

STATE OF VERMONT

SUPERIOR COURT

Windsor Unit

CIVIL DIVISION

Docket No.

STATE OF VERMONT, NATURAL)
RESOURCES BOARD, AND AGENCY)
OF NATURAL RESOURCES)
Plaintiffs,)
)
v.)
)
VERMONT PACKINGHOUSE, LLC, AND)
CURRAN-BIRGE REAL ESTATE, LLC)
Defendants.)

PLEADINGS BY AGREEMENT

The State of Vermont, Natural Resources Board and Agency of Natural Resources, by and through Attorney General Thomas J. Donovan, Jr., and Defendants Vermont Packinghouse, LLC and Curran-Birge Real Estate, LLC, by and through undersigned counsel, submit these pleadings by agreement pursuant to Vermont Rule of Civil Procedure 8(g).

I. THE STATE'S ALLEGATIONS

Parties

1. The Natural Resources Board (NRB) is an independent administrative board established pursuant to 10 V.S.A. § 6021, with offices in Montpelier, Vermont
2. The Vermont Agency of Natural Resources (ANR or the Agency) is a state agency established pursuant to 3 V.S.A. § 2802 with offices in Montpelier, Vermont.

3. Defendant Vermont Packinghouse, LLC (Vermont Packinghouse) is a Vermont limited liability company with a principal place of business at 25 Fairbanks Road in North Springfield, Vermont.

4. Defendant Curran-Birge Real Estate Partnership, LLC (Curran-Birge) is a Vermont limited liability company with a principal place of business at 25 Fairbanks Road in North Springfield, Vermont.

5. Curran-Birge owns the tract of land at 25 Fairbanks Road in North Springfield on which Vermont Packinghouse operates its slaughterhouse and meat packing and processing facility (the Project). The Project is subject to Act 250 Land Use Permit No. 2S1314-1.

Legal Framework

Act 250 and Land Use Permit 2S1314-1

6. The NRB administers Act 250 pursuant to 10 V.S.A. Chapter 151 and the Act 250 Rules.

7. Pursuant to Title 10, Chapter 151, and the Vermont Act 250 Rules, the NRB District 2 Environmental Commission issued Act 250 Land Use Permit 2S1314-1 accompanying Findings of Fact and Conclusions of Law to Defendants, on August 1, 2017 (the Permit).

8. Condition 1(b) of the Permit provides in part that “[t]he project shall be completed, operated and maintained in accordance with... [the] Findings of Fact and Conclusions of Law 2S1314 -1....”

9. Paragraph 3 of the Findings of Fact and Conclusions of Law 2S1314-1 provides in part that “[t]he Commission finds that the scheduled pickup of the offal

for disposal by a licensed hauler will minimize or eliminate risk of undue health or water quality impacts under criterion 1B [waste disposal].”

10. Vermont’s waste transportation statute, 10 V.S.A. § 6607a, requires that commercial haulers obtain a permit from the Agency of Natural Resources.

Specifically, 10 V.S.A. § 6607a(a) provides that:

A commercial hauler desiring to transport waste within the State shall apply to the Secretary for a permit to do so by submitting an application on a form prepared for this purpose by the Secretary and by submitting the disclosure statement described in section 6605f of this title. These permits shall have a duration of five years and shall be renewed annually. The application shall indicate the nature of the waste to be hauled. The Secretary may specify conditions that the Secretary deems necessary to ensure compliance with State law.

11. “Commercial hauler” is defined, in relevant part, as “any person that transports solid waste for compensation in a vehicle.” 10 V.S.A. § 6607a(b)(1)(B).

12. Condition 3(d) of the Permit requires that, “[p]rior to any disposal truck leaving the property with offal from the facility,” Defendants inspect the truck to confirm that:

- a) The truck is not over-filled in a manner that it is reasonably likely that spillage of offal would occur once the truck is on the public roads,
- b) the truck is adequately covered to prevent offal from falling out of the truck on public roads; and
- c) no bits of offal or leaks are visible outside of the truck.

13. Condition 3(d) of the Permit also provides that Defendants “shall maintain a written log of each such inspection.”

Multi-Sector General Permit for Stormwater

Discharges Associated with Industrial Activity (MSGP)

14. ANR administers the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) #3-9003 pursuant to the federal Clean Water Act, 33 U.S.C. § 1251, et seq., related regulations at 40 C.F.R. Part 122, the Vermont Water Pollution Control statutes, 10 V.S.A. Chapter 47, and the Vermont Water Pollution Control Regulations.

15. MSGP coverage is required for new and existing stormwater discharges from certain types of industrial facilities. Meat processing facilities are included among the industries covered by the MSGP. *See* MSGP Appendix D – List of Industrial Activities covered by the permit.

16. The MSGP requires that authorization be obtained prior to commencement of covered industrial activities by filing a Notice of Intent and Stormwater Pollution Prevention Plan in accordance with Part 1.4 of the MSGP, or that conditional exclusion from MSGP coverage be obtained by filing a Certification of No Exposure pursuant to Part 1.6 of the MSGP.

Civil Enforcement Action

17. Pursuant to Vermont's civil enforcement statute, 10 V.S.A. § 8221, the State may bring an action in the Civil Division of Superior Court to enforce Vermont's environmental laws, including violations of Act 250, and Title 10 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

18. Vermont Packinghouse operates an animal slaughter and meat processing facility at the Project site.

19. At all relevant times, Vermont Packinghouse hired a third-party commercial hauler, J.C. Rendering, to transport waste from the Project, including blood and animal offal for disposal.

20. J.C. Rendering did not have a Vermont commercial solid waste hauler permit or license until September 21, 2020.

21. A Vermont Solid Waste Transporter Permit pursuant to 10 V.S.A. § 6607a was issued to JC Rendering on September 21, 2020, for three trucks.

22. Upon information and belief, Vermont Packinghouse used JC Rendering to haul its wastes for hire for approximately two years before J.C. Rendering obtained a Vermont commercial hauler license.

23. To date, Defendants have not filed a Notice of Intent and Stormwater Pollution Prevention Plan to obtain coverage under the MSGP for the meat processing facility and have not submitted a Conditional Exclusion application and certification of No Exposure to ANR sufficient to establish that MSGP coverage is not required.

February 10, 2020

24. On February 10, 2020, a JC Rendering truck hauled animal waste from Vermont Packinghouse for disposal. The rendering truck was loaded with offal and blood, which leaked onto the ground in the yard at the Project site.

25. Upon information and belief, the rendering truck spilled approximately fifty to sixty gallons of blood on the ground at the Project site.

26. Vermont Packinghouse did not adequately inspect the truck to confirm that it was covered and that no offal or leaks were visible on the outside of the truck. Vermont Packinghouse did not maintain an adequate written log of such an inspection. The rendering truck was uncovered and still leaking when it left the Project site.

27. The truck then spilled contents including blood and animal parts onto the roadway, at the intersection of Fairbanks Road and Main Street.

28. Blood flowed from the intersection into a storm drain, through a culvert, and discharged into the Great Brook.

April 17, 2020

29. On April 17, 2020, Vermont State Police responded to a complaint regarding animal parts in the roadway on Route 11 near Andover.

30. Agency of Transportation staff removed numerous animal pieces off the roadway of Route 11 between Chester and Londonderry.

31. A JC Rendering truck transporting animal waste from the Project site for disposal, traveling west on Route 11, spilled animal parts onto Route 11 between Chester and Peru.

32. The truck was overloaded and had animal parts sticking out over the truck sides, with streaks of blood on the outside of the truck, when it departed the Project site.

33. The rendering truck pulled over in Peru, near the Bromley Mountain access road to help secure the load. A State trooper pulled in behind the truck and observed that there was blood on the side of the truck and animal parts hanging down from the top, which was covered with a tarp. The driver used a branch to push the contents back into the trailer and put some pieces into a hydraulic lift bucket. Some of the contents spilled onto the roadside. The trooper allowed the truck to leave after the animal parts were better secured.

34. The truck pulled over again in Manchester, where the driver repeated the processes of pushing animal parts back into the truck. Manchester police observed animal parts spilling out of the top of the truck and fluids covering the side of the truck. The police gave the driver a warning and the truck continued west on Route 11.

35. The truck was not adequately covered in a manner that was reasonably likely to prevent spillage of offal on the public roads.

36. Upon information and belief, Vermont Packinghouse did not adequately inspect the truck to confirm that it was covered and that no offal or leaks were visible on the outside of the truck. Vermont Packinghouse did not maintain an adequate written log of such an inspection.

August 17, 2020

37. On August 17, 2020, Springfield Police reported to ANR that a J.C. Rendering truck leaving the Vermont Packinghouse had spilled blood onto the roadway and storm drains at the intersection of Fairbanks Road and Main Street in North Springfield, discharging blood into surface waters.

38. The truck was leaking and not covered with a tarp when it left Vermont Packinghouse.

39. The inspection log for that day reads: “Driver did not come back to sign,” states the driver’s first name, “Art,” and states: “Truck was leaking Cleaned up.”

40. Vermont Packinghouse did not inspect the rendering truck to confirm that it was adequately covered, and that no offal or leaks were visible on the outside of the truck, or keep an adequate written log of such an inspection.

II. ALLEGED VIOLATIONS

41. By failing to properly inspect the disposal truck before leaving Vermont Packinghouse on February 10, 2020, and failing to maintain an adequate log of such inspection, Defendants violated Conditions 3(d)(a) – (c) of Act 250 Land Use Permit 2S1314-1.

42. By failing to properly inspect the disposal truck on April 17, 2020, and failing to maintain an adequate log of such inspection, Defendants violated Conditions 3(d)(a) – (c) of Act 250 Land Use Permit 2S1314-1.

43. By failing to properly inspect the disposal truck on August 17, 2020 to confirm that it was adequately covered, and that no offal or leaks were visible on the outside of the truck, and failing to maintain an adequate log of such inspection, Defendants violated Conditions 3(d)(a) – (c) of Act 250 Land Use Permit 2S1314-1.

44. By failing to use a licensed hauler as provided in Finding 3 of the Findings of Fact and Conclusions of Law, incorporated into the Permit through Condition 1(b), for a period of approximately two years, including on February 20, 2020, April

17, 2020, and August 17, 2020, Defendants violated Condition 1(b) of Act 250 Land Use Permit 2S1314-1.

45. By operating a meat processing facility without filing Notice of Intent and Stormwater Pollution Prevention Plan and obtaining authorization under Multi-Sector General Permit #3-9003 (MSGP) prior to commencement of industrial activities or a Conditional Exclusion application and certification of No Exposure, Defendants violated Parts 1.4 and 1.6 of the MSGP.

III. DEFENDANTS' RESPONSE TO THE ALLEGED VIOLATION

Defendants answer the preceding allegations as follows:

1. Defendants admit the factual allegations set forth in paragraphs 1 through 40 solely for purposes of resolving this case.
2. Without formally admitting or denying liability, Defendants agree to this settlement of the above violations alleged in paragraphs 41 through 45 to resolve this case.
3. Each Defendant agrees that the violation alleged in paragraphs 41 through 45 above is deemed proven and established as a "prior violation" in any future State proceeding considering each Defendant's compliance record, including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

DATED May 26, 2022 at Montpelier, Vermont.

STATE OF VERMONT
THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: 
Melanie Kehne
Assistant Attorney General
109 State Street
Montpelier, VT 05609
melanie.kehne@vermont.gov
ERN 2561

DATED May 25, 2022 at North Springfield, Vermont.

VERMONT PACKINGHOUSE, LLC, AND
CURRAN-BIRGE REAL ESTATE, LLC

By: 
Henry Mapes, General Mng.
[name and title of duly authorized agent]

APPROVED AS TO FORM:
L. Brooke Dingle
L. Brooke Dingle, Esq.
Valsangiacomo, Detora & McQuesten, P.C.
172 North Main St., Suite 301
Barre, VT 05641
ERN 2387
Counsel for Defendants