

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No.

**SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff**

v.

**VORSTEVELD FARM, LLP,
Respondent**

VIOLATIONS

1. 10 V.S.A. § 1259(a): Unpermitted discharge to waters of the State
2. 10 V.S.A. § 913(a) and Vermont Wetland Rules § 9.1: clearing vegetation, dredging, and placing fill in Class II wetlands and their buffer zones prior to obtaining a permit

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“ANR”) and Vorsteveld Farm, LLP (“Respondent”), hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Respondent owns and operates a Large Farm Operation (“LFO”) in Panton, Vermont. The LFO consists of three facilities located on multiple properties in the same general vicinity. The Main Farm facility is located at 4531 Jersey Street, the Arnold Bay Farm facility is located at 2066 Arnold Bay Road, and the Exline Farm facility is located at 1502 Arnold Bay Road.
2. The LFO, which is bisected in a north-south direction by Jersey Street, contains over 1,500 acres of agricultural land. The land is bounded to the east by the Dead Creek. Lake Champlain is located to the west.
3. On May 6, 2016, ANR staff visited an area of the Main Farm facility located to the east of Jersey Street, just south of Panton Road, where the Dead Creek forms the eastern boundary of the agricultural fields (identified as 3369 Panton Road). The various fingers of the Dead Creek

contain Class II wetlands that are contiguous to or are mapped on the Vermont Significant Wetlands Inventory (the “Panton Road Wetland”).

4. While at the site, ANR staff observed that vegetation had been removed and fill material had been placed within portions of the Panton Road Wetland and its 50-foot wetland buffer area. Soil appeared to have been relocated to increase the elevation of the wetland area at grade.
5. Based on field observations and its desktop review, ANR personnel determined that the vegetation removal and fill placement impacted approximately 6.5 acres of the Panton Road Wetland and its buffer area.
6. On June 28, 2017, ANR staff visited an area of the Arnold Bay Farm facility located to the west of Jersey Street, just north of Pease Road at the intersection of Arnold Bay Road. The area contains a Class II wetland that is contiguous to and is mapped on the Vermont Significant Wetlands Inventory (the “Pease Road Wetland”).
7. While at the site, ANR staff observed that vegetation removal, dredging, and filling had occurred within portions of the Pease Road Wetland and its 50-foot wetland buffer area. A ditch was dug in a north-south direction and the shoulder of Pease Road had been regraded.
8. Based on field observations and its desktop review, ANR personnel determined that the vegetation removal, dredging, and fill placement impacted approximately 0.6 acres of the Pease Road Wetland and its buffer area.
9. On July 19, 2017, ANR sent Respondent a Notice of Alleged Violation (“NOAV”). The NOAV directed Respondent to restore the Panton Road Wetland and its 50-foot buffer no later than September 22, 2017, pursuant to a restoration plan to be approved by the ANR. Respondent was further directed to delineate the Pease Road Wetland and develop a restoration plan for approval by September 15, 2017.
10. To date, Respondent has not restored either the Panton Road Wetland or the Pease Road Wetland or their 50-foot buffer areas.
11. Under Section 9.1 of the Vermont Wetland Rules (“VWR”) and 10 V.S.A. § 913(a), any activity in a Class II wetland or its associated buffer zone is prohibited without a permit.
12. The Agency alleges that the above conduct constitutes a violation of 10 V.S.A. § 913(a) and Vermont Wetland Rules § 9.1.
13. On May 8, 2019, employees from the Agency of Agriculture, Food and Markets (“AAF”) visited the Main Farm facility for a routine inspection. While on site, AAFM staff observed

agricultural waste flowing from various outlet pipes into a roadside channel where it was conveyed in an easterly direction and discharged into a tributary of the Dead Creek.

14. On March 13, 2020, ANR staff visited the Main Farm facility to evaluate the agricultural waste flowing from the property in response to a referral made by AAFM. ANR staff observed a hydrologic connection between the roadside channel and the tributary of Dead Creek. ANR staff also observed evidence of prior discharges of waste from multiple outlets on the property, including sedimentation by manure and feed silage deposits in the roadside channel.
15. Under 10 V.S.A. § 1259(a), no person may discharge any waste, substance, or material into waters of the State without first obtaining a permit from the Secretary of the ANR for that discharge.
16. The ANR alleges that the above conduct constitutes a violation of 10 V.S.A. § 1259(a).
17. Respondent admits the factual findings described above solely for purposes of resolving this case.

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violation, the parties agree as follows:

- A. For the violation described above, Respondent shall pay a total penalty of \$ 21,750.00. Payment shall be made in twelve (12) equal installments of \$ 1,782.50, unless earlier paid in full. The first monthly payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance. All subsequent payments shall be made no later than the fifteenth (15th) calendar day of each consecutive month thereafter. Payment shall be made by either:
 1. Check made payable to the “Treasurer, State of Vermont” and forwarded to:

Administrative Assistant
Agency of Natural Resources
Environmental Compliance Division
1 National Life Drive, Davis 3
Montpelier, VT 05620-3803

Or

2. Credit card or electronic check payment through the Agency's online system at:
https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

In the event Respondent fails to make any payment on time as set forth above, the Secretary shall have the authority to accelerate all the remaining payments and make them due and payable immediately. The decision to invoke this acceleration provision shall be in the sole discretion of the Secretary, and a decision not to invoke this provision shall not be deemed a waiver of the provision's future use.

- B. To address the violations of 10 V.S.A. § 1259(a), Respondent shall eliminate the discharge of wastes from the Main Farm facility to the tributary of the Dead Creek and implement the following measures at the farm with respect to the inlets depicted on a map of the Main Farm, dated July 10, 2020, and attached as Exhibit 1:
 1. No later than October 1, 2020, Respondent shall provide ANR with documentation to demonstrate the removal of accumulated waste materials in the channels that receive flow from inlets 1a, 1b, 1c, 2a, 2b, and 3a, and that the channels have been seeded with perennial seed.
 2. No later than November 15, 2020, Respondent shall:
 - a. Seal with concrete inlets 1a and 1c.
 - b. Install a 9" concrete curb along the east side of the hoof trim area above the existing floor.
 - c. Install plywood along the north and south sides of the laneway between the main barn and the milker barnyard within 15 ft. of both inlets 2a and 2b.
 - d. Fill or regrade the swale located between the Milker Barn and the Main Barn such that contaminated runoff flows to the leachate collection system and does not enter inlet 1b.
 - e. Cap or elevate through addition of standpipe inlet 1b in a manner such that future use for diverted roof runoff is possible.
 - f. Convert inlet 3a into a standpipe of sufficient elevation to prevent the discharge of agricultural waste from the road, feeding alley, and calf barn apron.
 3. No later than seven (7) consecutive calendar days following completion of all measures intended to eliminate the discharge of wastes to the tributary of the Dead Creek,

Respondent shall notify the ANR and obtain written confirmation of completion to the ANR's satisfaction.

- C. To address the violations of VWR § 9.1 and 10 V.S.A. § 913(a), Respondent shall remediate the impact of the activities within the Panton Road Wetland and the Pease Road Wetland in accordance with the following:
1. No later than fifteen (15) consecutive calendar days following the Effective Date of this Assurance, Respondent shall hire a qualified wetland consultant to prepare a Wetland Restoration Plan for the Panton Road Wetland and the Pease Road Wetland.
 2. No later than forty-five (45) consecutive calendar days following the Effective Date of this Assurance, Respondent shall submit to the ANR a Wetland Restoration Plan to restore the Panton Road Wetland and the Pease Road Wetland and remediate the impact of the vegetation removal, dredging and/or fill placement. The ANR shall have sole discretion in approving the Wetland Restoration Plan. At a minimum, the Wetland Restoration Plan shall include:
 - a. A map identifying the pre-disturbed limits of the wetlands and their 50-foot buffer zones;
 - b. A determination of the fill depth in the wetlands and their 50-foot buffer zones;
 - c. A plan for removal of fill from the wetlands and their 50-foot buffer zones, including detailed plans for removing fill, regrading slopes, replacing topsoil;
 - d. A plan for erosion prevention and sediment control and for stabilizing soils in the wetlands and their 50-foot buffer zones;
 - e. A plan for planting native vegetation in the wetlands and their 50-foot buffer zones;
 - f. A schedule for completing each phase of the restoration; and
 - g. A plan to monitor the wetlands for a period of three years to ensure successful restoration, including plans to implement additional plantings as needed.

To the extent permissible under the VWR, the Wetland Restoration Plan may include a plan for securing an after-the-fact wetlands permit for Respondent's activities in specific areas of the wetlands and their 50-foot buffers, as an alternative to a plan for remediating the entire wetlands area. In the event that the ANR rejects a proposed Wetland Restoration Plan, Respondent shall revise the Wetland Restoration Plan as directed and submit a revised Wetland Restoration Plan to the ANR no later than fifteen (15) consecutive calendar days following any rejection, repeating the process as needed until a Wetland Restoration Plan is approved.

3. The schedule for completing each component of the Wetland Restoration Plan shall be set forth in the plan, but shall include the following deadlines at a minimum:
 - a. No later than June 1, 2021, Respondent shall begin restoration activities in accordance with the Wetland Restoration Plan. No later than September 1, 2021, Respondent shall complete all restoration activities, excluding ongoing monitoring, in accordance with the approved Wetlands Restoration Plan.
 - b. If the Wetlands Restoration Plan includes a plan to secure an after-the-fact wetlands permit for any portion of the affected wetlands, Respondent shall file an administratively complete application before December 31, 2020, or no later than thirty (30) consecutive calendar days following ANR's approval of the Wetland Restoration Plan (whichever event occurs earlier). Respondent shall respond to ANR requests for additional information no later than fifteen (15) consecutive calendar days following any request, repeating the process as needed until an after-the-fact permit is administrative and technically complete.
 4. No later than seven (7) consecutive calendar days following completion of the Wetland Restoration Plan (excluding ongoing monitoring), Respondent shall notify the ANR and obtain written confirmation of completion to the ANR's satisfaction. Respondent shall also notify the ANR within seven (7) consecutive calendar days of completing the three-year monitoring period to assess the need for additional plantings, as described in the approved Wetland Restoration Plan.
- D. Without formally admitting or denying wrongdoing or liability, Respondent agrees to this settlement of the violation alleged above in order to resolve all outstanding disputes.
- E. Respondent agrees that the violation alleged is deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondent's past record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. § 8010.
- F. The State of Vermont and the ANR reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth hereinabove.

- G. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondent's on-going obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Respondent.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Division of the Superior Court (the "Effective Date"). When so entered by the Environmental Division, this Assurance shall become a judicial order. In the event that such order is vacated, the Assurance shall be null and void.
- I. The Respondent shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein occurring before the effective date of the Assurance, provided that the Respondent fully complies with the agreements set forth above.
- J. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Environmental Division of the Superior Court. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.
- K. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. Chapters 201 and/or 211.
- L. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

[Signatures on following pages.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Hans Vorsteveld, the undersigned, hereby state under oath that I am a Managing Partner of Vorsteveld Farm, LLP, that I have the power to contract on behalf of Vorsteveld Farm, LLP, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Vergennes, Vermont, this 21 day of August 2020.

VORSTEVELD FARM, LLP

By: [Signature]

Hans Vorsteveld, Managing Partner

STATE OF VERMONT

COUNTY OF Addison, ss.

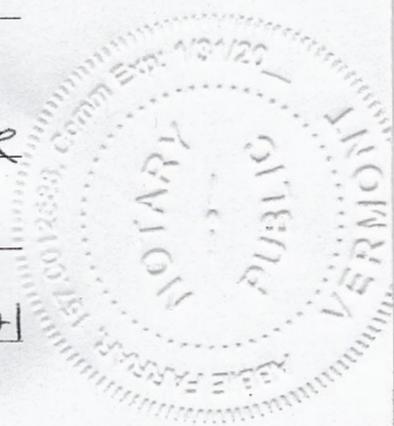
At Vergennes, Vermont, this 21 day of September 2020, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,

[Signature]
Notary Public State of Vermont

Printed Name Birtney S. Aube

Commission No. 157.0012719

My Commission Expires 1/31/2021



The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Montpelier, Vermont, this 29th day of September, 2020.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: 

Peter Walke, Commissioner
Department of Environmental Conservation

EXHIBIT 1



Vorsteveld Farm LLP Main Farm

Visit Type: Inspection
Visit Date: 7/8/2020

—	Stream
■	Waterbody

1 in. = 400 ft.

Created on: 7/10/2020