

STATE OF VERMONT

SUPERIOR COURT  
ADDISON UNIT

CIVIL DIVISION  
Docket No.

AERIE POINT HOLDINGS, LLC

Plaintiff

vs.

VORSTEVELD FARM, LLP,

Defendant

**COMPLAINT**

Plaintiff Aerie Point Holdings, LLC brings this action for declaratory and injunctive relief against Defendant Vorsteveld Farm, LLP.

**Introduction**



The discharge of sediment-laden water into Lake Champlain depicted in the above photograph, taken on June 6, 2019, was caused by Defendant's (a) systematic  
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alteration of the landscape; (b) construction of a water collection and discharge network; (c) mismanagement of agricultural waste; and (d) other changes in operations at its farm in Panton. Defendant's acts and omissions—independently and/or cumulatively—have directed destructive flows of polluted water on to the property owned by Plaintiff and into Lake Champlain. Relying on well-established common-law principles of trespass and nuisance, Plaintiff seeks an injunction to abate Defendant's wrongful alterations in water flow, together with related equitable relief.

### **Parties**

1. Plaintiff Aerie Point Holdings, LLC is a Vermont limited liability company that owns certain real property located on Arnold Bay Road in the Town of Panton, County of Addison, State of Vermont.
2. Aerie Point Holdings, LLC acquired title to its property by virtue of a warranty deed from its principals, Vicki and Dennis Hopper, husband and wife, dated July 22, 2016, and recorded on August 1, 2016 in Book 38 at Pages 355-357 of the Panton Land Records.
3. The Hoppers acquired the parcels now owned by Aerie Point Holdings, LLC through two deeds:
  - A. The first parcel was conveyed to the Hoppers by warranty deed from Arnold Bay Farms, L.P., dated March 19, 2014 and recorded on March 20, 2014 in Book 37 at Page 449 of the Panton Land Records. This property is sometimes referred to as the Point Property.
  - B. The second parcel was conveyed to the Hoppers by warranty deed from

Joseph G. Kuhn and Ruth M. Kuhn, dated April 30, 2015 and recorded in Book 37 at Page 836 of the Panton Land Records. This property is sometimes referred to as the Small Farm.

4. The Point Property and the Small Farm are now under common ownership and used as a single property and are therefore referred to jointly herein as the Hopper Properties.
5. Defendant Vorsteveld Farms, LLP is a Vermont limited liability partnership with a principal place of business in the Town of Panton.
6. Defendant owns certain real property located at 2066 Arnold Bay Road in the Town of Panton, County of Addison, State of Vermont by virtue of a deed from Arnold Bay Farms, L.P. dated July 16, 2013 and recorded in Book 37 at Page 206 of the Panton Land Records. This property is referred to as the Arnold Bay Farm.
7. Defendant owns certain real property located at 1033 Adams Ferry Road in the Town of Panton, County of Addison, State of Vermont by virtue of a deed from Arnold Bay Farms, L.P. dated July 16, 2013 and recorded in Book 37 at Page 206 of the Panton Land Records. Including adjoining land in the Town of Ferrisburgh, this property is referred to as the Exline Farm.
8. The Arnold Bay Farm and the Exline Farm are hereafter referred to jointly as the Vorsteveld Properties.

### **The Properties**

9. The Arnold Bay Farm is located across Arnold Bay Road and east of the Hopper Properties.

10. Until 2013, the Point Property, the Arnold Bay Farm and the Exline Farm were under common ownership and were managed as a single farm unit.
11. The Point Property is approximately 125 acres in size. It contains a farm pond, about 93 acres planted in hay and/or pasture grasses, approximately 26 acres of woodland, and several houses. The Point Property is bounded on the west by Lake Champlain.
12. The Small Farm is approximately 15 acres in size. It contains a house, a barn and approximately 13 acres of field.
13. Most of the agricultural land of the Hopper Properties is leased to Scuttleship Farm, LLC, a Vermont limited liability company.
14. Scuttleship Farm, LLC operates a regenerative livestock farm on the Hopper Properties.
15. The Arnold Bay Farm and the Exline Farm are component parts of “Vorsteveld Farm,” a Large Farm Operation, as defined in 6 V.S.A. § 4851.
16. As of 2019, Vorsteveld Farm cropped about 2,420 acres and maintained about 2,655 mature dairy cows and heifers.
17. The Arnold Bay Farm contains two heifer barns and associated concrete barnyards. Liquid waste from farm operations, including manure and leachate, is transferred into a collection pit.
18. Exline Farm contains two heifer barns and a calf barn, with associated concrete barnyards. Liquid waste from farm operations, including manure and leachate, is transferred into a collection pit.

19. Vorsteveld Farm annually disposes of more than 15 million gallons of collected liquid waste by applying it to land.
20. Arnold Bay Farm is located upslope from the Hopper Properties. A tributary stream to Lake Champlain runs less than 100 feet from the barnyard on the Arnold Bay Farm.
21. The Exline Farm is located upslope and northeasterly of the Hopper Properties. A water tributary to Lake Champlain, runs less than 100 feet from the Exline Farm barnyard.
22. All three of the foregoing tributaries flow directly from the Vorsteveld Properties onto the Hopper Properties before entering Lake Champlain.

#### **Changes in Land Use**

23. Since Defendant acquired Arnold Bay Farm and Exline Farm, Defendant has undertaken a program of removing trees, shrubbery and other vegetation on the two properties.
24. This vegetation-removal program reduced the capacity of the fields to retain sediments and increased erosion on the Hopper Properties.
25. Since Defendant acquired Arnold Bay Farm and Exline Farm, it has undertaken a program of installing subsurface “tile drainage” collection systems in fields throughout the two properties.
26. Defendant’s new collection systems remove water from fields through a network of corrugated and plastic tubes connected to “mains.”
27. Defendant’s new collection systems changed the natural and preexisting flow by

conveying large volumes of water through the pipe network directly to road ditches and to new drainage outlet points.

28. Defendant's new collection system has increased the total quantity of water flowing onto the Hopper Properties, while also increasing the velocity and extending the duration of flow.

29. Defendant's new collection system has redirected the flow of water onto the Hopper Properties.

30. After installing the new collection system in fields upslope from the Hopper Properties, Defendant changed the use of the fields from predominantly grass and hay cultivation to intensive cultivation of corn.

31. Vorsteveld Farm injects manure directly into the soil.

32. Injection of manure in fields with tile drainage can result in rapid conveyance of waste into the collection system without adequate residence time in the soil for filtration and uptake of nutrients.

33. Tile drains have a high potential for increasing the export of nitrates, phosphorus, sediments, pollutants and agricultural waste from agricultural fields.

34. Defendant has caused the filling of portions of a wetland and drainage courses on the Arnold Bay Farm.

35. Defendant has filled and/or regraded land on the Vorsteveld Properties in a manner that alters historical water flows.

36. Defendant has systematically removed vegetation buffers and failed to manage cropland in a manner that retains soil in the field and while minimizing erosion.

37. Defendant has failed to manage agricultural wastes at the farmsteads on the Vorsteveld Properties in a manner that prevents discharge of such wastes across property boundaries.

38. On information and belief, Defendant has commenced trucking of manure from other properties owned by Defendant for storage and injection upslope of the Hopper Properties.

39. Defendant has failed to manage its waste collection systems upslope of the Hopper Properties in a manner that prevents discharge of agricultural wastes to surface and ground water.

40. As a proximate result of the foregoing acts and omissions, the water flowing from the Vorsteveld Properties onto the Hopper Properties contains high concentrations of nitrate, phosphorus, total suspended solids and other pollutants.

41. As a proximate result of the foregoing acts and omissions, the water flowing from Vorsteveld Properties onto the Hopper Properties contains very high levels of e-coli— at times close to levels found in sewage before treatment.

42. As a proximate result of Defendant's failure to secure the integrity of an oil storage tank on the Arnold Bay Farm, heating oil was discharged in 2020 onto the Point Property.

43. In apparent response to the foregoing oil spill, Defendant's agents entered on to the Point Property, without any notice to or permission from Plaintiff, and further altered water courses on the Point Property.

44. As a proximate result of the foregoing acts and omissions, Defendant has

wrongfully altered the location, volume, velocity, duration and quality of water flowing from its property onto the Hopper Properties.

45. By virtue of the foregoing acts and omissions, Defendant has caused a continuous trespass onto the Hopper Properties.

46. By virtue of the foregoing acts and omissions, Defendant has created a private nuisance for the Hopper Properties.

### **Injury to the Hopper Properties**

47. As a proximate result of the foregoing acts and omissions by Defendant, the Hopper Properties have been and will continue to be injured by the altered volume, location, duration, velocity and quality of water flowing onto the Hopper Properties.

48. The water flowing from the Vorsteveld Properties has caused and continues to cause erosion on the Hopper Properties.

49. The pollutants in water flowing from the Vorsteveld Properties has contaminated the pond and other surface waters on the Point Property.

50. The water flowing from the Vorsteveld Properties has contaminated Lake Champlain with plumes of phosphorus and sediment-laden discharge.

51. The polluted water flowing from the Vorsteveld Properties has caused algae blooms that render the Lake Champlain shoreline along the Hopper Properties previously used for walking and swimming access unsuitable for those purposes.

52. The altered volume, location, velocity and duration of polluted water flows from the Vorsteveld Properties has interfered with agricultural use of the fields on the Hopper Properties.



53. The altered volume, location, velocity and duration of polluted water flows from the Vorsteveld Properties onto the Hopper Properties has noxiously and substantially interfered with use and enjoyment of the Hopper Properties by the Plaintiffs.

54. The altered volume, location, velocity and duration of polluted water flows from the Vorsteveld Properties onto the Hopper Properties threatens the health of trees on the Hopper Properties.

55. Upon information and belief, the polluted water flows from the Vorsteveld Properties onto the Hopper Properties has a substantial adverse effect on health, safety, and welfare.

56. The foregoing injuries are continuing and/or capable of repetition.

#### **Truck Traffic**

57. In connection with transport of waste, animals and other materials to the Vorsteveld Properties, Defendant has substantially increased the frequency, duration, timing and volume of traffic by heavy trucks and other vehicles on Arnold Bay Road since Dennis and Vicki Hopper acquired the Hopper Properties.

58. The foregoing truck activity constitutes a continuing nuisance that significantly interferes with use and enjoyment of the Hopper Properties.

59. The foregoing vehicle activity constitutes a continuing nuisance that has created a substantial adverse effect on safety on Arnold Bay Road.

#### **Importing and Managing Manure**

60. Plaintiff realleges paragraphs 38 and 39.

61. Defendant's acts and omissions have created noxious odors and insect

infestations that significantly interfere with use and enjoyment of the Hopper Properties.

62. Defendant's acts and omissions constitute a continuing nuisance.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that Defendant's alteration of the volume, location, duration, velocity and quality of water flowing onto the Hopper Properties has created a continuing trespass and/or private nuisance;
- B. Declare that Defendant's alteration of the volume, location, duration, velocity and quality of water flowing onto the Hopper Properties has injured and continues to injure the Hopper Properties;
- C. Declare that Defendant's alteration of the volume, location, duration, velocity and quality of water flowing onto the Hopper Properties has interfered with and continues to interfere with Plaintiff's use and enjoyment thereof;
- D. Issue a preliminary and permanent injunction requiring Defendant to implement a specific plan of mitigation and abatement, with effective provisions for monitoring compliance and for prompt enforcement in the event of violations, to restore the volume, location, duration, velocity and quality of water flowing onto the Hopper Properties prior to Defendant's foregoing acts and omissions.
- E. Issue a preliminary and permanent injunction requiring Defendant to implement a plan for managing truck traffic, with effective provisions for monitoring compliance and for prompt enforcement in the event of violations, to abate the nuisance caused by its intensified truck traffic;

F. Issue a preliminary and permanent injunction requiring Defendant to implement a plan for managing manure and other agricultural waste, with effective provisions for monitoring compliance and for prompt enforcement in the event of violations, to abate the nuisance caused by the importation and inadequate management of manure and other agricultural waste;

G. Grant such other equitable relief as found reasonably appropriate to mitigate and abate the foregoing trespasses and nuisances.

Dated at Manchester Center, Vermont on this 27<sup>th</sup> day of April, 2020.

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