

STATE OF VERMONT

SUPERIOR COURT
Addison Unit

CIVIL DIVISION
Docket No. 175-10-18 Ancv

STATE OF VERMONT, AGENCY)
 OF AGRICULTURE, FOOD, and)
 MARKETS, and AGENCY OF)
 NATURAL RESOURCES,)
 Plaintiff,)
)
)
 v.)
)
)
 RICHVILLE FARMS formerly known)
 as PERRY BROOK FARM,)
 LORENZO QUESNEL, AMY)
 QUESNEL, KYLIE)
 QUESNEL CHITTENDEN, and)
 JEREMY CHITTENDEN,)
 Defendants.)

FINAL JUDGMENT ORDER

The parties have filed a Stipulation for the Entry of Final Judgment Order. Based upon that Stipulation and 10 V.S.A. § 8221, 6 V.S.A. § 4995, and the Court’s inherent equitable powers, it is ORDERED as follows:

VIOLATIONS

1. Defendants’ alleged violations of 10 V.S.A. § 1259(a) on May 31, June 7, June 26, July 13, and October 12, 2017, as set forth by Plaintiffs in paragraphs 29-60 of the Complaint, are deemed proven and established as “prior violations” for all future proceedings under Title 10 of the Vermont Statutes Annotated, including permit proceedings and enforcement actions for administrative and civil penalties, and will be considered as part of the compliance record of Defendants and Defendants’ successors, assigns, and affiliated companies.

2. Defendants' alleged violations of 6 V.S.A. § 4810(b) by failing to follow sections 6.01(b), 6.02(a), and 6.03(c)(2) of the Required Agricultural Practices (RAPs), and section 6.A.4 of the Large Farm Operation (LFO) Rules on May 31, June 7, June 26, and October 12, 2017, as set forth by Plaintiffs in paragraphs 29-60 of the Complaint, are deemed proven and established as "prior violations" for all future proceedings under Title 6 of the Vermont Statutes Annotated, including permit proceedings and enforcement actions for administrative and civil penalties, and will be considered as part of the compliance record of Defendants and Defendants' successors, assigns, and affiliated companies.

PENALTIES

3. Pursuant to a Stipulation between the parties, Defendants shall pay a civil penalty of \$52,000. Defendants' shall pay the penalty in full within twenty-four (24) months according to the following payment schedule:

Payment Schedule

Penalty	10/1/2020		52,000.00
1	10/1/2020	1,681.82	50,318.18
2	11/1/2020	1,681.82	48,636.36
3	12/1/2020	1,681.82	46,954.54
2020 Totals			5,045.46
4	1/1/2021	1,681.82	45,272.72
5	2/1/2021	1,681.82	43,590.90
6	3/1/2021	1,681.82	41,909.08
7	3/15/2021	7,500.00	34,409.08
8	4/1/2021	1,681.82	32,727.26
9	5/1/2021	1,681.82	31,045.44
10	6/1/2021	1,681.82	29,363.62
11	7/1/2021	1,681.82	27,681.80
12	8/1/2021	1,681.82	25,999.98
13	9/1/2021	1,681.82	24,318.16
14	10/1/2021	1,681.82	22,636.34
15	11/1/2021	1,681.82	20,954.52
16	12/1/2021	1,681.82	19,272.70
2021 Totals			27,681.84
17	1/1/2022	1,681.82	17,590.88
18	2/1/2022	1,681.82	15,909.06
19	3/1/2022	1,681.82	14,227.24
20	3/15/2022	7,500.00	6,727.24
21	4/1/2022	1,681.82	5,045.42
22	5/1/2022	1,681.82	3,363.60
23	6/1/2022	1,681.82	1,681.78
24	7/1/2022	1,681.78	0.00
2022 Totals			19,272.70
Grand Totals			52,000.00

Any additional payments made by Defendants above the amounts set forth in this schedule shall first apply to reduce Defendants' two (2) \$7,500.00 payments, one due on March 15, 2021, and the other due on March 15, 2022.

4. Defendants shall submit their penalty payments by check to the "State of Vermont" and shall send each check to:

Megan Hereth, Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

5. In the event that Defendants fail to pay this penalty or fail to pay this penalty in the manner described in paragraphs 3 and 4, such failure shall constitute a breach of this Final Judgment Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, beginning on

the first day after the penalty becomes due. Defendants shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

CORRECTIVE ACTIONS

6. Defendants shall perform the following corrective actions at their Main Farm at 3539 Richville Road, Shoreham, Vermont, and Milbourne Farm at 238 Shoreham Depot Road, Shoreham, Vermont:
 - a. By **November 1, 2021**, Defendants shall implement to the satisfaction of the Vermont Agency of Natural Resources (ANR) and Agency of Agriculture, Food and Markets (AAFM) a long-term plan approved by ANR and AAFM (the Long-Term Plan) to permanently eliminate discharges of agricultural waste from the Main and Milbourne Farms. Defendants' implementation of the Long-Term Plan, as further referred to herein, shall include completion of all construction and modification of waste management structures.
 - b. By **October 1, 2020**, Defendants shall submit a conceptual Long-Term Plan to ANR and AAFM. By **January 1, 2021**, Defendants shall submit a preliminary Long-Term Plan to ANR and AAFM. Defendants' preliminary Long-Term Plan shall include a manure and wastewater handling plan. By **April 1, 2021**, Defendants shall submit a final Long-Term Plan to ANR and AAFM.

- c. Within five (5) days of implementation of the Long-Term Plan, Defendants shall provide ANR and AAFM with notification that all requirements of the Long-Term Plan have been followed. Within sixty (60) days of implementation of the Long-Term Plan, Defendants' shall provide ANR and AAFM with verification that all requirements of the Long-Term Plan have been followed. Defendants' verification shall include a professional engineers' certification for all Long-Term Plan work to Defendants' waste management structure(s). Defendants' notice and verification shall be submitted to ANR's Concentrated Animal Feeding Operation Program Manager via email (currently Chris Gianfagna at chris.gianfagna@vermont.gov) and AAFM's Agricultural Water Quality Section Chief via email (currently Nathaniel Sands at nathaniel.sands@vermont.gov). Email format with attachments is an acceptable format for submission. ANR and AAFM may conduct inspections following receipt of Defendants' notification.
- d. Defendants must obtain all regulatory approvals necessary to implement the Long-Term Plan, including any required construction stormwater permits and LFO permit amendments.
- e. Until the Long-Term Plan is implemented to ANR and AAFM's satisfaction, Defendants shall ensure there are no discharges of agricultural waste from their Main or Milbourne Farms to waters of the State, shall maintain their total agricultural waste storage

capacity in compliance with the RAPs and LFO Rules, and shall perform the following corrective action at the Main and Milbourne Farms (the Interim Plan):

- i. Defendants shall prevent runoff of agricultural wastes from the following areas and shall implement the following practices, at a minimum:
 1. Main and Milbourne Farm manure pits - maintain adequate freeboard in compliance with the RAPs and maintain 180 days of available storage in compliance with the LFO Rules;
 2. Main Farm silage bunk complex - maintain adequate function of the berms, impervious surfaces, curbing, and collection system;
 3. Main Farm commodities shed and driveway area - maintain adequate function of the diversion ditches and pipe along the west side of Cutting Hill Road;
 4. Main Farm south end barnyard laneway culvert - maintain adequate function of the barnyard walls and curbing;
 5. Milbourne Farm east bunk - empty the bunk or seal the catch basin with a water-tight cover on or before June 1, 2020; and
 6. Milbourne Farm west bunk - maintain the diversion bars and berms, and road stream crossing.
- f. Any and all discharges from the Main and Milbourne Farms occurring prior to implementation of the Long-Term Plan to ANR and AAFM's satisfaction shall constitute violations of this Final Judgment Order pursuant to paragraphs 12-13 and may subject Defendants to additional penalties as provided by Titles 6 and 10 of the Vermont Statutes Annotated.

g. Until the Long-Term Plan is implemented to ANR and AAFM's satisfaction, Defendants shall provide to ANR and AAFM a Monthly Interim Report. Defendants' Monthly Interim Report shall be submitted by the last day of each month, beginning with the first full month after signing the Stipulation for Entry of Final Judgment. The Monthly Interim Report shall include:

- i. A narrative description of the waste management conditions at the Main Farm and Milbourne Farm, including an estimate of freeboard in the manure pits;
- ii. Monthly photographs of each of the following areas and weekly photographs where specified:
 1. All Main and Milbourne Farm manure pits,
 2. Main Farm silage bunk complex,
 - a. Weekly of berms, impervious surfaces, and curbing,
 - b. Weekly of collection system,
 3. Main Farm commodities shed and driveway area,
 - a. Weekly of diversion ditches (roadside on the west side of Cutting Hill Road) and pipe,
 4. Main Farm south end barnyard laneway culvert,
 5. Milbourne Farm east side of east bunks,
 - a. Weekly of either bunk as empty or catch basin with water-tight cover,
 6. Milbourne Farm west side of west bunks,
 - a. Weekly of diversion bars and berms, and
 - b. Weekly of road stream crossing.
- iii. If a discharge is observed at the Main or Milbourne Farm, the report shall identify it and describe Defendants' implemented remedy to eliminate it.
- iv. The report shall be submitted by email to ANR's Concentrated Animal Feeding Operation Program Manager (currently Chris Gianfagna at chris.gianfagna@vermont.gov) and AAFM's Agricultural Water Quality Section Chief (currently Nathaniel Sands at nathaniel.sands@vermont.gov). Email format with attachments is an acceptable format for the monthly interim reports.

OTHER PROVISIONS

7. ANR and AAFM shall have access to the Main Farm and Milbourne Farm to conduct inspections at reasonable times to determine compliance with this Order.
8. The parties waive: (a) all rights to contest or appeal this Final Judgment Order and (b) all rights to contest the obligations imposed upon Defendants under this Final Judgment Order, in this or any other administrative or judicial proceeding involving the State of Vermont.
9. This Final Judgment Order is binding upon the parties and their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, their assigns, or their affiliated companies under this Final Judgment Order.
10. Nothing in this Final Judgment Order shall be construed to create or deny any rights of, or grant or deny any cause of action to any person not a party to this Final Judgment Order.
11. This Final Judgment Order shall become effective only after it is entered as an order of the Court at which time it shall become final.
12. Any violation of this Final Judgment 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, as set forth in 6 V.S.A. Chapter 215, Subchapter 10, and 10 V.S.A. Chapters 201 and 211.

13. The State of Vermont and this Court reserve continuing jurisdiction to ensure future compliance with all statutes and rules applicable to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
14. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
15. Nothing in this Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all federal, state, or local statutes, regulations, permits or directives applicable to Defendants.
16. The Court finds based on the representations of the parties that the parties have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable, and in the State of Vermont's interest.
17. This Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties or their legal representatives and approved by this Court. Any representations, whether written or oral, not set forth in this Final Judgment Order shall not be binding upon any party and shall be of no legal force or effect.

SO ORDERED and ENTERED as FINAL JUDGMENT.

Electronically signed pursuant to V.R.E.F. 9(d)
10/07/2020 2:48:12 PM



Honorable e Mary Miles Teachout
Addison Superior Court Judge