

STATE OF VERMONT

SUPERIOR COURT

Windham Unit

CIVIL DIVISION

Case No.

STATE OF VERMONT, AGENCY)
OF NATURAL RESOURCES,)
Plaintiff,)
)
v.)
)
LONG FALLS PAPERBOARD, LLC,)
Defendant.)

COMPLAINT

The State of Vermont Agency of Natural Resources, by and through Vermont Attorney General Charity R. Clark, and pursuant to 10 V.S.A. § 1259, 10 V.S.A. Chapter 159, 10 V.S.A. § 8221, and the equitable jurisdiction of the court, makes the following complaint against Long Falls Paperboard, LLC:

ALLEGATIONS

The Parties

1. The Vermont Agency of Natural Resources (ANR or Agency) is a state agency established pursuant to 3 V.S.A. § 2802, with offices in Montpelier, Vermont.

2. Long Falls Paperboard, LLC (Defendant) is a foreign limited liability company doing business in Brattleboro, Vermont and registered with the Vermont Secretary of State, with a principal place of business at 618 Powers Road, Starbuck, Washington.

Legal Framework

Title 10, Chapter 47 (Water Pollution Control)

3. ANR regulates the protection of Vermont's waters, the permitting and management of discharges, maintenance of water quality, and control of water pollution pursuant to 10 V.S.A., Chapter 47.

4. The United States Environmental Protection Agency has authorized ANR to implement the federal Clean Water Act's National Pollutant Discharge Elimination System permitting program in Vermont, which ANR does through 10 V.S.A. section 1259 and related provisions as set forth below.

5. 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]."

6. Title 10 section 1251(3) defines "discharge" as "the placing, depositing or emission of any wastes, directly or indirectly, into . . . waters of the State."

7. Title 10 section 1251(12) 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."

8. Title 10 section 1251(13) defines "waters" as including "all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are confined within, flow through, or border upon the State or any portion of it."

9. Title 10 section 1268, Emergency permits, states:

When a discharge permit holder finds that pollution abatement facilities require repairs, replacement, or other corrective action in order for them to continue to meet standards specified in the permit, the holder may apply in the manner specified by the Secretary for an emergency pollution permit for a term sufficient to effect repairs, replacements, or other corrective action. The Secretary shall proceed in accordance with chapter 170 of this title. No emergency pollution permit shall be issued unless the applicant certifies and the Secretary finds that:

- (1) there is no present, reasonable alternative means of disposing of the waste other than by discharging it into the waters of the State during the limited period of time of the emergency;
- (2) the denial of an emergency pollution permit would work an extreme hardship upon the applicant;
- (3) the granting of an emergency pollution permit will result in some public benefit;
- (4) the discharge will not be unreasonably harmful to the quality of the receiving waters; and
- (5) the cause or reason for the emergency is not due to willful or intended acts or omissions of the applicant.

Vermont Water Pollution Abatement Facility Operator Rules

10. ANR adopted the Pollution Abatement Facility Operator Rules (PAFOR) “pursuant to 10 V.S.A. Chapter 47, in particular §§ 1251a(a), 1263(d), and 1265(d), to require proper operation and maintenance of pollution abatement facilities.” PAFOR § 4-102(a).

11. Section 4-301(a) of the Pollution Abatement Facility Operator Rules states that:

An owner of a pollution abatement facility with a discharge permit issued pursuant to 10 V.S.A. §§ 1263 or 1265, when such permit requires facility operation by licensed operator(s), shall employ licensed operators, including a chief operator for any wastewater treatment facility and a chief operator for any indirect discharge system where the indirect discharge permit requires a chief operator.

12. Section 4-301(c) states:

Except as otherwise provided in this Rule, chief operators of pollution abatement facilities are required to hold a license in the numerical grade and facility type equal to the numerical grade and facility type of the pollution abatement facility at which they are employed.

13. Section 4-301(e) states:

Notwithstanding Subsection (c), in the event of the chief operator leaving a pollution abatement facility, the assistant chief operator or an experienced operator with adequate knowledge of that specific facility may act as chief operator for a maximum of 6 months without obtaining the license required to become chief operator.

14. Section 4-301(h) states:

A provisionally licensed operator cannot make operational changes at a pollution abatement facility without the oversight of a non-provisionally licensed operator.

15. Section 4-302(d) states:

Part-time coverage by a chief operator for wastewater treatment facilities.

(1) The chief operator must be on-site at the wastewater treatment facility a minimum of 8 hours per week and available to make day-to-day process decisions and respond to emergencies.

(2) The Department may require a chief operator to be on-site for more than 8 hours per week, based on the type, complexity, or permitted flow of the facility, or as otherwise determined by the Department based on the facility's needs.

(3) If the wastewater treatment facility is not normally staffed full time, the chief operator must be on-site a minimum of 4 hours per week and available to make day-to-day process decisions and respond to emergencies.

NPDES Permit 3-1136

16. National Pollution Discharge Elimination System (NPDES) Permit No. 3-1136, which applies to Defendant as set forth in the facts below, includes the following conditions:

- a. Condition I.A.1 states: “[T]he permittee is authorized to discharge from outfall serial number S/N 001: Treated process wastewater from a specialty paperboard manufacturing operation.” This condition also sets monitoring requirements and effluent limits for multiple contaminants including biochemical oxygen demand, total suspended solids, turbidity, phosphorus, nitrogen, and pH.
- b. Condition I.F.2 states: “The Permittee is required to submit monitoring results as specified on a Discharge Monitoring Report (Form WR-43). Reports are due on the 15th day of each month, beginning with the month following the effective date of this permit.”
- c. Condition II.A.1, Facility Modification/Change in Discharge states:

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such a violation may result in the imposition of civil and/or criminal penalties pursuant to 10 V.S.A. Chapters 47, 201, and/or 211. Any anticipated facility expansions, production increases, or process modifications which will result in new, different, or increased discharges of pollutants must be reported by submission of a new permit application or, if such changes will not violate the effluent limitations specified in this permit, by notice to the permit issuing authority of such changes. Following such notice, the permit may be modified to specify and limit any pollutants not previously limited.

d. Condition II.A.2, Noncompliance Notification, states:

In the event the permittee is unable to comply with any of the conditions of this permit due, among other reasons, to:

- (a) breakdown or maintenance of waste treatment equipment (biological and physical-chemical systems including, but not limited to, all pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes, ion exchange columns, or carbon absorption units),
- (b) accidents caused by human error or negligence, or
- (c) other causes such as acts of nature, the permittee shall notify the Secretary within 24 hours of becoming aware of such condition or by the next business day and shall provide the Secretary with the following information, in writing, within five (5) days:
 - i. cause of non-compliance;
 - ii. a description of the non-complying discharge including its impact upon the receiving water;
 - iii. anticipated time the condition of non-compliance is expected to continue or, if such condition has been corrected, the duration of the period of non-compliance;
 - iv. steps taken by the permittee to reduce and eliminate the non-complying discharge; and
 - v. steps to be taken by the permittee to prevent recurrence of the condition of non-compliance.

e. Condition II.A.3, Operation and Maintenance, states:

All waste collection, control, treatment, and disposal facilities shall be operated in a manner consistent with the following:

- (a) The permittee shall, at all times, maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.
- (b) The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance, and testing functions required to ensure compliance with the conditions of this permit.
- (c) The operation and maintenance of this facility shall be performed only by qualified personnel. The personnel shall be certified as required under the Vermont Water Pollution Abatement Facility Operator Certification Regulations.

d. Condition II.A.5, Bypass, states:

The diversion or bypass of facilities, necessary to maintain compliance with the terms and conditions of this permit, is prohibited, except where authorized under terms and conditions of an emergency pollution permit issued pursuant to 10 V.S.A. §1268.

e. Condition II.A.8, Solids Management, states:

Collected screenings, sludges, and other solids removed in the course of treatment and control of wastewaters shall be stored, treated and disposed of in accord with 10 V.S.A., Chapter 159 and with the terms and conditions of any certification, interim or final, transitional operation authorization or order issued pursuant to 10 V.S.A., Chapter 159 that is in effect on the effective date of this permit or is issued during the term of this permit.

17. The Permit does not authorize Defendant to discharge plastic.

Title 10, Chapter 159 and the Solid Waste Management Rules

18. ANR regulates the management of solid waste pursuant to 10 V.S.A., Chapter 159 and the Solid Waste Management Rules.

19. Title 10, section 6605(a)(1) prohibits, in relevant part, the operation of any solid waste management facility without first obtaining certification from ANR.

20. Title 10, section 6602(10) defines “facility” as “all contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste.”

21. ANR adopted the Solid Waste Management Rules pursuant to 10 V.S.A. § 6603(1).

22. Section 6-304(d) of the Solid Waste Management Rules, in relevant part, prohibits the “[t]reatment, storage or disposal of solid waste outside of a certified facility except for the exemptions set forth in § 6-302 of these Rules.”

23. Title 10, section 6602(2) and Section 6-201 of the Solid Waste Management Rules define “solid waste” as:

any discarded garbage; refuse; septage; sludge from a waste treatment plant, water supply plant, or pollution control facility; and other discarded material, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include animal manure and absorbent bedding used for soil enrichment; high carbon bulking agents used in composting; or solid or dissolved materials in industrial discharges that are point sources subject to permits under the Water Pollution Control Act, chapter 47 of this title.

24. Title 10, section 6601(12) defines “disposal” as:

the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.

Title 10, Chapter 159 and the Hazardous Waste Management Rules

25. ANR regulates the management of hazardous waste pursuant to 10 V.S.A., Chapter 159 and the Hazardous Waste Management Rules.

26. ANR adopted the Hazardous Waste Management Rules effective December 31, 2016 pursuant to 10 V.S.A. § 6603(1).

27. Title 10, section 6602(4) and Section 7-103 of the Hazardous Waste Management Rules (VHWMR) define “hazardous waste” as:

any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including those that are toxic, corrosive, ignitable, reactive, strong sensitizers, or that generate pressure through decomposition, heat, or other means, that in the judgment of the Secretary may cause or contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter that may have an unusually destructive effect on water quality if discharged to ground or surface waters of the State. . . .

28. VHWMR Section 7-303 provides that “Any person who generates a waste shall determine if that waste is a hazardous waste in accordance with § 7-202.”

29. VHWMR Section-307 states that:

- (a) A small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of subchapter 5 if that person meets the requirements of subsection (c) of this section and generates:
 - (1) Greater than or equal to 220 pounds (100 kilograms) but less than 2,200 pounds (1,000 kilograms) of hazardous waste in a calendar month;
 - (2) Less than 2.2 pounds (1 kilogram) of acutely hazardous waste in a calendar month;
 - (3) Less than 220 pounds (100 kilograms) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a discharge of any acutely hazardous waste in a calendar month; and
 - (4) The quantity of hazardous waste accumulated on-site never exceeds 13,200 pounds (6,000 kilograms).

30. VHWMR Section 7-307(c)(2)(A) states that, “a small quantity generator must store hazardous waste on-site no longer than 180 days from the date when the waste first started to accumulate.”

31. VHWMR Section 7-311(a) (Short-Term Area Design Standards) states:

- (1) Generators must accumulate and store hazardous waste upon an impervious surface except for spill clean-up debris that is generated in response to an emergency action completed pursuant to § 7-105.
- (2) Hazardous waste containers may be placed out-of-doors only if they are within a structure that sheds rain and snow.
- (3) Hazardous wastes subject to freezing and expansion may not be stored in containers or aboveground tanks unless mechanical or physical means are employed to prevent freezing.
- (4) The spill and fire control equipment required under §§ 7-309(a)(1)(A) and (C) shall be available in the immediate vicinity of each short-term storage area.

32. VHWMR Section 7-311(b)(2) and (3) states that, “containers of hazardous waste must be stored such that the hazardous waste labeling is visible. Aisle space between rows of containers must be sufficient to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation. In no circumstance shall the aisle space be less than twenty-four (24) inches wide.”

33. VHWMR Section 7-311(f)(1)(C) states that, “with the exception of satellite accumulation containers managed in accordance with § 7-310(a), containers and packages used for the storage

of hazardous wastes shall be clearly marked from the time they are first used to accumulate or store waste. Such marking shall include the date when the container was first used to accumulate or store hazardous waste.”

34. VHWMR Section 7-311(f)(4)(B) states that, “[a] container holding hazardous waste must not be opened, handled or stored in a manner that may rupture the container or cause it to leak.”

35. VHWMR Section 7-806(b) states, in relevant part, that:

(b) Containers holding used oil shall be managed as follows:

(1) Containers shall be kept closed at all times, except when adding or removing used oil.

AND,

(2) A container holding used oil must not be opened, handled, or stored in a manner which may rupture the container or cause a release. If a container begins to leak, the used oil must immediately be transferred from the leaking container to a container that is in good condition, or the used oil shall be managed in some other way that complies with the requirements of § 7- 806. AND,

(3) A container holding used oil must be made of or lined with materials which will not react with and are otherwise compatible with used oil;

(4) Containers holding used oil must be in good condition. AND,

(5) Containers holding used oil must be labeled or marked with the words "Used Oil" or “Used Oil Fuel,” as appropriate, such that the label or marking is visible. AND,

(6) Containers holding used oil must be stored on an impervious surface. AND,

(7) A container holding used oil may be stored out-of-doors only if the container is placed within a structure that sheds rain and snow. AND,

(8) A container holding a mixture of used oil and water shall be placed within a structure that protects the container from freezing.

36. VHWMR Section 7-912(d)(5)(A)(i) states that, “small and large quantity handlers must package universal waste lamps in containers that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”

37. VHWMR Section 7-912(e)(6) states that, “containers holding universal waste lamps must be labeled or marked clearly with one of the following phrases: ‘Universal Waste-Lamp(s),’ or ‘Waste Lamp(s),’ or ‘Used Lamp(s).’”

38. VHWMR Section 7-912(f)(3) states that, “a small or large quantity handler who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.”

Civil Enforcement

39. Pursuant to Title 10 section 8221, the State may bring an action in the Civil Division of Superior Court to enforce Vermont’s environmental laws, including Chapters 47 (water pollution control) and 159 (waste management) of Title 10. 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.

40. Pursuant to 10 V.S.A. § 8002(9) (applicable through 10 V.S.A. §§ 8003(a) and 8221), a “violation” is defined as “noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permits, assurances, or orders.” Chapter 47 (Water Pollution Control) and Chapter 159 (Solid Waste, Hazardous Waste, and Hazardous Materials) are among the statutes listed in 10 V.S.A. § 8003.

Facts

Plant and Wastewater Treatment Facility

41. At all relevant times, Defendant has owned and managed a paper plant in Brattleboro, Vermont (the Plant) that includes a wastewater treatment facility (the Facility).

42. The Plant is located at 161 Wellington Road in Brattleboro, on a parcel bordered by the Connecticut River on its northeast side and Wellington Road on the southeast. The parcel is approximately 39.52 acres in area, long and narrow, with the longest dimension running southwest to northeast, along the river. The Plant buildings are on the southwest portion of the

parcel, with the Facility's lagoons to the northeast of the buildings. The parcel extends to the northeast of the lagoons. There is a forested area between the Plant and the river.

43. The Facility is classified under the Pollution Abatement Facility Operator Rule as a Grade II Industrial Paper Wastewater Treatment Facility.

44. On October 3, 2012, ANR issued National Pollutant Discharge Elimination System (NPDES) direct discharge permit No. 3-1136 for the Facility pursuant to 10 V.S.A. §§ 1251, 1259(a) to FiberMark North America, Inc., authorizing it to discharge treated process wastewater from the Facility (the Permit).

45. In 2015, ownership of the Facility was transferred to Neenah Northeast, LLC.

46. Effective January 1, 2019, ownership of the Facility was transferred from Neenah Northeast, LLC to Defendant.

47. ANR approved transfer of the Permit to Defendant.

48. Defendant has owned and operated the Plant and the Facility since 2019.

49. Over the past few years, there have been multiple violations of Vermont's water pollution and hazardous waste laws at the Plant and Facility. These include exceedances of permit limits for biochemical oxygen demand, total suspended solids, turbidity, and pH; late and incomplete submission of discharge monitoring reports; unauthorized discharges of plastic particles into the Connecticut River; unauthorized alterations to and bypasses of the wastewater treatment system, including diversion of wastewater through a drain hole and discharges of wastewater through an auxiliary hose into woods near the river; failure to have a licensed facility operator; improperly storing hazardous wastes such as oil and mercury products; and stockpiling contaminated sludge around the Property.

Discharge Monitoring Reports and Exceedances

50. Discharge Monitoring Reports (DMRs) submitted to ANR by the Defendant show that discharges from the Facility exceeded the permitted daily maximum biochemical oxygen demand (BOD) on thirty (30) separate days between February 2019 and May 2022.

51. DMRs submitted to ANR by the Defendant show that discharges from the Facility exceeded the permitted monthly average BOD limit during ten (10) separate months between February 2019 and May 2022.

52. Biochemical oxygen demand (BOD) reduces the amount of dissolved oxygen in rivers and streams. The greater the BOD, the more rapidly oxygen is depleted in the river, leaving less oxygen available to aquatic life. High BOD in receiving water can cause aquatic organisms to become stressed, suffocate, and die.

53. DMRs submitted to ANR by the Defendant show that discharges from the Facility exceeded the permitted daily maximum total suspended solids (TSS) on June 18, 2019.

54. DMRs submitted to ANR by the Defendant show that discharges from the Facility exceeded the permitted monthly average TSS for June 2019.

55. Like BOD, excess TSS can decrease a water body's dissolved oxygen levels and increase water temperature, which can harm aquatic organisms.

56. DMRs submitted to ANR by the Defendant show that discharges from the Facility exceeded the permitted daily maximum turbidity limit on January 12, 2022, and January 13, 2022.

57. Excess turbidity affects a water body in the same ways as TSS, decreasing dissolved oxygen levels and increasing water temperature, which can harm aquatic organisms.

58. Defendant submitted the monthly DMRs to ANR after the monthly deadline twenty-four (24) times from March 2020 through May 2022.

59. Between March 2020 and May 2022, Defendants submitted the monthly DMR reports without the required weekly sampling data for: BOD, five (5) weeks; TSS, five (5) weeks; total phosphorous, one (1) week; total nitrogen, one (1) week; turbidity, two (2) weeks; and pH, five (5) weeks.

60. On May 2, 2023, the Facility exceeded the permitted daily turbidity limit.

61. On May 12, 2023, ANR requested additional effluent monitoring, including hourly turbidity samples and daily settleable solids tests while discharge is occurring.

62. In April and May 2024, the DMRs showed the Facility exceeded permitted pH limits on at least two dates.

63. The pH of surface water can harm aquatic ecosystems in several ways. Fluctuating or sustained pH levels outside the recommended range can lead to decreased growth, reproduction, disease, or death in aquatic species. Changes in pH can alter the chemical state of pollutants, making them more toxic to aquatic life. For example, a decrease in pH can increase the amount of mercury that's soluble in water and an increase in pH can lead to ammonia toxicity. Both mercury and ammonia can harm aquatic organisms.

Lack of Required Operating Staff

64. Defendant had employed a licensed facility operator with a Grade II Industrial Paper license until that individual resigned on January 3, 2022.

65. After that individual resigned, Defendant did not have a licensed operator at the Facility until February 1, 2022.

66. The Facility did not have a licensed operator from January 3, 2022, to January 31, 2022.

67. The Facility's next licensed operator left Defendant's employ on or about October 15, 2022.

68. After the licensed operator left Defendant's employ in October 2022, another employee served as the wastewater treatment facility operator. That employee did not have experience as an operator with adequate knowledge of the Facility and was not licensed until October 12, 2023.

69. The Facility did not have a licensed operator from on or about October 15, 2022, until on or about October 12, 2023.

70. This licensed operator notified ANR on or about May 16, 2024, that he had taken another job.

71. This licensed operator continued to work some hours for Defendant, but has not been available to make day-to-day process decisions and respond to emergencies, and has not been on site for a minimum of four hours per week, since approximately May 16, 2024.

72. The Defendant has had a provisionally licensed operator overseeing the treatment since July 25, 2024. Defendant has not had a fully licensed operator on site for a minimum of four hours per week and available to make day-to-day process decisions and respond to emergencies since approximately May 16, 2024.

Impaired Treatment Systems

73. There are three process water streams that flow to the Facility's wastewater treatment system: (1) the shark pulping system drains to the Shark Sump and is approximately 10% of the flow; (2) the Paper Machine and pulping areas drain to the Main Sump and is approximately 90% of the flow; and (3) the third stream is from a sand filter system that is used to filter river water for use at the facility.

74. Treatment of process wastewater consists generally of a primary clarifier and lagoon system.

75. Process wastewater from the Shark Sump and the Main Sump in the basement is pumped to the clarifier. Backwash from the sand filter system is pumped to the clarifier and is treated along with the paper processing wastewater.

76. The lagoon has four cells that are separated by baffles. The first three cells are aerated with mechanical aerators. The fourth cell is not aerated and acts as a quiescent zone to accommodate sludge settling. The lagoons are approximately fourteen feet deep.

77. Treated wastewater from the Facility is discharged over a weir into the Connecticut River.

Broken Clarifier and Lagoon Baffles

78. On or about January 12, 2022, ANR received a complaint that the clarifier broke in the summer of 2021, and that the Plant had continued to operate while the clarifier was impaired.

79. An ANR Environmental Enforcement Officer (EEO) investigated the complaint and conducted a site visit of the Facility on January 20, 2022. As a result of this investigation, ANR learned the following facts.

80. The clarifier broke in or about August 2021.

81. While the clarifier was not working, the baffles separating the four lagoons failed. This was likely due to the increased amount of solid materials entering the lagoon system because of the broken clarifier.

82. Defendant shut down the Plant in early November 2021 and resumed operations in December 2021.

83. Upon information and belief, Defendant did not repair the clarifier before some time in December 2021.

84. From approximately August 2021 to December 2021, the Facility's clarifier was not operating properly, therefore, process wastewater failed to receive proper treatment through the clarifier.

85. Defendant failed to notify ANR of the breakdown or maintenance of the clarifier and the lagoon system, or to provide corrective actions to remediate the issues as required by the Permit.

86. Defendant did not apply for an emergency pollution permit to approve the bypass of process wastewater while the clarifier was inoperable.

87. Defendant failed to maintain the permitted wastewater treatment system in good working order at all times as required by the Permit.

88. Defendant failed to operate the permitted wastewater treatment system as efficiently as possible at all times as required by the Permit.

Hazardous Waste Compliance

89. On January 27, 2022, staff from ANR's Waste Management & Prevention Division conducted a hazardous waste compliance evaluation inspection at the Plant.

90. At the time of the inspection, multiple containers located in the short-term storage area were not labeled and the contents of such containers could not be identified by facility personnel.

91. At the time of the inspection, multiple containers in the short-term storage area were stored beyond the 180 days storage time limit.

92. At the time of the inspection, there were a total of approximately 52 containers in short-term storage and in satellite accumulation areas, which equate to approximately 21,000 pounds of waste, exceeding the 13,200-pound limit.

93. At the time of the inspection, there were multiple containers stored outdoors and outside the short-term storage area, and not on an impervious surface.

94. At the time of the inspection, there were multiple containers in and around the short-term storage that were not adequately protected from rain and snow. In addition, two containers of hazardous waste in and around the storage area were observed bulging or leaking due to being frozen. Additionally, one 5-gallon container of waste paint and one open 55-gallon container of an unknown waste were observed frozen.

95. At the time of the inspection, there was no spill or fire control equipment in the short-term storage area.

96. At the time of the inspection, multiple containers located in the short-term storage area did not have visible labels and containers were inaccessible due to insufficient aisle space.

97. At the time of the inspection, multiple hazardous waste containers in the short-term storage area were not marked with the date the container was first used to accumulate or store hazardous waste.

98. At the time of the inspection, there was one open (open funnel) used oil container located in the Lube Area Satellite Accumulation Area of the Plant. Two containers holding used oil in the short-term storage area were stored in a manner which could rupture the container or cause a release; these containers were observed to be in poor condition. Multiple containers holding used oil in the short-term storage area were not marked with the words "Used Oil" or "Used Oil Fuel," were not stored on an impervious surface, and not stored in a structure that adequately shed rain and snow or protected the contents of containers from freezing.

99. At the time of the inspection, universal waste lamps (mercury-containing light bulbs) were being stored in open containers and were not packaged in a manner to prevent breakage.

100. At the time of the inspection, containers holding universal waste lamps were not labeled.

101. At the time of the inspection, Plant representatives could not demonstrate how long universal waste lamps had been accumulating on site.

Plastic Discharge, Facility Bypass, and Impaired Systems

First Plastic Discharge

102. On September 15, 2022, ANR received a complaint that plastic particles were floating in the Connecticut River near the Facility.

103. On the same day, an ANR EEO conducted a site visit at the Facility and observed pieces of plastic film in the second treatment lagoon.

104. On September 15, 2022, there was substantial sludge buildup in the fourth lagoon, which reduced the lagoon's capacity to settle solids out of the wastewater prior to discharge and increased the risk that solids would be discharged.

105. On September 15, 2022, there was floating plastic in the fourth lagoon near the outflow.

106. On September 15, 2022, there was plastic leaving the lagoons through the outflow into the Connecticut River.

107. On September 15, 2022, there was nothing in place at the Facility to prevent or restrict plastic from entering the river.

108. Plastic can adversely affect human health and the environment.

109. When aquatic animal species swallow plastic, it can create cuts in the digestive system, leading to infection and internal bleeding. Plastic can also block digestive systems, which can make the animals ill or cause them to starve. This material can stay in their bodies for a long time, and can travel to other species through the food web.

110. Humans can ingest plastic directly from drinking water or indirectly, for instance, by eating fish or other animals that have ingested plastic. Plastic materials are carcinogenic and can affect the body's endocrine system, causing developmental, neurological, reproductive, and immune disorders.

111. Plastics can also impact the photosynthetic ability of aquatic plants and harm aquatic habitat.

112. On or about September 27, 2022, Defendant informed ANR that screens had been placed in the effluent path to prevent plastic debris from entering the river, and that the Facility was working toward improving water treatment.

113. On or about September 29, 2022, ANR requested photos of the screens and daily videos of the effluent being discharged over the weir to ensure that solids had been screened prior to discharge.

114. On or about October 3, 2022, Defendant informed ANR that it was installing screens for the clarifier outfall and in the clarifier, among other things, and getting quotes to have the lagoon dredged and properly cleaned to eliminate debris and sludge.

115. The plastic in the Facility's wastewater came from recycled paper material that had plastic mixed in with the paper that Defendant had accepted and processed.

Second Plastic Discharge

116. On October 7, 2022, ANR received a second complaint that plastic had been observed in the Connecticut River near the Facility.

117. Defendant shut down the Plant from October 7, 2022, to October 10, 2022, due to the plastic discharge.

118. During a Plant shutdown, the Facility generally operates at reduced flows. This decreases the risk of a discharge.

119. The Facility briefly restarted on October 10, 2022, but shut down the same day after the lagoon screens that had been put in place filled with material and clogged the outflow.

120. An ANR EEO conducted a site visit on October 11, 2022. The Plant was not operating because the Facility could not run with the screens in place to remove the plastic.

121. During the site visit, staff were observed pulling plastic out of the fourth lagoon, and there were containers on the ground with shredded plastic inside them and shredded plastic on the ground.

122. At the time of the site visit one of the lagoon baffles was missing.

123. During the site visit, there was a significant amount of sludge in the fourth lagoon. This sludge buildup prevented the lagoon system from settling out solids efficiently, which increased the risk of a discharge of solids.

Facility Bypass

124. On October 26, 2022, ANR staff visited the Facility to evaluate its operational status and Defendant's response to the plastic discharge.

125. The Plant was running at normal rate at the time of this inspection.

126. The Plant had resumed operation on October 24, 2022.

127. No plastic discharge was observed at the time of this site visit, but a significant amount of plastic remained in the lagoons.

128. Defendant had installed a 1/8-inch mesh screen around the 36-inch diameter discharge pipe with the weir, and another mesh screen creating a zone around the discharge pipe. The

screens were installed to capture plastic film and material larger than 1/8” from the effluent prior to discharge. Defendant had Facility staff remove material from the screens manually.

129. Defendant had installed two nets in the fourth lagoon before the weir to catch plastic flowing through. Defendant had Facility staff remove plastic from the nets manually.

130. At the time of the site visit, there was a pump on the bridge to the weir with flexible tubing to pump effluent from the area between the two screens around the discharge pipe, out over the side of the lagoon and onto other screens Defendant had placed there to catch plastic.

131. Defendant diverted wastewater to bypass the permitted wastewater treatment system by pumping water out from between the mesh screens in the lagoon system.

132. Defendant used this unpermitted bypass whenever the mesh screens in the lagoon system became clogged such that wastewater containing plastic could overtop the lagoon or discharge into the river.

133. Defendant did not apply for an emergency pollution permit to approve the bypass of the final discharge screens.

December 2022 Auxiliary Discharge

134. On December 2, 2022, ANR received a complaint that Defendant was discharging wastewater through a pipe or hose over the berm of the lagoon and out over an access road.

135. An ANR EEO investigated and observed that Defendant was discharging wastewater from the Facility’s lagoons through a hose at least six inches in diameter over the northeast end of the berm, onto the access road and adjacent property, into the woods toward the Connecticut River.

136. The Permit authorizes Defendant to discharge from a single point only, outfall serial number S/N 001. Condition I.A.1

137. The auxiliary discharge hose was at a location other than S/N 001.

138. On December 21, 2022, ANR informed Defendant that it considered the auxiliary discharge to be a violation of the Permit.

139. On January 3, 2023, Facility staff notified ANR that the Facility had continued to utilize the auxiliary discharge.

140. Defendant discharged wastewater through this auxiliary hose on multiple occasions, including on or about December 1, 2, 3, and 29, 2022.

141. At no time has Defendant applied for or obtained an emergency pollution permit under 10 V.S.A. § 1268.

March 2023 Bypass

142. On March 22, 2023, ANR received a complaint regarding discharges at the Facility.

143. On March 31, 2023, an ANR EEO conducted a site visit at the Facility and observed a six-inch diameter pipe conveying effluent from the lagoon to the top of a cube-shaped, metal-caged, hard plastic container (“tote”), which was positioned over the top of a drain hole next to the clarifier.

144. The hole at the top of the tote was covered with a screen that could be removed to collect accumulated plastic before the effluent flowed through the tote and into the drain hole.

145. The effluent Defendant diverted from the lagoon and into the drain hole flowed back into the Facility.

146. Defendant did not notify ANR or seek authorization for these alterations to its permitted treatment system.

147. At the time of the site visit, plastic was visible floating in the lagoon and effluent was barely running through the screens in the weir, which were largely clogged with plastic.

Sludge Stockpiles

148. On June 30, 2021, ANR approved the Sludge Management Plan for the Facility in accordance with 10 V.S.A. § 6605(a) (the Plan).

149. The Plan authorizes Defendant to store approximately 5,760 wet tons (or 1,500 dry tons) of the paper residuals coming off the belt press conveyor on a concrete pad outside the clarifier building, and additional temporary storage on an impervious surface at the former trailer storage area to the east of the concrete pad.

150. The Plan requires Defendant to test residuals quarterly for PCBs and heavy metals.

151. At the time ANR approved the Plan, testing had consistently shown negligible levels significantly below any state regulatory threshold.

152. Because of the high quality of the residuals from the Facility at the time the Plan was approved, the Plan provided that the Facility was able to reuse most of the residuals in its own manufacturing process.

153. The Plan allows Defendant to reuse recovered fiber material, send it to the Windham Solid Waste Management District for composting, or to transport it to a suitable in-state or out-of-state solid waste facility for disposal or end use.

154. The Plan does not allow long-term storage or disposal of sludge on the Facility site.

155. Defendant has stored sludge from the lagoon system on the Facility site since before March 31, 2023.

156. On or before March 31, 2023, Defendant made a pond with walls of sludge from the Facility, into which Defendant discharged wastewater from the Facility. The liquid in this pond also contains sludge.

157. On or about August 30, 2023, Defendant had the sludge from the lagoons sampled. The test results showed mercury, PCBs, and cyanide levels that were unacceptable for use of the residuals in compost.

158. On March 6, 2024, ANR staff visited the Facility. Sludge was stockpiled around the Facility site. Most of the stockpiled sludge was located in a half-acre area north of the mill building and south of the lagoons, in piles up to ten feet high.

159. Pieces of plastic film or sheeting were visible in the sludge piles.

160. Over 3,000 cubic yards of sludge were stockpiled on the site at the time of this site visit.

161. Sludge was stockpiled around the site in places not authorized by the Plan.

162. Defendant has not sought to amend the Plan to provide for the proper disposal of sludge that cannot be reused as paper fiber or composted, or for management of much larger quantities of sludge than provided for in the Plan.

163. Defendant has stored sludge at the Facility without properly disposing of it since at least March 31, 2023, and to date has failed to remove and properly dispose of stockpiled sludge.

VIOLATIONS

Based upon the above facts, the State of Vermont alleges the following violations of Vermont's environmental laws and regulations by Defendant. The preceding paragraphs are realleged and incorporated by reference into each claim below.

COUNT ONE: Effluent Limit Violations

164. By exceeding the discharge limitations in the Permit on multiple occasions from 2019 to 2024, Defendant violated Permit Condition 1.A.1 and 10 V.S.A. § 1259(a).

COUNT TWO: Failure to Sample and Late Reporting

165. By failing to timely submit DMRs to ANR and to complete required weekly sampling on several occasions between February 2019 and May 2022, Defendant violated Permit Conditions Part I.A. and I.F.

COUNT THREE: Inadequate Staff and Impaired Systems

166. By operating without a licensed operator for several periods of time between January 2022 to October 12, 2023, and from May 16, 2024, to date, Defendant violated PAFOR § 4-301 and Permit Conditions II.A.3.b and c.

167. By failing to repair the clarifier and lagoons quickly and effectively and maintain the system in good working order, failing to notify ANR of all impaired systems, failing to notify or seek approval from ANR for the sludge removal, and failing to apply for an emergency pollution permit, Defendant violated Permit Condition II.A.3.a.

COUNT FOUR Plastic Discharge

168. By discharging plastic into the Connecticut River without a permit in September 2022, Defendant violated 10 V.S.A. § 1259(a).

COUNT FIVE: Bypass of Permitted Wastewater Treatment System

169. By bypassing the permitted wastewater treatment system on multiple occasions between August 2021 and March 2023 without an emergency pollution permit issued pursuant to 10 V.S.A. § 1268, Defendant violated Permit Conditions II.A.3.a and II.A.1, 2, and 5.

COUNT SIX: Auxiliary Discharges

170. By discharging treatment water from the wastewater treatment lagoon through flexible piping over the side of the lagoon and onto the access road and adjacent property without a permit, Defendant violated 10 V.S.A. § 1259(a).

COUNT SEVEN: Container Management

171. By failing to properly manage containers of hazardous waste, Defendant violated VHWMR Sections 7-303, 7-307, and 7-311.

COUNT EIGHT: Used Oil

172. By failing to appropriately manage used oil, Defendant violated VHWMR Section 7-806(b).

COUNT NINE: Universal Waste Lamps

173. By failing to properly manage universal waste lamps, Defendant violated VHWMR Section 7-912.

COUNT TEN: Waste Disposal

174. By failing to appropriately dispose of the sludge from the lagoons in accordance with the approved sludge management plan, and by failing to provide notice to ANR and amend the sludge management plan, Defendants violated Permit Condition II.A.8, 10 V.S.A. § 6605(a)(1), and Section 6-304(d) of the Solid Waste Management Rules.

RELIEF SOUGHT


WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests that the Court:

1. Find Defendant liable for the violations of Vermont statutes and regulations set forth in Counts One through Ten above.
2. Order Defendant to pay civil penalties for each violation in accordance with 10 V.S.A. § 8221.
3. Order Defendant to take corrective actions, as approved by ANR, to bring the Facility and Plant into compliance.
4. Order such other relief as this Court deems just and appropriate.

DATED October 17, 2024 at Montpelier, Vermont.

STATE OF VERMONT

CHARITY R. CLARK
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