

Brennan Punderson & Donahue, PLLC

ATTORNEYS AT LAW

Kevin T. Brennan, Esq.

Ebenezer Punderson, Esq.

Joan Donahue, Esq.

November 8, 2017

**VIA FIRST CLASS MAIL &
EMAIL maria.steyaart@vermont.gov**

Maria Steyaart
Medium and Large Farm Operations Supervisor
Vermont Agency of Agriculture, Food & Markets
94 Harvest Lane
Williston, Vermont 05495

**Re: Pleasant Valley Farms of Berkshire, LLC
Public Information Meeting - November 9, 2017**

Dear Maria:

Brennan Punderson & Donahue, PLLC has been engaged to represent the St Pierre family (Pleasant Valley Farms of Berkshire, LLC) relative to the pending LFO Permit Amendment Application.

It is my understanding that the Public Informational Meeting is scheduled for tomorrow, November 9, 2017. It is also my understanding that the St Pierre's pending application, and the farm as a whole, has attracted the attention of a number of differ parties with varied opinions on, not only the application, but on overall farming practices throughout the State of Vermont.

It is important, at the start of the meeting, that public attendees be informed that the purpose of the Public Informational Meeting, as provided for in Subchapter 5 Section (B)(2)(j) of the Large Farm Operations Rules, is to provide an opportunity for the public to learn about the proposed project, and accordingly, the scope of questions should be strictly limited to the project. While the St Pierre family certainly respects the right of the public to share their opinions, the Public Informational Meeting is neither the time nor the place to do so unless they are specifically related to the project as detailed in the application. The scope of the meeting should be narrowly confined to the project applied for.

Given recent events, we expect that public attendees may attempt to broaden the scope of the meeting by commenting on or inquiring about unrelated matters, and expect that you will adhere to the rules governing the Public Informational Meeting by limiting all conversation to the application materials.

TO REPLY:

KEVIN: Monkton P.O. Box 8, 1317 Davis Road, Monkton, Vermont 05469 Phone 802.453.8400 Fax 802.453.8411

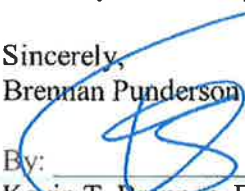
EBEN & JOAN: Middlebury The Marbleworks, 99 Maple Street, Suite 10B, Middlebury, Vermont 05753 Phone 802.989.7342 Fax 802.989.7623

Maria Steyaart
November 8, 2017
Page 2 of 2

It is also my understanding that the St Pierre family, or their representative, discussed with you potential future uses of a property or properties that they own but which are not included in LFO permit. I am writing to remind you that the disclosure to you of possible future uses was done so with the understanding that the information would not be shared with the public as public disclosure of the information could negatively impact the St Pierre's future business plans.

Should you have any questions or need anything further, please do not hesitate to call.

Sincerely,
Brennan Punderson & Donahue, PLLC

By: 
Kevin T. Brennan, Esq.
kevin@bpd.legal

cc: Anson Tebbets (via email)
Alyson Eastman (via email)
Laura DiPietro (via email)
Pleasant Valley Farms (via email)
Jonathan Chamberlain (via email)
Leah H. Ziemba, Esq. (via email)

Brennan Punderson & Donahue, PLLC

ATTORNEYS AT LAW

Kevin T. Brennan, Esq.

Ebenezer Punderson, Esq.

Joan Donahue, Esq.

November 15, 2017

**VIA FIRST CLASS MAIL &
EMAIL maria.steyaart@vermont.gov**

Maria Steyaart
Medium and Large Farm Operations Supervisor
Vermont Agency of Agriculture, Food & Markets
94 Harvest Lane
Williston, Vermont 05495

Re: Pleasant Valley Farms of Berkshire, LLC

Dear Maria:

Thank you for moderating the Public Informational Meeting of last week. I am writing relative to a couple of follow-up items, which are as follows:

Status of Application

Subchapter 5, §(B)(2)(c) of the Large Farms Operations Rules provides "Public informational meetings shall only by scheduled and held after the Secretary has notified the applicant that the application has been deemed administratively complete."

Subchapter 5, §(B)(4)(E) of the Large Farms Operations Rules provides "The formal 45 business day application review period will not start until the Agency determines that the application has been considered administratively complete, the application review advisory group has met and provided feedback (where required by statute), and the public informational meeting has been held. The day after the application is deemed complete is day 1 of the statutory 45 business day review period."

At the Public Informational Meeting of last week, when asked when the Agency would be rendering its decision on the application, the response we received was that the day after the Meeting began the 45 business day period in which the Agency would either approve, deny, or approve with conditions.

I do not believe that the Agency has provided formal written notification to Pleasant Valley Farms of Berkshire, LLC (hereinafter "Pleasant Valley") that the application has been deemed administratively complete. Given the above, it is clear that the application has been deemed

TO REPLY:

KEVIN: Monkton P.O. Box 8, 1317 Davis Road, Monkton, Vermont 05469 Phone 802.453.8400 Fax 802.453.8411

EBEN & JOAN: Middlebury The Marbleworks, 99 Maple Street, Suite 10B, Middlebury, Vermont 05753 Phone 802.989.7342 Fax 802.989.7623

Maria Steyaart
November 15, 2017
Page 2 of 2

administratively complete, but the applicant may not yet have received formal notification thereof.

I am writing to request written confirmation that the Agency has, in fact, deemed the application administratively complete and that the decision on the application will be issued within the requisite 45 day period, which commenced on Friday, November 10, 2017.

In addition, I am writing to request that the Agency provide a draft Permit for the Applicant's review as soon as one is available.

Lumbra Farm


At the conclusion of the Meeting, we had discussions relative to the Lumbra Farm. Apparently, the Agency received two phone inquiries from farmers asking about the activity at this site. As a result of the inquiries, Laura indicated that she wanted to do a site visit to be able to respond to such an inquiry.

As we discussed, this farm is a small farm and does not fall within the jurisdiction of Pleasant Valley's LFO. The St Pierre family is considering a number of different options for the use of this farm, and to date, has not yet finalized any plans. The St Pierre family will certainly file all requisite paperwork with the Agency when appropriate.

In light of the above, I have advised the St Pierre family against scheduling the requested site visit. Of course, when plans have been finalized and the corresponding application/paperwork has been filed with the Agency, we can then discuss scheduling a site visit.

Should you have any questions or need anything further, please do not hesitate to call.

Sincerely,
Brennan Punderson & Donahue, PLLC

By: 
Kevin T. Brennan, Esq.
kevin@bpd.legal

cc: Anson Tebbetts (via email)
Alyson Eastman (via email)
Laura DiPietro (via email)
Pleasant Valley Farms (via email)
Jonathan Chamberlain (via email)

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WILLIAM E. GRIFFIN
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STATE OF VERMONT
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109 STATE STREET
MONTPELIER, VT
05609-1001

November 30, 2017

Kevin T. Brennan, Esq.
Brennan Punderson & Donahue, PLLC
1317 Davis Road
P.O. Box 8
Monkton, VT 05469
kevin@bpd.legal

VIA EMAIL

Re: Pleasant Valley Farms of Berkshire, LLC

Dear Kevin:

I gave your office a call and learned that you are out of the office and do not have access to cell phone service but may have some access to email. Instead of waiting for your return to have a phone conversation, I am sending this letter to you via email.

This letter has multiple purposes. First, it is to formally respond to your November 15, 2017 letter to AAFM employee Maria Steyaart. Maria earlier sent you an email confirming her receipt of your email, and I am now responding on her behalf. Second, it is to ask for your confirmation that the St. Pierres have refused the Agency's inspection of the Lumbra facility. Third, it is to request information needed for the Agency to continue its technical review of the permit amendment application.

The Agency deemed the application administratively complete as of the date the public informational meeting was held, November 9, 2017. Per my calculation the 45-day period ends January 18, 2017, this allows for 45 business days and excludes holidays (November 10, November 23, December 25, January 1, and January 15). You also requested a draft permit. A draft permit will not be available for review.

As for the Lumbra Farm, while you have noted that there may be varying options still in play as to the use of this farm, this does not negate the Agency's authority to inspect and investigate the property under Title 6. The Agency understands that there have been construction activities and that animals are housed on the property. The Agency notes that the property is subject to a conservation easement of which the Agency is a co-holder.

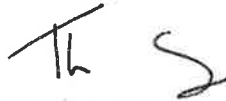
In your letter you wrote that “we can discuss scheduling a site visit” when the St. Pierre family has finalized their plans and filed corresponding application/paperwork with the Agency. Title 6 does not account for such a delayed site visit. Please confirm whether the statement in your letter is a refusal to allow the Agency to inspect and investigate the property by December 8, 2017. If it is not a refusal, then the Agency will proceed to inspect and investigate during normal business hours. Please note that the Agency has the authority to obtain a search warrant under 6 V.S.A. § 12 but would prefer to not have to do so.

As you are aware, the Agency is in the process of conducting a technical review of the permit amendment application. During the review, it has become evident that information indicated on the attachment to this letter is necessary for the technical review to be completed. Please have Pleasant Valley or its technical service provider directly provide the needed information to Maria Steyaart by December 8, 2017. If they have any questions regarding what is requested, please have them direct their questions directly to Maria as well.

From this point forward, please do not contact AAFM staff directly. Please direct all your communications regarding the Pleasant Valley Farms’ permit amendment application as well as regarding the St. Pierres’ activities at the Lumbra Farm to me.

Upon your return, please give me a call. There are a few items that I did not include in this letter as they seemed better suited to a conversation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Th S', written over a horizontal line.

Thea Schwartz
Counsel for the Agency of Agriculture, Food and Markets

Attachment

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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JOSHUA R. DIAMOND
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STATE OF VERMONT
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109 STATE STREET
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December 21, 2017

Kevin T. Brennan, Esq.
Brennan Punderson & Donahue, PLLC
1317 Davis Road
P.O. Box 8
Monkton, VT 05469
kevin@bpd.legal

VIA EMAIL

Re: Pleasant Valley Farms of Berkshire, LLC

Dear Kevin,

Based on new information that the Agency received yesterday, PVF's LFO permit amendment application materials are no longer administratively complete as there has been a material change in circumstances.

The Department of Environmental Conservation (DEC) shared with the Agency the St. Pierres' December 19, 2017 construction permit materials for the Lumbra Farm, submitted by Barnard & Gervais, LLC on their behalf. The project narrative, Appendix B (attached), states:

The subject property is improved with various agricultural structures and is currently used as Pleasant Valley Farms dry cow and heifer barn facility. The project is the expansion of an existing manure system and includes the construction of a new manure pit, cow/heifer barn facility and concrete bunker silos.

PVF did not indicate that it was using the Lumbra Farm in the LFO permit amendment materials that it submitted to the Agency; the project narrative indicates that it is. This is contrary to your November 15, 2017 letter to Maria Steyaart that states that the St. Pierre family was in the process of "considering a number of different options for use of this farm, and to date, has not yet finalized any plans" and that it "will certainly file all requisite paperwork with the Agency when appropriate." PVF is using and expanding the animal housing facility to house the LFO's animals and is expanding the existing manure system at the Lumbra Farm. It must submit the A-1 form for the facility and the A-2 form for the manure pit. It also must submit the NMP for the corresponding land base and resubmit Appendix A.

Please have PVF file with the Agency the forms and the NMP. Once the Agency receives these forms and reviews them to make sure that they are fully completed and is able to inspect the Lumbra Farm, and once all steps in LFO Rule Subchapter 5 Section 4.e occur, the formal 45 business day review period can start anew.

Please also note the Lumbra Farm is not an inspected facility for the purposes of shipping milk, therefore milk cannot be shipped from it.

If you have any questions, let me know. I look forward to meeting you in person, tomorrow, for the continuation of the annual inspection.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thea Schwartz', with a stylized flourish at the end.

Thea Schwartz

Counsel for the Agency of Agriculture, Food and Markets

Attachment.

Agency Of Agriculture, Food & Markets
116 State Street
Montpelier, VT 05620-2901
www.Agriculture.Vermont.gov

January 5, 2018

Secretary Julie Moore
Agency of Natural Resources
One National Life Drive, Davis 2
Montpelier VT 05620-3901

Dear Secretary Moore,

This letter is to keep you informed of the status of the Pleasant Valley Farms (PVF) permit amendment application.

As you are aware, the Agency of Agriculture, Food & Markets (AAFM) received permit amendment application materials from PVF to amend its Large Farm Operation (LFO) Permit. AAFM initially determined the permit amendment application materials to be "administratively complete"¹ and began its technical review of the permit amendment application materials. During this technical review, AAFM communicated with PVF's attorney, Kevin Brennan, and PVF's technical service provider, Jonathan Chamberlin, to request clarification of submitted information and the submission of additional information.

AAFM intended to consult with ANR to review the permit amendment application and, prior to approval of that application, to issue a written determination regarding whether PVF established that there will be no unpermitted discharges to waters of the State,² and then make a decision on the permit amendment application within the 45-business day statutory period, which would have ended on January 18, 2018.

However, based on new information that AAFM received from the Department of Environmental Conservation (DEC) on December 20, 2017, AAFM determined that the permit amendment application materials were no longer administratively complete as there has been a material change in circumstances. AAFM communicated this to PVF in a December 21, 2017 letter to Attorney Brennan. The new information was the St. Pierres' December 19, 2017 construction permit materials for the Lumbra Farm, submitted by Barnard & Gervais, LLC on the St. Pierres' behalf to DEC, which described the use of the farm in the project narrative as:

The subject property is improved with various agricultural structures and is currently used as Pleasant Valley Farms dry cow and heifer barn facility. The project is the expansion of an existing manure system and includes the construction of a new manure pit, cow/heifer barn facility and concrete bunker silo.



This project narrative is contrary to the LFO permit amendment application materials that PVF submitted to AAFM. PVF did not indicate that it was using the Lumbra Farm in its application materials. Furthermore, this is also contrary to Attorney Brennan's November 15, 2017 letter to AAFM stating that the St. Pierres were in the process of "considering a number of different options for use of this farm, and to date, has not yet finalized any plans" and that it "will certainly file all requisite paperwork with the Agency when appropriate."

This project narrative indicates that PVF is using and expanding the animal housing facility to house the LFO's animals and is expanding the existing manure system at the Lumbra Farm. Therefore, it is AAFM's determination that PVF must submit additional permit amendment application materials to AAFM in order for the application to be administratively complete. PVF must submit the A-1 form for the facility and the A-2 form for the manure pit at the facility. It also must submit the Nutrient Management Plan (NMP) for the corresponding land base and resubmit Appendix A. In the December 21 letter to Attorney Brennan, AAFM requested that PVF submit these forms and the NMP. In that same letter, AAFM informed PVF that the 45-business day period will not start anew until the following occurs: AAFM receives the forms and NMP and is able to review to ensure that they are fully complete; AAFM is able to inspect the Lumbra Farm; and all steps in LFO Rule Subchapter 5 B.4.e are completed.

AAFM is also in the process of finishing up its 2017 annual inspection of the LFO. On December 22, 2017, AAFM staff inspected some of fields and all but one of the authorized facilities. Attorney Brennan was present at the inspection on behalf of PFV and informed AAFM's counsel that Barnard & Gervais, LLC had made a mistake in the project narrative – the Lumbra Farm was not being used to house PVF's animals. AAFM's counsel advised Attorney Brennan that if this were the case, AAFM would need an affidavit submitted by the St. Pierres attesting to this and requested the same. To date, AAFM has not received an affidavit.

In the meantime, as you know, DEC is also working with PVF and Attorney Brennan to address existing discharges on its Home Farm facility, and is planning on (and perhaps has already) meeting with PVF this week to discuss this issue. Therefore, on December 28, 2017, AAFM sent to DEC a working draft of the permit amendment so that DEC would be aware of the scope and details of the proposed amendment. Please note that the working draft is just a draft and subject to change depending on the submission of additional materials from PVF. AAFM still considers PFV's permit amendment materials to not be administratively complete at this time.

¹ 6 V.S.A. § 4851; Large Farm Operations Rules Subchapter 5.

¹ 6 V.S.A. § 4851; Section 5.B.3 of the Memorandum of Understanding between the Agency of Agriculture, Food and Markets and the Agency of Natural Resources regarding implementation and enforcement of water quality programs as required by 6 V.S.A. § 4810 and 10 V.S.A. §§ 1259(i) and 8003(d), dated March 17, 2017.

AAFM staff and its counsel plan to visit the LFO again on January 9, 2018 during which time AAFM staff plan to inspect the remaining facility and fields, and the Lumbra Farm. AAFM inspection staff, engineering staff, and its counsel planned to meet with PVF (the St. Pierres), Attorney Brennan, and likely PVF's technical service provider on January 10, 2018 at AAFM's Montpelier office to discuss the permit amendment application materials. At this time, it makes sense to hold this meeting after AAFM receives the additional forms and NMP described above. AAFM is in the process of rescheduling the January 10 meeting. AAFM invited DEC to attend the meeting; DEC previously declined. DEC is certainly welcome to attend the meeting, if, and when it is rescheduled, should DEC so choose.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "A. S. Tebbetts".

Anson Tebbetts
Secretary of Agriculture

Cc: Kevin Brennan, Esq., Attorney for PVF

APPENDIX B

Mark and Amanda St. Pierre
Lumbra Farm
Manure System Expansion
1576 Skunk Hollow Road
Berkshire, Vermont

Project Narrative:

Mark and Amanda St. Pierre (owners of Pleasant Valley Farm) own an agricultural property located at 1576 Skunk Hollow Road in Berkshire, Vermont. The subject property is improved with various agricultural structures and is currently used as Pleasant Valley Farms dry cow and heifer barn facility. The project is the expansion of an existing manure system and includes the construction of a new manure pit, cow/heifer barn facility and concrete bunker silos.

ESPC Plan Required Information:

- a. The project is agricultural which consists of the expansion of an existing manure system and addition of agricultural cow barns and concrete bunker silos.
- b. The major components associated with the construction of a manure system also consist of the addition of a cow barn and concrete feed bunker silos.
- c. Based on the results of a recently completed field topographic survey, approximately 4.87 +/- acres of disturbance was created as a result of this project.
- d. At this juncture, the vast majority of the construction work has been completed. Further, most of the disturbed areas have stabilized grading and the disturbed areas have been mulched and/or erosion control matting has been used to stabilize the areas with steeper slopes.
- e. The maximum concurrent earth disturbance used to score this project is 4.87 +/- acres and is based on a topographic survey that was completed with a Survey Grade GPS unit.
- f. Areas down slope of the disturbed areas consist of vegetated farm fields and as such any surface water flowing from the site will pass through a minimum of a 50 foot vegetative cover.
- g. Based on information provided by the landowner, disturbed areas were mulched at a minimum of every fourteen (14) days.
- h. Pine Brook is the nearest receiving waters and is located approximately 1,500 feet down slope of the construction site.
- i. Based on a review of the pre-construction plan and the post construction plans, there are two distinct drainage areas associated with the project. Drainage Area 1 is located to the northeast of the cow barn. This area is approximately 0.89 +/- acres in size and the soils in this area are mapped as Westbury, stony fine sandy loam (WrC) and Stowe, stony fine sandy loam (StC) with erodibility ratings of 0.20. Surface water from this area generally flows in a southeasterly direction and ultimately discharges to a catch basin system along the west side of the barn and/or directly into the manure pit. Drainage Area 2 is approximately 3.98 +/- acres in size and the soils in this area are mapped as Westbury, stony fine sandy loam, Cabot silt loam, Tunbridge-Woodstock, fine sandy loams, and Peru, fine sandy loam with erodibility ratings of 0.20, 0.43, 0.24 and 0.37, respectively.

The pre-existing slope across Drainage Area 1 is estimated to be between 5-7% and is based on existing lidar contours. The pre-existing slope across Drainage Area 2 varies due to existing agricultural structures and features and range between 3-4% in most areas and between 5-10% across some areas. Pre-construction slopes are based on available lidar topographic information. Post construction slopes in Drainage Area 1 range between 5-10% in most locations and up to 50% along the embankment to the northwest of the bunker silo and sawdust shed. It is important to note that sediment/run off from this area is contained on-site and ultimately discharges to the manure pit. Post construction slopes associated with Drainage Area 2 vary and generally range between 5-15%. It is important to note that the effected areas associated with Drainage Area 2 have been stabilized using erosion matting and/or have been mulched.

- j. There are no proposed stream crossings associated with this project. Therefore, a stream alteration permit is not required to be obtained.
- k. Based on a review of the VCGC website, there are no wetlands within Drainage Area 1 and/or Drainage Area 2. Therefore, a Conditional Use or Army Corp of Engineers permits are not required for this project.
- l. Since all material used for this project was generated on-site and was ultimately regraded, there has been no need for the use of borrow areas and nor has any material been transported off-site.
- m. At this juncture, other than mulching and the installation of additional silt fence, no other earthwork or construction activities are proposed for the upcoming winter months (October 15-April 15). The existing silt fence barriers will be maintained throughout the winter months and additional mulch hay and conservation grass seed mixture will be applied to the affected areas in the spring of 2018.



Agency of Agriculture, Food & Markets
Water Quality Division
116 State Street
Montpelier, VT 05620
www.VermontAgriculture.com

[phone] 802-828-2431
[fax] 802-828-2361

February 19, 2018

Dear St Pierre's,

The Agency has received the General Permit for Medium Farm Operations (MFO GP) Appendix A: Notice of Intent to Comply for the Lumbra Farm.

During its January 9, 2018 inspection of the farm, the Agency of Agriculture, Food and Markets (the Agency) observed an existing barn that had been recently expanded upon. According to the Agency's review of the observations made during the inspection, the information provided by the farm verbally during the inspection, the application materials that were provided to DEC for a Vermont Construction General Permit 3-9020 permit, and aerial imagery, the Agency has determined that the expanded barn has been designed to house more than the LFO threshold number of animals listed in 6 V.S.A. Section 4851.

Therefore, the Agency is denying coverage under the MFO General Permit for the farm. The farm should have applied for and obtained from the Agency a Section 4851 LFO permit application prior to the expansion of the barn.

Please submit a LFO permit application within the next 60 days. Please note that the farm, even if it submits this application within the next 60 days, may be subject to an enforcement action for failing to obtain a Section 4851 permit prior to the barn's expansion. Please note that should the farm fail to submit a LFO permit application within the next 60 days the farm may also be subject to additional enforcement action.

The Secretary's decision to deny coverage to the farm under the MFO General Permit may be appealed to the Environmental Division within 30 days of the decision pursuant to 6 V.S.A. Section 4861.

If you have any questions please contact Laura DiPietro, (802) 595-1990.

Sincerely,

A handwritten signature in black ink, appearing to read "L. DiPietro", written in a cursive style.

Laura DiPietro
Water Quality Division, Director

cc: Attorney Kevin Brennan via email

