

STATE OF VERMONT

SUPERIOR COURT  
FRANKLIN UNIT

CIVIL DIVISION  
Docket No. Frcv

STATE OF VERMONT, AGENCY OF  
NATURAL RESOURCES,  
Plaintiff,

v.

PLEASANT VALLEY FARMS OF  
BERKSHIRE, LLC,  
Defendant.

**PLEADINGS BY AGREEMENT**

The State of Vermont, Agency of Natural Resources, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendant Pleasant Valley Farms of Berkshire, LLC, hereby submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

**THE STATE'S ALLEGATIONS**

*The Parties*

1. The Agency of Natural Resources (ANR) is an agency of the State of Vermont created through 3 V.S.A. § 2802.
2. Pleasant Valley Farms of Berkshire, LLC ("Defendant"), is the owner and an operator of Pleasant Valley Farms, which is a dairy farming operation comprised of multiple facilities in Vermont including the Pleasant Valley's Main Farm at 1954 Richford Road, Berkshire, Vermont.
3. Mark and Amanda St. Pierre are the owners of the real property at 1954 Richford Road, Berkshire, Vermont. Additionally, in filings with the

Vermont Secretary of State, Mark St. Pierre is listed as the sole Member of Defendant corporation and Amanda St. Pierre is listed as its Registered Agent.

*Statutory and Regulatory Structure*

4. ANR regulates the protection of Vermont's waters, the permitting and management of discharges, maintenance of water quality, and control of water pollution under 10 V.S.A. Chapter 47.
5. Section 1259(a) of Title 10 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. Pursuant to 10 V.S.A. § 1251(3), a "discharge" is "the placing, depositing or emission of any wastes, directly or indirectly, into an injection well or into waters of the State."
7. In 10 V.S.A. § 1251(12), "waste" is defined 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. Section 1251(13) of Title 10 provides that "waters" include "all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it."

9. Pursuant to 10 V.S.A. § 8221, the State may bring an action in superior court to enforce Vermont's environmental laws, including violations of Chapter 47. Among other things, the court may grant injunctive relief, order compliance activities, and assess civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

***Facts Relating to Defendants***

10. Pleasant Valley Farms is regulated as a Large Farm Operation and the Main Farm houses mature cows, youngstock, and heifers.

11. Godin Brook, waters of the State as defined in 10 V.S.A. § 1251(13), flows between Main Farm fields to the east of the production area.

July 26, 2016 Incident

12. On July 26, 2016, an environmental enforcement officer (EEO) from ANR visited the Main Farm in response to a call reporting that Godin Brook was red in color. The weather that day was sunny and clear, and it was not raining.

13. At the time of the EEO's visit, silage was stored in bunks on the southern half of the production area at the Main Farm. The silage leachate collection and diversion system was designed to collect leachate, divert high flow to a leachate and stormwater retention pond, and divert low flow to the primary manure pit.

14. The leachate pond had a pink/red hue to it. The pond was originally designed by the Agency of Agriculture, Food, and Markets. It had an outlet valve by which leachate could be discharged from the pit through a pipe that empties into a field between the pit and Godin Brook, with the pipe outlet approximately 2000 feet from Godin Brook.
15. Sometime between the evening hours of July 25, 2016 and the early afternoon of July 26, 2016, a discharge of pink/red liquid from the leachate pond entered Godin Brook because a valve controlling the pipe in question was open too far and leachate was flowing onto the field from the pipe.
16. The EEO observed pink/red liquid puddling in the field next to Godin Brook and discharging into the Brook.
17. The EEO observed the Brook flowing pink/red at least 7,200 feet downstream from the point of discharge. The Brook was solid pink/red at the intersection of Marvin Road and Godin Road, looking east and flowing further downstream toward the Missisquoi River.
18. A sample of the pink/red water in Godin Brook, taken by the EEO downstream of the discharge, revealed the presence of the algae Porphyridium. Porphyridium is pink/red in tint and may have caused or contributed to the pink/red color of the silage pond and discharge. Porphyridium feeds on nutrients, but is not itself considered a biological

toxin or cyanobacteria (blue green algae), and does not have high biological oxygen demand.

19. This sample from the Brook also revealed elevated levels of total nitrogen (17 mg/L), digested phosphorus (1810 ug/L), and turbidity (99 NTU).

20. The EEO asked Mark St. Pierre to close the valve on the silage leachate pond to stop the discharge, which he did at approximately 3:00p.m. on July 26, 2016.

21. It is Defendant's position that the source of Porphyridium in the leachate pond is unknown and that a third party tampered with the valve causing the discharge to occur. The State of Vermont does not have sufficient information to verify that a third party tampered with the valve causing the discharge to occur.

22. Shortly after the incident, Defendant installed an anti-tampering device on the valve and reduced the size of the outfall pipe from four inches to two inches. Defendant later developed a leachate management plan and is in discussions with ANR regarding an acceptable plan going forward.

#### Godin Brook and Lake Champlain

23. Godin Brook is in the Missisquoi River basin, which is part of the Lake Champlain watershed. The Brook flows into the Missisquoi River, which flows into the Missisquoi Bay of Lake Champlain.

24. Godin Brook is impaired because nutrient concentrations in the Brook have exceeded the water quality criteria for aquatic life support and aesthetic uses under Vermont's Water Quality Standards.

25. Missisquoi Bay is impaired by phosphorus and has one of the highest concentrations of phosphorus of any segment of Lake Champlain.

***Violation***

26. By discharging waste, i.e. silage leachate, from the Main Farm to waters of the State, i.e. Godin Brook, on July 25 and/or July 26, 2016, without a permit from the Secretary of ANR, Defendant violated 10 V.S.A. § 1259(a).

**DEFENDANT'S RESPONSE TO THE ALLEGED VIOLATION**

Defendant answers the preceding allegations as follows:

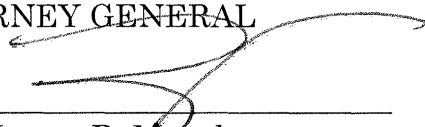
27. Defendant admits the allegations set forth in paragraphs 1-26.

DATED at Montpelier, Vermont this 13<sup>th</sup> day of Nov., 2017.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

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

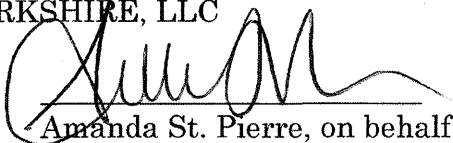
  
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DATED at Berkshire, Vermont this 8 day of Nov, 2017.

PLEASANT VALLEY FARMS OF  
BERKSHIRE, LLC

By:

  
Amanda St. Pierre, on behalf of  
Pleasant Valley Farms of  
Berkshire, LLC, as its Registered  
Agent

1546 Richford Road  
Richford, VT 05476

  
Mark St. Pierre, on behalf of  
Pleasant Valley Farms of  
Berkshire, LLC, as Principal  
1546 Richford Road  
Richford, VT 05476