

STATE OF VERMONT

SUPERIOR COURT
ADDISON UNIT

CIVIL DIVISION
Docket No. Adcv

STATE OF VERMONT, AGENCY OF
AGRICULTURE, FOOD and MARKETS,
and AGENCY OF NATURAL RESOURCES,
Plaintiffs,

v.

DOUGLAS BUTLER and BUTLER FARM,
Defendants.

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 6 V.S.A. § 4995 and 10 V.S.A. § 8221 and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

RELIEF

1. Defendants shall immediately lower the level of manure in the manure pit at the Butler Farm to provide for at least twelve (12) inches of freeboard space capacity in the manure pit.
2. Defendants shall provide written notice to the State of Vermont when the level of manure in the manure pit has been lowered to provide the 12 inches of freeboard space capacity as described in paragraph 1. Written notice shall

be provided to the "State of Vermont" c/o Alison Milbury Stone, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. Following receipt of the written notice, the State may conduct an inspection of the Butler Farm to confirm that the level of manure has been lowered to provide the 12 inches of freeboard space capacity as described paragraph 1.

3. Nothing in this Order shall relieve Defendants of their obligations to comply with the Vermont winter manure spreading ban. If Defendants, in order to lower the level of manure in the manure pit to provide the 12 inches of freeboard space capacity within the time frame specified in paragraph 1, need to land apply manure during the winter spreading ban, they must seek an exemption from the Secretary of Agriculture, Food and Markets, and should expect that if an exemption is granted it shall, at most, be for the amount necessary to provide sufficient capacity through the duration of the winter spreading ban.
4. In the event that Defendants fail to immediately lower the level of manure in the manure pit to provide the 12 inches of freeboard space capacity as described in paragraph 1, the Agency of Agriculture, Food and Markets may exercise its authority, pursuant to 6 V.S.A. § 21, for response and remediation. Should the Agency take action under 6 V.S.A. § 21, the Agency

may bring a cost recovery action to recoup Agency expenditures up to \$25,000.00.

5. In the event that Defendants fail to lower the level of manure in the manure pit to provide the 12 inches of freeboard space capacity within the time frame specified in paragraph 1, the Agency of Agriculture, Food and Markets may at its discretion arrange and pay for removal of manure from the manure pit to obtain the 12 inches of freeboard space capacity and/or remediation of any manure that has overtopped. If the Agency arranges and pays for removal of manure and/or remediation, Defendants shall reimburse the Agency for these costs.
6. Defendants are liable for a civil penalty of forty-two thousand, five hundred dollars (\$42,500.00).
7. In light of Defendants' demonstrated inability to pay, to wit, Defendant Douglas Butler's pending Chapter 12 bankruptcy proceeding in United States Bankruptcy Court for the District of Vermont, the Court approves the State's agreement to waive payment of the above-listed amount, in full, provided that:
 - a. Defendants shall provide the State of Vermont with any final, approved bankruptcy plan that results in the matter of: *In re: Douglas Butler*, Case No. 17-10231, jointly administered with *In re: CHD, Inc.*, Case No. 17-10230, within thirty (30) days of the plan's approval;

- b. For five (5) years following the date of entry of this Consent Order and Final Judgment Order, no later than May 15th of each year Defendants shall provide the State of Vermont with copies of Defendant Douglas Butler's federal and state tax returns for the previous year; and
 - c. Should the State determine that Defendants' financial circumstances have improved at any time in the five (5) years following entry of this Consent Order and Final Judgment Order, it may petition this Court to impose all or part of the civil penalty amount provided in paragraph 1, above, and Defendants may not challenge the original penalty amount but reserve the right to challenge what part of the original penalty shall be imposed.
8. The documents listed in paragraph 6 shall be sent to the "State of Vermont" c/o Alison Milbury Stone, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609.
9. Consistent with Vermont law and regulations, Defendants shall manage the Butler Farm manure pit to prevent any future overtopping. This provision shall apply whether or not the farm is in active use as a dairy farm.

OTHER PROVISIONS

10. While pursuant to paragraph 1 of the Stipulation for the Entry of Consent Order and Final Judgment Order in which the parties stipulate that

Defendants do not admit or deny liability for the violations alleged in the Pleadings by Agreement, the parties stipulate that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Defendants' past record of compliance, such as permit review proceedings and calculating civil penalties under Title 6 and Title 10.

11. Defendants waive: (a) all rights to contest or appeal this Consent Order; and (b) all rights to contest the obligations imposed upon Defendants under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.
12. This Consent Order is binding upon Defendants and their successors and assigns.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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. The State reserves all rights, claims, and interests not expressly waived herein.
18. This Consent Order may only be altered, amended, or otherwise modified by subsequent written agreements 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.
19. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Pleadings by Agreement occurring before the effective date of the Order, provided that Defendants fully comply with the terms of the Consent Order set forth above.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Middlebury, Vermont this ___ day of _____, 2020.

Hon.
Addison Superior Court Judge