

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
Docket No. Frcv

359-9-18

STATE OF VERMONT, AGENCY OF
NATURAL RESOURCES,
Plaintiff,

v.

KANE'S SCENIC RIVER FARMS, LLC,
Defendant.

Vermont Superior Court

OCT - 9 2018

FILED: Franklin Civil

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties filing Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties' Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221 and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

RELIEF

1. Defendant shall pay a civil penalty of thirteen thousand five hundred dollars (\$13,500). Payments shall be made in four parts, with the first payment of \$3,375 due within five (5) business days of the Court's issuance of this Consent Order and Final Judgment Order. Remaining payments of \$3,375 each shall be made on December 31, 2018, March 29, 2019, and June 28, 2019.

2. Payment of the thirteen-thousand-five-hundred-dollar (\$13,500) penalty shall be made to the “State of Vermont” and shall be sent to Laura B. Murphy, Assistant Attorney General, Environmental Protection Division, Vermont Attorney General’s Office, 109 State Street, Montpelier, VT 05609.
3. In the event that Defendant fails to pay the amounts described in paragraphs 1 and 2 on the dates identified, such failure shall constitute a breach of this Consent Order and Final Judgment Order and interest shall accrue on the applicable overdue balance at twelve percent (12%) per annum, beginning on the first day after each such payment is due. Defendant shall also be liable for costs incurred by the State, including reasonable attorney’s fees, to collect any unpaid penalty amount.
4. Defendant shall perform corrective actions at the Farm at 5893 VT Route 105 in Sheldon, Vermont. Specifically, Defendant shall:
 - a. Comply with a Vermont Agency of Natural Resources (“ANR”)- approved long-term plan (“the Plan”) to permanently eliminate silage leachate discharges from the Farm.
 - i. The Plan shall consist of:
 1. The Waste Storage Facility plan document prepared by the United States Department of Agriculture Natural Resources Conservation Service (NRCS), attached as Attachment 1;
 2. The supporting calculations (“WSS Sizing Calculator” and “Paved Lot Runoff Calculator” contained in “WSF Size – Silage Leachate” spreadsheet), which are known to both parties, prepared by the NRCS and transmitted via email

from NRCS to Chris Gianfagna, ANR, on November 16, 2017;

3. Results of the geotechnical investigation in accordance with NRCS Code 313 demonstrating the required separation to groundwater, which shall be submitted to ANR no later than five (5) calendar days before commencing construction to implement the Plan;
 4. A certification from a professional engineer licensed in Vermont or an NRCS State Engineer that the structure was designed in accordance with NRCS Code 313, which shall be submitted to ANR no later than five (5) calendar days before commencing construction to implement the Plan;
 5. A grading plan with internal and external side slopes and structure floor and crest elevations, prepared by Defendant and subject to review, revision, and approval by ANR, which shall be submitted to ANR no later than five (5) calendar days before commencing construction to implement the Plan; and
 6. A map showing the structure location, parcel boundaries, surface waters, and all applicable setbacks in accordance with the Required Agricultural Practices, prepared by Defendant and subject to review, revision, and approval by ANR, which shall be submitted to ANR no later than five (5) calendar days before commencing construction to implement the Plan.
- ii. Defendant shall implement the Plan by October 15, 2018. In the event Defendant fails to fully implement the Plan by October 15, 2018, ANR may extend the compliance deadline upon Defendant showing that Defendant made reasonable and good faith efforts to fully implement the Plan by October 15, 2018, and the failure to fully implement the Plan by October 15, 2018 was no fault of Defendant's. ANR agrees that its decision regarding whether to extend the compliance deadline under this paragraph 4(a)(ii)

shall be reviewable by the Court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

iii. Nothing herein relieves Defendant of the obligation to obtain any and all regulatory approvals necessary to implement the Plan, including but not limited to any required construction stormwater permits.

iv. Upon implementation of the Plan, Defendant shall provide ANR with an as-built plan and a certification from a Professional Engineer or an NRCS Engineer that construction was done in accordance with the Plan. The as-built plan and certification shall be submitted to Chris Gianfagna (chris.gianfagna@vermont.gov). Email format with attachments is an acceptable format.

b. Eliminate silage leachate discharges from the Farm until the long-term plan described in paragraph 4(a) is fully implemented.

Defendant shall maintain adequate freeboard in the dry cow pit, consistent with the NRCS 313 standard, to receive leachate and shall not cover or block, or allow to be covered or blocked, the big bunk catchbasin (through which leachate flows to the dry cow pit).

- c. Until the long-term plan described in paragraph 4(a) is fully implemented, Defendant shall provide to ANR on the 30th of each month a report that includes:
- i. A narrative description of conditions at the Farm, including an estimate of freeboard in the dry cow pit;
 - ii. Pictures of the available freeboard in the dry cow pit, the big bunk catchbasin, and the horse pasture, including the channel that flows to the Missisquoi River, to ensure there are no discharges;
 - iii. If a discharge is observed, the report shall so state;
 - iv. The report shall be submitted to Chris Gianfagna (chris.gianfagna@vermont.gov). Email format with attachments is an acceptable format for the monthly reports.
- d. Until the long-term plan described in paragraph 4(a) is fully implemented, Defendant agrees to allow ANR access to the Farm to conduct inspections to confirm compliance with this Order. This access shall be in addition to ANR's existing authorities regarding access.
5. As described in the attached affidavit of Aaron Kane (Attachment 2), the manure pipe discharge was remedied as follows: (i) on or about March 18, 2016, Aaron Kane bent the discharging end of the pipe over and tied it with wire, and plugged the pipe with a plastic cap; and (ii) in October or November

2017, Aaron Kane located the other end of the pipe when the manure pit was empty, filled the pipe with premixed tile grout, and plugged that end of the pipe with a plastic cap and a stainless-steel clamp.

OTHER PROVISIONS

6. While pursuant to Paragraph 1 of the Stipulation for the Entry of Consent Order and Final Judgment Order, the parties stipulate that Defendant does not admit or deny liability for the violation alleged in Paragraph 30 of the Pleadings by Agreement, the parties stipulate that the violation alleged is deemed proved and established as a “prior violation” in any future state proceeding that requires consideration of Defendant’s past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
7. Defendant waives: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendant under this Consent Order, in this or any other administrative or judicial proceeding involving the State of Vermont.
8. This Consent Order is binding upon Defendant and any and all of its successors and assigns. Any change in Defendant’s ownership or corporate or other legal status, including but limited to any transfer of assets or real or personal property, shall in no way alter Defendant’s, or any and all of

Defendant's successor's and assign's, responsibilities under this Consent Order.

9. In the event Defendant becomes insolvent or any change in Defendant's ownership or corporate or other legal status makes it impracticable for Defendant to comply with this Consent Order, of which Defendant agrees to make good faith efforts to provide notice to ANR, or for the State to collect the amounts described in paragraphs 1 to 3 or enforce the relief described in paragraph 4: Thomas Kane, Nancy Kane, Aaron Kane, and Ashley Swainbank, as Principals of Kane's Scenic River Farms, LLC, and operators of the Farm, shall be responsible for complying with paragraphs 1, 2, 3, 4(a), 4(c), and 4(d) of this Consent Order.
10. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.
11. This Consent Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.
12. 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.

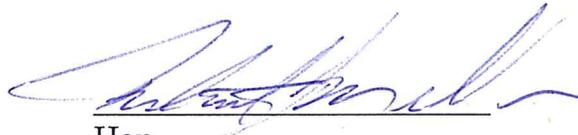
13. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.

14. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits, or directives applicable to Defendant.

15. This Consent Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties and approved by this Court. Alleged representations not set forth in this Consent 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.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at St. Albans, Vermont this 9th day of October, 2018.



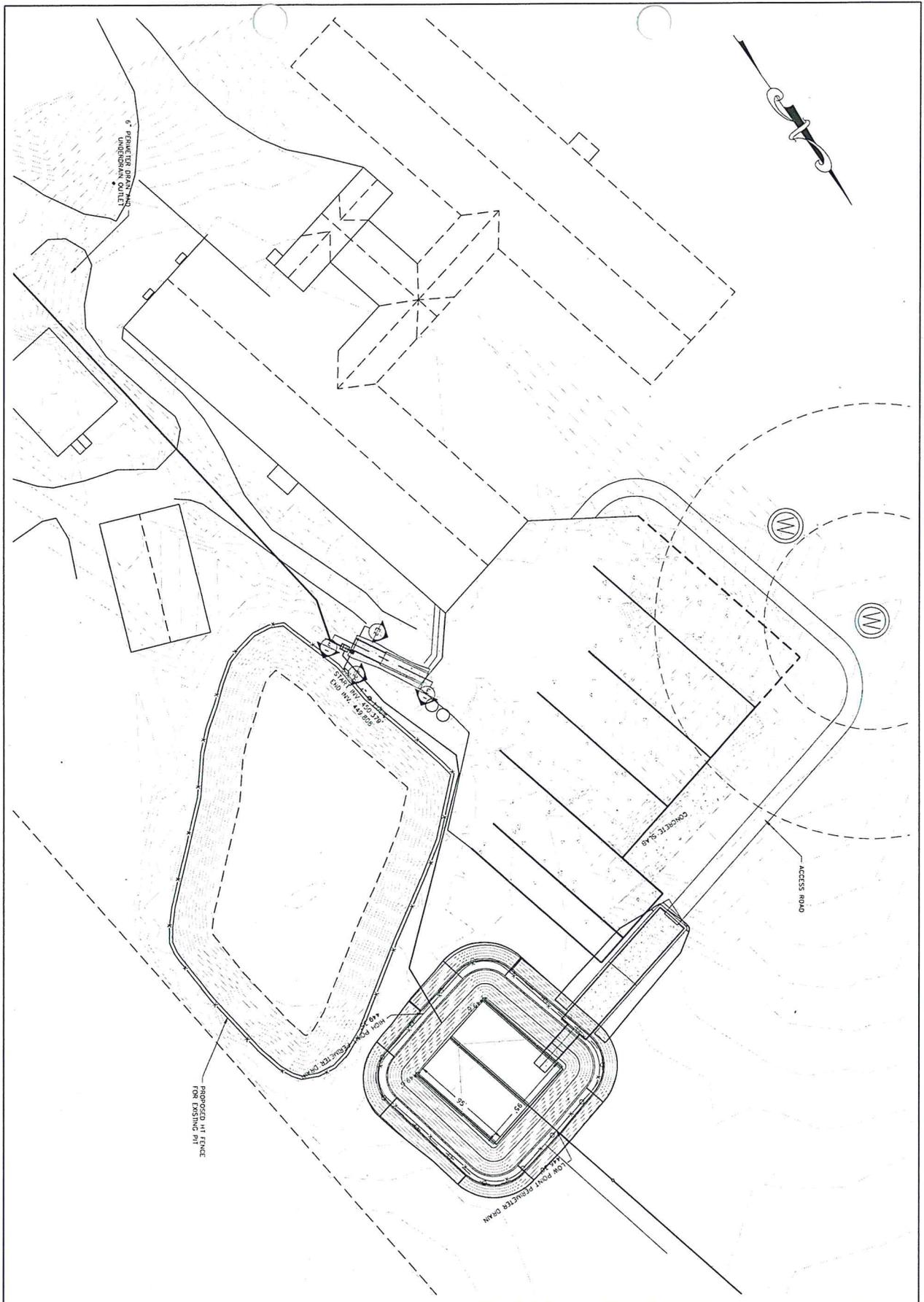
Hon.
Vermont Superior Court Judge,
Franklin Unit

Vermont Superior Court

OCT - 9 2018

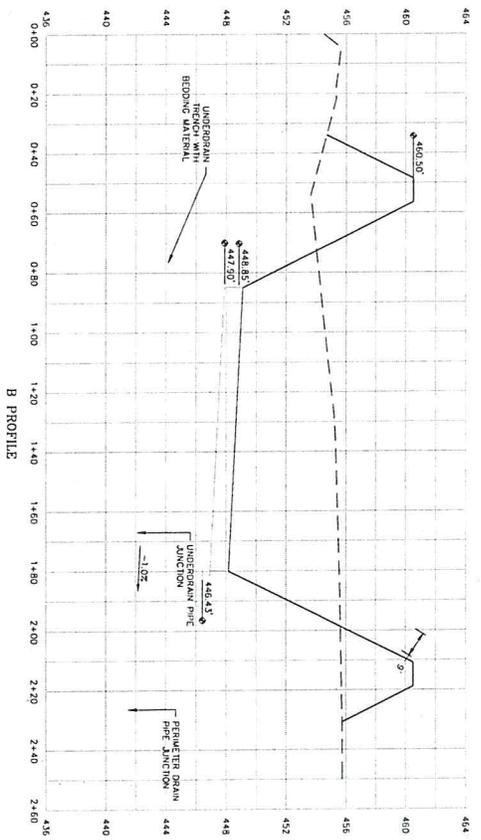
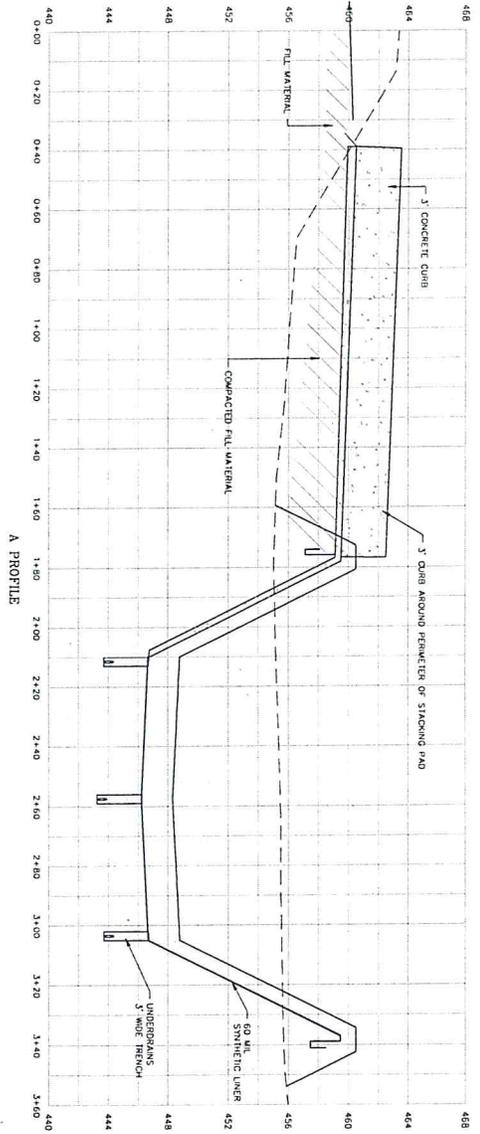
FILED: Franklin Civil





Sheet of	Drawing Name File Name	TOM KANE (HOME FARM) WASTE MANAGEMENT SYSTEM SITE PLAN	HAZARD CLASS LOW JOB CLASS 1	 United States Department of Agriculture Natural Resources Conservation Service	Date Designed R. THOMPSON Drawn K. RIVERA Checked Approved by
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File Name
 Drawing Name
 Sheet of

TOM KANE (HOME FARM)
 WASTE MANAGEMENT SYSTEM
 PROFILES

VERMONT

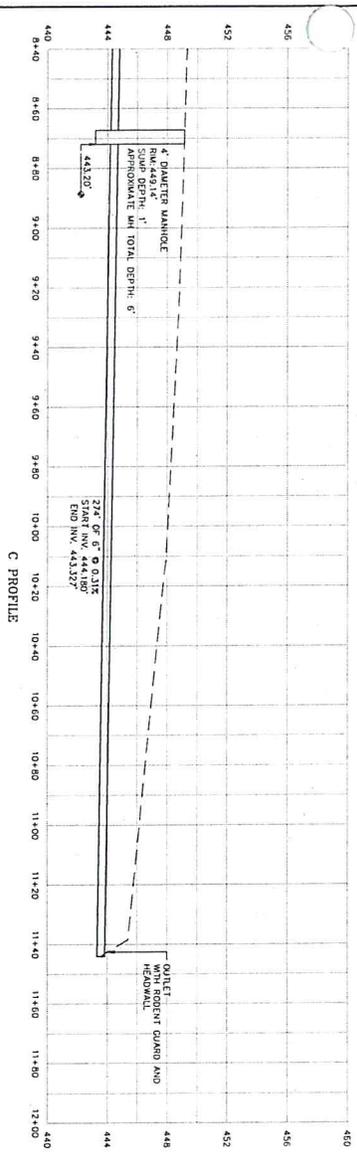
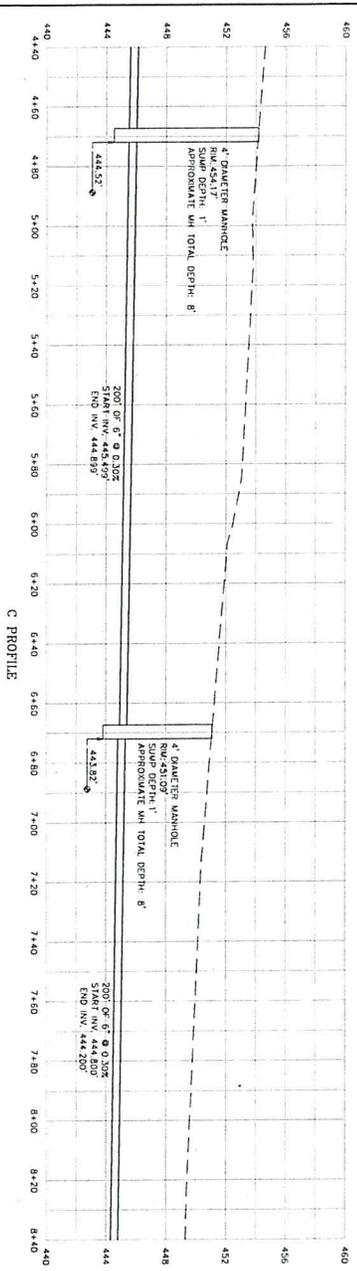
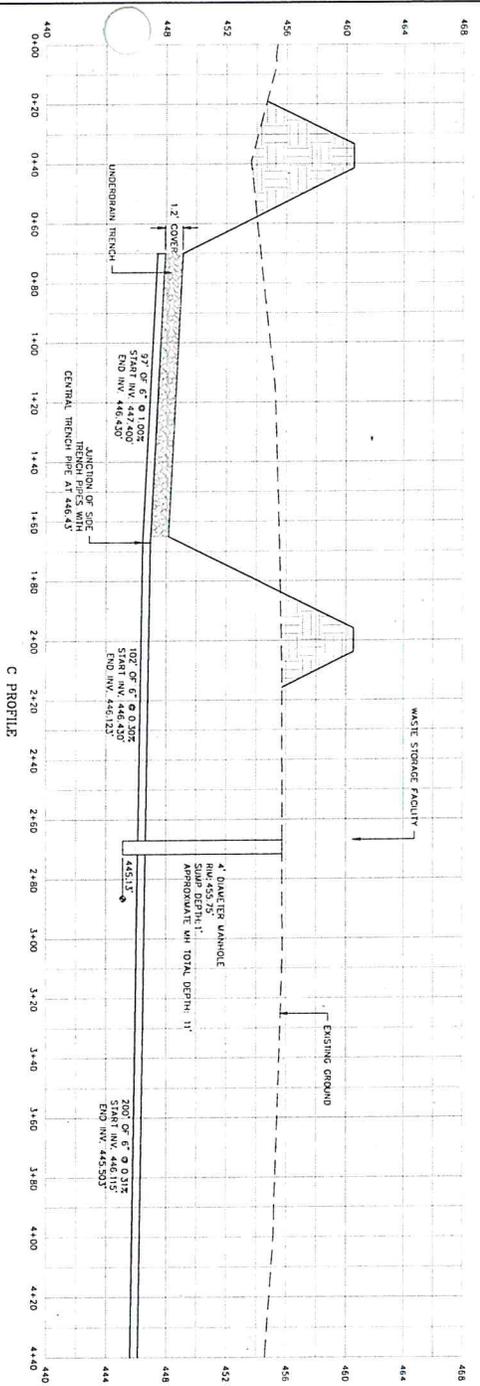
HAZARD CLASS
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Designed
 Drawn X. RIVERA
 Checked
 Approved by



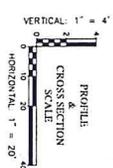
Date



TRENCH PIPE INVERT ELEVATIONS AT WSF

TRENCH	START INV. (FT)	BEND INV. (FT)	JUNCTION INV. (FT)
EAST	447.90	446.93	446.43
CENTRAL	447.40	-	446.43
WEST	447.90	446.93	446.43

NOTE: ALL SLOPES ARE AT 1% UNLESS OTHERWISE NOTED. THIS TABLE DOES NOT INCLUDE SLOPES FROM THE TRENCH TO THE MANHOLE. REFER TO PROFILES FOR DETAILS.



File Name
Drawing Name
Sheet of

TOM KANE (HOME FARM)
UNDERDRAIN
PROFILES

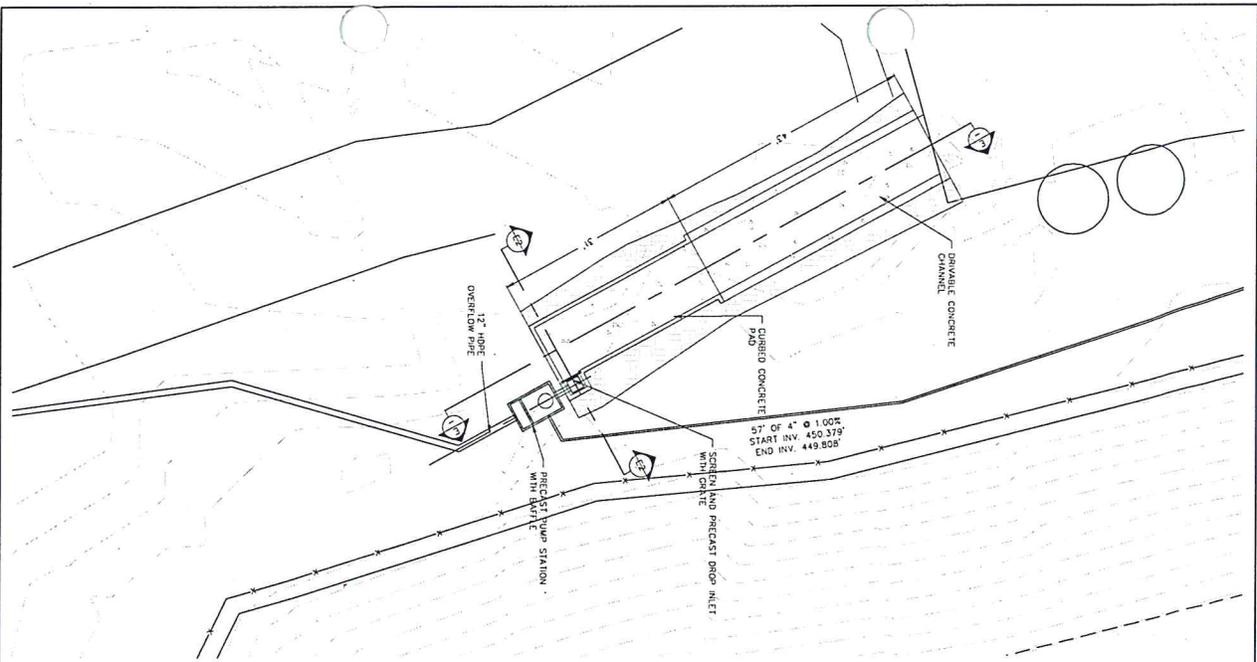
HAZARD CLASS
LOW
JOB CLASS
1
VERMONT



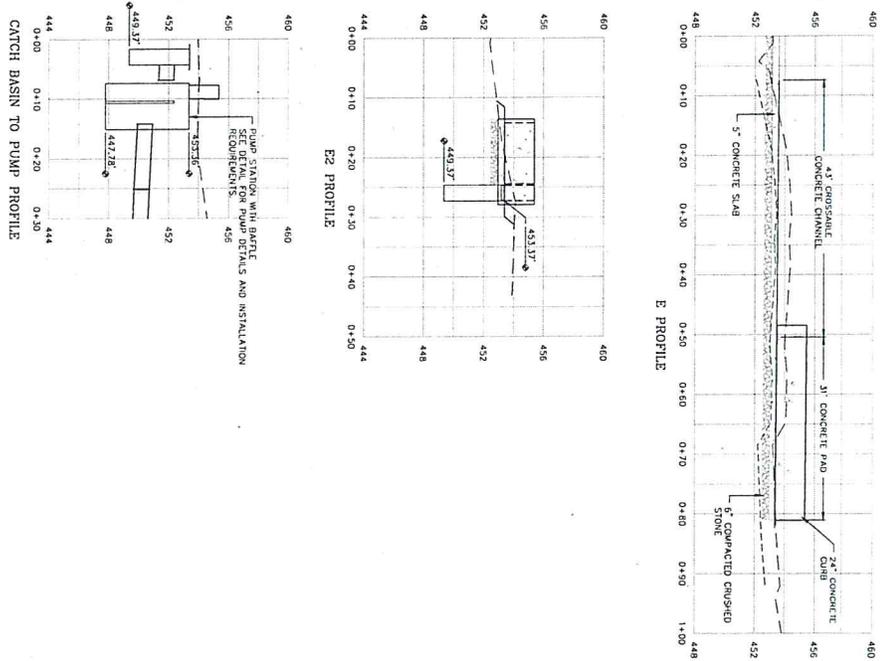
Designed
Drawn: X. RIVERA
Checked
Approved by



Date

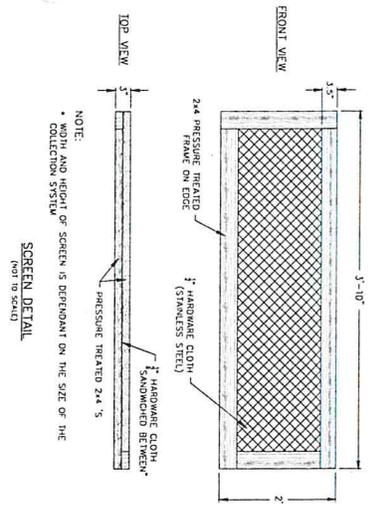


PLAN VIEW

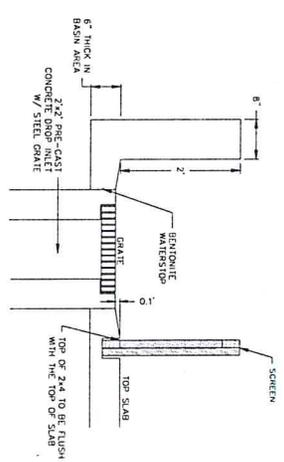


<p>PROJECT INFO</p>	HAZARD CLASS LOW	<p>United States Department of Agriculture</p> <p>Natural Resources Conservation Service</p>	Designed _____		Date _____
	JOB CLASS 1		Drawn _____		Checked _____
VERMONT			Approved by _____		

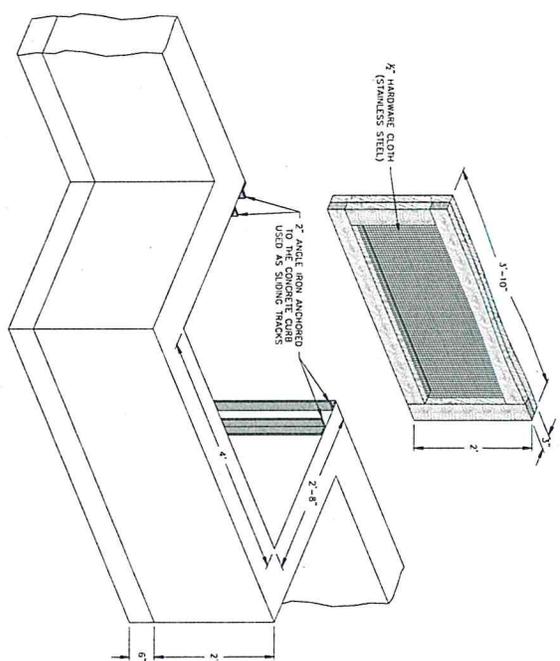
Sheet 91



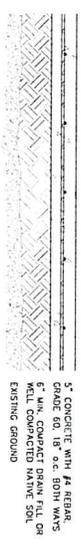
SCREEN DETAIL
(NOT TO SCALE)



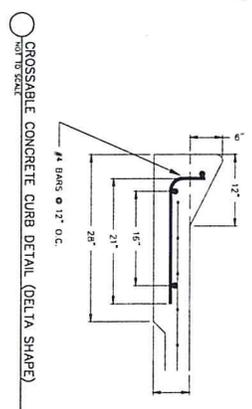
COLLECTION BASIN SIDE VIEW
(NOT TO SCALE)



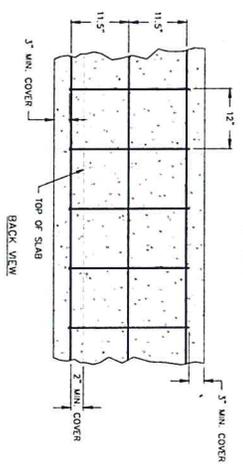
COLLECTION BASIN DETAIL (FOR BUNK SILO RUN-OFF)
(NOT TO SCALE)



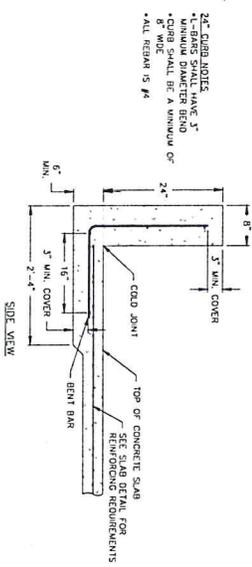
REINFORCED CONCRETE SLAB DETAILS



CROSSABLE CONCRETE CURB DETAIL (DELTA SHAPE)
(NOT TO SCALE)



24" REINFORCED CONCRETE CURB
(NOT TO SCALE)



24" CURB NOTES

PROJECT INFO	HAZARD CLASS LOW	United States Department of Agriculture Natural Resources Conservation Service	Date
	JOB CLASS I		Designed _____ Drawn _____ Checked _____ Approved by _____
VERMONT			



STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
Docket No. _____

STATE OF VERMONT, AGENCY OF)
NATURAL RESOURCES,)
Plaintiff)
v.)
KANE'S SCENIC RIVER FARMS, LLC,)
Defendant)

AFFIDAVIT OF AARON KANE

I, Aaron Kane, being first duly sworn, hereby depose and state:

1. On or about March 18, 2016, Environmental Enforcement Officer Ted Cantwell conducted a site visit at Kane's Scenic River Farm (the "Farm") in connection with his investigation regarding an alleged discharge of manure from the Farm.

2. I joined Mr. Cantwell for a portion of his site visit. During that time, we discovered an area near a small wetland swale on the Farm where liquid manure appeared to be surfacing. I was not previously aware of this issue and generally did not visit this wetland area on the Farm. I indicated to Mr. Cantwell that I would dig in that area to investigate further.

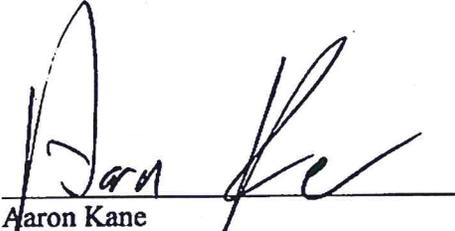
3. After Mr. Cantwell departed, Trevor Lewis from the Agency of Agriculture, Food & Markets arrived and he assisted me in the excavation of a small hole at the site. I dug a hole in that area (approximately 4 feet wide by 6 feet long and 2 feet deep) with a mini-excavator and discovered a buried 1-inch plastic pipe that appeared to be discharging liquid manure from the nearby manure pit (the "Pipe").

4. The Pipe appeared to be a section of old water line. The Pipe was not exposed to the surface of the ground before the excavation and I was not previously aware of its presence. To my knowledge, the Pipe was not connected to any of the Farm buildings or other improvements and was not part of the design of the manure pit.

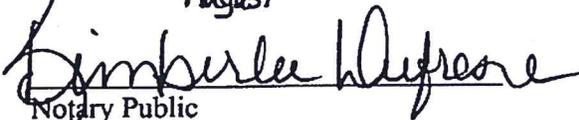
5. I immediately bent the Pipe over and tied it up with a wire to stop the flow. Roughly 30 minutes after I discovered the Pipe, I plugged the Pipe with a plastic cap designed to plug plastic water pipes. I also fastened down the plastic cap with a stainless-steel clamp. To my knowledge, no liquid manure has leaked from the Pipe since that time.

6. At the time of this occurrence the manure pit was full and I was unable to investigate the inside of the pit to see if I could locate the other uncapped end of the Pipe.

7. In October or November of 2017 when the manure pit was empty, I found the unplugged end of the Pipe in the manure pit and filled it with pre-mixed tile grout designed to create a watertight seal. After inserting the tile grout, I plugged the Pipe with a plastic cap designed to plug plastic water pipes. I also fastened down the plastic cap with a stainless-steel clamp.


Aron Kane

Sworn to before me this
17 day of ~~June~~, 2018.
August


Notary Public

My commission expires: 2/10/19