

**STATE OF VERMONT**

**SUPERIOR COURT  
WINDHAM UNIT**

**CIVIL DIVISION  
DOCKET NO. 21-CV-00063**

STATE OF VERMONT,	)
	)
Plaintiff,	)
	)
v.	)
	)
CHERRYRAIL FARM, LLC,     and	)
JAMES WESTBROOK,	)
	)
Defendants.	)

**CONSENT AGREEMENT AND FINAL JUDGMENT ORDER**

This action came before the Court pursuant to the parties' filing of a Stipulation for the Entry of Consent Order and Final Judgment Order. Based upon that Stipulation, 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. Without formally admitting or denying wrongdoing or liability, Defendants agree to this settlement of the alleged violations in order to resolve all outstanding disputes.
2. Defendants agree that the violations alleged in the Complaint are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of a past record of compliance, such as permit

review proceedings and calculating civil penalties under Title 10, section 8010.

### **RELIEF**

3. For the violations described above, a penalty of \$70,000 is assessed as follows:
  - a. Defendants shall pay \$10,000 within 30 days of this Order, via check payable to the “State of Vermont” and sent to: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. In the event that payment is received by the State before the Court has approved the Consent Order, the State shall hold the check(s) in trust until approval. Should the Court reject the Consent Order, the State will return the check(s) to Defendants; and
  - b. The remainder of the penalty (\$60,000) shall be waived due to Defendants’ demonstrated inability to pay.
4. For each year through 2022, no later than May 15<sup>th</sup> of each year, Defendants shall submit tax returns, including all schedules, to the State of Vermont at: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. If these documents or other information show a change in economic circumstances such that the State believes Defendants’ ability to pay the remaining

\$60,000 penalty has increased, the State may petition the Court and the Court may require such increased payment.

5. If Defendants fail to pay the \$10,000 amount described in ¶ 4(a), such failure shall constitute a breach of this Consent Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. Defendants shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.
6. Defendant Cherryrail Farm, LLC shall cease all agricultural operations by December 8, 2021. This shall include: removal of all live animals (such as pigs); removal of all manure and other agricultural waste; and the adequate composting or burying of all mortalities pursuant to the Required Agricultural Practices Rule, Section 6.08; all completed by December 8, 2021. Defendant Westbrook shall be able to maintain personal gardens and grow crops for personal use on the property.
7. If Defendant Cherryrail Farm, LLC continues any agricultural operations (including housing live animals such as pigs, or maintaining waste that is not properly managed or disposed), beyond December 8, 2021, then it shall pay a civil penalty of \$3,000 per month for each month that such conduct continues. This provision shall not limit the State's ability to seek additional remedies, including further penalties and injunctive relief.
8. Defendants shall hire a professional engineer or other qualified professional acceptable to the Agency of Natural Resources (ANR) to

prepare an erosion prevention and sediment control plan (“EPSC Plan”), to be submitted to Chris Gianfagna at ANR (via email to: [chris.gianfagna@vermont.gov](mailto:chris.gianfagna@vermont.gov)) by October 15, 2021 for review and approval. The EPSC Plan shall address erosion and sediment control during manure removal and following animal removal to address long-term erosion prevention and sediment control at the site. In the event that ANR requests information or rejects the proposed EPSC Plan, Defendant shall revise and resubmit the EPSC Plan to ANR no later than ten (10) consecutive calendar days following any request or rejection, repeating the process as needed until an EPSC Plan is approved.

9. The approved EPSC Plan shall be implemented during manure removal and any long-term measures shall be completed no later than December 1, 2021.

#### **OTHER PROVISIONS**

10. Defendants waive all rights to contest or appeal this Consent Order.;
11. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendants’ obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendants.
12. This Consent Order is binding upon Defendants and all their successors and assigns. Any change in Defendants’ ownership or corporate or legal status, including but not limited to any

transfer of assets or real or personal property, shall not alter Defendants', or Defendants' successors and assigns', responsibilities under this Consent Order.

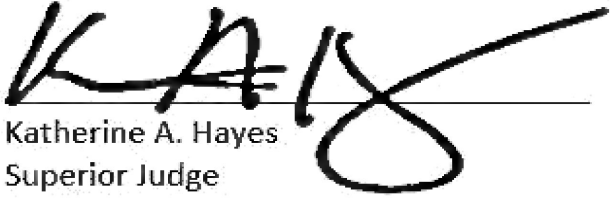
13. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, the Consent Order shall be final.

14. Any violation of this Consent 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.

15. This Consent Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this Court. Any representations not set forth in this Consent Order and Final Judgment Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

16. The Windham Civil Division of the Vermont Superior Court shall have jurisdiction over this Consent Order and the Parties for the purpose of enabling any of the Parties to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe the Consent Order, to modify or terminate any of its

provisions, to enforce compliance, and to punish violations of its provisions. The laws of the State of Vermont shall govern the Orders.

  
Katherine A. Hayes  
Superior Judge

September 21, 2021

DATED at Montpelier, Vermont this 23 day of August, 2021.

STATE OF VERMONT  
THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL



By: \_\_\_\_\_

Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
(802) 828-3186

Aug 17, 2021

DATED at \_\_\_\_\_, Vermont this \_\_\_\_ day of August 2021.

CHERRYRAIL FARM, LLC

By: \_\_\_\_\_

*James Westbrook*  
James Westbrook (Aug 17, 2021 17:42 EDT)

James Westbrook, Member/Manager

Aug 17, 2021

DATED at \_\_\_\_\_, Vermont this \_\_\_\_ day of August 2021.

JAMES WESTBROOK

By: \_\_\_\_\_

*James Westbrook*  
James Westbrook (Aug 17, 2021 17:42 EDT)

James Westbrook

**ORDER AND FINAL JUDGMENT**

Based on the Pleadings by Agreement and the terms of the Consent Agreement of the Parties, the Court enters this ORDER and FINAL JUDGMENT.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Montpelier, Vermont this \_\_\_ day of \_\_\_\_, 2021.

\_\_\_\_\_  
Hon. \_\_\_\_\_  
Windham Superior Court Judge