

STATE OF VERMONT

SUPERIOR COURT
ADDISON UNIT

CIVIL DIVISION
Docket No. Adv

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

v.

DOUGLAS BUTLER and BUTLER FARM,
Defendants.

PLEADINGS BY AGREEMENT

The State of Vermont, Agency of Agriculture, Food and Markets, and Agency of Natural Resources, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Defendants, Douglas Butler and Butler Farm, by and through their counsel, Peter F. Langrock, Esq., 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 Agriculture, Food and Markets (AAFM) and the Agency of Natural Resources (ANR) are agencies of the State of Vermont created through 3 V.S.A. § 2350 and 3 V.S.A. § 2802, respectively.
2. Defendant Butler Farm is a Vermont dairy farming operation, with a principal place of business at 1726 Munger Street in Middlebury, Vermont.
3. Defendant Douglas Butler is the owner and operator of Butler Farm.

Statutory and Regulatory Structure

4. AAFM regulates agricultural water quality under 6 V.S.A. Chapter 215.

5. In addition, 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.

6. ANR and AAFM cooperate and coordinate their respective efforts relating to agricultural water quality pursuant to 10 V.S.A. § 1259(i) and 6 V.S.A. § 4810(d).

Title 6 and Required Agricultural Practices

7. Pursuant to 6 V.S.A., Chapter 215, Subchapter 2, the Secretary of AAFM (the Secretary) shall adopt, implement, and enforce agricultural land use practices, including "Required Agricultural Practices."

8. Pursuant to Title 6, the Secretary adopted by Rule the Required Agricultural Practices (RAPs) to "address activities which have a potential for causing agricultural pollutants to enter the groundwater and waters of the State, including dairy and other livestock operations" 6 V.S.A. § 4810(b); RAPs § 1.2.

9. Section 6 of the RAPs sets forth the Required Agricultural Practices; Conditions, Restrictions, and Operating Standards.

10. RAPs § 6.01(b) provides that "[p]roduction areas, barnyards, animal holding or feedlot areas, manure storage areas, and feed storage areas shall utilize .

. . . strategies in order to prevent the discharge of agricultural wastes to surface water or groundwater.”

11. RAPs § 6.02(c)(2) requires that waste storage facilities be managed to “provide adequate volume in order to prevent overflows at all times.”

Title 10 Chapter 47

12. Title 10 § 1259(a) 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].”

13. Title 10 § 1251(3) provides that a “discharge” is “the placing, depositing or emission of any wastes, directly or indirectly, into . . . waters of the State.”

14. Title 10 § 1251(12) provides that “waste” is “effluent, sewage or any substance or material, liquid, gaseous, solid or radioactive, including heated liquids, whether or not harmful or deleterious to waters.”

15. Title 10 § 1251(13) 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.”

16. Pursuant to 6 V.S.A. § 4995, the State may bring an action in superior court to enforce Vermont’s agricultural water quality law, including violations of Chapter 215 and the rules adopted or permits issued thereunder. Among other things, the court may grant injunctive relief, order corrective actions, and assess

civil penalties up to \$85,000 per violation or, for continuing violations, up to \$42,500 for each day the violation continues.

17. 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

Manure Pit and Discharges

18. The Butler Farm is in the vicinity of two waters of the State: the Muddy Branch and a tributary of the Muddy Branch.

19. The Muddy Branch is a stream that flows east west from the New Haven River through Middlebury, Vermont.

20. The tributary to the Muddy Branch is a stream that flows into the larger Muddy Branch.

21. On May 25, 2018, a Department of Conservation (DEC) Environmental Enforcement Officer (EEO) observed manure-laden runoff in the north ditch along East Munger Street in Middlebury, Vermont—in the vicinity of the Butler Farm—flowing into the tributary of the Muddy Branch.

22. A grassy swale, or marshy depression, sits approximately 60 yards below and to the east of the Butler Farm manure pit. The swale leads to a ditch on

the north side of East Munger Street, east of the Butler Farm. This East Munger Street ditch leads to the tributary of the Muddy Branch.

23. Though Defendant Butler subsequently told the EEO that he did not believe his farm was the source of the runoff observed on May 25, 2018, he stated that his manure pit was full on that day.

24. On November 15, 2018, AAFM staff observed the manure pit full to its maximum capacity.

25. Five days later, on November 20, 2018, AAFM staff observed active overtopping of the manure pit.

26. On November 21, 2018, the ANR EEO observed manure actively overtopping the manure pit, flowing through the grassy swale to the East Munger Street ditch, and eventually into the tributary of the Muddy Branch.

27. On December 5, 2018, active overtopping of the manure pit was observed by the ANR EEO.

28. Manure was again observed actively overtopping the pit, flowing to the roadside ditch and into the tributary of the Muddy Branch, on December 28, 2018.

29. Despite agency directives beginning on November 20, 2018, the manure pit was not partially pumped until January 3, 2019, reducing the volume by an amount still insufficient to provide storage until the end of the winter spreading ban.

30. On January 7, 2020, AAFM staff observed that the manure pit was once again overtopping.

Douglas Butler Bankruptcy Filing

31. On June 5, 2017, Defendant Douglas Butler, as well as a corporation he owns, CDH, Inc. d/b/a Cobble Hill Dairy, both filed for Chapter 12 bankruptcy in the United States Bankruptcy Court for the District of Vermont (*In re: Douglas Butler*, Case No. 17-10231 and *In re: CHD, Inc.*, Case No. 17-10230).

32. On September 22, 2017, the United States Bankruptcy Court for the District of Vermont determined that Defendant Douglas Butler's Chapter 12 bankruptcy case and the bankruptcy case for CHD, Inc. shall be jointly administered. The main bankruptcy case number at the United States Bankruptcy Court for the District of Vermont is: Case No. 17-10230.

33. Defendant Douglas Butler's Chapter 12 bankruptcy case is active and pending at the current time.

Sale of Dairy Herd

34. Defendants have represented that they have sold off the dairy herd from Butler Farm and plan to transition into a small herd of beef cattle.

THE STATE'S ALLEGED VIOLATIONS

Based upon the above facts, the State of Vermont alleges the following violations of Vermont's environmental and agricultural laws and regulations by Defendants:

35. By discharging manure-laden water from their manure pit to waters of the State, i.e. the tributary of the Muddy Branch, on May 25, 2018, without a permit from the Secretary of ANR, Defendants violated 10 V.S.A. § 1259(a).

36. By discharging manure-laden water from their manure pit to waters of the State, i.e. the unnamed tributary of the Muddy Branch, on November 21, 2018, without a permit from the Secretary of ANR, Defendants violated 10 V.S.A. § 1259(a).

37. By discharging manure-laden water from their manure pit to waters of the State, i.e. the unnamed tributary of the Muddy Branch, on December 28, 2018, without a permit from the Secretary of ANR, Defendants violated 10 V.S.A. § 1259(a).

38. By failing to manage waste storage facilities to “provide adequate volume in order to prevent overflows at all times,” i.e. by allowing the manure pit to become full as observed on November 15, 2018 until the pit was pumped of manure on January 3, 2019, Defendants violated RAP § 6.02(c)(2) under 6 V.S.A. Chapter 215.

39. By failing to manage “[p]roduction areas [and] manure storage areas . . . to prevent the discharge of agricultural wastes,” i.e. by allowing the manure pit to become full as observed on November 15, 2018 until the pit was pumped of manure on January 3, 2019, and allowing the manure pit to overtop on at least four occasions, including in January of 2020, Defendants violated RAP § 6.01(b) under 6 V.S.A. Chapter 215.

DEFENDANTS’ RESPONSE TO THE ALLEGED VIOLATIONS

Defendants answer the preceding allegations as follows:

40. Defendants admit the allegations set forth in paragraphs 1 to 34 solely for purposes of resolving this case.

41. Without formally admitting or denying liability, Defendants agree to this settlement of the above violations alleged in paragraphs 35 to 39 in order to resolve this case.

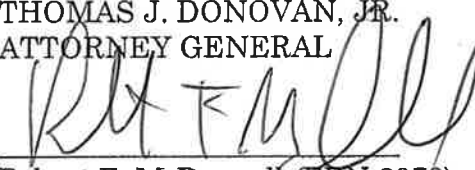
42. Defendants agree that each of the violations alleged in paragraphs 35 to 39 above is deemed proven and established as a "prior violation" in any future state proceeding considering Defendants' compliance record(s), including but not limited to administrative or judicial enforcement actions for civil penalties calculated under Title 6 or Title 10, and permit proceedings.

Dated at Montpelier, Vermont, this 11th day of February 2020,

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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