

STATE OF VERMONT

SUPERIOR COURT

CIVIL DIVISION

RUTLAND UNIT

Docket No. 597-10-15 Rdev

STATE OF VERMONT, AGENCY OF)
 AGRICULTURE, FOOD and MARKETS,)
 and AGENCY OF NATURAL)
 RESOURCES,)
 Plaintiff,)
)
 v.)
)
 WILLIAM and ROBIN HANFIELD,)
 Defendants.)

**STATE OF VERMONT’S MOTION FOR DEFAULT JUDGMENT AGAINST
 WILLIAM and ROBIN HANFIELD**

The State of Vermont, Agency of Agriculture, Food and Markets (AAFV) and Agency of Natural Resources (ANR), by and through Vermont Attorney General William H. Sorrell, hereby moves for an order entering default of Defendants William and Robin Hanfield (Defendants).¹

The Complaint in this action was filed October 8, 2015. *See* Complaint. In compliance with V.R.C.P. 4(b), on February 16, 2016, Defendants were properly served² with a copy of the Complaint, Summons, and a blank Notice of Appearance Form by the Rutland County Sheriff. *See* Return of Service. The Return of Service documents were filed with the Court on February 24, 2016.³ *Id.*

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¹ If the Court grants the State’s Motion for Default Judgment, the State will submit a request for a hearing on civil penalties and any necessary corrective action at the farm location.

² The Complaint, Summons and blank Notice of Appearance forms were served on Defendant Robin Hanfield at the 1022 Wheeler Road property in Brandon. *See* Return of Service; V.R.C.P. 4. The Sheriff’s return of service form indicates that Mrs. Hanfield accepted service on behalf of her husband, Defendant William Hanfield, Sr. and that Mrs. Hanfield is a “person of suitable age and discretion.” *See* Return of Service.

³ The State previously filed a Motion for Default Judgment on January 20, 2016. The Court denied the State’s motion due to questions about the prior service. *See* Entry Regarding Motion (February 4, 2016). The Court extended the time to complete service to March 7, 2016. *Id.*

As of this date, Defendants have not answered the Complaint or otherwise defended this action. Defendants are not infants and the State has no information to cause it to believe that either is an incompetent person. Affidavit of Patrick J. Lowkes ¶ 3; Affidavit of Matthew Wood ¶ 3; Return of Service Forms (indicating Defendant Robin Hanfield is in her “50’s” and “of suitable age and discretion). The State has no reason or basis to believe that either Defendant is in military service. Affidavit of Jonathan Goddard ¶¶ 3-4. Therefore, entry of default is warranted pursuant to V.R.C.P. 55(a).⁴

DEFENDANTS’ LIABILITY

Defendants should be found liable for violations of Vermont’s environmental and agricultural statutes and regulations. Defendants’ liability is established by the facts set forth below. All facts are supported by accompanying affidavits, as required by V.R.C.P. 55(b)(1).

Statutory structure⁵

A. Direct Discharges

The protection of Vermont’s waters, the permitting and management of discharges, maintenance of water quality, and control of water pollution is regulated through 10 V.S.A., Chapter 47. The regulation of agricultural wastes as related to waters of the State occurs through 6 V.S.A., Chapter 215. ANR and AAFM cooperate and coordinate their respective efforts related to agricultural water quality pursuant to 6 V.S.A. § 4810(b).

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⁴ Vermont Civil Court Form 100-00262 is attached hereto.

⁵ The Vermont Legislature passed comprehensive water quality legislation in Act 64, signed into law by Governor Shumlin on June 16, 2015. The relevant law and all statutes referenced in this motion are to the law applicable during the period of the alleged violations and prior to the enactment of Act 64.

Section 1259(a) in Chapter 47 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].” 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.

B. Accepted Agricultural Practices

Pursuant to 6 V.S.A. § 4810(a)(1), the Secretary of AAFM has adopted Accepted Agricultural Practices (AAPs) to “address activities which have a potential for causing pollutants to enter the groundwater and waters of the state.” Under Vermont’s AAPs, section 4.01(a), “[a]gricultural operations shall not create any direct discharge of wastes into the surface waters of the State from a discrete conveyance such as, but not limited to, a pipe, ditch, or conduit without a permit from the Secretary of ANR.” Under Vermont’s AAPs, section 4.01(b), “[b]arnyards, manure storage areas, animal holding areas and production areas shall be managed or controlled to prevent runoff of wastes to adjoining waters, groundwater or across property boundaries.” Under Vermont’s AAPs, section 4.02(d), “[w]aste management systems shall be managed and maintained so as to prevent discharges or structural failures.”

Vermont’s AAPs, section 2.20, define “wastes” as including but not limited to “sediments, minerals (including heavy metals), plant nutrients, pesticides, *organic wastes* (including *livestock waste*, mortalities, compost, feed and crop debris), waste oils, pathogenic bacteria and viruses, thermal pollution, silage runoff, untreated milkhouse waste and any other waste compound or material which is determined by the Secretary of ANR to

be harmful to the waters of the State, or other wastes as defined in 10 V.S.A. § 1251(12)” (emphasis added).

Vermont’s AAPs, section 4.03(c), prohibits the spreading of manure between December 15 and April 1 (Winter Spreading Ban) unless the Secretary of AAFM grants an exemption due to an “emergency situation.”

Section 4812(c) of Title 6 provides that whenever the Secretary of AAFM believes that any person engaged in farming is in violation of the agricultural water quality laws of Title 6, Chapter 215, or the rules adopted thereunder, an action may be brought in the name of the agency in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions, and other relief as may be necessary to curtail any violations.

Facts relating to Defendants

Defendants are the owners of the real property at 1022 Wheeler Road in Brandon, Vermont. Affidavit of Jonathan Goddard ¶ 2. Defendants are engaged in agricultural operations, *i.e.* the operation of a dairy farm, at the property. Affidavit of Matthew Wood ¶ 4.

AAFM administers Vermont’s ban on winter spreading of manure which has been in effect since 1995. The Agency publicizes the ban to farmers in Vermont by issuing an annual press release and posting the release on its website. Affidavit of Laura DiPietro ¶ 8. On or about December 17, 2014, two days after the winter spreading ban took effect, Defendants requested an extension from AAFM to permit them to continue spreading manure. *Id.* ¶ 9. On December 18, 2014, an inspector from AAFM visited Defendants’ farm at 1022 Wheeler Road in Brandon, Vermont (the farm) to review the exemption

request. *Id.* ¶ 10. During this visit the AAFM inspector observed the manure pit at the farm as nearly full. *Id.* AAFM denied Defendants' request to continue spreading on or about December 19, 2014 and Defendants were advised to transfer waste from the farm's manure pit to allow for additional capacity. *Id.* ¶ 11.

First observed unpermitted discharge to waters of the state – December 26, 2014

On December 26, 2014, an inspector from AAFM visited the farm and observed the farm's manure pit had overtopped and there was an active discharge of manure-laden water to waters of the state, i.e. an unnamed tributary of the Neshobe River. Affidavit of Matthew Wood ¶¶ 5-6. Specifically, the AAFM inspector observed the flow of manure-laden water from the pit, along a driveway, to a ditch running south along Wheeler Road, into a culvert and into a pasture where it eventually flowed into an unnamed tributary of the Neshobe River, a water of the State of Vermont. *Id.* ¶¶ 6-8; *see also* Attachment 1 (ANR Atlas Map (red line is estimated flow path from manure pit to waters of the state); Attachment 2 (photos 12/26/14). During his visit to the farm on December 26, 2014, the AAFM inspector also observed evidence of the manure pit overtopping on the south side of the pit, evidenced by dried manure observed on the nearby grass. Affidavit of Matthew Wood ¶ 9; Attachment 3 (photo 12/26/14). AAFM made a referral to ANR's Department of Environmental Conservation (DEC) concerning a possible discharge to waters of the state. Affidavit of Laura DiPietro ¶ 13.

The unnamed tributary of the Neshobe River, shown as a blue line running along Wheeler Road on the ANR Atlas Map (Attachment 1), is a perennial stream, save for a portion of the stream that flows in an undefined channel through a wetland area. Affidavit of Julie Foley Follensbee ¶ 3; Affidavit of Joshua Carvajal ¶ 3-4. The unnamed tributary of

the Neshobe River, including both the perennial stream and wetland portions, is a water of the state, as is the Neshobe River. Affidavit of Julie Foley Follensbee ¶¶ 3-4; Affidavit of Joshua Carvajal ¶¶ 3-4.

At no time have Defendants had a permit from the Secretary of ANR to discharge any waste from the farm into waters of the state. Affidavit of Patrick J. Lowkes ¶ 4.

Second observed unpermitted discharge to waters of the state – December 30, 2014

On December 30, 2014, an Environmental Enforcement Officer (EEO) from ANR visited the farm and observed conditions to be the same as reported by the AAFM inspector on December 26, 2014, including the discharge of manure-laden water along the same pathway from the farm to the waters of the state. *Id.* ¶ 6; Attachment 1 (ANR Atlas Map). The EEO took photographs at the farm on December 30, 2014. Affidavit of Patrick J. Lowkes ¶ 7; *see also* Attachment 4 (photos 12/30/14).

Emergency Order from the Environmental Division

DEC filed an *Application for an Emergency Order* (Application) in Vermont Superior Court, Environmental Division. Affidavit of Patrick J. Lowkes ¶ 8; *see also* Attachment 5 (Application for an Emergency Order). The Application argued that Defendants violated 10 V.S.A. § 1259 and its prohibition on discharge of waste to waters of the state without a permit. Affidavit of Patrick J. Lowkes ¶ 8.

The Vermont Superior Court, Environmental Division granted DEC's Application on January 2, 2015 and issued an Emergency Order. *Id.* ¶ 9; *see also* Attachment 6 (Emergency Order). The Emergency Order required that Defendants "cease the discharge of manure from the manure pit on the property and in so doing drop the level of manure in the pit a minimum of one foot below the top of the pit (one foot of freeboard). [Defendants] shall

accomplish this by pumping manure from the pit and moving it to alternative storage.” Affidavit of Patrick J. Lowkes ¶ 10; see also Attachment 6. This provision of the Emergency Order was to occur “[w]ithin 72 hours of receipt of” the Order. Affidavit of Patrick J. Lowkes ¶ 10. The Emergency Order also required Defendants to maintain “at least one foot of freeboard in the pit (manure level one foot below the top of the pit)” and “no later than fifteen... calendar days following receipt of this Order, empty the manure pit by pumping and trucking the manure from the pit to create sufficient capacity to store manure for the remainder of the winter spreading ban.” Affidavit of Patrick J. Lowkes ¶ 11, Attachment 6 at 2-3. The Order also permitted ANR personnel to inspect the facility for compliance with the Order or related laws, rules or permits. Attachment 6 at 3.

Third observed unpermitted discharge to waters of the state – January 9, 2015

DEC and AAFM jointly inspected Defendants’ manure pit on January 9, 2015 and observed that no manure had been removed from the pit and that there continued to be a discharge of manure-laden water from the pit to waters of the state, *i.e.* the unnamed tributary of the Neshobe River. Affidavit of Patrick J. Lowkes ¶ 12; *see also* Attachment 7 (photos 1/9/15). Defendants were not in compliance with the terms of the Emergency Order on January 9, 2015 because the manure pit was still full and overflowing. Affidavit of Patrick J. Lowkes ¶ 13.

The unpermitted discharge to waters of the state observed on January 9, 2015 occurred after the entry of the Emergency Order by the Environmental Division on January 2, 2015. *See* Attachment 6 (Emergency Order).

DEC inspected Defendants’ manure pit on January 13, 2015 and determined that some of the manure had been removed, but the pit was still not in compliance with the

Emergency Order. *Id.* ¶ 14. No active discharge was observed on January 13, 2015. *Id.* Subsequent inspections by DEC through early June found no discharge from Defendants' manure pit, though not all manure had been removed from the pit. *Id.* ¶ 15.

Additionally, during a previous visit to the farm by AAFM, on or about September 18, 2014, a waste pipe running from Defendants' milk house was observed as not being properly connected to the farm's manure pit. Affidavit of Laura DiPietro ¶ 14.

Liability for violations of Vermont's environmental statutes and regulations

Given the above facts, Defendants are liable for the following violations of Vermont's environmental statutes and regulations:

1. By discharging waste (manure-laden water) from their overtopped manure pit to waters of the state, i.e. the unnamed tributary of the Neshobe River, on December 26, 2014 without a permit from the Secretary of ANR, Defendants are liable for a violation of 10 V.S.A. § 1259(a);
2. By discharging waste (manure-laden water) from their overtopped manure pit to waters of the state, i.e. the unnamed tributary of the Neshobe River, on December 30, 2014 without a permit from the Secretary of ANR, Defendants are liable for a violation of 10 V.S.A. § 1259(a);
3. By discharging waste (manure-laden water) from their overtopped manure pit to waters of the state, i.e. the unnamed tributary of the Neshobe River, on January 9, 2015 without a permit from the Secretary of ANR, Defendants are liable for a violation of 10 V.S.A. § 1259(a);
4. By creating a direct discharge of waste into the surface waters of the state, i.e. the unnamed tributary of the Neshobe River, from a discrete conveyance, i.e. a ditch or

conduit, without a permit from the secretary of ANR, on December 26 and 30, 2014 and January 9, 2015, Defendants are liable for violating section 4.01(a) of the Vermont AAPs;

5. By failing to manage and control the farm's manure pit to prevent the runoff of waste to adjoining waters and across property boundaries, including December 26 and 30, 2014 and January 9, 2015 when discharges to waters of the state were observed, Defendants are liable for violating section 4.01(b) of the Vermont AAPs; and
6. By allowing the farm's manure pit to overtop on December 26 and 30, 2014, and January 9, 2015, and by failing to properly connect the milk house pipe to the manure pit as observed on or about September 18, 2014, Defendants failed to manage and maintain the farm's waste management system so as to prevent discharges or structural failures and are liable for violating section 4.01(d) of the Vermont AAPs.

CONCLUSION

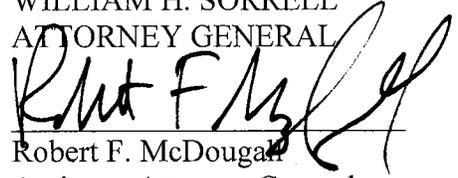
Pursuant to Rule 55(b), the State asks the Court to enter judgment against Defendants William Hanfield and Robin Hanfield. A proposed Judgment Order accompanies this motion.

DATED at Montpelier, Vermont this 21st day of March, 2016.

Respectfully submitted,

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