

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
Docket No. 1-1-20 Frcv

STATE OF VERMONT, AGENCY OF
AGRICULTURE, FOOD, and MARKETS,
Plaintiff,

Vermont Superior Court

JAN - 2 2020

FILED: Franklin Civil

v.

PLEASANT VALLEY FARMS OF
BERKSHIRE, LLC, MARK ST. PIERRE,
and AMANDA ST. PIERRE,
Defendants.

COMPLAINT

The State of Vermont, Agency of Agriculture, Food, and Markets, by and through Vermont Attorney General Thomas J. Donovan, Jr., and pursuant to 6 V.S.A. § 4995 and the general equitable jurisdiction of the Court, hereby makes the following complaint against Pleasant Valley Farms of Berkshire, LLC, Mark St. Pierre, and Amanda St. Pierre.

ALLEGATIONS

1. The Agency of Agriculture, Food, and Markets ("AAFV") is an agency of the State of Vermont created through 3 V.S.A. § 2350.
2. Pleasant Valley Farms of Berkshire, LLC is the owner and an operator of Pleasant Valley Farms, which is a dairy farming operation comprised of multiple facilities and land application areas in and around Berkshire, Fairfield, Franklin, Swanton, Richford, St. Albans, Sheldon, and Enosburg, Vermont.
3. Defendants Mark and Amanda St. Pierre also are operators of Pleasant Valley Farms.

4. At the time of the events described below, Pleasant Valley Farms of Berkshire, LLC (“Pleasant Valley”), Mark St. Pierre, and Amanda St. Pierre (collectively, “Defendants”) were engaged in agricultural operations, i.e. the operation of a dairy farm, at the “Lumbra Farm” located at 1567 Skunk Hollow Road, Berkshire, Vermont.

5. The real property at 1567 Skunk Hollow Road, Berkshire, Vermont is owned by Mark St. Pierre and Amanda St. Pierre.

Statutory and Regulatory Framework

6. Pursuant to Title 6 § 4995, the State may bring an action in superior court to enforce Vermont’s agricultural water quality laws, including violations of Chapter 215 and the rules adopted thereunder. Among other things, the court may grant injunctive relief, order corrective actions, and assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

Title 6 and Large Farm Operation Rules

7. Title Six, Chapter 215, Subchapter 4 of the Vermont Statutes Annotated establishes requirements for “large farm operations” and authorizes the Secretary of AAFM (the “Secretary”) to regulate them. Title 6 § 4852 authorizes the Secretary to adopt rules to implement Subchapter 4 and the Secretary has adopted the Large Farm Operations Rules (“LFO Rules”) for this purpose. See LFO Rules Subchapter 1.

8. Pursuant to 6 V.S.A. § 4851(a), “[n]o person shall, without a permit from the Secretary, construct a new barn, or expand an existing barn, designed to house more than 700 mature dairy animals, [or] 1,000 cattle or cow/calf pairs,” or designated thresholds for other animals.

9. Pursuant to the LFO Rules, Subchapter 4(A)(1), the construction or expansion of a barn designed to house more than 700 mature dairy animals, 1,000 cattle or cow/calf pairs, youngstock, or heifers, or in excess of the designated thresholds for other animals, requires an LFO Permit.

10. Pursuant to 6 V.S.A. § 4851(b), an LFO permit is required to operate a farm which exceeds 700 mature dairy animals, 1,000 cattle or cow/calf pairs, or designated thresholds for other animals, if the animals “are in a barn or adjacent barns owned by the same person, or if the barns share a common border or have a common waste disposal system.”

11. Thus, a farm must obtain an LFO Permit if it constructs or expands a barn designed to house the threshold number of animals, or it is (or is part of) an operation that meets the threshold number of animals. *See In re Appeal of Vermont Egg Farms, Inc.*, Docket No. 155-8-98 Vtec, 2000 WL 35522097 (Vt. Env'tl. Ct. Oct. 25, 2000) (“[T]he statute [6 V.S.A. § 4851] requires a single permit, triggered by either of two events: construction of a new structure or proposed operation with the threshold number of animals.”).

12. Where a farm is an LFO because it is part of a larger farm operation (e.g., meeting the threshold number of animals by sharing a waste management system), there is one LFO Permit for the farm operation. See LFO Rules Subchapter 4(B) (“for barn construction and for farm operation, the Agency will process a single LFO permit for persons who apply for or are required to obtain an LFO permit”).

13. Pursuant to Subchapter 6(B)(1)(a) of the LFO Rules, any waste storage facility at an LFO shall meet or exceed the standards of the Vermont Natural Resources Conservation Service (“NRCS”) Field Office Technical Guide Section IV, or equivalent standard as certified by an engineer licensed to practice in Vermont.

14. Pursuant to Subchapter 6(B)(3) of the LFO Rules, any new construction of storage structures shall be designed in accordance with the Vermont NRCS Field Office Technical Guide Section IV or other equivalent standards as certified by an engineer licensed to practice in Vermont.

15. Pursuant to Subchapter 6(B)(5) of the LFO Rules, plans for new waste storage facilities must be submitted to AAFM prior to construction and post-construction documentation must be provided to AAFM within 60 days of completion, unless otherwise specified.

16. Pursuant to Subchapter 6(C)(1) of the LFO Rules, all waste storage and management facilities must be affirmed to be designed to meet Vermont NRCS Field Office Technical Guide Section IV standards or designed by a professional engineer licensed in the State of Vermont with specific requirements.

17. Pursuant to Subchapters 6(F) and 7(A) of the LFO Rules, all LFOs must have a nutrient management plan, and farms must maintain records related to agricultural waste application and crop yields, which AAFM shall have access to.

Title 6 and Required Agricultural Practices Rule

18. Title 6, Chapter 215, Subchapter 2 requires the Secretary to adopt, implement, and enforce rules governing agricultural land use practices, including "Required Agricultural Practices."

19. Pursuant to Title 6, the Secretary adopted Required Agricultural Practices ("RAPs") to "address activities which have a potential for causing agricultural pollutants to enter the groundwater and waters of the State, including dairy and other livestock operations" 6 V.S.A. § 4810(b); RAPs § 1.2.

20. Section 6.03(a) of the RAPs requires that all Certified Small Farm Operations ("CSFOs") and all permitted Medium Farm Operations ("MFOs") and Large Farm Operations ("LFOs") "shall implement a field-by-field nutrient management plan consistent with the requirements of the USDA [United States Department of Agriculture] NRCS Nutrient Management Practice Code 590 or other equivalent standards approved by the Secretary."

21. Section 6.03(b) of the RAPs requires that for all other farming operations, "all sources of nutrients shall be accounted for when determining nutrient application rates," and that recommended rates may be adjusted based on manure or other waste analysis and/or nutrient testing procedures but must be

consistent with "current university regulations and standard agricultural practices."

22. Section 6.03(c) of the RAPs further requires that for all other farming operations "all fields receiving mechanical application of manure, agricultural wastes, or fertilizer shall be soil sampled at least once in every five years Records of soil analysis, manure or other agricultural waste application, and fertilizer applications shall be maintained on the farm for a period of five years and provided to the Secretary upon request."

23. Section 6.03(f) of the RAPs requires that "records of manure or other agricultural waste application shall be maintained by all farms for a period of five years and shall be provided to the Secretary upon request." The records must include the date of application, field location, application rate, source of nutrients applied, and the weather and field conditions at the time of application.

24. Section 9(a)(1) of the RAPs requires that "[p]rior to the construction of farm structures, the farmer must notify the zoning administrator or town clerk of the town in which the farm structure is proposed, in writing, of the proposed construction activity." Section 9(a)(1) requires that this notification "contain a sketch of the proposed structure including the setback distances from adjoining property lines, road rights-of-way, and adjacent surface water."

25. Section 9(a)(4) of the RAPs requires that for new buildings or other farm structures that disturb one or more acres of land, authorization must be

obtained from the Agency of Natural Resources prior to commencing land disturbance or construction activities.

Lumbra Farm

26. Defendants have a Large Farm Operation Permit (#2000-01-A9) ("LFO Permit") from AAFM for a number of their facilities. The Lumbra Farm is not included in Defendants' LFO Permit.

27. In January 2018, Mark and Amanda St. Pierre indicated that they had 195 mature dairy cows and 270 youngstock or heifers housed at the Lumbra Farm on a form submitted to AAFM.

28. At the time of a March 21, 2018 inspection by AAFM, Mark St. Pierre indicated the Lumbra Farm housed approximately 551 mature dairy cows and 277 youngstock or heifers according to Mark St. Pierre's count.

29. As will be explained further below, Defendants expanded a barn at the Lumbra Farm and the expanded barn is now designed to house, at a minimum, 736 mature dairy cows. Therefore, the Lumbra Farm is an LFO.

30. The Lumbra Farm shares a common waste disposal system with other farms operated under Pleasant Valley's LFO Permit which collectively house more than 700 mature dairy animals. Therefore, the Lumbra Farm is an LFO.¹

¹ AAFM has denied coverage to the Lumbra Farm under the Medium Farm Operation General Permit because the Lumbra Farm is an LFO and is required to obtain an LFO Permit. The denial of MFO coverage is presently on appeal to the Vermont Superior Court,

31. The Lumbra Farm is not currently included in Defendants' LFO Permit and the Lumbra Farm does not have its own LFO Permit.

Construction at Lumbra Farm

32. Between September 2016 and the end of 2017, Defendants substantially expanded an existing barn on the Lumbra Farm.

33. The barn was approximately 120' long by 115' wide prior to the expansion, approximately 13,800 square feet or one third of one acre.

34. The new expanded barn is approximately 825' long, more than six times longer than the pre-existing barn. The entire square footage of the expanded barn, not including the milking parlor, is approximately 104,026 square feet or approximately 2.39 acres.

35. The construction of the barn expansion involved more than an acre of disturbance and therefore required a pre-construction stormwater permit from the Agency of Natural Resources.

36. Also between September 2016 and the end of 2017, Defendants constructed a new earthen manure storage pit with a synthetic liner. The new manure pit exceeds one acre in space and involved more than an acre of disturbance and therefore required a pre-construction stormwater permit from the Agency of Natural Resources. The new manure pit has total storage capacity of more than 10

Environmental Division. *In re Pleasant Valley Farms of Berkshire, LLC*, Docket No. 58-5-19 Vtec.

million gallons of manure and an active storage of 7.4 million gallons of manure which is consistent with animal numbers associated with an LFO.

37. Defendants did not obtain pre-construction stormwater permits from the Agency of Natural Resources for construction of the barn expansion or the new manure pit.

38. Upon information and belief, Defendants did not provide pre-construction written notice to the Town of Berkshire prior to constructing the new manure pit or the expanded barn, a requirement of the RAPs for construction of farm structures.

39. Defendants did not obtain an LFO Permit prior to construction of the expanded barn which is required by statute because the barn is designed to house LFO numbers of animals.

40. Defendants did not submit plans or specifications for the new manure pit to AAFM prior to construction, nor did they submit post-construction documentation within sixty days of completion as were required by the LFO Rules.

January 9, 2018 Inspection by AAFM

41. On January 9, 2018, AAFM representatives conducted an inspection of the Lumbra Farm.

42. During the January 9, 2018 inspection, AAFM representatives requested a copy of the farm's Nutrient Management Plan ("NMP").

43. Defendants did not have a NMP for the Lumbra Farm despite being required to have one by the LFO Rules and the RAPs.

44. AAFM representatives requested soil samples for all fields at the Lumbra Farm that receive manure, agricultural wastes, or fertilizer.

45. Defendants indicated that some soil tests had been taken but that Defendants had not sampled all of the fields and did not have the soil analysis for all fields associated with the Lumbra Farm.

46. Defendants did not provide soil sampling or analysis results to the AAFM representatives despite the RAPs requiring farms without NMPs to maintain these records and provide them to AAFM upon request.

47. AAFM also requested manure or other agricultural waste application records for fields associated with the Lumbra Farm.

48. Defendants did not have the manure spreading records, though Defendants had spread manure at fields associated with the Lumbra Farm in Fall 2016 and in 2017.

49. Defendants did not provide manure spreading records to the AAFM representatives despite the LFO Rules and the RAPs requiring farms to maintain these records and provide them to AAFM upon request.

50. AAFM also requested records of crop yields for all fields associated with the Lumbra Farm.

51. Defendants did not have crop yield records for the Lumbra Farm and did not provide crop yield records to AAFM despite the LFO Rules requiring farms to maintain these records and provide them to AAFM upon request.

52. Defendants had not taken all sources of nutrients into account when or if Defendants determined nutrient application rates for the spreading in 2016 and 2017.

March 21, 2018 Inspection by AAFM

53. On March 21, 2018, AAFM representatives returned to the Lumbra Farm to complete the inspection.

54. During this inspection, AAFM representatives took measurements of the expanded barn, collected GPS data on the location and size of the building, and inspected the layout, number of pens, number of animals, and number of stalls within the expanded barn.

55. Using this and other information and a computer-aided drafting software program, AAFM determined that the minimum number of mature dairy cows the expanded barn is designed to house is 736; the maximum number of mature dairy cows the expanded barn is designed to house is 1,387.

56. During the inspection AAFM staff counted 1,198 stalls existing in the expanded barn.

57. The Lumbra Barn is designed to house more than 700 mature dairy cows or 1,000 cattle, cow/calf pairs, youngstock, or heifers.

58. During this inspection, AAFM also asked Defendants for documentation regarding the new Lumbra manure pit. Defendants did not provide documentation or other affirmation that the manure pit is designed to meet Vermont NRCS Field Office Technical Guide Section IV standards or is designed by a professional engineer licensed in the State of Vermont. Defendants did not provide this information within 60 days of the completion of the new Lumbra manure pit.

59. Upon information and belief, the new manure pit does not meet these required standards.

60. AAFM has determined that the new manure pit is able to accommodate waste for 1,500 mature dairy animals

VIOLATIONS

COUNT ONE – Violations of 6 V.S.A. § 4851 and LFO Rules Subchapter 4 (Failure to Obtain Large Farm Operation Permit)

61. Paragraphs 1–60 are incorporated by reference and realleged for Count One.

62. Defendants expanded the barn at the Lumbra Farm such that the barn is designed to house more than 700 mature dairy animals or 1,000 cattle or cow/calf pairs, youngstock, or heifers.

63. Defendants were therefore required to obtain an LFO Permit prior to constructing the Lumbra barn expansion, and by failing to obtain an LFO permit for Lumbra Farm Defendants violated 6 V.S.A. § 4851 and LFO Rules Subchapter 4.

64. Defendants also required an LFO permit because the barn at the Lumbra Farm shares a common waste disposal system with other barns owned or operated by Defendants and are collectively designed to house more than 700 mature dairy animals or 1,000 cattle or cow/calf pairs, youngstock, or heifers.

65. Every day that Defendants operated the Lumbra Farm without an LFO permit is an independent violation of the law.

COUNT TWO – Violations of LFO Rules Subchapter 6(B) (Failure to Submit Plans for Manure Pit Construction and Post-Construction Documentation)

66. Paragraphs 1–65 are incorporated by reference and realleged for Count Two.

67. Subchapter 6(B)(5) of the LFO Rules requires that plans and specifications for any new or upgraded waste storage facility be submitted to AAFM prior to construction and that post-construction documentation be submitted to AAFM within 60 days of project completion.

68. Defendants violated LFO Rules Subchapter 6(B)(5) by constructing a new manure pit at the Lumbra Farm without submitting the plans and specifications for the waste storage facility prior to construction and by failing to supply postconstruction documentation to AAFM within 60 days of project completion.

COUNT THREE – Violations of LFO Rules Subchapter 6(B)(1)(a), (B)(3), and 6(C)(1) (Failure to Meet and Affirm Waste Storage Facility Standards)

69. Paragraphs 1–68 are incorporated by reference and realleged for Count Three.

70. Defendants violated the LFO Rules because, upon information and belief, the new manure pit does not meet the standards in the LFO Rules Subchapter 6(B)(1)(A) and 6(B)(3), constituting two separate violations of those Rules.

71. Defendants violated the LFO Rules because they did not provide affirmation to AAFM within 60 days that the new manure pit was designed to meet or exceed the standards set forth in Subchapter 6(C)(1).

COUNT FOUR – Violations of Vermont RAPs § 9(a)(1) (Failure to Notify Town of Berkshire of Construction)

72. Paragraphs 1–71 are incorporated by reference and realleged for Count Four.

73. Defendants committed two separate violations of RAPs § 9(a)(1) by failing to notify the Town of Berkshire prior to the construction of the barn expansion and the new manure pit at the Lumbra Farm.

COUNT FIVE – Violations of Vermont RAPs § 9(a)(4) (Failure to Obtain Permit Prior to Construction)

74. Paragraphs 1–73 are incorporated by reference and realleged for Count Five.

75. Defendants expanded the barn at the Lumbra Farm from approximately 13,800 square feet (approximately one third of one acre) to over 100,000 square feet (more than two acres). This construction disturbed more than one acre of land.

76. Defendants also constructed a new manure pit at the Lumbra Farm which has nearly three acres of surface area and involved more than one acre of disturbance.

77. By failing to obtain the required permit(s) from the Agency of Natural Resources prior to construction of the expansion of the barn or the manure pit, Defendants violated RAPs § 9(a)(4).²

78. This constitutes two separate violations of RAPs § 9(a)(4).

COUNT SIX – Violations of LFO Rules Subchapter 6(F) and RAPs § 6.03(a) (Failure to Have Nutrient Management Plan) and/or § 6.03(b) (Failure to Account for Nutrients) and § 6.03(c) (Failure to Test and Maintain Soil Samples)

79. Paragraphs 1–78 are incorporated by reference and realleged for Count Six.

² The Vermont Agency of Natural Resources (ANR) issued an Environmental Citation to Mark St. Pierre on March 7, 2018 for construction activities involving more than an acre of earth disturbance (approximately 12 acres disturbed) prior to obtaining authorization. The failure to obtain the required stormwater permit from ANR is also a violation of the RAPs under a separate regulatory scheme (Title 6, RAPs § 9(a)(4)) than the violation at issue in the Environmental Citation (10 V.S.A. §§ 1263, 1264).

80. Defendants operated the Lumbra Farm without having developed a nutrient management plan.

81. By operating the Lumbra Farm without a nutrient management plan, Defendants violated LFO Rules Subchapter 6(F) and RAPs § 6.03(a).

82. In the alternative with respect to the RAPs, if Defendants were not required by the RAPs to have a nutrient management plan, Defendants were required to account for all sources of nutrients in determining nutrient application rates pursuant to RAPs § 6.03(b), which applies to all other farming operations.

83. Defendants did not take all sources of nutrients into account when or if Defendants determined nutrient application rates for the spreading in 2016 and 2017.

84. Also, in the alternative with respect to the RAPs, RAPs § 6.03(c) requires that, for all other farming operations, "all fields receiving mechanical application of manure, agricultural wastes, or fertilizer shall be soil sampled at least once in every five years" and that records of soil analysis be maintained on the farm for a period of five years and provided to the Secretary upon request.

85. Defendants did not have soil samples for all fields associated with the Lumbra Farm and did not provide soil analysis to the Secretary upon request

86. Therefore, in the alternative with respect to the RAPs, Defendants committed two separate violations of RAPs § 6.03(b) and (c) by failing to account for

all sources of nutrients in determining application rates and failing to maintain and provide the soil records required for “other farming operations.”

COUNT SEVEN – Violation of LFO Rules Subchapter 7(A) (Failure to Maintain and Provide Manure Application and Crop Yield Records) and RAPs § 6.03(f) (Failure to Maintain and Provide Manure Application Records)

87. Paragraphs 1–86 are incorporated by reference and realleged for Count Seven.

88. During the January 9, 2018 inspection, AAFM requested the records for manure application and crop yields for fields associated with the Lumbra Farm.

89. Though Defendants spread manure in 2016 and 2017, Defendants did not have nor provide the requested records.

90. By failing to maintain and provide the required manure application and crop yield records, Defendants committed multiple violations of Subchapter 7(A) of the LFO Rules and RAPs § 6.03(f).

RELIEF SOUGHT

WHEREFORE, the State of Vermont respectfully requests the following relief:

1. An Order adjudicating Defendants liable for the violations of Vermont statutes and regulations set forth above in Counts One through Seven;
2. An Order levying civil penalties against Defendants in accordance with 6 V.S.A. § 4995(b)(7);

3. An Order requiring Defendants to apply for a Large Farm Operation Permit for the Lumbra Farm;

4. An Order requiring Defendants to bring the Lumbra Farm into compliance with Title 6, Chapter 215, all Required Agricultural Practices (RAPs), and the Large Farm Operations Rules (LFO Rules) through a compliance plan developed by Defendants and approved by AAFM;

5. An Order requiring Defendants to reimburse the State for its costs and expenses in investigating and prosecuting this action; and

6. Such other relief as the Court may deem just and appropriate.

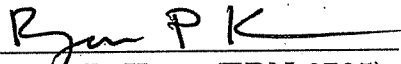
DATED at Montpelier, Vermont this 2nd day of January 2020.

Respectfully submitted,

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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