAFOCompliance@vermont.gov. Email format with attachments is an acceptable format for submission. ANR may conduct inspections following receipt of the Paradis Defendants' verification.

- d. The Paradis Defendants must obtain all regulatory approvals necessary to implement the Long-Term Plan, including any required construction stormwater permits.
- e. Until the Long-Term Plan is implemented to ANR's satisfaction, the Paradis Defendants shall ensure there are no discharges of agricultural waste from the farm to waters of the State and shall perform the following corrective action at the farm (the Interim Plan):
 - i. The Paradis Defendants shall prevent runoff of agricultural wastes from the following areas and shall implement the following practices, at a minimum:
 1. Main Pit – monitor and maintain a minimum of 12 inches of freeboard at the lowest point of the manure pit berm, as well as monitor and maintain the berm of the manure pit.
 2. Heavy use/Driveway area – ensure that no wastes or raw materials, including feed, are stored in the heavy use/driveway area. Monitor and maintain the heavy use/driveway area to ensure that feed or other agricultural wastes do not accumulate. Monitor and maintain the ditch berm to ensure that erosion is minimized, and runoff continues to be diverted away from ditches, surface waters, and tiled portions of the field.
 3. Silage Bunks – monitor and maintain the gravel berm at the edge of the new bunk apron to ensure no leachate can bypass it until the final berm is established.

- f. Any and all discharges from the farm occurring prior to implementation of the Long-Term Plan to ANR's satisfaction shall constitute violations of this Final Judgment Order pursuant to paragraphs 14-15 and may subject the Paradis Defendants to additional penalties as provided by Title 10 of the Vermont Statutes Annotated.
- g. Until the Long-Term Plan is implemented to ANR's satisfaction, the Paradis Defendants shall provide to ANR a Monthly Interim Report. The Paradis Defendants' Monthly Interim Report shall be submitted by the last day of each month, beginning with the first full month after Court entry of the Final Judgment Order. The Monthly Interim Report shall include:
- i. A narrative description of the waste management conditions at the farm areas, listed in subsections 8(g)(ii) below;
 - ii. Photographs of each of the following areas as described:
 - Main Pit freeboard at the lowest point of the berm,
 - The Heavy Use/Driveway Area and all flowpaths of Heavy Use/Driveway Area runoff,
 - The western berm of the new Silage Bunk Apron,
 - iii. If a discharge is observed at the farm, the report shall identify it and describe the Paradis Defendants' implemented remedy to eliminate it.
 - iv. The report shall be submitted to ANR's Concentrated Animal Feeding Operation Program via email to ANR.WSMDCAFOCompliance@vermont.gov. Email format with attachments is an acceptable format for the monthly interim reports.

OTHER PROVISIONS

8. ANR shall have access to the farm to conduct inspections at reasonable times to determine compliance with this Order.
9. The parties waive: (a) all rights to contest or appeal this Final Judgment Order and (b) all rights to contest the obligations imposed upon Defendants under this Final Judgment Order, in this or any other administrative or judicial proceeding involving the State of Vermont.
10. This Final Judgment Order is binding upon the parties and their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, or their assigns under this Final Judgment Order.
11. Nothing in this Final Judgment Order shall be construed to create or deny any rights of, or grant or deny any cause of action to any person not a party to this Final Judgment Order.
12. This Final Judgment Order shall become effective only after it is entered as an order of the Court at which time it shall become final.
13. Any violation of this Final Judgment Order shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.

14. The State of Vermont and this Court reserve continuing jurisdiction to ensure future compliance with all statutes and rules applicable to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
15. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
16. Nothing in this Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all federal, state, or local statutes, regulations, permits or directives applicable to Defendants.
17. The Court finds based on the representations of the parties that the parties have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable, and in the State of Vermont's interest.
18. This Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties or their legal representatives and approved by this Court. Any representations, whether written or oral, not set forth in this Final Judgment Order shall not be binding upon any party and shall be of no legal force or effect.

SO ORDERED and ENTERED as FINAL JUDGMENT.

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

Franklin Superior Court Judge

**INDIVIDUAL ABILITY TO PAY CLAIM
 FINANCIAL DATA REQUEST FORM**

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental cleanup or penalties. If you need more space for your answers, please attach additional sheets of paper. Note that further documentation may be requested of any of your responses. Any other information you wish to provide supporting your case is welcome, particularly if you feel your situation is not adequately described through the information requested here.

CERTIFICATION

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief.

Signature: _____

Date: _____

Name:

Spouse's Name:

Names of Additional Household Members:

Street Address:

City:

State:

County:

Zip:

Household Members' Income

List all income that household members earn. Provide tax returns for last three years.

Name:						
Relationship to Applicant	Self	Spouse				
Gender						

<i>Household Members' Income Continued...</i>									
Employer									
Years Employed									
Gross (pre-tax) Income									
<i>For income period, specify either weekly (W), monthly (M), quarterly (Q), or yearly (Y)</i>						Period			
						W	M	Q	Y
Wages / Salaries									
Sales / Commissions									
Investment Income									
Net Business Income									
Rental Income									
Pension Income									
Child Support									
Alimony									
Other (attach description)									
Household Living Expenses									
<i>List household living expenses typical of last year, indicating if any are likely to change significantly in the current year. If you own an operating business, exclude any business expenses; instead, attach any available financial statements for your business</i>									
Expense	Amount	Subject to change?	Period						
			W	M	Q	Y			
Rent									
Home maintenance									
Transportation (including auto maintenance)									
Home heating oil, gas, etc									
Electricity									
Water and sewer									

<i>Household Living Expenses Continued...</i>		W	M	Q	Y
Telephone					
Food					
Clothing, personal care					
Medical (other than insurance premiums)					
Mortgage payments (principal and interest only)					
Car payments					
Credit card interest					
Educational loan payments					
Other debt payments					
Home insurance					
Life insurance					
Auto insurance					
Medical insurance					
Property taxes					
Federal income taxes (net of any refunds)					
State and local income taxes (net of any refunds)					
FICA					
Other taxes					
Childcare					
Tuition					
Legal or professional fees					
Other (attach description)					

Net Worth

Provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish, note such items with an "E." If you are the sole proprietor of a business, please list business assets and liabilities to the extent that the information sought is not already provided in your tax returns, in addition to personal assets and liabilities. Mark these entries with a "B" to identify them as business assets and liabilities.

	Assets	Liabilities	Comments
Bank Accounts (Checking, NOW, Savings, Money Market, CDs, etc)	Balance		
Financial Investments (stocks, bonds, etc)	Market Value		
Retirement Funds and Accounts (IRA, 401(k), Keogh, bested interest in company retirement fund, etc)	Market Value		
Life Insurance Policies (whole life, universal life, etc)	Cash Value		

<i>Net Worth Continued...</i>	<i>Assets</i>	<i>Liabilities</i>	<i>Comments</i>
Vehicles Used for Commuting (cars, trucks, motorcycles, RVs, motor homes, boats, airplanes, etc)	Market Value	Loan Balance	
Primary Residence	Market Value	Mortgage Balance	
Real Estate (other than primary residence, to include lands, buildings, land with buildings)	Market Value	Mortgage Balance	
Personal Property (household goods and furniture, jewelry, art, antiques, collections, precious metals, etc – list only items with value greater than \$500)	Market Value	Debt Balance	

<i>Net Worth Continued...</i>	<i>Assets</i>	<i>Liabilities</i>	<i>Comments</i>
Credit Cards and Lines of Credit		Balance Due	
Other Debts and/or Assets (any other assets and any debts on those assets, plus any other debts owed to individuals, fixed obligations, taxes owed, overdue alimony or child support, etc)	Market Value	Debt Balance	
Additional Information			
<i>For any questions that you check off as applicable, provide additional information below or on a separate page.</i>			
			Check if "yes"
Reason to believe financial situation will change during the next year?			
Currently selling or purchasing any real estate?			
Property held by other person/entity on applicant's behalf?			

<i>Additional Information Continued...</i>	Check if "yes"
Party in pending lawsuit (other than this enforcement action)?	
Any belongings repossessed in last three years?	
Is applicant a trustee, executor, or administrator of an estate?	
Participant or beneficiary of estate or profit-sharing plan?	
Declared bankruptcy in last seven years?	
Receive any type of federal aid or public assistance?	