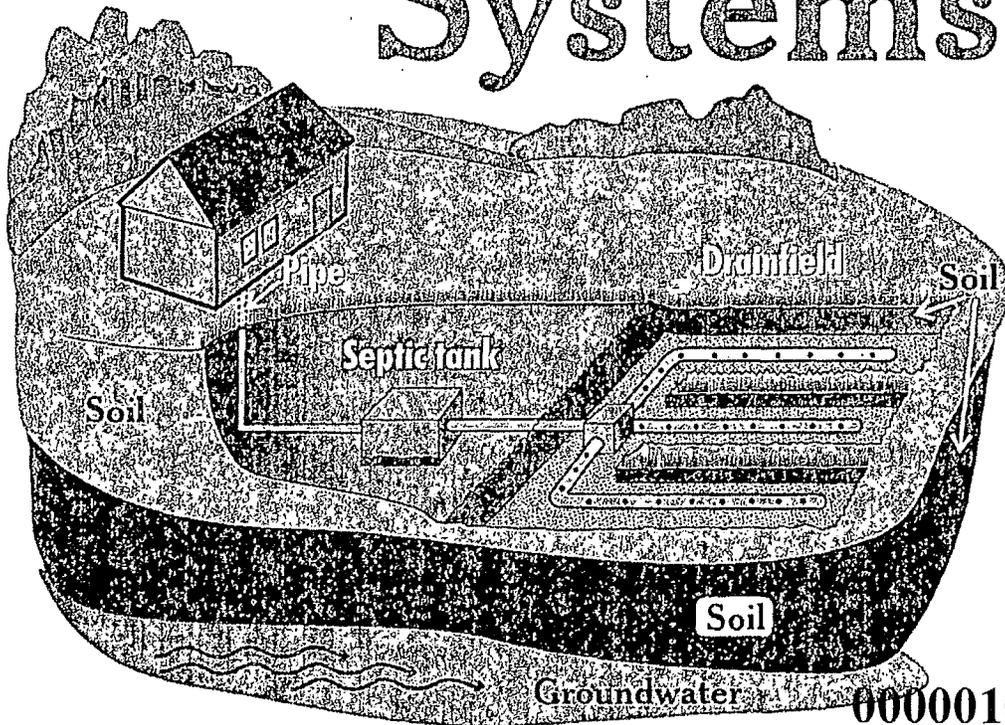




A Homeowner's Guide to Septic Systems



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Your Septic System is your responsibility!

Did you know that as a homeowner you're responsible for maintaining your septic system? Did you know that maintaining your septic system protects your investment in your home? Did you know that you should periodically inspect your system and pump out your septic tank?

If properly designed, constructed and maintained, your septic system can provide long-term, effective treatment of household wastewater. If your septic system isn't maintained, you might need to replace it, costing you thousands of dollars. A malfunctioning system can contaminate groundwater that might be a source of drinking water. And if you sell your home, your septic system must be in good working order.

This guide will help you care for your septic system. It will help you understand how your system works and what steps you can take as a homeowner to ensure your system will work properly. To help you learn more, consult the resources listed at the back of this booklet.

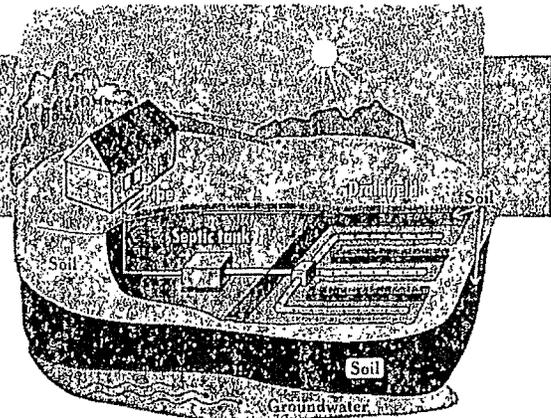
Top Four Things You Can Do to Protect Your Septic System

1. Regularly inspect your system and pump your tank as necessary.
2. Use water efficiently.
3. Don't dispose of household hazardous wastes in sinks or toilets.
4. Care for your drainfield.

How does it work?

Components

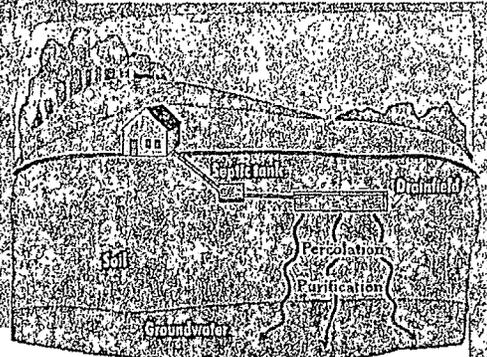
A typical septic system has four main components: a pipe from the home, a septic tank, a drainfield, and the soil. Microbes in the soil digest or remove most contaminants from wastewater before it eventually reaches groundwater.



Typical septic system

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Finding Your System
 Your septic tank, drainfield, and reserve drainfield should be clearly designated on the as-built drawing for your home. (An as-built drawing is a line drawing that accurately portrays the buildings on your property and is usually filed in your local land records.) You might also see lids or manhole covers for your septic tank. Older tanks are often hard to find because there are no visible parts. An inspector/pumper can help you locate your septic system if your septic tank has no risers.



Drainfield

The wastewater exits the septic tank and is discharged into the drainfield for further treatment by the soil. The partially treated wastewater is pushed along into the drainfield for further treatment every time new wastewater enters the tank.

If the drainfield is overloaded with too much liquid, it will flood, causing sewage to flow to the ground surface or create backups in plumbing fixtures and prevent treatment of all wastewater.

A reserve drainfield, required by many states, is an area on your property suitable for a new drainfield system if your current drainfield fails. Treat this area with the same care as your septic system.

Soil

Septic tank wastewater flows to the drainfield, where it percolates into the soil, which provides final treatment by removing harmful bacteria, viruses, and nutrients. Suitable soil is necessary for successful wastewater treatment.

Alternative systems

Because many areas don't have soils suitable for typical septic systems, you might have or need an alternative system. You might also have or need an alternative system if there are too many typical septic systems in one area or the systems are too close to groundwater or surface waters. Alternative septic

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Septic system aliases:

- On-lot system
- Onsite system
- Individual sewage disposal system
- Onsite sewage disposal system
- Onsite wastewater treatment system

Pipe from the home

All of your household wastewater exits your home through a pipe to the septic tank.

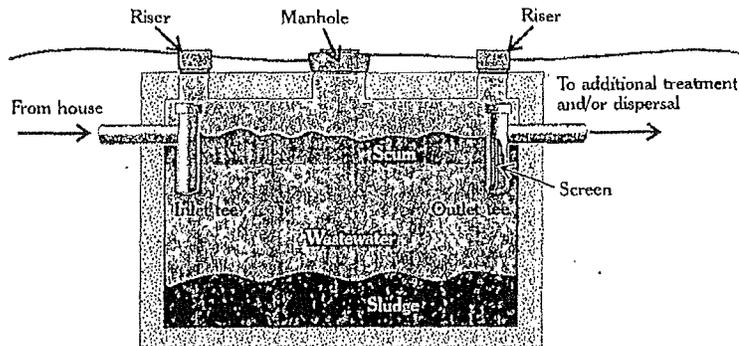
Septic tank

The septic tank is a buried, watertight container typically made of concrete, fiberglass, or polyethylene. It holds the wastewater long enough to allow solids to settle out (forming sludge) and oil and grease to float to the surface (as scum). It also allows partial decomposition of the solid materials. Compartments and a T-shaped outlet in the

septic tank prevent the sludge and scum from leaving the tank and traveling into the drainfield area. Screens are also recommended to keep solids from entering the drainfield.

Newer tanks generally have risers with lids at the ground surface to allow easy location, inspection, and pumping of the tank.

Typical single-compartment septic tank with ground-level inspection risers and screen



Tip To prevent buildup, sludge and floating scum need to be removed through periodic pumping of the septic tank. Regular inspections and pumping are the best and cheapest way to keep your septic system in good working order.

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systems use new technology to improve treatment processes and might need special care and maintenance. Some alternative systems use sand, peat, or plastic media instead of soil to promote wastewater treatment. Other systems might use wetlands, lagoons, aerators, or disinfection devices. Float switches, pumps, and other electrical or mechanical components are often used in alternative systems. Alternative systems should be inspected annually. Check with your local health department or installer for more information on operation and maintenance needs if you have or need an alternative system.

Why should I maintain my septic system?

When septic systems are properly designed, constructed, and maintained, they effectively reduce or eliminate most human health or environmental threats posed by pollutants in household wastewater. However, they require regular maintenance or they can fail. Septic systems need to be monitored to ensure that they work properly throughout their service lives.

Saving money

A key reason to maintain your septic system is to save money! Failing septic systems are expensive to repair or replace, and poor maintenance is often the culprit. Having your septic system inspected regularly is a bargain when you consider the cost of replacing the entire system. Your system will need pumping depending on how many people live in the house and the size of the system. An unusable septic system or one in disrepair will lower your property value and could pose a legal liability.

Protecting health and the environment

Other good reasons for safe treatment of sewage include preventing the spread of infection and disease and protecting water resources. Typical pollutants in household wastewater are nitrogen, phosphorus, and disease-

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A Homeowner's Guide to Septic Systems

causing bacteria and viruses. If a septic system is working properly, it will effectively remove most of these pollutants.

With one-fourth of U.S. homes using septic systems, more than 4 billion gallons of wastewater per day is dispersed below the ground's surface. Inadequately treated sewage from septic systems can be a cause of ground-water contamination. It poses a significant threat to drinking water and human health because it can contaminate drinking water wells and cause diseases and infections in people and animals. Improperly treated sewage that contaminates nearby surface waters also increases the chance of swimmers contracting a variety of infectious diseases. These range from eye and ear infections to acute gastrointestinal illness and diseases like hepatitis.

How do I maintain my septic system?

Inspect and pump frequently

You should have a typical septic system inspected at least every 3 years by a professional and your tank pumped as recommended by the inspector (generally every 3 to 5 years). Alternative systems with electrical float switches, pumps, or mechanical components need to be inspected more often, generally once a year. Your service provider should inspect for leaks and look at the scum and sludge layers in your septic tank. If the bottom of the scum layer is within 6 inches of the bottom of the outlet tee or the top of the sludge layer is within 12 inches of the outlet tee, your tank needs to be pumped. Remember to note the sludge and scum levels determined by your service provider in your operation and maintenance records. This information will help you decide how often pumping is necessary.

What Does an Inspection Include?

- Locating the system
- Uncovering access holes
- Flushing the toilets
- Checking for signs of system backup
- Measuring scum and sludge layers
- Identifying any leaks
- Inspecting mechanical components
- Pumping the tank if necessary

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Four major factors influence the frequency of pumping: the number of people in your household, the amount of wastewater generated (based on the number of people in the household and the amount of water used), the volume of solids in the wastewater (for example, using a garbage disposal increases the amount of solids), and septic tank size.

Some makers of septic tank additives claim that their products break down the sludge in septic tanks so the tanks never need to be pumped. Not everyone agrees on the effectiveness of additives. In fact, septic tanks already contain the microbes they need for effective treatment. Periodic pumping is a much better way to ensure that septic systems work properly and provide many years of service. Regardless, every septic tank requires periodic pumping.

In the service report, the pumper should note any repairs completed and whether the tank is in good condition. If the pumper recommends additional repairs he or she can't perform, hire someone to make the repairs as soon as possible.

Use water efficiently

Average indoor water use in the typical single-family home is almost 70 gallons per person per day. Leaky toilets can waste as much as 200 gallons each day. The more water a household conserves, the less water enters the septic system. Efficient water use can improve the operation of the septic system and reduce the risk of failure.

High-efficiency toilets

Toilet use accounts for 25 to 30 percent of household water use. Do you know how many gallons of water your toilet uses to empty the bowl? Most older homes have toilets with 3.5- to 5-gallon reservoirs, while newer high-efficiency toilets use 1.6 gallons of water or less per flush. If you have problems with your septic system being flooded with household water, consider reducing the volume of water in the toilet tank if you don't have a high-efficiency model or replacing your existing toilets with high-efficiency models.



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Faucet aerators and high-efficiency showerheads

Faucet aerators help reduce water use and the volume of water entering your septic system. High-efficiency showerheads or shower flow restrictors also reduce water use.

Water fixtures

Check to make sure your toilet's reservoir isn't leaking into the bowl. Add five drops of liquid food coloring to the reservoir before bed. If the dye is in the bowl the next morning, the reservoir is leaking and repairs are needed.

A small drip from a faucet adds many gallons of unnecessary water to your system every day. To see how much a leak adds to your water usage, place a cup under the drip for 10 minutes. Multiply the amount of water in the cup by 144 (the number of minutes in 24 hours, divided by 10). This is the total amount of clean water traveling to your septic system each day from that little leak.



Use Water Efficiently!

- Install high-efficiency showerheads.
- Fill the bathtub with only as much water as you need.
- Turn off faucets while shaving or brushing your teeth.
- Run the dishwasher and clothes washer only when they're full.
- Use toilets to flush sanitary waste only (not kitty litter, diapers, or other trash).
- Make sure all faucets are completely turned off when not in use.
- Maintain your plumbing to eliminate leaks.
- Install aerators in the faucets in your kitchen and bathroom.
- Replace old dishwashers, toilets, and clothes washers with new high-efficiency models.

For more information on water conservation, please visit www.epa.gov/cwm/water-efficiency/index.htm

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Watch your drains

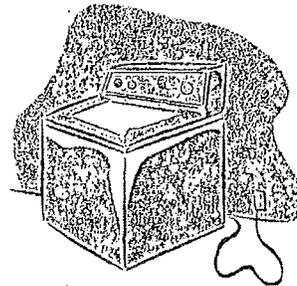
What goes down the drain can have a major impact on how well your septic system works.

Waste disposal

What shouldn't you flush down your toilet? Dental floss, feminine hygiene products, condoms, diapers, cotton swabs, cigarette butts, coffee grounds, cat litter, paper towels, and other kitchen and bathroom items that can clog and potentially damage septic system components if they become trapped. Flushing household chemicals, gasoline, oil, pesticides, antifreeze, and paint can stress or destroy the biological treatment taking place in the system or might contaminate surface waters and groundwater. If your septic tank pumper is concerned about quickly accumulating scum layers, reduce the flow of floatable materials like fats, oils, and grease into your tank or be prepared to pay for more frequent inspections and pumping.

Washing machines

By selecting the proper load size, you'll reduce water waste. Washing small loads of laundry on the large-load cycle wastes precious water and energy. If you can't select load size, run only full loads of laundry.



Doing all the household laundry in one day might seem like a time-saver, but it could be harmful to your septic system. Doing load after load does not allow your septic tank time to adequately treat wastes. You could be flooding your drainfield without allowing sufficient recovery time. Try to spread water usage throughout the week. A new Energy Star clothes washer uses 35 percent less energy and 50 percent less water than a standard model.

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Care for your drainfield

Your drainfield is an important part of your septic system. Here are a few things you should do to maintain it:

- Plant only grass over and near your septic system. Roots from nearby trees or shrubs might clog and damage the drainfield.
- Don't drive or park vehicles on any part of your septic system. Doing so can compact the soil in your drainfield or damage the pipes, tank, or other septic system components.
- Keep roof drains, basement sump pump drains, and other rainwater or surface water drainage systems away from the drainfield. Flooding the drainfield with excessive water slows down or stops treatment processes and can cause plumbing fixtures to back up.

What can make my system fail?

If the amount of wastewater entering the system is more than the system can handle, the wastewater backs up into the house or yard and creates a health hazard.

You can suspect a system failure not only when a foul odor is emitted but also when partially treated wastewater flows up to the ground surface. By the time you can smell or see a problem, however, the damage might already be done.

By limiting your water use, you can reduce the amount of wastewater your system must treat. When you have your system inspected and pumped as needed, you reduce the chance of system failure.

A system installed in unsuitable soils can also fail. Other failure risks include tanks that are inaccessible for maintenance, drainfields that are paved or parked on, and tree roots or defective components that interfere with the treatment process.

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Stop, look, and smell!

Failure symptoms

The most obvious septic system failures are easy to spot. Check for pooling water or muddy soil around your septic system or in your basement. Notice whether your toilet or sink backs up when you flush or do laundry. You might also notice strips of bright green grass over the drainfield. Septic systems also fail when partially treated wastewater comes into contact with groundwater. This type of failure is not easy to detect, but it can result in the pollution of wells, nearby streams, or other bodies of water. Check with a septic system professional and the local health department if you suspect such a failure.

Failure causes

Household toxics

Does someone in your house use the utility sink to clean out paint rollers or flush toxic cleaners? Oil-based paints, solvents, and large volumes of toxic cleaners should not enter your septic system. Even latex paint cleanup waste should be minimized. Squeeze all excess paint and stain from brushes and rollers on several layers of newspaper before rinsing. Leftover paints and wood stains should be taken to your local household hazardous waste collection center. Remember that your septic system contains a living collection of organisms that digest and treat waste.

Household cleaners

For the most part, your septic system's bacteria should recover quickly after small amounts of household cleaning products have entered the system. Of course, some cleaning products are less toxic to your system than others. Labels can help key you into the potential toxicity of various products. The word "Danger" or "Poison" on a label indicates that the product is highly hazardous. "Warning" tells you the product is moderately hazardous. "Caution" means the product is slightly hazardous. ("Nontoxic" and "Septic Safe"

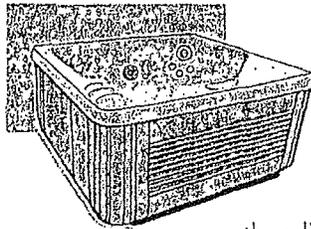


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are terms created by advertisers to sell products.) Regardless of the type of product, use it only in the amounts shown on the label instructions and minimize the amount discharged into your septic system.



Hot tubs

Hot tubs are a great way to relax.

Unfortunately, your septic system was not designed to handle large quantities of water from your hot tub. Emptying

hot tub water into your septic system stirs

the solids in the tank and pushes them out into the

drainfield, causing it to clog and fail. Draining your hot tub

into a septic system or over the drainfield can overload the system. Instead, drain cooled hot tub water onto turf or landscaped areas well away from the septic tank and drainfield, and in accordance with local regulations.

Use the same caution when draining your swimming pool.

Water Purification Systems

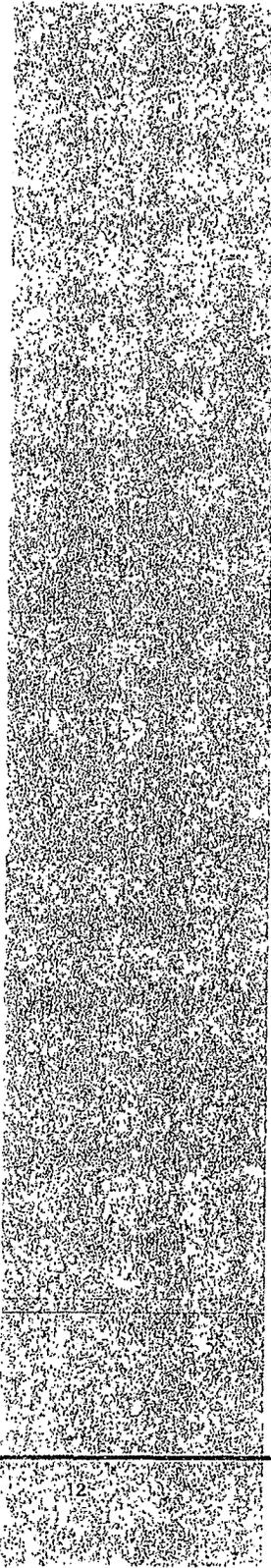
Some freshwater purification systems, including water softeners, unnecessarily pump water into the septic system. This can contribute hundreds of gallons of water to the septic tank, causing agitation of solids and excess flow to the drainfield. Check with your licensed plumbing professional about alternative routing for such freshwater treatment systems.

Garbage disposals

Eliminating the use of a garbage disposal can reduce the amount of grease and solids entering the septic tank and possibly clogging the drainfield. A garbage disposal grinds up kitchen scraps, suspends them in water, and sends the mixture to the septic tank. Once in the septic tank, some of the materials are broken down by bacterial action, but most of the grindings have to be pumped out of the tank. Using a garbage disposal frequently can significantly increase the accumulation of sludge and scum in your septic tank, resulting in the need for more frequent pumping.



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Improper design or installation

Some soils provide excellent wastewater treatment; others don't. For this reason, the design of the drainfield of a septic system is based on the results of soil analysis. Homeowners and system designers sometimes underestimate the significance of good soils or believe soils can handle any volume of wastewater applied to them. Many failures can be attributed to having an undersized drainfield or high seasonal groundwater table. Undersized septic tanks—another design failure—allow solids to clog the drainfield and result in system failure.

If a septic tank isn't watertight, water can leak into and out of the system. Usually, water from the environment leaking into the system causes hydraulic overloading, taxing the system beyond its capabilities and causing inadequate treatment and sometimes sewage to flow up to the ground surface. Water leaking out of the septic tank is a significant health hazard because the leaking wastewater has not yet been treated.

Even when systems are properly designed, failures due to poor installation practices can occur. If the drainfield is not properly leveled, wastewater can overload the system. Heavy equipment can damage the drainfield during installation which can lead to soil compaction and reduce the wastewater infiltration rate. And if surface drainage isn't diverted away from the field, it can flow into and saturate the drainfield.

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For more information

Local Health Department

EPA Onsite/Decentralized Management Homepage

www.epa.gov/owm/septic

EPA developed this Web site to provide tools for communities investigating and implementing onsite/decentralized management programs. The Web site contains fact sheets, program summaries, case studies, links to design and other manuals, and a list of state health department contacts that can put you in touch with your local health department.

National Small Flows Clearinghouse

www.nesc.wvu.edu

Funded by grants from EPA, the NSFC helps America's small communities and individuals solve their wastewater problems. Its activities include a Web site, online discussion groups, a toll-free assistance line (800-624-8301), informative publications, and a free quarterly newsletter and magazine.

Rural Community Assistance Program

www.rcap.org

RCAP is a resource for community leaders and others looking for technical assistance services and training related to rural drinking water supply and wastewater treatment needs, rural solid waste programs, housing, economic development, comprehensive community assessment and planning, and environmental regulations.

National Onsite Wastewater Recycling Association, Inc.

www.nowra.org

NOWRA is a national professional organization to advance and promote the onsite wastewater industry. The association promotes the need for regular service and educates the public on the need for properly designed and maintained septic systems.

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Septic Yellow Pages

www.septicyellowpages.com

The Septic Yellow Pages provides listings by state for professional septic pumpers, installers, inspectors, and tank manufacturers throughout the United States. This Web site is designed to answer simple septic system questions and put homeowners in contact with local septic system professionals.

National Association of Wastewater Transporters

www.nawt.org

NAWT offers a forum for the wastewater industry to exchange ideas and concerns. The NAWT Web site lists state associations and local inspectors and pumpers.



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Septic System Dos and Don'ts

(adapted from National Small Flows Clearinghouse)

Dos

- Check with the local regulatory agency or inspector/pumper if you have a garbage disposal unit to make sure that your septic system can handle this additional waste.
- Check with your local health department before using additives. Commercial septic tank additives do not eliminate the need for periodic pumping and can be harmful to the system.
- Use water efficiently to avoid overloading the septic system. Be sure to repair leaky faucets or toilets. Use high-efficiency fixtures.
- Use commercial bathroom cleaners and laundry detergents in moderation. Many people prefer to clean their toilets, sinks, showers, and tubs with a mild detergent or baking soda.
- Check with your local regulatory agency or inspector/pumper before allowing water softener backwash to enter your septic tank.
- Keep records of repairs, pumpings, inspections, permits issued, and other system maintenance activities.
- Learn the location of your septic system. Keep a sketch of it with your maintenance record for service visits.
- Have your septic system inspected and pumped as necessary by a licensed inspector/contractor.
- Plant only grass over and near your septic system. Roots from nearby trees or shrubs might clog and damage the drainfield.

Don'ts

- Your septic system is not a trash can. Don't put dental floss, feminine hygiene products, condoms, diapers, cotton swabs, cigarette butts, coffee grounds, cat litter, paper towels, latex paint, pesticides, or other hazardous chemicals into your system.
- Don't use caustic drain openers for a clogged drain. Instead, use boiling water or a drain snake to open clogs.
- Don't drive or park vehicles on any part of your septic system. Doing so can compact the soil in your drainfield or damage the pipes, tank, or other septic system components.

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United States
Environmental Protection
Agency

Office of Water
Washington, DC 20460

Official Business
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Agriculture

You are here: [EPA Home](#) [Agriculture](#) [Topics](#) Nutrient Management and Fertilizer

Nutrient Management and Fertilizer

You will need Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more about PDF, and for a link to the free Acrobat Reader.

Most fertilizers that are commonly used in agriculture contain the three basic plant nutrients: nitrogen, phosphorus, and potassium. Some fertilizers also contain certain "micronutrients," such as zinc and other metals, that are necessary for plant growth. Materials that are applied to the land primarily to enhance soil characteristics (rather than as plant food) are commonly referred to as soil amendments.

Fertilizers and soil amendments can be derived from virgin raw material, composts and other organic matter, and wastes, such as sewage sludge and certain industrial wastes. Overuse of fertilizers has resulted in contamination of surface water and groundwater.

- [Fertilizers Made From Domestic Septage and Sewage Sludge \(Biosolids\)](#)
- [Fertilizers Made from Wastes](#)
- [Manure as Fertilizer](#)
- [Related Fertilizer Links](#)

More information from EPA

[myRMPSuite of Retail Guidance Materials](#) [EXIT Disclaimer](#) - provides practical advice, insights, and guidelines for clearer understanding of the Risk Management Program and its implementation, particularly as applied to facilities in the retail ammonia fertilizer industry

[GreenScaping for Homeowners: The Easy Way to a Greener, Healthier Yard](#)

[An Urgent Call to Action: Report of the State-EPA Nutrient Innovations Task Group \(PDF\)](#) (170 pp, 5.6MB) - the State-EPA Nutrient Innovations Task Group presents a summary of scientific evidence and analysis that characterizes the scope and major sources of nutrient impacts nationally.

More information from universities [EXIT Disclaimer](#)

[A Farmer's Guide To Agriculture and Water Quality Issues - Nutrient Management](#) - an educational resource for agricultural producers and agricultural service professionals.

Fertilizers Made From Domestic Septage and Sewage Sludge (Biosolids)

Biosolids are the treated residuals from wastewater treatment that can be used beneficially. Wastewater residuals (formerly sewage sludge) would not be known as biosolids unless they have been treated so that they can be beneficially used.

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Years of research and practice have repeatedly demonstrated that biosolids recycling is safe and the food crops grown on land fertilized with biosolids are safe to eat. The long-term practice of recycling biosolids has been subjected to more than 30 years of intensive careful study. As a result of research and practice showing the safety of biosolids recycling, the U.S. Department of Agriculture, the Food and Drug Administration, and EPA issued a joint policy statement in 1981

that endorsed the use of biosolids on land for producing fruits and vegetables. Then, in 1984, EPA issued a policy statement in the Federal Register that encouraged and endorsed the recycling of biosolids. And again in 1991, EPA was a co-endorser of an Interagency Policy placed in the Federal Register regarding the benefits of using biosolids.

The Federal rule that governs the use of biosolids today is based on comprehensive science-based risk assessments and many rounds of extensive review. Additional confirmation of the validity of the Federal biosolids rule and the Federal policy that promotes the beneficial recycling of biosolids is the careful 3-year review by the prestigious National Research Council (NRC) of the National Academy of Sciences which took place after the promulgation of the rule. The NRC concluded in their 1996 report that the use of biosolids in accordance with existing Federal guidelines and regulations presents negligible risk to the consumer, to crop production, and to the environment.

EPA offers guidance and technical assistance for the beneficial recycling of biosolids as soil amendments and fertilizer. The use of these valuable materials can enhance water quality, pollution prevention, and sustainable agriculture.

Sewage sludge that is used in agriculture is regulated under the Clean Water Act, and is currently subject to concentration limits for the metals arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc.

Related laws and policies

[Biosolids](#)

Related environmental requirements

[Clean Water Act Summary](#)

[40 CFR Part 503](#)

[Plain English Guide to the EPA Part 503 Biosolids Rule](#)

More information from EPA

[Sewage Sludge \(Biosolids\)](#)

[Biosolids -- Frequently Asked Questions](#)

Fertilizers Made From Wastes

Industrial waste materials are often used in fertilizers as a source of zinc and other micronutrient metals. Current information indicates that only a relatively small percentage of fertilizers is manufactured using industrial wastes as ingredients, and that hazardous wastes are used as ingredients in only a small portion of waste-derived fertilizers. Some fertilizers and soil amendments that are not derived from waste materials can nevertheless contain measurable levels of heavy metals such as lead, arsenic, and cadmium.

EPA's longstanding policy encourages the beneficial reuse and recycling of industrial wastes, including hazardous wastes, when such wastes can be used as safe and effective substitutes for virgin raw materials. Although EPA is examining whether some fertilizers or soil conditioners may contain potentially harmful levels of contaminants, the Agency believes that some wastes can be used beneficially in fertilizers when properly manufactured and applied.

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Concerns have been raised regarding the use of certain wastes in the manufacture of agricultural fertilizers and soil amendments, and the potential for ecological or human health risks, as well as crop damage, when such fertilizers are applied to farmlands. In conjunction with State governments, the U.S. Environmental Protection Agency (EPA) has launched a major effort to assess whether or not contaminants in fertilizers may be causing harmful effects, and whether

additional government action to safeguard public health and the environment may be warranted.

For fertilizers that contain hazardous waste, EPA standards specify limits on the levels of heavy metals and other toxic compounds that may be contained in the fertilizer products. These concentration limits were based on the "best demonstrated available technology" for reducing the toxicity and mobility of the hazardous constituents. However, fertilizer made from one specific type of hazardous waste air pollution control dust generated during steel manufacturing is not subject to those concentration limits. This exemption was based on a 1988 finding by EPA that the composition of this particular waste is comparable to the materials that would otherwise be used to make this type of fertilizer, and that its typical use was not harmful. All other fertilizers that contain hazardous wastes are, however, subject to the contaminant concentration limits established by EPA.

In some States, the regulations on hazardous waste use in fertilizers may be more stringent than the Federal standards, since States can adopt regulations that are more stringent and/or broader in scope than the Federal regulations.

For food chain crops, farming can occur on land where hazardous constituents are applied as long as the agricultural producer receives a permit from the EPA Regional Administrator. Agricultural producers must demonstrate that there is no substantial risk to human health caused by the growth of such crops.

Unless prohibited by other State or local laws, agricultural producers can dispose of solid, non-hazardous agricultural wastes (including manure and crop residues returned to the soil as fertilizers or soil conditioners, and solid or dissolved materials in irrigation return flows) on their own property.

Related topics

[Waste](#)

Related environmental requirements

[Resource Conservation and Recovery Act Summary](#)

[40 CFR Part 257](#)

[40 CFR Part 264](#)

[40 CFR Part 266](#)

[40 CFR Part 268](#)

More information from EPA

[Waste-Derived Fertilizers](#)

[Waste-Derived Fertilizers Fact Sheet \(PDF\)](#) (3 pp, 15K)

[Aquatic Life Criteria Document for Cadmium Fact Sheet](#)

[Background Report on Fertilizer Use, Contaminants, and Regulations \(PDF\)](#) (395 pp, 2.9MB)

[EPA Pushes Procurement of Materials from Recovered Waste](#)

Telephone assistance from EPA

RCRA Hotline 800-424-9346 or TDD 800-553-7672

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Manure As Fertilizer

Agricultural producers can return manure and crop residues to the soil as fertilizers or soil conditions on their own property unless prohibited by other State or local laws.

Related topics

[Waste](#)

[Ag Animals](#)

Related environmental requirements

[Resource Conservation and Recovery Act Summary](#)

[Animal Feeding Operations](#)

More information from other organizations

[Comprehensive Nutrient Management Planning \(CNMP\) Resource from NASDA](#)

[EXIT Disclaimer](#)

Related Fertilizer Links

[European Fertilizer Manufacturers Association](#) [EXIT Disclaimer](#)

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STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE
STATE FARM CONSERVATION PLAN
Pursuant to AS 38 and 11 AAC

ADL# Lot 5 D & I Farmstead Subd.

NAME Robert Riddle

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PHONE Home: (907) 488-6844 Other: _____

Local Soil and Water Conservation District Fairbanks

This State Farm Conservation Plan (Plan), authorized under AS 38 and required pursuant to 11 AAC 67.177 and conditions within the Contract, summarizes purchaser's/owner's commitment to proper agricultural land use and conservation practices, which are represented graphically on the attached parcel map and supplementary written narrative. When approved, this plan and its covenants remain with the property title as approved currently or in a subsequent amendment.

Covenants:

- 1) Purchaser of this parcel classified by the State of Alaska for agricultural purposes agrees to inform himself or herself of the governing statute (AS 38.05.321), regulations (11 AAC 67.177 and .180), and associated conditions of sale (see brochure and contract), and to abide by all relevant covenants and restrictions of those statutes, regulations and conditions of sale.
- 2) In compliance with AS 38.05.321, 11 AAC 67.177 and the conditions of sale, purchaser agrees, to the extent development is planned, to develop and maintain this parcel in accordance with the Plan, with primary emphasis upon permanent soil conservation measures, that, when possible, will be in compliance with the appropriate practices and procedures identified in the current USDA/NRCS manual.

When complete, this Plan should address such permanent conservation objectives as: a) protection of wetland, streams and related water resources of the land, and b) protection of highly erodible land, farmsteads, animal rest areas, etc. with conservation practices such as effective wind barriers (natural or planted wind breaks), permanent cover crops, and proper location of **000124**

ADL SFCP
Rev 2/7/2003

must be shown on the scale plan map. Of equal importance are the purchaser's/owner's land-development decisions. The proper matching of cropping intentions and methods with suitable soil types and topographical features is essential.

The parcel map should identify: a) map scale, b) non-cropland areas such as wetland, steep slopes, etc. c) clearing configuration (proposed or existing) and acreage; d) real property improvement locations and types (houses, barns, fences, etc.); e) access roads, legal easements and existing physical features such as water bodies.

Map scale <u>1 in. = 400 ft.</u>	Map # of Improvement	Improvement Type (house, barn, etc.)	Size
Total parcel acres <u>120</u>			
Total cropland acres <u>~100</u>	1.	_____	_____
Cleared acres <u>~100</u>	2.	_____	_____
Cropped acres _____	3.	_____	_____
Pasture acres _____	4.	_____	_____

Robert Riddle
Purchaser/Owner

March 09, 2011
Date Agreed To

<i>Soil and Water Conservation District Comments and/or Recommendations:</i> <i>(Attach Separate Sheet if Necessary)</i>	
<u>See Attached</u>	
Reviewed by the <u>Fairbanks</u> Soil and Water Conservation District on <u>4/13/11</u>	
<u>[Signature]</u> Chair	<u>4/13/11</u> Date Reviewed

Director, Division of Agriculture

Date Approved

ADL SFCP
Rev 2/7/2003

000125



CONSERVATION DISTRICT

The Fairbanks SWCD approves of the clearing/development activities stated on the attached Alaska Farm Conservation Plan (ADL# Lot S D&I Farmstead Sub.) to maintain the lands agricultural purpose. All activities must be in accordance with local, state, and federal laws. The Fairbanks SWCD strongly urges the landowner to complete and maintain a Conservation Plan with Fairbanks SWCD or NRCS to identify and address any natural resource concerns and implement best management practices.

Board of Supervisors Signatures

Name *D. Lee* Date 4/12/11 Notes: _____

Name *Shirley Schopfberg* Date 4/12/11 Notes: _____

Name *Dodd Boyce* Date 4/13/11 Notes: Adequate buffer should be provided from slough.

Name *James W. ...* Date 4/13/11 Notes: _____

Name _____ Date _____ Notes: _____

590 University Avenue, Suite 2 • Fairbanks, Alaska 99709
Phone: (907) 479-1213 • Fax: (907) 479-6998 • E-mail: fswcd@gei.net

000127

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE
STATE FARM CONSERVATION PLAN
Pursuant to AS 38 and 11 AAC

ADL# Lot 4 Coben Farmstead Subd.

NAME Robert Riddle

ADDRESS 1948 Badger Road North Pole, AK 99705

PHONE Home: (907)488-6844 Other: _____

Local Soil and Water Conservation District Fairbanks

This State Farm Conservation Plan (Plan), authorized under AS 38 and required pursuant to 11 AAC 67.177 and conditions within the Contract, summarizes purchaser's/owner's commitment to proper agricultural land use and conservation practices, which are represented graphically on the attached parcel map and supplementary written narrative. When approved, this plan and its covenants remain with the property title as approved currently or in a subsequent amendment.

Covenants:

- 1) Purchaser of this parcel classified by the State of Alaska for agricultural purposes agrees to inform himself or herself of the governing statute (AS 38.05.321), regulations (11 AAC 67.177 and .180), and associated conditions of sale (see brochure and contract), and to abide by all relevant covenants and restrictions of those statutes, regulations and conditions of sale.
- 2) In compliance with AS 38.05.321, 11 AAC 67.177 and the conditions of sale, purchaser agrees, to the extent development is planned, to develop and maintain this parcel in accordance with the Plan, with primary emphasis upon permanent soil conservation measures, that, when possible, will be in compliance with the appropriate practices and procedures identified in the current USDA/NRCS manual.

When complete, this Plan should address such permanent conservation objectives as: a) protection of wetland, streams and related water resources of the land, and b) protection of highly erodible land, farmsteads, animal rest areas, etc. with conservation practices such as effective wind barriers (natural or planted wind breaks), permanent cover crops, and proper location of improvements.

ADL SFCP
Rev 2/7/2003

Page 1 of 4



002961



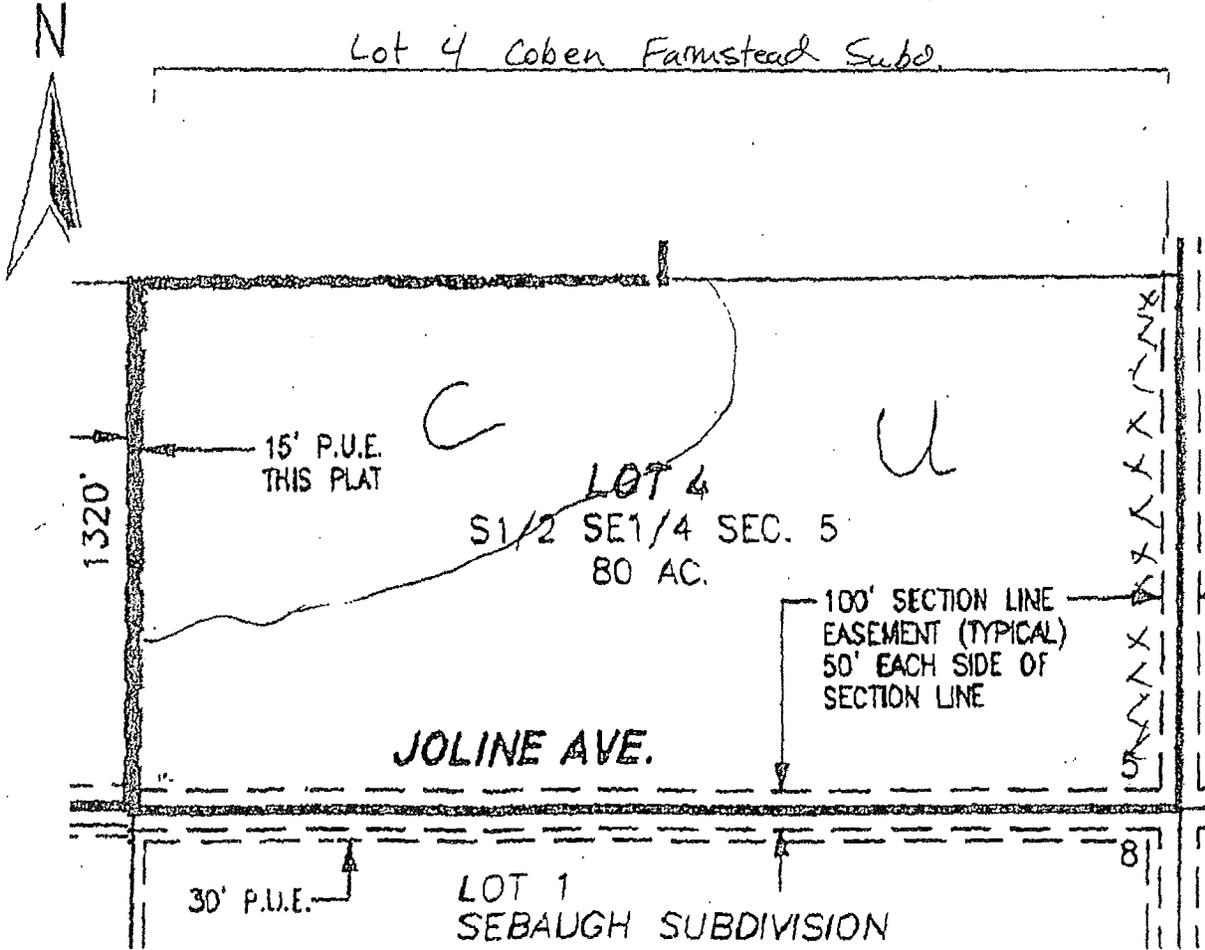
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE

FARM CONSERVATION PLAN

Pursuant to A.S. 38.05.020, A.S. 38.05.069, A.S. 38.05.321, and 11AAC 67 160-192

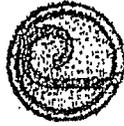
Owner Robert Riddle Conservation District No ESWCD Date Mar 09, 2011
Operator Robert Riddle Scale _____ Acres 80 Approx. Approx.
Fairbanks North Star Borough Alaska Phone No. (907)488-6844
County State

Location (Community, watershed, road & distance, etc.)



000130

ADL SFCP
Rev 2/7/2003



FAIRBANKS SOUTHWESTERN
CONSERVATION DISTRICT

The Fairbanks SWCD approves of the clearing/development activities stated on the attached Alaska Farm Conservation Plan (ADL# lot 4 Coben Farmstead Subd.) to maintain the lands agricultural purpose. All activities must be in accordance with local, state, and federal laws. The Fairbanks SWCD strongly urges the landowner to complete and maintain a Conservation Plan with Fairbanks SWCD or NRCS to identify and address any natural resource concerns and implement best management practices.

Board of Supervisors Signatures

[Signature] 4/12/11
Name _____ Date _____ Notes: _____

[Signature] 4/12/11
Name _____ Date _____ Notes: _____

[Signature] 4/13/2011
Name _____ Date _____ Notes: _____

[Signature]
Name _____ Date _____ Notes: _____

Name _____ Date _____ Notes: _____

590 University Avenue, Suite 2 • Fairbanks, Alaska 99709
Phone: (907) 479-1213 • Fax: (907) 479-6998 • E-mail: fswcd@uci.net

000131

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE
STATE FARM CONSERVATION PLAN
Pursuant to AS 38 and 11 AAC

ADL# Lot 3 Coben Farmstead Subd.

NAME Robert Riddle

ADDRESS 1948 Badger Road North Pole, AK 99705

PHONE Home: (907) 488-6844

Other: _____

Local Soil and Water Conservation District Fairbanks

This State Farm Conservation Plan (Plan), authorized under AS 38 and required pursuant to 11 AAC 67.177 and conditions within the Contract, summarizes purchaser's/owner's commitment to proper agricultural land use and conservation practices, which are represented graphically on the attached parcel map and supplementary written narrative. When approved, this plan and its covenants remain with the property title as approved currently or in a subsequent amendment.

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When complete, this Plan should address such permanent conservation objectives as: a) protection of wetland, streams and related water resources of the land, and b) protection of highly erodible land, farmsteads, animal rest areas, etc. with conservation practices such as effective wind barriers (natural or planted wind breaks), permanent cover crops, and proper location of **000132**

ADL SFCP
Rev 2/7/2003



Page 1 of 4

002965

must be shown on the scale plan map. Of equal importance are the purchaser's/owner's land-development decisions. The proper matching of cropping intentions and methods with suitable soil types and topographical features is essential.

The parcel map should identify: a) map scale, b) non-cropland areas such as wetland, steep slopes, etc. c) clearing configuration (proposed or existing) and acreage; d) real property improvement locations and types (houses, barns, fences, etc.); e) access roads, legal easements and existing physical features such as water bodies.

Map scale	<u>1 - 250</u>	Map # of	Improvement Type	Size
Total parcel acres	<u>40</u>	Improvement	(house, barn, etc.)	
Total cropland acres	<u>40</u>	1.	_____	_____
Cleared acres	_____	2.	_____	_____
Cropped acres	<u>30</u>	3.	_____	_____
Pasture acres	_____	4.	_____	_____

<u>Robert Riddle</u>	<u>March 09, 2011</u>
Purchaser/Owner	Date Agreed To

Soil and Water Conservation District Comments and/or Recommendations:
(Attach Separate Sheet if Necessary)

See Attached

Reviewed by the Fairbanks Soil and Water Conservation District on 4/13/11

[Signature] 4/13/11
 Chair Date Reviewed

Director, Division of Agriculture	Date Approved
-----------------------------------	---------------

000133

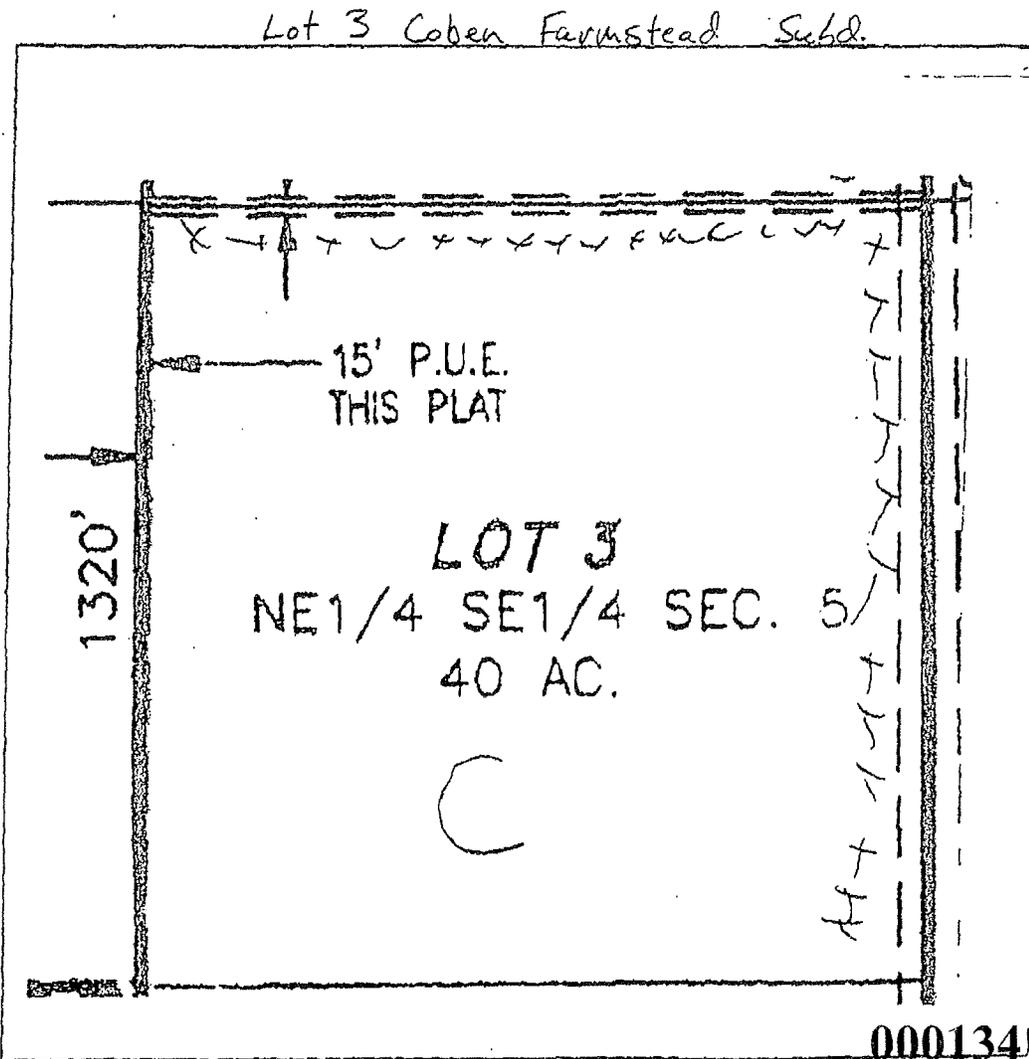
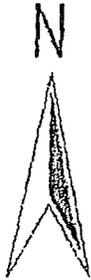


STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE

FARM CONSERVATION PLAN
Pursuant to A.S. 38.05.020, A.S. 38.05.069, A.S. 38.05.321, and 11AAC 67 160-192

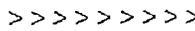
Owner Robert Riddle Conservation District No. ESWCD Date March 9, 2011
Operator Robert Riddle Scale Acres 40
Fairbanks North Star Borough Alaska Phone No. (907)488-6844
County State

Location (Community, watershed, road & distance, etc.)



ADL SFCP
Rev 2/7/2005

FARM CONSERVATION PLAN MAP LEGEND

North arrow (needed for orientation)	
Parcel Boundary	
Field or land use boundary	
Existing access (roads or trails)	
Proposed access (roads or trails)	
Irrigation or drainage ditch	
Streams	
Building with map identification number	
Farmstead	
Field to be cleared and cultivated	C
Pasture	P
Undeveloped Area (woodlands)	U
Windbreak, leave strip, etc. (width?)	*****
Well	
Water reservoir including ponds	R
Fence	XXXXXXXXXXXX
Others used	

000135



**FAIRBANKS SOIL & WATER
CONSERVATION DISTRICT**

The Fairbanks SWCD approves of the clearing/development activities stated on the attached Alaska Farm Conservation Plan (ADL# Lot 3 Coben Farmstead Subd.) to maintain the lands agricultural purpose. All activities must be in accordance with local, state, and federal laws. The Fairbanks SWCD strongly urges the landowner to complete and maintain a Conservation Plan with Fairbanks SWCD or NRCS to identify and address any natural resource concerns and implement best management practices.

Board of Supervisors Signatures

Name	<i>[Signature]</i>	Date	4/12/11	Notes:
Name	<i>Chandof Schenberger</i>	Date	4/12/11	Notes:
Name	<i>Dodd Boye</i>	Date	4/13/2011	Notes:
Name	<i>[Signature]</i>	Date	4/13/2011	Notes:
Name		Date		Notes:

590 University Avenue, Suite 2 • Fairbanks, Alaska 99709
Phone: (907) 479-1213 • Fax: (907) 479-6998 • E-mail: fswcd@agci.net

000136

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE
STATE FARM CONSERVATION PLAN
Pursuant to AS 38 and 11 AAC

ADL# Lot 4 D&I Farmstead Sub.

NAME Robert Riddle

ADDRESS 1948 Badger Road North Pole, AK 99705

PHONE Home: (907)488-6844 Other: _____

Local Soil and Water Conservation District Fairbanks ... _____

This State Farm Conservation Plan (Plan), authorized under AS 38 and required pursuant to 11 AAC 67.177 and conditions within the Contract, summarizes purchaser's/owner's commitment to proper agricultural land use and conservation practices, which are represented graphically on the attached parcel map and supplementary written narrative. When approved, this plan and its covenants remain with the property title as approved currently or in a subsequent amendment.

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ADL SFCP
Rev 2/7/2003

must be shown on the scale plan map. Of equal importance are the purchaser's/owner's land-development decisions. The proper matching of cropping intentions and methods with suitable soil types and topographical features is essential.

The parcel map should identify: a) map scale, b) non-cropland areas such as wetland, steep slopes, etc. c) clearing configuration (proposed or existing) and acreage; d) real property improvement locations and types (houses, barns, fences, etc.); e) access roads, legal easements and existing physical features such as water bodies.

Map scale	<u>1:400</u>	Map # of	Improvement Type	Size
Total parcel acres	<u>120</u>	Improvement	(house, barn, etc.)	
Total cropland acres	<u> </u>	1.	<u>BARN</u>	<u>30 x 100</u>
Cleared acres	<u>~80</u>	2.	<u> </u>	<u> </u>
Cropped acres	<u> </u>	3.	<u> </u>	<u> </u>
Pasture acres	<u> </u>	4.	<u> </u>	<u> </u>

Robert Riddle
Purchaser/Owner

Date Agreed To

Soil and Water Conservation District Comments and/or Recommendations:
(Attach Separate Sheet if Necessary)

See Attached

Reviewed by the Fairbanks Soil and Water Conservation District on 4/13/11
[Signature] Chair Date Reviewed 4/13/11

Director, Division of Agriculture

Date Approved

000138

ADL SFCP
Rev 2/7/2003



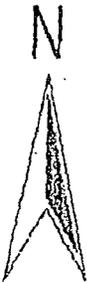
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE

FARM CONSERVATION PLAN

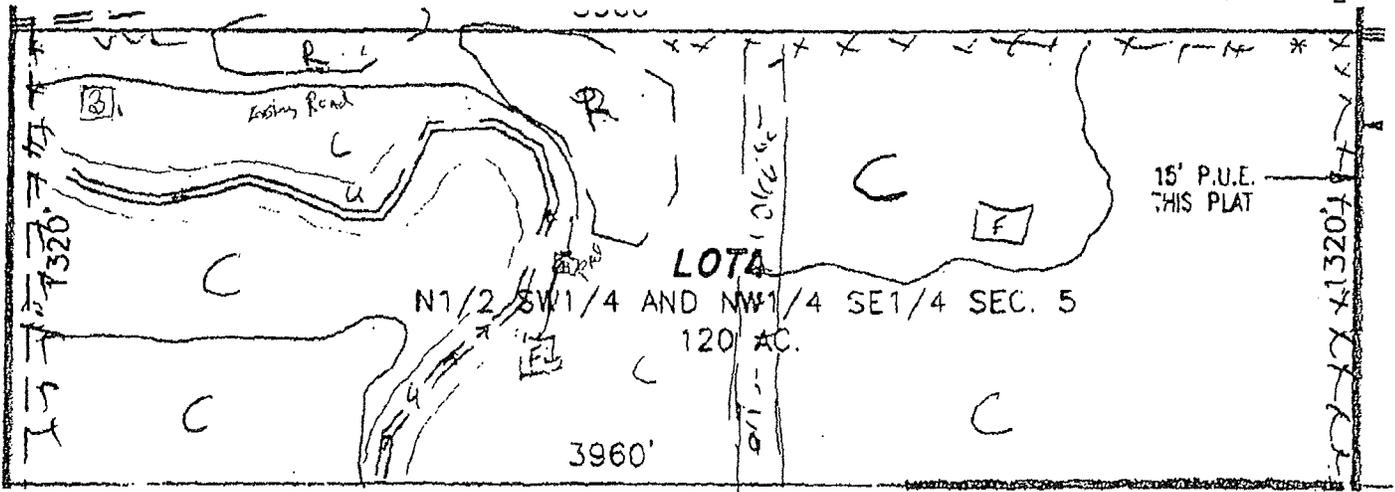
Pursuant to A.S. 38.05.020, A.S. 38.05.069, A.S. 38.05.321, and 11AAC 67 160-192

Conservation District No FSWCD Date Mar 9, 2011
 Operator Robert Riddle Scale _____ Acres 120
 Approx. _____ Approx. _____
Fairbanks North Star Borough Alaska Phone No. (907)488-6844
 County State

Location (Community, watershed, road & distances, etc.)



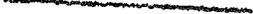
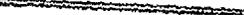
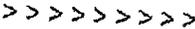
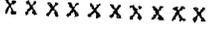
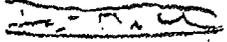
Lot 4 D & I Farmstead Sub.



000139

ADL SFCP
Rev 2/7/2003

FARM CONSERVATION PLAN MAP LEGEND

North arrow (needed for orientation)	
Parcel Boundary	
Field or land use boundary	
Existing access (roads or trails)	
Proposed access (roads or trails)	
Irrigation or drainage ditch	
Streams	
Building with map identification number	
Farmstead	
Field to be cleared and cultivated	C
Pasture	P
Undeveloped Area (woodlands)	U
Windbreak, leave strip, etc. (width?)	
Well	
Water reservoir including ponds	R
Fence	
Others used <i>for strip grass</i>	

000140



CONSERVATION DISTRICT

The Fairbanks SWCD approves of the clearing/development activities stated on the attached Alaska Farm Conservation Plan (ADL# Lot 4 D&I Farmstead Sub) to maintain the lands agricultural purpose. All activities must be in accordance with local, state, and federal laws. The Fairbanks SWCD strongly urges the landowner to complete and maintain a Conservation Plan with Fairbanks SWCD or NRCS to identify and address any natural resource concerns and implement best management practices.

Board of Supervisors Signatures

Name D. [Signature] Date 4/12/11 Notes:

Name Shawna [Signature] Date 4/12/11 Notes:

Name Jodd Boyce Date 4/13/11 Notes: Adequate buffer should be provided along slough

Name [Signature] Date 4/13/11 Notes:

Name _____ Date _____ Notes: _____

590 University Avenue, Suite 2 • Fairbanks, Alaska 99709
Phone: (907) 479-1213 • Fax: (907) 479-6998 • E-mail: fswod@gei.net



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE
STATE FARM CONSERVATION PLAN
Pursuant to AS 38 and 11 AAC

ADL# Lot 1 Sebaugh Farm

NAME Robert Riddle

ADDRESS 1948 Badger Road North Pole, AK 99705

PHONE Home: (907)488-6844 Other: _____

Local Soil and Water Conservation District Fairbanks

This State Farm Conservation Plan (Plan), authorized under AS 38 and required pursuant to 11 AAC 67.177 and conditions within the Contract, summarizes purchaser's/owner's commitment to proper agricultural land use and conservation practices, which are represented graphically on the attached parcel map and supplementary written narrative. When approved, this plan and its covenants remain with the property title as approved currently or in a subsequent amendment.

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When complete, this Plan should address such permanent conservation objectives as: a) protection of wetland, streams and related water resources of the land, and b) protection of highly erodible land, farmsteads, animal rest areas, etc. with conservation practices such as effective wind barriers (natural or planted wind breaks), permanent cover crops, and proper location of **000142**

ADL SFCP
Rev 2/7/2003

Page 1 of 4



002975

must be shown on the scale plan map. Of equal importance are the purchaser's/owner's land-development decisions. The proper matching of cropping intentions and methods with suitable soil types and topographical features is essential.

The parcel map should identify: a) map scale. b) non-cropland areas such as wetland, steep slopes, etc. c) clearing configuration (proposed or existing) and acreage; d) real property improvement locations and types (houses, barns, fences, etc.); e) access roads, legal easements and existing physical features such as water bodies.

Map scale	<u>1" = 100'</u>	Map # of Improvement	Improvement Type (house, barn, etc.)	Size
Total parcel acres	<u>40</u>			
Total cropland acres	<u> </u>	1.	<u>Road</u>	<u>~ 400 ft</u>
Cleared acres	<u>~ 35</u>	2.	<u>Paid</u>	<u> </u>
Cropped acres	<u> </u>	3.	<u>Farmstead</u>	<u> </u>
Pasture acres	<u> </u>	4.	<u> </u>	<u> </u>

Robert Riddle
Purchaser/Owner Date Agreed To

Soil and Water Conservation District Comments and/or Recommendations:
(Attach Separate Sheet if Necessary)

See Attached

Reviewed by the Fairbanks Soil and Water Conservation District on 4/13/11

[Signature] 4/13/11
Chair Date Reviewed

Director, Division of Agriculture Date Approved

000143



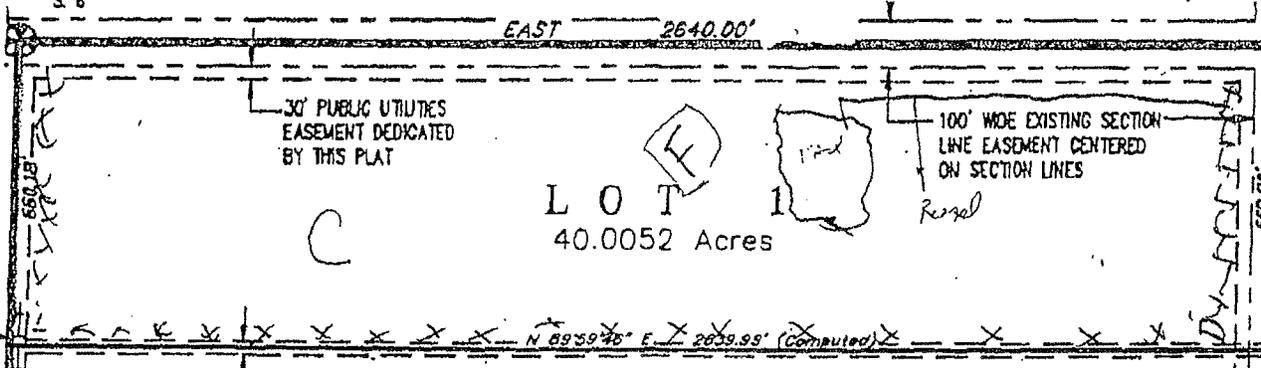
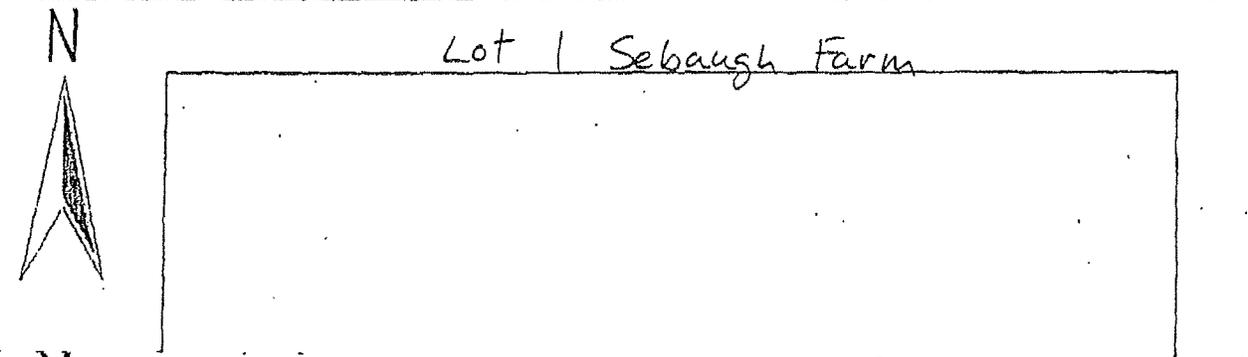
STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF AGRICULTURE

FARM CONSERVATION PLAN

Pursuant to A.S. 38.05.020, A.S. 38.05.069, A.S. 38.05.321, and 11AAC 67 160-192

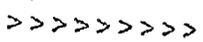
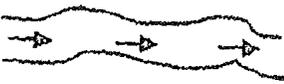
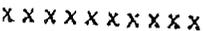
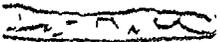
Owner Robert Riddle Conservation District No FSWCD Date Mar. 9, 2011
Operator Robert Riddle Scale _____ Acres 40
Fairbanks North Star Borough Alaska Phone No. (907)488-6844
County State

Location (Community, watershed, road & distance, etc.)



000144

FARM CONSERVATION PLAN MAP LEGEND

North arrow (needed for orientation)	
Parcel Boundary	
Field or land use boundary	
Existing access (roads or trails)	
Proposed access (roads or trails)	
Irrigation or drainage ditch	
Streams	
Building with map identification number	
Farmstead	
Field to be cleared and cultivated	C
Pasture	P
Undeveloped Area (woodlands)	U
Windbreak, leave strip, etc. (width?)	
Well	
Water reservoir including ponds	R
Fence	
Others used <i>for strip signs</i>	

000145



**FAIRBANKS SOUTH SIDE
CONSERVATION DISTRICT**

The Fairbanks SWCD approves of the clearing/development activities stated on the attached Alaska Farm Conservation Plan (ADL# Lot 1 Sebaugh Farm) to maintain the lands agricultural purpose. All activities must be in accordance with local, state, and federal laws. The Fairbanks SWCD strongly urges the landowner to complete and maintain a Conservation Plan with Fairbanks SWCD or NRCS to identify and address any natural resource concerns and implement best management practices.

Board of Supervisors Signatures

Name	<i>Don [Signature]</i>	Date	<i>4/12/11</i>	Notes:
Name	<i>Phan [Signature]</i>	Date	<i>4/12/11</i>	Notes:
Name	<i>Jodd Boyce</i>	Date	<i>4/13/11</i>	Notes:
Name	<i>[Signature]</i>	Date	<i>4/13/11</i>	Notes:
Name		Date		Notes:

590 University Avenue, Suite 2 • Fairbanks, Alaska 99709
Phone: (907) 479-1213 • Fax: (907) 479-6998 • E-mail: fswcd@gsi.net

000146

Filed for Record at Request of:
Yukon Title Company, Inc.

AETER RECORDING MAIL TO:

Name Robert C. Riddle
Address 1948 Badger Road
City, State Zip North Pole, AK 99705
Escrow Number: Y44121E

Statutory Warranty Deed

~~THE GRANTOR~~ ~~Party D. Sebaugh Revocable Living Trust Agreement dated May 25, 1999,~~
as to an undivided 1/2 interest and ~~The Margaret A. Sebaugh Revocable Living~~
Trust Agreement dated May 25, 1999 as to an undivided 1/2 interest.
Address: 3221 Chaumont Road, Park City, KY 42160
for and in consideration of
TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION
in hand paid, conveys and warrants to
Robert C. Riddle

000147

002980

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff,)
 v.)
)
 ROBERT RIDDLE, et al,)
)
 Defendant.)

Case No. 4FA-11-03117CI

ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

AND

**ORDER DENYING DEFENDANT RIDDLE'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

This case, like every nuisance case, is about the conflicting uses of land. While some facts are still contested, the disposition of this case depends on the construction of Alaska's Right-to-Farm statute.

In 1986 the Alaska Legislature enacted Alaska's Right-to-Farm Act, AS 09.45.235. That act provides that an agricultural operation or facility can not be a private nuisance if it was not a nuisance at the time it began agricultural operations. The statute defines the beginning of an operation as the date any type of agricultural operation began on the site, regardless of subsequent expansion of the facility or the adoption of new technologies.¹ The right to farm does not apply to improper, illegal or negligent operations.²

¹ AS 09.45.235(a).

² AS 09.45.235(b).

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The area of Eielson Farm Road near Salcha, Alaska, has been the subject of homestead operations. Its very name indicates the farming character of the locale. The land now owned by the defendant, Robert Riddle, has been documented to having been farmed as early as 1985, and possibly earlier. Riddle purchased the farm property in 2005. He has 100 acres planted in oats, and has cows and horses on the farm. Some of the land is cultivated by a neighboring farmer for a share of the crop. He is bringing 20 hogs to the farm in 2012. The farm soil, typical of Interior Alaska, requires fertilizer to be productive. Because of the thin soil, it will require many years of additions to the soil to develop a rich soil base.

Since 1987 Riddle has also been the owner of Fairbanks Pumping and Thawing. As part of that business, Riddle is called upon to pump septic tanks in the Interior part of Alaska. A home septic system, as opposed to a sewer system, makes use of a partitioned tank and microbes to deal with waste from a home. The waste flows into the tank, where solids sink and are consumed by the microbes, while liquid continues to flow out of the tank and is returned to the soil through a leach field. When a septic tank is pumped the septage may be years old, processed by the microbes, or it may include recently-added toilet material which has not been significantly treated by the microbes. It is common for septage pumpers, such as Riddle, to then dispose of the septage by paying a fee to Golden Heart Utilities. GHU then processes the collected septage into a rich fertilizer, which it sells to the public. GHU charges a hauling business \$111.74 per 1000 gallons (\$.11 per gallon). In 2009 a competitor of Riddle in the septage-pumping business, Big Foot Pumping, dumped 4,000,000 gallons of pumpings with GHU, at a cost of approximately \$448,000. Accordingly, a

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significant part of the over-head of the septic system pumping business is the disposal of the pumpings.

Besides soil under cultivation needing fertilizer, a farmer with cows, horses and hogs has the problem of dealing with their excretions. In a happy coincidence, those excretions become a manure which, when turned into the soil, satisfies some of the soil's needs for fertilizer. Testimony was received from an impressive array of expert witnesses, including the statewide president of the Alaska Farm Bureau, the local Interior Farm Bureau president, and a retired manager of the University of Alaska at Fairbanks Experimental Farm—a professor with a Ph.D. in soil chemistry. They all affirmed that an accepted farming practice is to apply human waste as well as other animal waste to the soil. Bryce Wrigley, the statewide Farm Bureau president, testified that in Delta Junction he pumps home septic systems and adds human septage to animal waste. He collects the waste in ponds, where the fertilizer is stored before adding to the fields. Bernie Karl, the Fairbanks area Farm Bureau President, testified that at his Chena Hot Springs Resort, where he has 200,000 guests per season, he pumps the septage generated by those guests into ponds, thereby disposing of the waste products of thousands of guests, and at the same time enriching the grain production for feed for its animals. Other Delta Junction farmers collect septage from home septic systems and add the septage to other animal excretion to fertilize grain production fields.

In February 2007 the plaintiff, Eric Lanser, purchased a tract of land off of Eielsen Farm Road adjoining Riddle's farm. He was aware that there were fallow fields there. **000150**

and operating farms down the road. He began developing the land, changing the zoning from what previously would have allowed one acre home lots into a zone requiring a minimum lot of just under 4-acre lots. This zoning would allow for a neighborhood with horse corrals, chickens, rabbits, a few farm animals, extensive gardens, and other light farming operations on each site. Besides selling home lots, he also has a construction business which contracts to build homes in his subdivision. He is not hostile to the farming industry nor does he seek to change the farming nature of the Eielson Farm Road area. Lanser chose to develop at that location not only because of the quality of the soil and trees, but also because of the rural character of the land.

Also in 2007, in a move which would benefit both his farm as well as his septic pumping business, Riddle made application to apply septage bio-solids to his farm on Eielson Farm Road. At the time of his application he represented that there would not be noxious odors. Public meetings were held in which Lanser participated, who was left with the impression that Riddle's permit could be revoked by the granting authority if odor became a problem. Lanser continued his plans to develop the Arctic Fox subdivision.

For a couple of years, while five septage-holding ponds were being constructed on the Riddle farm, there were no offensive from the Riddle property. In 2010 Riddle began to place his septage business pumpings in his holding ponds. Big Foot Pumping ceased using GHU as a dumping site for its pumpings, and its trucks were regularly seen en route to Riddle's farm instead. Accordingly, besides using the ponds for holding his own business pumpings, Riddle collects septage from other pumpers.

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In the spring of 2010, while Lanser was working on the roof on one of the houses in his development, he first smelled the Riddle's bio-solids operation. Hoping the odor to be temporary, Lanser waited until the following day to call Riddle. Riddle gave an explanation for the odors, but did not offer to mitigate them.

Lanser then sought to have the Alaska Department of Environmental Conservation (DEC) enforce the solid waste permit. On ten occasions owners in the subdivision discerned odors and notified DEC. DEC inspectors visited the property, but could discern no odors. On one occasion Riddle tried to stir up the septage in his settling ponds to create an odor, and no odor was perceived. However, on an eleventh complaint, an offensive odor was sensed by the DEC inspector. If the court views the evidence in a light favorable to Lanser, there have been periods of severe odors. Indeed, Wrigley, the statewide farm bureau president, testified that farms are a smelly business.

There is disagreement among witnesses as to exactly how frequently the odors occur—but many estimated 2-3 times a week in the warmer months. There is also some disagreement as to the intensity, which is no doubt a result of differing sensitivities. However, if the court takes the evidence in a light favorable to Lanser, the odor occurs on a regular basis in the summer and is strong enough to make any extended outdoor activity very unpleasant during those times.

Lanser now seeks a preliminary injunction. Riddle seeks dismissal of the suit for failure to state a claim upon which relief may be granted. Lanser argues that the odors are a private and public nuisance, and violate the DEC permit. Riddle argues that his operation is allowed under the Right-to-Farm Act, which prevents the finding of nuisance, and seeks dismissal.

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PRELIMINARY INJUNCTION

In order to decide whether a preliminary injunction should be granted the court must first determine which of two legal standards should apply. If a plaintiff faces irreparable harm and the opposing party is adequately protected, then the plaintiff need only raise non-frivolous claims to be entitled to an injunction.³ If, however, the plaintiff's threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then the plaintiff must make a clear showing of probable success on the merits to receive injunctive relief.⁴

In this case the harm to the plaintiff, and his neighborhood, is not irreparable. While odors may potentially qualify as a nuisance, there has been no allegation that they may cause any permanent, irreversible damage to persons or property in this case (e.g., there are no allegations that the odors are carcinogenic or corrosive). By the plaintiff's own admission, even if a preliminary injunction does not issue, he has work under contract for at least another year. While Lanser may potentially suffer long-term financial losses if the odors continue, he does not stand to suffer an immediate financial loss. Because the harm alleged by the plaintiff is fleeting, a preliminary injunction would only enter in this case if there is "a clear showing of probable success on the merits."⁵ As discussed below, a probable outcome in Lanser's favor is not clear.

NUISANCE

To demonstrate a private nuisance, the plaintiff must show that the defendant's actions cause a "substantial and unreasonable interference with the use or enjoyment of real

³ *City of Kenai v. Friends of Recreation Center, Inc.*, 129 P.3d 452, 456 (Alaska 2006) (quoting *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (internal quotation marks and citations omitted)).

⁴ *Id.*

⁵ *Id.*

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property.”⁶ But before the court can reach the question of whether the odor of dumping, storing, and applying human waste to fields constitutes a nuisance, it must reckon with Alaska’s Right-to-Farm law.⁷ Right-to-Farm statutes are designed to address the property use problems that arise from urban flight into rural communities.⁸

Most states follow a common pattern for protecting agriculture: “A typical Right-to-Farm Act provides that an agricultural operation or activity shall not be considered a nuisance if the nuisance derives from changed conditions in the areas surrounding the operation and if the operation was established first and operated for a defined period of time, typically one year, before the change in conditions occurred. In this sense, the Acts are merely a codification of the common law’s coming to the nuisance doctrine.”⁹

The first clause of AS 09.45.235 conforms to this common model. Under Alaska law, a farm does not become a nuisance merely because some change of circumstance outside the farmer’s control— like the creation of a residential development across the street— so long as the farm operation was not a nuisance from the outset. Unlike many states, there is no fixed

⁶ *Maddox v. Hardy*, 187 P.3d 486, 498 (Alaska 2008), quoting AS 09.45.255.

⁷ Each of the fifty states has its own right-to-farm statute providing some sort of protection to farmers against nuisance suits. 8 A.L.R. 6th 465. Alaska, among the last states to adopt a Right-to-Farm act, enacted protective legislation in 1986. See 9 *Harv. J.L. & Pub. Pol’y* 481, 492-493. The legislation underwent significant revision in 2001.

⁸ 9 *Harv. J.L. & Pub. Pol’y* 481, 485: “People who move from cities and suburbs to the countryside are often surprised, not to mention disappointed and upset, to learn that their new neighbors – farmers – are engaged in noisy, dusty, smelling, or unsightly occupation. This has led more than a few such property owners to file agricultural nuisance suits, some of which [...] have been successful. Occasionally, when a court orders that a farm operation be permitted to continue, it will order that the farmer compensate the neighboring property owner in monetary damages for the injury inflicted by the farming operation. This remedy, like that of the equitable injunction, may put a farmer out of business, and when farmers are put out of business and replaced by nonfarming property owners or entrepreneurs, productive farmland is **000154** nonagricultural uses. This compounds the underlying problem.”

⁹ 8 A.L.R. 6th 465, §2

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period of time that the farm has to be in existence prior to receiving the benefit of the statutory protection in Alaska.

In Alaska, “the time an agricultural facility began agricultural operations refers to the date on which *any type of agricultural operation* began on that site regardless of any subsequent expansion of the agricultural facility or adoption of new technology.”¹⁰ Thus, the statute protects not any particular way of farming, but the land itself. In this sense, Alaska’s statute is far more expansive than the typical Right-to-Farm statute. Rather than merely prohibiting those who move to a nuisance from enjoining it, the statute protects farmland as long as it is being used as a farm. A farmer has a defense against a nuisance suit so long as his or her farm was in existence prior to the adjacent landowner’s acquisition of ownership, even if the nuisance begins long after the adjacent landowners have purchased property. In this case, grains from fertilized fields, including bio-solid fertilizers, were being raised well before the subdivision was created. Although the extent of the application of the septage has gone beyond what had been applied in the past, the statute specifically includes in the right to farm the expansion of facilities and the adoption of even newer technologies. So long as other legal norms are not violated, the neighbors of a farm appear not to be able to complain of odors coming from pre-existing farming operations.

Lanser argues with great force that the defendant’s operation is really a means to avoid paying a half-million dollars in septage dumping fees as part of his business over-head. That is, he argues that Riddle’s purpose is not really agricultural, but is part of his septic pumping business. Further, Riddle has compounded his advantage by also receiving 4,000,000

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¹⁰ AS 09.45.235, emphasis added.
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gallons from a pumping competitor, who pays Riddle to receive his pumpings. If allowed, this is a huge economically beneficial combination of activities for Riddle.

Lanser's argument, however, only works if there is no valid farming purpose to the application of the septage. A huge benefit to the over-head costs of his pumping business does not disqualify the application of the bio-solids so long as it is a legitimate farming practice. Riddle using resources from one business to benefit another business interest is no different from Lanser operating as a land sub-divider and developer as well as a contractor with access to discounted building lots. Or it is no different from Bernie Karl using septage produced by his tourists at Chena Hot Springs Resort as fertilizer on his grain fields. Further, as long as Riddle has a permit to engage in the dumping operation, he is privileged to invite other donations of bio-solids to improve his soil, just as they do in Delta Junction. He really is in no different a situation than the person who posts a sign on a low-lying piece of ground requesting "Fill Wanted." Riddle, and every other farmer with a permit who wishes to improve the quality of the farm soil, may invite the delivery of bio-solids. If he can accept donations for free, he can certainly charge others for dumping. He may even find himself in competition with his neighboring farms for Bigfoot's pumpings. If those farms pre-dated the subdivision, it appears that the subdivision neighbors may not complain of odors.

The storage and application of human waste to grain fields is an accepted farming practice. The Right-to-Farm statute at AS 09.45.235(d)(2)A)(vii) includes the application and storage of "substances" to aid in crop production, and specifically includes "treated sewage sludge." The statute on its face is not limited to the enumerated substances. The legislature

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specifically used at AS 09.45.235(d)(2)(A) the expansive, “any agricultural or farming activity *such as . . .*” Although Lanser discounts the extent of the agricultural activity on Riddle’s property, farmers who reviewed his operation classified his farm as a legitimate farm. The statute does not specify a number of acres which would be too small to qualify for the protection of the statute. Riddle testified that last year he had 100 acres under cultivation, with substantial investments in farming machinery. Lanser has offered no convincing evidence that the defendant’s farm is a sham.

The Right-to-Farm Act only prevents an agricultural operation from being classified as a private nuisance. It does not address public nuisance claims. It also does not protect against improper, illegal, or negligently conducted agricultural operations.¹¹ In considering improper or illegal operations, the protection for farming supersedes municipal ordinances and regulations to the contrary.¹²

Riddle urges the court to construe the Right-to-Farm Act so that the adjective “municipal” qualifies “ordinance” only, and that it also trumps any state regulatory action.¹³ Canons of construction suggest, but do not demand, that when interpreting an ambiguous series, a noun of a lower order does not proceed a noun of a higher order.¹⁴ Presumably, if the Legislature had intended to exempt farms from all regulatory control it would have been much

¹¹ AS 09.45.235(b)(1).

¹² AS 09.45.235(c).

¹³ “[E]ven if 18AAC 60.233 did apply to Mr. Riddle, *these code provisions are expressly superseded by the Agricultural Protection Act, AS 09.45.235.*” Riddle’s Joinder and Reply to Opposition to ADEC’s Motion to Dismiss, pg. 2.

¹⁴ “A doctrine of statutory construction holding that a statute dealing with things or persons of an inferior rank cannot by any general words be extended to things or persons of a superior rank. • Blackstone gives the example of a statute dealing with deans, prebendaries, parsons, vicars, *and others* having spiritual promotion. According to Blackstone, this statute is held not to extend to bishops, even though they have spiritual promotion, because deans are the highest persons named, and bishops are of a higher order.” Black’s Law Dictionary (9th ed. 2009), *rule of rank*.

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clearer. The most obvious reading of this clause exempts farms only from local, municipal control. By explicitly denying the right of local government to supersede the Right-to-Farm law, the legislature made clear its intent to retain the ability to restrict the protections granted under the Right-to-Farm law.¹⁵ Indeed, the statute addresses private nuisances, and the public interest, including state regulatory authority, is not affected by the statute. That is, for example, the protection of drinking water sources would not be trumped by the Right-to-Farm Act.

This clause making the Right-To-Farm Act inapplicable for improper and illegal operations is troublesome. It is susceptible of two very different readings. The Legislature could have intended this provision to serve as a precautionary interpretive tool (i.e., “Just to be clear, nothing we say here immunizes farms from being sued for other improper, illegal, or negligent activities.”) Or, it could be intended as a modification of the substance of the statute (i.e., “This statute allows ordinary farm nuisances, but not nuisances that are caused by otherwise illegal, improper, or negligent conduct.”) Because the capacity of a farm to be sued for a non-nuisance would still exist even if that capacity were not included in the statute, if the prohibition is a precautionary interpretive tool then the phrase is mere surplusage. Such a reading would violate the rules of statutory interpretation.¹⁶ Accordingly, the statute preserves nuisance claims as a private cause of action against farmers whose activities *not only* substantially interfere with the property rights of another *but also* which violate other state laws, regulations, or clearly-

¹⁵ This reading is also consistent with nationwide trends: “Many Right-to-Farm Acts expressly preclude the application or enforcement of local ordinances that directly or indirectly characterize an operation or activity as a nuisance.” 8 A.L.R. 6th 465, §2

¹⁶ “We will construe a statute ‘so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.’” *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1139 (Alaska 2012) (internal footnote omitted).

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established norms. In other words, private parties can sue a farmer for a private nuisance as long as the nuisance also violates state law.

The failure to comply with the valid terms of a permit is improper, if not illegal, conduct. This, of course, means that liability for nuisance follows the contours of state law. Consider two examples: If the Arctic Fox subdivision were being bombarded daily by an unkindness¹⁷ of raven carcasses clutching septage-soaked trash, and it were established that the death of the ravens had been caused by the defendant's lagoons, and it was further established that the death of the ravens would not have occurred but for the defendant's failure to take measures to prevent vector attraction as required by the DEC permit—then the plaintiff might be able to prove a nuisance, even given the protection of the Right-to-Farm statute. On the other hand, if the defendant were running a large-scale hog operation that created constant, noxious odors that disturbed residents of the Arctic Fox subdivision, and if there is no statute that prohibits odors arising from hog operations, then the plaintiff would be unable to prevail against the defendant because they would be unable to overcome the Right-to-Farm statute.

The plaintiff argues that because the permits required for the defendant's biosolid operation have been violated, the right-to-farm statute provides no protection against the nuisance action. The defendant counters that the Right-to-Farm statute prevents the government from revoking a bio-solids permit based on a private nuisance premised on an odor which is inherent in a legitimate agricultural practice. There has been no conclusive evidence either for or against the proposition that the DEC permit requires odor abatement. The language of the DEC permit makes no reference to mandatory odor control. The DEC Decision Document issued in

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¹⁷ http://en.wikipedia.org/wiki/List_of_collective_nouns_for_birds

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conjunction with the defendant's Solid Waste Permit makes it clear that DEC believed, at the time of issuance, that excessive odors would violate the terms of the permit. It reads:

There was some concern in the comments that the neighboring houses were close enough that odor would be a problem. On the other hand, one person who commented said he had once lived next to a farm where land application was occurring and never experienced odors from the operation. Under the solid waste regulations, Mr. Riddle is obligated to ensure that odors do not become a nuisance and Mr. Riddle has stated he will use commercial products to stop odors if they do become a problem. Although the permit cannot be denied due to the potential for odors, ADEC can revoke the permit if odors become a nuisance and the nuisance is not abated.

It now appears that DEC may have been mistaken in its understanding of the applicable law when it issued the underlying permit. It may be that it is not entitled to deny a permit solely on grounds that an odor from an accepted agricultural activity is offensive. It is also unclear whether the odors complained of originate from the application of bio-solids as fertilizer, according to the permit, or if it originates from the collection of septage in lagoons, which is not addressed by the permits. Until these matters are resolved, it is impossible for the court to conclude that the plaintiff will probably prevail in proving a nuisance.

There are allegations by the plaintiff that the septage operation has also failed to comply with other permitting requirements.¹⁸ While these allegations are potentially serious, they do not overcome the protection of the Right-to-Farm statute. Even if these were remedied, they would do nothing to reduce the odor produced by the septage lagoons. Further, it is unclear whether these requirements have since been satisfied by the defendant.

PUBLIC NUISANCE

¹⁸ i.e., failure to create or maintain records of the dates septage was applied, failure to create or maintain signed certifications for each batch of septage applied, failed to create or maintain records reflecting that pathogen reduction requirements (preventing spread of disease) were met for each batch of domestic septage, etc.

The plaintiff argues that the defendant's bio-solid operation is also a public nuisance. To establish a claim based on public nuisance, it is not enough to merely show that someone is injured by the creation of some physical condition. It must also be shown that such condition would be injurious to those who come in contact with it in the exercise of a public or common right.¹⁹ The plaintiff suggests that the public health might be threatened by the defendant's septage lagoons. There has been no credible evidence that the septage lagoons are actually posing any harm to public health: While trash-carrying vectors are concerning, they do not seem to be frequent enough to pose a serious health hazard. Furthermore, the odors created by septage do not appear to qualify as a public nuisance. While the odors are not confined by property boundaries, it is not obvious that the odors impinge on a public right. There seems to be very little basis for claiming that there is a public right to odorless air: the mere aggregation of private harm does not create a public harm.²⁰ While the plaintiff makes a colorable claim for odor as a public nuisance, it appears that it may only be colorable. The plaintiff also suggests that the traffic going to and from the defendant's septage lagoons is a public nuisance. While it seems clear that the traffic on the public roads near the Arctic Fox subdivision has increased as a result of the septage dumping activities, it did not rise to a magnitude of harm to appear to render the road impassable or unsafe.

FAILURE TO STATE A CLAIM

"To survive a motion to dismiss, a complaint need only allege 'a set of facts consistent with and appropriate to some enforceable cause of action.' A complaint should not be

¹⁹ *Maier v. City of Ketchikan*, 403 P.2d 34, 38 (Alaska 1965) (overruled on other grounds).

²⁰ "Conduct does not become a public nuisance merely because it interferes with the use and enjoyment of land by a large number of persons. There must be some interference with a public right. A public right is one common to all members of the general public." Restatement (Second) of Torts § 821B.

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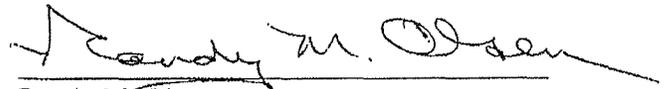
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dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief.”²¹ Riddle has not sought summary judgment on the claims by Lanser, but only dismissal for failure to state a claim. The uncertainty as to obligations related to the odor representations when obtaining the permit is sufficient to defeat a motion for judgment on the pleadings.

Accordingly, Defendant’s motion to dismiss for failure to state a claim for private nuisance is DENIED. Defendant’s motion to dismiss for failure to state a claim for public nuisance is DENIED. Plaintiff’s motion for preliminary injunction against a private nuisance is DENIED. Plaintiff’s motion for preliminary injunction against a public nuisance is DENIED.

DATED at Fairbanks, Alaska, this 20th day of May, 2012.

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Clerk


Randy M. Olsen
Superior Court Judge

²¹ *McGrew v. State, Dept. of Health and Social Services, Div. of Family and Youth Services*, 106 P.3d 319, 322 (Alaska 2005) (internal citations omitted).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff(s),)
)
 vs.)
)
 ROBERT RIDDLE, dba)
 FAIRBANKS PUMPING AND THAWING,)
)
 Defendant(s).)

Case No. 4FA-11-3117 CI

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN PART AND DENYING MOTION FOR SUMMARY JUDGMENT IN PART AND GRANTING CROSS-MOTION FOR SUMMARY JUDGMENT IN PART AND DENYING CROSS-MOTION FOR SUMMARY JUDGMENT IN PART

This matter came before the court on the defendant's Motion for Summary Judgment and the plaintiff's Cross-Motion for Summary Judgment. The court has considered the motions and any oppositions thereto and hereby denies in part and grants in part both motions.

I. INTRODUCTION

A court may grant a party's motion for summary judgment only when the moving party has shown that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."¹ "[T]he burden of showing the absence of a genuine issue as to any material fact is upon the moving party."² Once the movant has established this

¹ Alaska R. Civ. P. 56(c).

² *Wilson v. Pollett*, 416 P.2d 381, 383 (Alaska 1981).

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burden, the non-moving party must then “set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant’s evidence and thus demonstrate that a material issue of fact exists.”³

In considering a motion for summary judgment, the court must draw all reasonable inferences in favor of the non-moving party.⁴ To successfully oppose summary judgment, the non-moving party need only present “any evidence sufficient to raise a genuine issue of material fact, so long as it amounts to more than a scintilla of contrary evidence[.]”⁵ “A court should resolve a factual matter issue as a matter of law only if no reasonable juror could reach a different conclusion.”⁶ “[W]hen the issue of whether a summary judgment motion should be granted depends on resolving a factual dispute in order for the court to apply the statute of limitations, the court must ordinarily resolve the factual dispute at a preliminary evidentiary hearing in advance of trial because the task of interpreting and applying a statute of limitations traditionally falls within the province of the courts.”⁷ But the court has affirmed superior court decisions to not hold evidentiary hearings when no factual dispute existed.⁸

II. FACTS

In 2005, Riddle began a farming enterprise located off Eielson Farm Road in an agriculturally-zoned land.⁹ Shortly thereafter, Riddle began using the septage from his pumping

³ *Maines v. Kenworth Alaska, Inc.*, 155 P.3d 318, 323 (Alaska 2007) (quoting *Parker v. Tomera*, 89 P.3d 761, 765 (Alaska 2004)).

⁴ *Maines*, 155 P.3d at 322.

⁵ *Id.* at 323 (citing *In re J.B.*, 922 P.2d 878, 881 n. 4 (Alaska 1996) & *Martech Constr. Co., Inc. v. Ogden Envtl. Servs., Inc.*, 852 P.2d 1146, 1149 n. 7 (Alaska 1993)) (internal quotations omitted) (emphasis in original).

⁶ *Airline Support, Inc. v. ASM Capital II, L.P.*, 279 P.3d 599, 606 (Alaska 2012).

⁷ *Clemensen v. Providence Alaska Med. Ctr.*, 203 P.3d 1148, 1154 (Alaska 2009).

⁸ *Id.*

⁹ Order Denying Motion for Preliminary p.2

business, Fairbanks Pumping and Thawing Company, to fertilize his farm land.¹⁰ In 2007 Riddle applied for and received a permit from the North Star Borough to hold the septage.¹¹ The permit allows Riddle to apply domestic septage from private septic tanks and sludge¹² from the Golden Heart Utilities Sewage Treatment Plant to be used as a source of nitrogen for turf, brome grass, barley, oats, wheat, canola, and timothy/alfalfa mix on 760 acres near Moose Creek, Alaska.¹³ Riddle started to apply septage in 2010.¹⁴

Lanser filed suit against Riddle in December 2011. In the complaint, and in his cross-motion for summary judgment, Lanser claims Riddle violated a number of permit conditions, statutes, and administrative codes. In particular, Lanser alleges that Riddle is receiving and holding more septage than he uses to fertilize the land. Riddle responds that he is complying with the permit and that the Right to Farm Act bars Lanser's suit for negligence.

III. ISSUES PRESENTED

A. Private Nuisance

- 1) Has Riddle substantially and unreasonably interfered with Lanser's use and enjoyment of his real property?
- 2) Was Riddle out of compliance with the relevant permits such that he is acting unreasonably?
 - a) Does the DEC permit require odor control or odor abatement?

¹⁰ *Id.*

¹¹ Lanser Testimony April 4, 2012 9:39:35

¹² EPA.gov. Available at <http://water.epa.gov/polwaste/wastewater/treatment/biosolids/> "Sewage sludge is the name for the solid, semisolid or liquid untreated residue generated during the treatment of domestic sewage in a treatment facility. When treated and processed, sewage sludge becomes biosolids which can be safely recycled and applied as fertilizer to sustainably improve and maintain productive soils and stimulate plant growth." (Last accessed March 21, 2013).

¹³ Biosolid Permit, Riddle Memo. in Support of Mot. for Summary Judgment Exhibit E, p. 1

¹⁴ Lanser Testimony April 4, 2012, 9:39:50

- b) Is Riddle in compliance with the DEC permit?
 - c) Is Riddle in compliance with the FNSB conditional use permit?
 - d) Are the offensive odors the result of Riddle's spreading of biosolids or are they caused by Riddle's holding ponds?
- 3) Does the Right to Farm Act bar Lanser's private nuisance claim?
 - 4) Does AS 09.45.230(b) bar Lanser's private nuisance claim?

B. Public Nuisance

- 1) Has Riddle created or maintained a physical condition that would cause injury to a person coming into contact with that condition while exercising a public or common right?
- 2) Has Lanser sustained an injury peculiar to himself, a special injury other than that in which the general public shares?

C. Negligence

- 1) Does Riddle have a duty to Lanser?
- 2) Did Riddle breach the duty?
- 3) Did Lanser suffer harm?
- 4) Was the harm caused by Riddle's breach of duty?

IV. **DISCUSSION**

A. Private Nuisance

The Alaska courts have established that private nuisance liability results from an intentional and unreasonable interference with another's use and enjoyment of his or her

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property.¹⁵ Unintentional conduct may also warrant nuisance liability if it is negligent, reckless, or abnormally dangerous.¹⁶ To incur liability, an actor's conduct must be a substantial factor in causing the nuisance.¹⁷ Liability for damage caused by a nuisance turns on whether the defendant was in control of the instrumentality alleged to constitute the nuisance.¹⁸

Two statutes set out defenses that are relevant to private nuisance. Alaska Statute 09.45.230(b) states that a person may not maintain a private nuisance action based upon an air emission or water or solid waste discharge where the emission or discharge was expressly authorized by and is not in violation of a term or condition of a license, permit, or order that is issued after public hearing by the state or federal government. Alaska Statute 09.45.235, also known as the Right to Farm Act, indicates that an agricultural facility does not become a private nuisance as a result of a changed condition if the facility was not a nuisance at the time it began its agricultural operations. An "agricultural operation" includes any agricultural and farming activity including the application and storage of treated sewage sludge.¹⁹ An "agricultural facility" is land that is used or intended for use in the commercial production or processing of crops, livestock, or livestock products.²⁰

¹⁵ *Parks Hiway Enterprises, LLC v. CEM Leasing, Inc.*, 995 P.2d 657, 666 (Alaska 2000).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ AS 09.45.240(d)(2)(A)(vii)

²⁰ AS 09.45.240(d)(1).

1. Has Riddle negligently and unreasonably interfered with Lanser's use and enjoyment of his real property?

Lanser owns real property near Riddle's farm.²¹ Lanser has presented evidence that the odors from the biosolids on Riddle's property are offensive and pervasive.²² The odors indisputably originate from the biosolids on Riddle's property.²³ However, Lanser does not live on the real property he owns; rather, he uses it for work purposes.²⁴ Specifically, Lanser engages in house building on the property.²⁵ His intended use and enjoyment of the property is to develop the property for sale to third persons.²⁶ Additionally, Riddle has a permit to spread biosolids and is engaged in farming.²⁷ Therefore, the court concludes that whether Riddle's conduct in creating foul odors while farming is unreasonable and negligent is a contested issue of fact that cannot be resolved by summary judgment. Similarly, whether the foul odors unreasonably interfere with Lanser's use and enjoyment of land he uses exclusively for work purposes as a house builder is a contested issue of fact that cannot be resolved by summary judgment. Summary judgment on this issue is denied.

²¹ Lanser Affidavit p.1

²² Lanser Affidavit pp.2-3

²³ Lanser Affidavit p.4

²⁴ Lanser Testimony April 4, 2012, 9:59-9:10:02; Lanser Affidavit p.2

²⁵ Lanser Testimony April 4, 2012, 9:58:36; Lanser Affidavit p.1

²⁶ Lanser Affidavit p.1

²⁷ Riddle Affidavit p.1

2. Is Riddle out of compliance with the relevant permits such that he is acting unreasonably?

a. Does the DEC permit require odor control or odor abatement?

The court has reviewed the DEC permit.²⁸ It does not directly reference odor control or abatement. However, the permit states that “activities conducted by the Permittee pursuant to the terms of this permit . . . shall comply with all applicable state and federal laws and regulations.”²⁹ As indicated above, there is evidence in the record to support Lanser’s allegation that the odors from Riddle’s property are a nuisance. A person who maintains a private nuisance is not in compliance with state law. The decision document issued by DEC stated that “under solid waste regulations, Mr. Riddle is obligated to ensure that odors do not become a nuisance.” Therefore, the court concludes that the DEC permit requires odor control or abatement such that the odors do not become a nuisance.³⁰ Summary judgment is granted as to this issue. However, whether the odors are a nuisance remains a contested issue of fact.

The DEC permit also states that Riddle must manage and operate the facility “in accordance with . . . the permit application materials.”³¹ The Decision Document issued by the DEC announcing that it would issue a permit to Riddle indicates that “Mr. Riddle has stated he will use commercial products to stop odors if they do become a problem.”³² This language indicates that Riddle’s permit application indicated that he would use commercial products to stop odors if they “become a problem.” Riddle does not contend otherwise. For this additional

²⁸ Lanser Cross-Motion for Summary Judgment, Grassi Affidavit Exhibit 4.

²⁹ Lanser Cross-Motion for Summary Judgment, Grassi Affidavit Exhibit 4, p. 3.

³⁰ As explained below, Riddle cannot rely on AS 09.45.230(b) as a defense to this action.

³¹ Lanser Cross-Motion for Summary Judgment, Grassi Affidavit Exhibit 4, p. 5.

³² Lanser Cross-Motion for Summary Judgment, Grassi Affidavit Exhibit 2, p. 5.

reason, summary judgment is granted on the issue of whether the DEC permit requires odor abatement. Odor abatement is required by the permit.

b. Is Riddle in compliance with the DEC permit?

Riddle has submitted an affidavit indicating that he is in compliance with the DEC and FNSB permits issued to him for the land application of biosolids.³³ Two DEC witnesses testified that as of May 2012, Riddle was in compliance with his permit.³⁴ On the other hand, there is evidence that the odors from Riddle's activities are unreasonably and substantially interfering with his and his neighbors' use and enjoyment of their land. There is evidence that Riddle has violated federal law by not keeping records as required by the permit. Whether Riddle is in compliance with the DEC permit is, therefore, a contested issue of fact not amenable to summary judgment. Summary judgment on this issue is denied.

c. Is Riddle primarily using his property for agricultural purposes in compliance with the FNSB Conditional Use Permit?

The FNSB Conditional Use permit indicates that biosolids may only be applied to Riddle's property if the principal use of the property is agricultural in nature, "with the beneficial application of biosolids remaining a conditionally-approved accessory use in support of the agriculture use. The disposal of biosolids cannot become the principal use of the property."³⁵ Lanser has provided evidence that an astonishing amount of biosolids are being applied to Riddle's property.³⁶ However, the record before the court, including the testimony at the

³³ Riddle Motion for Summary Judgment, Appendix F, ¶ 6.

³⁴ Lanser Cross-Motion for Summary Judgment p.28

³⁵ Lanser Cross-Motion for Summary Judgment, Grassi Affidavit Exhibit 11, p. 2.

³⁶ Lanser Affidavit pp.2-3

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preliminary injunction hearing, is that Riddle is using his property for agricultural purposes.³⁷ Whether the “principal” use of the property is agriculture or whether the principal use of the property is the disposal of biosolids is a contested issue of fact. The court denies summary judgment on this issue.

d. Are the odors caused by Riddle’s spreading of biosolids or by his holding ponds?

Whether the offensive odors are the result of Riddle’s spreading of biosolids or whether they are caused by Riddle’s holding ponds is a contested issue fact. However, the court notes that the DEC permit regulates the holding ponds and other facilities used to store or treat the biosolids as well as the spreading of biosolids. The permit clearly requires that the “height of containment berms around any lagoons and other facilities used to store or treat biosolids must be higher than the anticipated level of a 100-year flood in the Eielson Farm Road area.”³⁸

3. Does the Right to Farm Act bar Lanser’s private nuisance claim?

Alaska’s “Right-to-Farm Act” as codified by Alaska Statute 09.45.235 states:

(a) An agricultural facility or an agricultural operation at an agricultural facility is not and does not become a private nuisance as a result of a changed condition that exists in the area of the agricultural facility if the agricultural facility was not a nuisance at the time the agricultural facility began agricultural operations. For purposes of this subsection, the time an agricultural facility began agricultural operations refers to the date on which any type of agricultural operation began on that site regardless of any subsequent expansion of the agricultural facility or adoption of new technology. An agricultural facility or an agricultural operation at an agricultural facility is not a private nuisance if the governing body of the local soil and water conservation district advises the commissioner in writing that the facility or operation is

³⁷ Riddle Testimony April 5, 2012, 10:23:10

³⁸ Lanser Cross-Motion for Summary Judgment, Grassi Affidavit Exhibit 4, p. 5.

consistent with a soil conservation plan developed and implemented in cooperation with the district.

(b) The provisions of (a) of this section do not apply to

(1) liability resulting from improper, illegal, or negligent conduct of agricultural operations; or

(2) flooding caused by the agricultural operation.

(c) The provisions of (a) of this section supersede a municipal ordinance, resolution, or regulation to the contrary.

(d) In this section,

(1) "agricultural facility" means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment that is used or is intended for use in the commercial production or processing of crops, livestock, or livestock products, or that is used in aquatic farming;

(2) "agricultural operation" means

(A) any agricultural and farming activity such as . . . and

(B) any practice conducted on the agricultural facility as an incident to or in conjunction with activities described in (A) of this paragraph, including the application of existing, changed, or new technology, practices, processes, or procedures . . .

This statute is designed to address the property use problems that arise from urban flight into rural communities. It prohibits those who move next to a farm from claiming that the farm is a nuisance as long as the farm was not a nuisance at the time it began agricultural operations. It also continues to protect the farm from a nuisance action even if new technology is adopted or the agricultural operation is expanded. Riddle relies upon this statute as a defense to Lanser's nuisance claim.

Although it is undisputed that Riddle's property was initially an "agricultural facility"³⁹ such that it was protected from a nuisance lawsuit by the "Right-To-Farm Act," Lanser claims that Riddle's property is no longer an "agricultural facility" in any real sense. Lanser claims that Riddle is now using his land for the disposal of biosolids rather than for agriculture. This court

³⁹ AS 09.45.235

finds that the “Right-to-Farm Act” bars Lanser’s private nuisance claim only if his land is an “agricultural facility.” As long as Riddle’s use or intended use of his land is “the commercial production or processing of crops, livestock, or livestock products,”⁴⁰ Lanser’s private nuisance claim is barred. If, however, Riddle no longer uses or intends to use his land primarily for these purposes and instead primarily uses his land for the disposal of biosolids, the “Right-to-Farm Act” does not bar Lanser’s private nuisance claim. As indicated above, whether the principal use of the property is agricultural in nature, with the beneficial application of biosolids remaining an accessory use in support of the agriculture use, or whether the primary use of the property is the disposal of biosolids is a contested issue of fact. Summary judgment on this issue is denied.

4. Does AS 09.45.230(b) bar Lanser’s private nuisance claim?

Alaska Statute 09.45.230(b) states that a person may not maintain a private nuisance action based upon an air emission or water or solid waste discharge where the emission or discharge was expressly authorized by and is not in violation of a term or condition of a license, permit, or order that is issued after public hearing by the state or federal government. Here, as indicated above, there is evidence that odors from the biosolids substantially interfere with Riddle’s neighbors’ use and enjoyment of their land.⁴¹ Additionally, it is undisputed that Riddle’s spreading of biosolids is expressly authorized by permits that were issued by the state and borough governments after a public hearing.⁴²

Riddle’s DEC permit authorizes the spreading of biosolids. However, as indicated in part A2 above, the permit requires odor abatement if the odors become a nuisance. That is, a specific

⁴⁰ AS 09.45.235(d)(1).

⁴¹ Renson Testimony April 2, 2012, 12:44; Brunsberg Testimony April 2, 2012, 11:22

⁴² Biosolid Permit, Riddle Memo. in Support of Mot. for Summary Judgment Exhibit E, p.1

term of the permit is that odors from the biosolids not become a nuisance. Therefore, if the odors are a nuisance, Riddle is not in compliance with his permit and Lanser is not barred from bringing this private nuisance action. Therefore, the court finds that, as a matter of law, AS 09.45.230(b) does not bar Lanser's private nuisance claim based on foul odors being a nuisance. Summary judgment is granted as to this issue.

B. Public Nuisance

The Alaska Supreme Court has indicated that a public nuisance claim encompasses factual issues, primarily whether the defendant's conduct creates an unreasonable interference with a right common to the general public.⁴³ The court has cited with approval the Restatement (Second) of Torts, § 821B:

- (1) A public nuisance is an unreasonable interference with a right common to the general public.
- (2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
 - (a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
 - (b) whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
 - (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

The Restatement (Second) of Torts §821C indicates:

- (1) In order to recover damages in an individual action for a public nuisance, one must have suffered harm of a kind different from that suffered by other members of the public exercising the right common to the general public that was the subject of interference.

⁴³ *Friends of Willow Lake, Inc. v. State, Dept. of Transp. & Pub. Fac.*, 280 P.3d 542, 548 (Alaska 2012).

(2) In order to maintain a proceeding to enjoin to abate a public nuisance, one must

(a) have the right to recover damages, as indicated in Subsection (1), or

(b) have authority as a public official or public agency to represent the state or a political subdivision in the matter, or

(c) have standing to sue as a representative of the general public, as a citizen in a citizen's action or as a member of a class in a class action.⁴⁴

1. Has Riddle unreasonably interfered with a right common to the general public? Put differently, has he done something that would cause injury to a person who is exercising a public or common right?

Lanser has not identified anything that is created or maintained by Riddle that would injure a person who is exercising a public right. In fact, Lanser has not come forward with evidence that anyone exercising a public right comes into contact with Riddle's land or with the odors associated with Riddle's use of his land. Lanser claims that the biosolids on Riddle's land are a risk to public health, but he provides no evidence of this. He provides no evidence, other than speculation, that anyone exercising a public right would come into contact with the biosolids that are located on Riddle's property or with the *e coli* bacteria and other pathogens that exist in those biosolids. There is no genuine issue of material fact as to whether Riddle's activity is a risk to human health, and therefore the court grants partial summary judgment to the defendant on this issue.

The only public or common right that Lanser asserts is a common right to air that is free of odors.⁴⁵ Lanser fails to support his claim that the public enjoys a common right to air that is free of odors with any citation to relevant law. Additionally, although there is evidence that

⁴⁴ See also, *Snyder v. Kelter*, 4 Alaska 447 (D. Alaska 1912).

⁴⁵ Lanser Opp to Riddle's Summary Judgment and Memo for Cross-Motion Summary Judgment p.24

Riddle's neighbors encounter the odors while exercising their right to quiet use and enjoyment of their land, there is no evidence in the record that anyone exercising a public right encounters the odors.

There is no evidence in the record to suggest that the biosolids on Riddle's land significantly interfere with public health, public safety, public peace, public comfort or public convenience. There is no evidence that Riddle's activity has produced a permanent or long-lasting effect or a significant effect upon the public right. For these reasons, the court grants summary judgment on the issue of public nuisance in favor of the defendant.

2. Has Lanser sustained an injury peculiar to himself, a special injury other than that in which the general public shares, such that he has standing to pursue this action for a public nuisance?

Lanser's pleadings initially suggested that he has sustained injury that is peculiar to himself that is different from that in which the general public shares: first, because he works near Riddle's land he must remain outdoors, exposed to the odors, while the resident landowners are able to retreat indoors; and second, because he sells homes that are built near Riddle's land, he must disclose the odors to prospective purchasers and it is more difficult to sell the homes. Recently, Lanser has clarified that he is not alleging economic injury. Rather, he is asserting noneconomic injury for the loss of quiet use and enjoyment of property, risk to human health and safety, and "difficulty in selling or placing homes."⁴⁶ There is no evidence in the record to support a nuisance claim based on a risk to human health and safety. The court considers difficulty in selling or placing homes to be the type of injury for which economic damages are

⁴⁶ Lanser Opp. to Riddle's Motion in Limine and Motion for Sanctions, pp. 5-6.

the appropriate remedy. By abandoning a claim for economic damages, Lanser has abandoned this claimed injury. Therefore, the injury that remains at issue in this case is the injury Lanser allegedly suffers for the loss of quiet use and enjoyment of his property.

Here, Lanser's injury is not peculiar to himself.⁴⁷ His exposure to the odors while he is working is not sufficiently different in kind from the injury suffered by Riddle's neighbors. Additionally, Lanser's exposure to the odors is temporary. He has always intended to sell the land that he owns near Riddle, and his exposure to the odors will end as soon as he has completed the houses that he is building near Riddle's land. Therefore, to the extent that his injury is different in kind to that of his neighbor's, his injury is actually less severe than that of the neighbors who are more likely to be exposed to the odors for a much longer period of time. Therefore, Lanser does not have standing to pursue this claim for public nuisance and for this additional reason, summary judgment on this issue is granted.

Summary judgment on the issue of public nuisance is GRANTED.

C. Negligence

1. Does Riddle owe a duty to Lanser arising out of a statute or regulation or out of common law?

The Restatement (Second) of Torts § 286, which has been cited with approval by the Alaska Supreme Court, indicates that a court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part:

⁴⁷ The Supreme Court's discussion of standing in *Friends of Willow Lake*, 28 P.3d 542 (Alaska 2012) is not helpful to resolution of this issue because that discussion focused on associational standing rather than on public nuisance standing.

- (a) to protect a class of persons which includes the one whose interest is invaded, and
- (b) to protect the particular interest which is invaded, and
- (c) to protect that interest against the kind of harm which has resulted, and
- (d) to protect that interest against the particular hazard from which the harm results

Similarly, the Restatement (Second) of Torts §286 states:

The court will not adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively

- (a) to protect the interests of the state or any subdivision of it as such,
- or
- (b) to secure to individuals the enjoyment of rights or privileges to which they are entitled only as members of the public,
- or
- (c) to impose upon the actor the performance of a service which the state or any subdivision of it undertakes to give the public, or
- (d) to protect a class of persons other than the one whose interests are invaded, or
- (e) to protect another interest than the one invaded, or
- (f) to protect against other harm than that which has resulted, or
- (g) to protect against any other hazards than that from which the harm has resulted.

In this case, AS 46.03.870(a) states that “the bases for proceedings or actions resulting from violations of this chapter or a regulation adopted under this chapter inure solely to and are for the benefit of the state.” Therefore, it is clear that the purpose of that legislation and of the regulations adopted under it is exclusively to protect the interests of the state. A violation of that legislation does not give rise to a duty of care.

The purpose of 18 AAC 60 is “to promote cost effective, environmentally-sound solid waste management and to ensure that landfills are designed, built, and operated to minimize health and safety threats, pollution, and nuisances.”⁴⁸ Thus, one purpose of 18 AAC 60 is to protect against safety threats and nuisances. It is designed to protect those who could be harmed from the storage of solid waste from safety threats and nuisances. Lanser is a member of the specific class of people that this regulation was designed to protect. Therefore, this regulation gives rise to a duty of care owed by Riddle to Lanser.

Lanser also asserts that Riddle has a common-law duty to protect Lanser and his neighbors from the foul odors based on his promise that his activities would not cause odors and based on his testimony to that effect at the public hearing. Lanser has not provided any authority for the suggestion that such a promise or testimony gives rise to a common-law duty of care. Therefore, the court finds that Riddle owes no common-law duty of care to Riddle based on his promise to Lanser or based on his testimony at the public hearing.

2. Did Riddle breach the duty?

Riddle may be out of compliance with that part of 18 AAC 60 that prohibits Riddle from storing accumulated waste in a manner that “causes” the access of wildlife.⁴⁹ There is evidence of wildlife tracks near the waste storage ponds.⁵⁰ However, it can be argued that it was not the waste storage that “caused” the access of the wildlife. Therefore, whether Riddle has violated this regulation and has therefore breached the duty of care is a contested issue of fact.

⁴⁸ 18 AAC 60.005(a).

⁴⁹ Pursuant to 18 AAC 16.010(a), a person may not store accumulated solid waste in a manner that “causes . . . (2) the attraction or access of domestic animals, wildlife, or disease vectors.”

⁵⁰ Lanser Affidavit p.11

3. Did Lanser suffer harm, and was the harm caused by Riddle's breach of duty?

Here, the only duty that Lanser owes to Riddle arises out of 18 AAC 60. The only alleged breach of duty under that regulation that has survived the motion for summary judgment is whether Riddle has stored accumulated waste in a manner that "causes" the access of wildlife. The question for the court, then, is whether Lanser has suffered harm as a result of that breach of duty.

Lanser does not allege that he suffered any economic damage from Riddle's "causing" wildlife to access the holding ponds. The harm he alleges that he suffered is his noneconomic injury based on "loss of quiet use and enjoyment of property" and also based on a risk to public health.⁵¹ There is no evidence in the record that the biosolids on Riddle's property are a risk to public health. With regard to the loss of quiet use and enjoyment of property, there is no evidence that allowing wildlife to access the waste storage ponds has caused a loss of quiet use and enjoyment of property. Rather, this harm is allegedly caused by the odors coming from the biosolids on Riddle's property. Therefore, the court finds that there is no material issue of fact on this issue: the harm that is alleged (loss of quiet use and enjoyment of property) was not caused by Riddle's breach of 18 AAC 60.010 (causing wildlife to access the solid waste).

Based on the above, the court finds that there is no contested material fact on the issue of negligence. Although Riddle owes Lanser a duty of care arising out of 18 AAC 60.010, the duty of care owed is the duty to prevent the access of wildlife. There is no suggestion that Riddle's

⁵¹ Lanser also initially alleged an economic injury, an increased difficulty in selling homes. Since the court has issued a protective order prohibiting Lanser from pursuing economic damages at trial, and since a difficulty in selling homes results in economic rather than non-economic damage, that alleged injury is not being considered by the court.

breach of this duty caused the harm that Lanser is alleging he has suffered. Therefore, summary judgment on this issue is GRANTED.

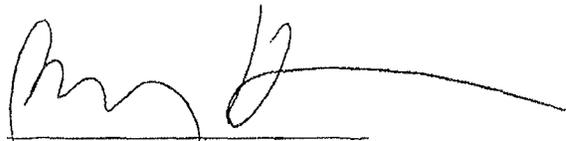
V. CONCLUSION

Summary judgment is GRANTED to the defendant on the issues of public nuisance and negligence. Those claims are now DISMISSED. The court finds, as a matter of law, that the DEC permit requires odor abatement and that AS 09.45.230(b) does not bar Lanser's private nuisance claim. Summary judgment is GRANTED to the plaintiff on these issues.

VI. TRIAL

The issue for which Lanser would have had the right to jury trial (negligence) has been dismissed by the court. Lanser seeks an order declaring the odors a private nuisance and requiring Riddle to decommission the raw sewage storage lagoons if an odor control plan proves unsuccessful. He also seeks an order enjoining Riddle from receiving septage in the lagoons until an odor control plan approved by the DEC and the landowners is instituted. This type of relief is equitable. The matter will be tried to the court rather than to a jury.

DATED at Fairbanks, Alaska, this 1 day of July, 2013.



Bethany S. Harbison
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT RIDDLE, dba)
 FAIRBANKS PUMPING & THAWING,)
 AND ALASKA DEPARTMENT OF)
 ENVIRONMENTAL CONSERVATION,)
)
 Defendant.)

Case No. 4FA-11-3117 CI

ORDER

The parties' dispute in this case revolves around land use. The plaintiff, Eric Lanser ("Lanser") is developing a subdivision adjacent to agricultural land owned by Robert Riddle ("Riddle"). Riddle operates septage lagoons on his property. Lanser filed this lawsuit asking the court to require Riddle to abate odors emanating from the septage lagoons.

Lanser asserts that the lagoons constitute a private nuisance¹ because the odors produced by the lagoons are so pervasive and so foul that nearby landowners often are driven indoors to escape the odors, which renders them unable to engage in ordinary activities on their land such as gardening and barbequing. Riddle denies that the odors unreasonably interfere with his

¹ Private nuisance liability results from an intentional and unreasonable interference with another person's use and enjoyment of his or her property. Unintentional conduct may warrant nuisance liability if it is negligent, reckless, or abnormally dangerous. *Parks Hiway Enterprises, LLC v. CEM Leasing, Inc.*, 995 P.2d 657, 666 (Alaska 2000).

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neighbors' use of their land. In addition, he asserts that Alaska's Right-to-Farm Act prevents the septage lagoons from being a private nuisance because he uses his land for farming and the septage lagoons support his farming activity.

In 1986, the Alaska Legislature enacted Alaska's Right-to-Farm Act, AS 09.45.235. That act provides that an agricultural facility or an agricultural operation at an agricultural facility is not a private nuisance if it was not a nuisance at the time it began agricultural operations. The Act states:

(a) An agricultural facility or an agricultural operation at an agricultural facility is not and does not become a private nuisance as a result of a changed condition that exists in the area of the agricultural facility if the agricultural facility was not a nuisance at the time the agricultural facility began agricultural operations. For purposes of this subsection, the time an agricultural facility began agricultural operations refers to the date on which any type of agricultural operation began on that site regardless of any subsequent expansion of the agricultural facility or adoption of new technology. An agricultural facility or an agricultural operation at an agricultural facility is not a private nuisance if the governing body of the local soil and water conservation district advises the commissioner in writing that the facility or operation is consistent with a soil conservation plan developed and implemented in cooperation with the district.

(b) The provisions of (a) of this section do not apply to

(1) liability resulting from improper, illegal, or negligent conduct of agricultural operations; or

(2) flooding caused by the agricultural operation.

(c) The provisions of (a) of this section supersede a municipal ordinance, resolution, or regulation to the contrary.

(d) In this section,

(1) "agricultural facility" means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment that is used or is intended for use in the commercial production or

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processing of crops, livestock, or livestock products, or that is used in aquatic farming;

(2) "agricultural operation" means

(A) any agricultural and farming activity such

(i) the preparation, plowing, cultivation, conserving, and tillage of the soil;

(ii) dairying;

(iii) the operation of greenhouses;

(iv) the production, cultivation, rotation, fertilization, growing, and harvesting of an agricultural, floricultural, apicultural, or horticultural crop or commodity;

(v) the breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock;

(vi) forestry or timber harvesting, manufacturing, or processing operations;

(vii) the application and storage of pesticides, herbicides, animal manure, treated sewage sludge or chemicals, compounds, or substances to crops, or in connection with the production of crops or livestock;

(viii) the manufacturing of feed for poultry or livestock;

(ix) aquatic farming;

(x) the operation of roadside markets; and

(B) any practice conducted on the agricultural facility as an incident to or in conjunction with activities described in (A) of this paragraph, including the application of existing, changed, or new technology, practices, processes, or procedures;

(3) "livestock" means horses, cattle, sheep, bees, goats, swine, poultry, reindeer, elk, bison, musk oxen, and other animals kept for use or profit.

Based on the above, in order to resolve the parties' dispute, the court must first determine whether Riddle's septage lagoons would be a private nuisance if it were not for the Right-to-Farm Act. If the lagoons constitute a nuisance, then the court must determine whether the lagoons are "an agricultural facility or an agricultural operation at an agricultural facility." If they are, and if they are being operated legally, the Right-to-Farm Act prohibits them from being

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a private nuisance. On the other hand, if the lagoons are not “an agricultural facility or an agricultural operation at an agricultural facility,” or if they are being operated negligently or illegally, Riddle must abate the nuisance.

This matter came before the court for trial on July 9 - 12, July 15 - 19, and September 12 - 13, 2013. Based on the testimony of witnesses and the exhibits present at the trial, the court finds that there is clear and convincing evidence of the following:

FINDINGS OF FACT

I.

In 2005, Riddle began to acquire agricultural land located off Eielson Farm Road. Currently, he owns 500 acres of land in that location, all of which is subject to a State Farm Conservation Plan (“Farm Plan”). A Farm Plan is required pursuant to 11 AAC 67.177 whenever the State of Alaska sells land classified for agricultural purposes. A Farm Plan sets out agricultural covenants and summarizes the purchaser’s/owner’s commitment to proper agricultural land use and conservation practices, which are represented graphically on a parcel map and with a supplementary written narrative. When approved by the Division of Agriculture, the Farm Plan remains with the property title as approved or as subsequently amended. There are several Farm Plans for Riddle’s land, with the earliest dating back to 1985-1986.

The soil on Riddle’s property, as is typical in Interior Alaska, requires modification to be productive. Chemical fertilizer is expensive, and therefore a significant part of the overhead for crop production in the Interior is the cost of fertilizer.

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Some of Riddle's Eielson Farm Road property is planted in oats and some is planted in pasture grass. A portion of Riddle's Eielson Farm Road land is cultivated by a neighboring farmer for a share of the crop. Riddle has four cows on the property, as well as a horse. He is growing five acres of sod on his property that he intends to sell. He is actively haying some of his fields. He uses the hay to feed his own livestock or donates it to charity. So far, he has not sold any hay. In fact, to date, he has not sold any crops at all, nor has he sold any farm products, nor has he received any income from farming. Nevertheless, Riddle considers himself a farmer and testified that his farm is a work in progress.

II.

In 1988, Riddle purchased Fairbanks Pumping and Thawing. Fairbanks Pumping and Thawing engages in various business activities including pumping septic tanks in the Fairbanks area.

Septic systems, as opposed to municipal sewer systems, use a tank and leach field to partially process domestic waste. The waste flows into the tank where solids sink and are consumed by microbes while liquid flows out of the tank and is returned to the soil through a leach field. When a septic tank is pumped, the material pumped out of the tanks, which is called septage, may be material that has been significantly treated by the microbes, or it may be mainly recently-added material that has not been significantly treated by microbes. Because of the extreme cold in the Fairbanks area, septic tanks do not work very well and must be pumped frequently.

Until 2009, virtually all of the septage pumping businesses in the Fairbanks area disposed of pumped septage by paying a fee to dump the septage at the treatment plant owned by Golden Heart Utilities (“GHU”), a regulated utility company.² GHU charges approximately 11 cents per gallon to dispose of septage, and as a result, a significant part of the overhead for septage pumping businesses is the dump fee.

When septage is processed at the GHU treatment plant, it is put through a screening process to remove trash and is thickened and dewatered. It is then trucked to the GHU compost yard where it is mixed with wood chips and placed on an asphalt pad. It is heated to at least 50°C, tested for metals and for fecal coliform bacteria, and then sold as a finished product. GHU has the necessary permits to do this.

Septage in the Fairbanks area has a high metal content because arsenic occurs naturally in local water, and most septic systems are associated with wells. If GHU compost were made from septage sludge alone, it probably would not meet the metals guidelines established by the solid waste disposal permit issued to GHU by the Alaska Department of Environmental Conservation (“ADEC”). In order to meet the regulatory guidelines regarding metals, GHU mixes septage sludge with sewage sludge.

III.

In 2005, Riddle’s business, Fairbanks Pumping and Thawing, began dumping septage into lagoons located on Riddle’s Eielson Farm Road property. Fairbanks Pumping and Thawing

² An exception was Fairbanks Pumping and Thawing which stopped most of its dumping at GHU by 2005.

does not keep records about how much septage it dumps into the lagoons, so there is no way to determine how much septage is dumped into the lagoons annually by Riddle's business.

Riddle testified that the reason he dumps septage into the lagoons at Eielson Farm Road is to use the septage to fertilize the soil on his farm. He testified that he began dumping septage into the lagoons on his property in 2005 but did not actually apply any of the septage to the land until 2010 because it took from 2005 to 2010 to accumulate enough septage to use it on the fields.³

Applying human waste to soil in order to fertilize the soil is an accepted farming practice. Trial testimony from a variety of witnesses (including local farmers, ADEC employees, the president of the statewide Alaska Farm Bureau, the president of the local Interior Farm Bureau, and a retired manager of the University of Alaska Fairbanks Experimental Farm) established that using human septage to enrich soil is not only acceptable but desirable because human septage is a renewable and widely available source of fertilizer. In fact, many farmers take septage from their home septic systems and add it to animal waste to fertilize fields.

When human waste is applied to soil as fertilizer, it should be applied at an "agronomic rate" that is sufficient to satisfy the consumptive needs of the plants grown at the site. The term "agronomic rate" refers to a specific rate of effluent application that provides the correct amount of nutrients for the crops. EPA guidelines for the land application of septage prohibit any application of effluent beyond the agronomic rate. This is to ensure that effluent does not

³ The court finds that this explanation is not credible.

seep below the root zone and into the ground water. Any application beyond the agronomic rate is not allowed by federal regulations.

IV.

In 2007, Lanser purchased land adjacent to Riddle's property in order to develop it as a subdivision of "farmsteads." He applied for and obtained a rezoning of the land from GU 1 to RF 4. The re-zoning requires a minimum lot size of just under four acres and allows for a residential neighborhood with horse corrals, chickens, rabbits, a few farm animals, extensive gardens, and other light farming operations.

From 2008 to the present, Lanser worked at the subdivision, which is known as the Arctic Fox Subdivision, for over 50 hours per week. He sold (and is in the process of selling) numerous homes in the subdivision. Lanser was aware that he was developing a subdivision that was surrounded by agricultural land and was aware that the landowners adjacent to the subdivision were actively farming. Lanser is not hostile to farming and does not want to change the agricultural nature of the area. In fact, he chose Eielson Farm Road for his development not only because of the quality of the soil and trees but also because of the agricultural character of the area.

V.

Beginning in December of 2006, Riddle applied for permits that would allow him to apply septage to his land on Eielson Farm Road. Lanser participated in some of the public meetings that were conducted with regard to the permits. At the time of the applications, many of Riddle's neighbors expressed concern that if Riddle were allowed to store and spread septage

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on his land, the septage might emit pervasive and unpleasant odors. Riddle represented that there would not be any noxious odors, and Lanser was left with the impression that Riddle's permits could be revoked by the granting authorities if odors became a problem.

On December 27, 2006, Riddle applied for a permit from the Alaska Department of Environmental Conservation ("ADEC") for land application of biosolids.⁴ His application indicated, "Odor control will be accomplished by injecting biosolids in the soil before the end of the day. Cover materials, or odor inhibitors would be applied, if necessary, should odors become a nuisance. Stockpiles will be covered with non-breathable covers. Odors could additionally be controlled with non-toxic, biodegradable odor inhibitors." Riddle's application was granted by the ADEC, which issued a permit on April 17, 2007.

Riddle's ADEC permit indicates that he must manage and operate "the facility" in accordance with his permit application materials. Because Riddle's permit application indicated that he would cover stockpiles with non-breathable covers and that he would control odors if they become a nuisance, the ADEC permit requires these things. In fact, the ADEC decision document indicated, "Although the permit cannot be denied due to the potential for odors, ADEC can revoke the permit if odors become a nuisance and the nuisance is not abated."

In spite of the clear language of the permit and the ADEC decision document, at some point after the permit was issued, the ADEC took the position that the Right-to-Farm Act prevents it from enforcing the odor control requirements of the permit. The ADEC has decided that it will not take further odor enforcement action until this lawsuit has been decided.

⁴ Land application of biosolids is the process of enriching soils by adding either septage from domestic septic tanks or sewage sludge from a wastewater treatment plant. As indicated herein, the process is an accepted method of adding nutrients (primarily nitrogen) to soil.

In addition to requiring odor control, the ADEC permit also requires Riddle to comply with federal and state regulations regarding the land application of biosolids. Federal regulations require that the applied quantity does not exceed the loading rate for metals in the soil or the agronomic rate for nitrogen for the crop to be grown. As mentioned above, the agronomic rate is the rate that septage can be applied to crops in order to provide nitrogen for the crops without polluting the ground and the ground water.

To determine the agronomic rate for applying septage to his crops, Riddle obtained the help of Dr. Charles Knight, a retired UAF professor. With Dr. Knight's help, Riddle determined the amount of nitrogen required by each of the crops he wanted to plant. He then subtracted the amount of nitrogen in the soil.⁵ He then calculated how much effluent would be needed to supply the difference. He used data regarding the dilution rate for sewage cake⁶ to determine the dilution factor for the septage.

After receiving the ADEC permit, Riddle applied to the Fairbanks North Star Borough for conditional use approval of the beneficial application of biosolids to his land. At the Borough Planning Commission meeting on September 18, 2008, Riddle represented that he would store septage mainly in enclosed tanks.⁷ The Chairperson asked Riddle to clarify that the holding cell/septage lagoon "would only be used in the summertime as you're transitioning stuff

⁵ Riddle assumed that his soil was, like most soil in the Interior, "pretty sterile."

⁶ He obtained this information from MUS, a regulated utility.

⁷ Riddle told the Commission that there would be "a small holding cell" for the storage of the septage in addition to the enclosed tanks. When pressed as to how he defines "small", Riddle indicated that the holding cell/lagoon would not be a football field sized cell but rather would be the size of an Olympic swimming pool. In spite of what he told the Planning Commission, Riddle now has five septage lagoons on his property that cover an area significantly larger than an Olympic-sized swimming pool.

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around,” Riddle said, “Correct.” The Chairperson asked, “It’s not stored there throughout the winter, stockpiling waiting for spring thaw?” Riddle answered, “No, no.”

Riddle also was asked whether the septage dumping was going to be “a year-round operation.” He replied, “No.” When the Chairperson said, “It’s really only thaw to freeze is when this is going to work,” Riddle replied, “Correct. Correct.” The Chairperson then clarified, “There will be no septic hauling - biosolids activity - on this land through the winter months when there’s nothing to do out there.” Riddle replied, “No. You can’t – you can’t – you can’t apply it; you can’t use it.” The Chairperson then said, “Because it has to be applied to work,” and again Riddle replied, “Correct.”

The Planning Commission approved Riddle’s request for a permit to apply biosolids to his land. The Commission indicated, however, that the “principal use of the property must be agricultural in nature, with the beneficial application of biosolids remaining a conditionally-approved accessory use in support of the agricultural use.” Furthermore, pursuant to the Planning Commission’s approval letter, “[t]he disposal of biosolids cannot become the principal use of the property.”

VI.

For the first several years that Riddle was operating his septage lagoons, there were no offensive odors noticed by his neighbors. From 2005 through 2009, Fairbanks Pumping and Thawing dumped septage into the lagoons but the lagoons did not cause noticeable odors.

This changed in the early spring of 2010. At that time, Lanser and other neighborhood residents began to smell strong, pervasive, and persistent foul odors originating with Riddle’s

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septage lagoons. The evidence at trial established that it is not Riddle's spreading of biosolids that is causing the odors; rather, it is his storage lagoons that are causing the odors. In fact, Riddle's neighbors first noticed the foul odors in the early spring of 2010, which was months before Riddle's first application of the septage to his land.

Evidence at trial demonstrated clearly that the odors from Riddle's lagoons intensified in the early spring of 2010 because the volume of septage being dumped into Riddle's septage lagoons dramatically increased during the preceding winter. During that winter, Bigfoot Pumping and Thawing ("Bigfoot") stopped dumping its septage at the wastewater treatment plant owned by GHU and began dumping its septage into the septage lagoons on Riddle's property.⁸ In calendar year 2010, Bigfoot dumped at least 2,520,857 gallons of septage into Riddle's septage lagoons.⁹ The result was that the total volume of septage deposited at GHU declined by approximately 40-50 percent. In fact, the total annual volume of septage deposited at GHU declined by 3,000,000 to 4,000,000 gallons.

The odors from the septage lagoons often prevent Lanser and his neighbors from engaging in ordinary outdoor activities on their land. The odors begin at breakup and endure through freezeup. The odors are so strong and so foul that engaging in outdoor activities is often extremely unpleasant, and the odors interfere with ordinary activities such as barbequing,

⁸ Riddle charges Bigfoot dumping fees of 5 cents per gallon of septage, which is about half of what GHU charges for dumping septage. Bigfoot paid Riddle \$123,875.35 in dumping fees for calendar year 2010, \$188,744.80 in calendar year 2011, and \$182,607.85 in calendar year 2012.

⁹ Bigfoot self-reported dumping this amount, and therefore the evidence is clear that at least this amount was dumped. However, it is likely that this amount was under-reported, given that the amount of septage dumped at GHU declined by more than this.

gardening, and sitting outdoors. The odors clearly interfere with Lanser's outdoor activities on the land, which include building houses and preparing the land for development.

VII.

In June of 2010, a few months after the odors from the septage lagoons began to bother his neighbors, Riddle applied septage to his fields for the first time. In calendar year 2010, he applied a total of 174,000 gallons of septage to the fields. The application occurred on four days – June 9, June 10, June 24, and June 25. Riddle's records indicate that for that same calendar year, Bigfoot dumped at least 2,520,857 gallons of septage into Riddle's septage lagoons. Thus, Riddle used, at most, approximately 7 percent of the septage he took in from Bigfoot that year.¹⁰

In 2011, Bigfoot dumped 3,773,932 gallons of septage into the lagoons. That year, Riddle applied 1,084,000 gallons of septage to his fields. That is, he spread approximately 29 percent of the septage that was dumped into the lagoons by Bigfoot in 2011. In 2012, Bigfoot dumped at least 3,652,157 gallons of septage into the lagoons. That year, Riddle applied 377,000 gallons of septage to his fields, which is about 10 percent of the amount that Bigfoot dumped into the lagoons that year.¹¹

From 2005 to the present, Riddle's business, Fairbanks Pumping and Thawing, has also been dumping septage into the lagoons. The amount of septage that Riddle is currently storing in the lagoons is unknown because Riddle does not keep records of how much septage Fairbanks Pumping and Thawing has dumped and because the total volume of material in the lagoons

¹⁰ In addition, Fairbanks Pumping and Thawing had been dumping septage into the lagoons for 4 to 5 years prior to the time that Bigfoot began dumping. None of this septage was used by Riddle for farming.

¹¹ For 2013, the only data available regarding Bigfoot's dumping was for the month of January. That data shows that in January of 2013, Bigfoot dumped 108,671 gallons of septage into Riddle's lagoons and paid Riddle \$5433.53 in dumping fees. As of September 13, 2013, Riddle had applied 1,412,000 gallons of septage to his fields.

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declines as water evaporates from them. It is clear, however, that Riddle has made use of less than a quarter of the septage that Bigfoot has dumped, and it is also clear that, at the time of trial, Bigfoot had dumped at least 12 million gallons of septage into the lagoons. Riddle has not made use of any of the septage that his own company dumps into the lagoons.

Riddle testified at trial that he spreads the septage "all the time" and that he applies the septage "every day that we can." He testified that application of the septage to the fields is limited by weather, specifically by rain, and by field conditions. He indicated that he cannot apply the septage to the fields if the fields are too boggy or if it is raining. If Riddle's testimony is to be believed, weather and field conditions prevent him from making use of more than three-quarters of the total amount of septage that is dumped into his lagoons.

VIII.

Riddle testified at the trial that he is using some of the septage for compost. He explained that he is dewatering the septage by allowing it to sit in the lagoons while the water evaporates and that he is allowing it to naturally degrade by storing it in the septage lagoons and moving it from cell to cell. He testified that once the septage has been dewatered and has naturally degraded in the lagoons, he mixes it with wood chips in order to create compost. He testified that he began making compost in 2005 but that he did not remove the compost material from the lagoons or add wood chips to it until the summer of 2013.

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Riddle testified that he is composting the septage in order to use it as fertilizer on his fields. However, Riddle's ADEC permit specifically forbids him from doing this.¹² The evidence at trial was clear, and Riddle did not disagree, that his permit does not allow him to apply treated septage to his land, including septage that he treats by dewatering and composting. The only treated septage that may be applied to his land is sewage sludge from GHU. Because the permit specifically forbids him from applying his compost to the land, he cannot use his compost for farming.

Riddle testified that he plans to apply for a modification of his permit to allow him to land-apply the compost. However, it is unlikely that he would be granted such a modification, given that he made material misrepresentations to both the Borough and to the DEC when he applied for his original permits, and also given that the compost he is making is unlikely to pass a metals test.

Certainly, Riddle currently is unable to use his compost for farming his land, and therefore the septage that he is composting is not intended for use in the commercial production or processing of crops, livestock, or livestock products. Additionally, the composting of the septage in lagoons is not incident to or done in conjunction with farming activities. The septage that is dumped into Riddle's lagoons is intended to be treated by dewatering and composting and/or is intended to be disposed of. It is not intended for use in farming.

¹² The permit states clearly that sewage sludge obtained from sources other than GHU may not be land applied without a modification to the permit. Title 40, Part 503 of the code of Federal Regulations (40 CFR 503) defines sewage sludge as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. The regulations further indicate treatment of sewage sludge is the preparation of sewage sludge for final use or disposal, including, but not limited to, thickening, stabilizing and dewatering. Therefore, although the permit allows Riddle to apply untreated domestic septage to his land, he is not allowed by the permit to apply septage to his land if it has been treated by dewatering it and/or composting it.

IX.

Most of the witnesses at trial were not aware of how much septage has been dumped into Riddle's lagoons and/or were not aware of how little septage Riddle has actually applied to his land. However, many of the witnesses who testified that applying human biosolids to soil is an accepted farming practice also testified that the septage in Riddle's lagoons is not nearly enough to fertilize his fields.¹³ Most of these witnesses had seen Riddle's lagoons and knew how big they were. Many of these witnesses also testified that Riddle could apply all of the septage he has on his property to his land and still not meet the nutrient needs of the soil. The evidence at trial was clear and convincing: if the lagoons were intended to store septage for use in farming, Riddle could, and should, be applying all of the septage to his land. The court concludes, based on the evidence described above, that the septage lagoons are not presently intended to be used in farming. Riddle's current intention in operating the septage lagoons is to use them for the treatment and disposal of septage. He has occasionally applied some of the septage to his fields, but his intention in doing this was more to dispose of the septage than to prepare the land for farming.

DISCUSSION

I.

Lanser has proved by clear and convincing evidence that Riddle's septage lagoons would be a private nuisance if it were not for the Right-to-Farm Act. The septage lagoons unreasonably interfere with Lanser's use and enjoyment of his property. The odors from the lagoons are so

¹³ One of these witnesses testified that because Riddle has access to septage as free fertilizer, he assumes that Riddle's farm is making money. The witness stated that if Riddle is not making money, he is "doing something wrong."

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strong and pervasive that engaging in outdoor activities is often extremely unpleasant, and the odors interfere with Lanser's activities on the land such as building houses and developing the subdivision, and the odors also interfere with ordinary activities of homeowners in the subdivision.

Riddle was aware of the risk that his conduct in operating septage lagoons would unreasonably interfere with Lanser's use and enjoyment of his property. When he applied for permits to apply septage to his land in 2006 and 2007, many of his neighbors expressed concern that the septage might emit pervasive and unpleasant odors. Riddle responded with a number of misrepresentations. First, he misrepresented the manner in which the septage would be stored. He indicated that stockpiles of septage would be covered with non-breathable covers and that odors would be controlled with non-toxic, biodegradable odor inhibitors. He also misrepresented the size of the lagoons, claiming that there would be only one lagoon that would the size of a swimming pool. He also misrepresented the scope of the septage dumping that would occur on his land, claiming that dumping would only occur in the summer when he was spreading the septage. In fact, Riddle intended, and has operated, a year-round septage dumping business.

The evidence clearly shows that Riddle acted recklessly and/or intentionally. Riddle was aware of the risk that the septage lagoons would cause noxious odors and he disregarded that risk. His conduct recklessly and unreasonably interfered with Lanser's use and enjoyment of his property.

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II.

Although Riddle's conduct in operating the septage lagoons would constitute a private nuisance under ordinary circumstances, this case involves Riddle's use of agricultural land. It is clear that before Riddle began operating the lagoons, his land was an "agricultural facility" that was not a nuisance. Riddle's predecessors used and intended to use the land for the commercial production of crops. For this reason, the court must determine whether the Right-to-Farm act prevents the septage lagoons from being a nuisance.

The Right-to-Farm-Act indicates that as long as land is "used or is intended for use in the commercial production or processing of crops, livestock, or livestock products," the land is an "agricultural facility" protected by the Act. Similarly, if the lagoons themselves are an "agricultural facility" or if they are an "agricultural operation" on an "agricultural facility," they are protected by the Act. The Act defines an "agricultural operation", as an agricultural and farming activity or a practice conducted on an agricultural facility that is incident to or in conjunction with farming activities.

The evidence presented at trial suggests that Riddle's land is no longer an "agricultural facility" that is "used or is intended for use in the **commercial** production or processing of crops, livestock, or livestock products" (emphasis added).¹⁴ However, Alaska's Right-to-Farm Act does not provide a definition of "commercial." In defining this term, this court's primary goal is

¹⁴ In the court's summary judgment order, the court indicated that the "primary purpose" of the septage lagoons must be for agriculture. The court recognizes the error in its previous order and will apply the correct legal standard in issuing this order. The error in the previous order was not relevant to the court's decision on summary judgment; a material issue of fact existed as to whether the lagoons were "used or intended for use" in farming, and the court now resolves that issue in favor of the plaintiff.

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to determine and implement the intent of the Legislature. To do this, the court looks to the language of the entire statute, along with its purpose, effects, and consequences.

There is little doubt as to the purpose behind the Right-to-Farm Act. Indeed, virtually all states have enacted right-to-farm laws to deal with the conflict that develops “[a]s the population of the nation grows and is dispersed into traditionally rural areas.”¹⁵ The increased encroachment of nonagricultural uses upon traditional agricultural uses “has created an atmosphere in which farmers throughout the nation have been subjected to nuisance suits.”¹⁶ Alaska’s Right-to-Farm Act is a direct response to urban (or suburban) dwellers moving into agricultural areas and then filing nuisance suits because of noisy or smelly farming activity. Like other Right-to-Farm Acts, Alaska’s statute codifies the common law defense of “coming to the nuisance.”¹⁷ When an agricultural activity on a commercial farm may interfere with the use and enjoyment of adjoining suburban developments that subsequently locate next to the farm, Alaska’s Right-to-Farm Act protects the farmer from nuisance suits resulting from such circumstances. This is true even if the activity is a new activity that was not taking place when the plaintiff first moved next to the commercial farm, as long as the activity is related to farming.

Testimony at trial from many experienced Alaskan farmers indicated that often it takes several years of working the land before a farmer receives any income from farming. Additionally, the costs of farming often exceed the income from farming. Therefore, the fact that Riddle does not seem to be making any money from farming is not dispositive of the

¹⁵ 13 N. Harl, *Agricultural Law* § 124.01, at 124–2 (1993).

¹⁶ *Id.*

¹⁷ Margaret Rosso Grossman & Thomas G. Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, *Wis L.Rev.* 95, 118 (1983).

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question of whether he using his land for commercial farming. The fact that he receives significantly more income from septage disposal than from the processing of crops, livestock, or livestock products is also not dispositive of this issue. Additionally, it clear from the legislative history of the Right-to-Farm Act and from the testimony of trial witnesses that there is no minimum level of sales that must be reached before a farm is considered a “commercial” farm.

Based on the above, the court concludes that “the commercial production or processing of crops, livestock, or livestock products” is the act of producing or processing crops, livestock, or livestock products intended to be marketed and sold.¹⁸ In this case, Riddle has had access to free fertilizer in the form of septage since 2005. In spite of this, he has not sold any crops at all, nor has he sold any farm products, nor has he received any income from farming. He seems to be growing a patch of sod that he intends to sell, but aside from this, he has not produced or processed anything intended to be marketed or sold. He has, however, received approximately \$600,000 of income from septage dumping fees over the last 4 years.

Riddle has purchased a significant amount of farm machinery, and he seems to be growing sod for sale. It may be that at some point in the future, his farm will be used in the commercial production of crops or livestock. It is unclear to the court whether or not Riddle truly intends to produce or process crops for profit. In this case, Riddle may be in the process of developing a nascent commercial farming enterprise. However, if this were the case, Riddle would be selling some of his products, even if he was taking in very little income in proportion to the expenses. Instead, Riddle has not sold any farm products of any kind, and no income,

¹⁸ See, e.g., *Charter Tp. of Shelby v. Papesh*, 267 Mich.App. 92, 100-101, 704 N.W.2d 92 (2005).

however slight, has been generated by his farming activities. Riddle's farm appears to be a "hobby farm" rather than a commercial farm. If it is, his land is not an "agricultural facility" and Riddle's septage lagoons are not protected by the Act.

The court does not need to decide this question, however. Even if the land is an "agricultural facility," the evidence at trial demonstrated clearly that Riddle's septage lagoons are not an "agricultural operation" such that Riddle is protected from a nuisance suit by the Right-To-Farm Act. Riddle is not operating the lagoons "as an incident to or in conjunction with agricultural activities." In fact, Riddle is using the lagoons to treat and dispose of septage rather than to support his limited agricultural operations. The lagoons are clearly intended to treat the septage through the processes of dewatering and natural degradation rather than to store septage that is intended to be land-applied in order to fertilize the soil.¹⁹ In fact, even the land-application of the septage seems to be intended to dispose of it rather than to fertilize fields with it.

The evidence at trial established that Riddle intends that the septage disposal business he is operating on his farm will also, at some point in the future, support commercial farming activities. Riddle is a civic-minded, entrepreneurial person who is developing a business model that would combine septage disposal with commercial farming, which is a laudable goal. However, the Right-to-Farm Act does not offer protection from a nuisance that may later support a farming activity. Rather, the Right-to-Farm Act protects a farming activity that later becomes a nuisance because of subsequent expansion or adoption of new technology.

¹⁹ See 40 CFR 503 §503.9(y) and (z) ("storage" is the placement of septage on land for two years or less; "treatment" is the preparation of septage for final use or disposal, including dewatering)

If the lagoons existed to store septage as fertilizer for Riddle's fields, and if they later were expanded in order to fertilize more fields, causing them to emit nuisance-level odors, Riddle would be protected by the Right-to Farm Act. In this case, however, the reverse is true. Riddle was dumping septage into the lagoons for five years before he spread any of it onto his fields. The nuisance-level odors occurred before Riddle land-applied any of the septage. Even now, Riddle spreads only a small fraction of the millions of gallons of septage that are dumped into the lagoons each year. The fact that he hopes, at some point in the future, to be able to use the septage to support a commercial farm does not provide him with protection under the Act. In order to be protected, the septage must be intended for use in farming from the onset.

The evidence at trial was clear: The lagoons were a nuisance before Riddle began using the septage for farming, and the lagoons currently are intended to be used for the treatment and disposal of septage rather than to support a farming activity. The court does not doubt that Riddle hopes to use the lagoons for both treatment of septage and for commercial farming in the future. However, the fact remains that he began operating the lagoons in order to treat and dispose of septage and has only recently begun to use a small portion of the septage for fertilizing his fields. Under these circumstances, the Right-to-Farm Act does not prevent the lagoons from being a private nuisance.

III.

Riddle must abate the nuisance odors. A status hearing will be held on November 26, 2013, at 4:00 p.m. to schedule an evidentiary hearing on whether and to what extent the nuisance has already been abated and also to determine what, if any, further abatement should be ordered.

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Dated this 7 day of November, 2013 at Fairbanks, Alaska.


Bethany S. Harbison
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT RIDDLE, dba)
 FAIRBANKS PUMPING & THAWING,)
)
 Defendant.)
)
 _____)
 Case No. 4FA-11-3117 CI

ORDER

This matter came before the court on the plaintiff's motion for a temporary injunction and for the court's decision regarding appropriate abatement of the nuisance in this case.

The evidence presented at trial established by clear and convincing evidence that the storage of septage in lagoons on Mr. Riddle's property constitutes a private nuisance because the odors produced by the lagoons unreasonably interfere with his neighbors' use of their land. Additionally, the evidence established that Riddle's storage and spreading of biosolids is not an activity that is being conducted incident to or in conjunction with agricultural and farming activities.

Therefore, the court must order abatement of the nuisance. The court heard two days of evidence about Riddle's abatement plan. The court finds that, in large part, the proposed plan is appropriate in this case and is more likely than not to be successful. The court finds that the Ecolo deodorizer system that Riddle purchased and installed on his property, if operated as

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recommended by Ecolo, is likely to eliminate the nuisance odors or reduce them to a non-nuisance level.

As suggested by Riddle at the abatement hearing, the court will schedule a status hearing to take place in July. At that time, the court expects the parties to report on whether the odors have been eliminated or reduced to a non-nuisance level and also expects Mr. Riddle to update the court on his abatement efforts. If the nuisance has not been successfully abated by the Ecolo system, the court will issue an injunction prohibiting Mr. Riddle from continuing to collect domestic septage on his property.

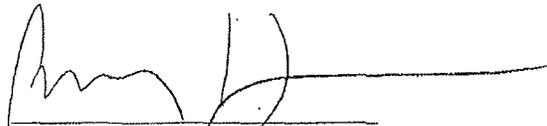
Based on the above, IT IS HEREBY ORDERED:

1. The Motion for Temporary Injunction is denied.
2. Mr. Riddle shall immediately apply BioStreme 201 & BioStreme 211 to his septage lagoons in a manner recommended by Ecolo.
3. Mr. Riddle shall operate the odor control system he purchased from Ecolo, including the AirStreme Misting System, as recommended by Ecolo. The misting shall occur for a minimum of 30 seconds every 5 minutes during daylight hours. The system shall be moved to the location recommended by Ecolo, between the lagoons and the Arctic Fox subdivision.
4. Mr. Riddle shall monitor and keep records of the amounts of septage dumped into the lagoons by his own company, Fairbanks Pumping and Thawing.
5. Mr. Riddle shall be available to receive any odor complaints and to address them by manually distributing the neutralizing chemicals on an as-needed basis.
6. The odor control system must be placed into operation within seven days of the date of **000206** this order and must continue to be operated this year until the lagoons are frozen. If

necessary, Mr. Riddle shall use propylene glycol to prevent the system from freezing. The odor control system must be operated each year from March 15 until the lagoons are frozen.

7. Mr. Riddle shall employ Nortech to advise him on achieving abatement of the odors and shall follow any additional recommendations made by that company. Mr. Riddle shall also involve the Ecolo technician in his abatement efforts and shall follow Ecolo's recommendations regarding operating the system.
8. Mr. Riddle shall keep and maintain records of his abatement efforts and of any odor complaints he receives. He shall keep and maintain records of his discussions with Nortech and Ecolo and of the recommendations they make to him.
9. If the abatement plan proposed by Mr. Riddle and ordered herein is not successful, in July the court will enjoin Mr. Riddle from dumping, storing, treating, or disposing of domestic septage on his property. A final judgment will issue following the status hearing in July.

Dated this 4 day of April, 2014, at Fairbanks, Alaska.


Bethany S. Harbison
Superior Court Judge

I certify that a copy of the foregoing was distributed via:
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT RIDDLE, dba)
 FAIRBANKS PUMPING & THAWING,)
)
 Defendant.)

Case No. 4FA-11-03117 CI

AMENDED FINAL JUDGMENT

The Court, being fully advised in the premises, and pursuant to the decisions of the Court dated November 7, 2013 and April 4, 2014, and subsequent status hearings on July 8 and October 15, 2014, it is hereby ORDERED as follows:

1. Judgment is entered in favor of Plaintiff Eric Lanser against Defendant Robert Riddle dba Fairbanks Pumping & Thawing.

2. By this order, the court declares that Riddle has ^{created a} ~~created an unabated~~ private nuisance.¹

3. By this order, a permanent injunction is issued to enjoin Defendant Robert Riddle dba Fairbanks Pumping and Thawing from creating or maintaining an odor nuisance, ~~by storing, accumulating, treating, and land applying domestic septage on the following property:~~

(B7)

¹ Order, dated November 7, 2013.

² Order, dated April 4, 2013, at p. 2, 3. The property identified herein is reflected on Plaintiff's Trial Exhibit 26. Tract A and Tract B of D&I Farmstead are reflected as Lot 3 D&I Farmstead on Plaintiff's 26.

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LOGGED

DEC 08 2014

ORAVEC LAW GROUP, LLC

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TRACT A D&I FARMSTEAD FIRST ADDITION according to the plat filed October 9, 2009 as Plat No. 2009-99, Records of the Fairbanks Recording District, Fourth Judicial District.

TRACT B D&I FARMSTEAD FIRST ADDITION according to the plat filed October 9, 2009 as Plat No. 2009-99, Records of the Fairbanks Recording District, Fourth Judicial District.

Lot 4 of D&I FARMSTEAD according to the plat filed November 18, 2005 as Plat No. 2005-165 and amended by plat recorded December 22, 2008 as Plat No. 2008-132, Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

Lot 5 of D&I FARMSTEAD according to the plat filed November 18, 2005 as Plat No. 2005-165 and amended by plat recorded December 22, 2008 as Plat No. 2008-132, Records of the Fairbanks Recording District, Fourth Judicial District.

Lot 3 of COBEN FARMSTEAD, according to the plat filed November 18, 2005 as Plat No. 2005-164, Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska

Lot 4 of COBEN FARMSTEAD, according to the plat filed November 18, 2005 as Plat No. 2005-164, Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

Lot 1 of SEBAUGH SUBDIVISION according to the plat filed March 31, 1999 as Plat Number 99-21; Recorded in Fairbanks Recording District, Fourth Judicial District, State of Alaska.

4. By this order, Defendant Robert Riddle dba Fairbanks Pumping and Thawing is required to meet the terms of the following odor abatement plan:

- a. Riddle shall apply BioStreme 201 & BioStreme 211 to his septage lagoons in a manner recommended by Ecolo.
- b. Riddle shall operate the odor control system he purchased from Ecolo, including the AirStreme Misting System, as recommended by Ecolo. The misting shall occur for a minimum of 30 seconds every 5 minutes during daylight hours. The system shall be moved to the location recommended by Ecolo, between the lagoons and the Arctic Fox subdivision.
- c. Riddle shall monitor and keep records of the amount of septage dumped into the lagoons by his own company, Fairbanks Pumping and Thawing.

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AMENDED FINAL JUDGMENT

Lanser v. Riddle dba Fairbanks Pumping & Thawing

Case No. 4FA-11-3118 CI

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- d. Riddle shall be available to receive any odor complaints and to address them by manually distributing the neutralizing chemicals on an as-needed basis.
- e. The odor control system must be placed in operation and must be operated until the lagoons are frozen. If necessary, Riddle shall use propylene glycol to prevent the system from freezing. The odor control system must be operated each year from March 15 until the lagoons are frozen.
- f. Riddle shall employ Nortech to advise him on achieving abatement of the odors and shall follow any additional recommendations made by that company. Riddle shall also involve the Ecolo technician in his abatement efforts and shall follow Ecolo's recommendations regarding operating the system.
- g. Riddle shall keep and maintain records of his abatement efforts and of any odor complaints he receives. He shall keep and maintain records of his discussions with Nortech and Ecolo and of the recommendations they make to him.

5. ~~The court retains jurisdiction over Riddle's compliance with the abatement plan.~~

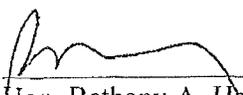
6. Plaintiff Eric Lanser shall recover from and against Defendant Robert Riddle dba

Fairbanks Pumping and Thawing:

- a. Sanctions: _____
Date Awarded: _____
- b. Attorney Fees: _____
Date Awarded: _____
- c. Costs: _____
Date Awarded: _____
Clerk: _____
- d. TOTAL JUDGMENT: _____
- e. Post-Judgment Interest Rate: 3.75%

DATED this 1 day of April, 2015, at Fairbanks, Alaska.

I certify that on 4-2-15
copies of this form were sent to:
Clerk: cl satterberg-cc
Oravec
W/BIANKS


Hon. Bethany A. Harbison
Superior Court Judge
000210

AMENDED FINAL JUDGMENT
Lanser v. Riddle dba Fairbanks Pumping & Thawing

Case No. 4FA-11-3118 CI
Page 3 of 4

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Certificate of Service

The undersigned hereby certifies
that on the 8th day of December, 2014, ,
true and complete copies of the
foregoing were sent via U.S. Mail to:

William Satterberg
Law Offices of William R. Satterberg Jr.
709 Fourth Avenue
Fairbanks, AK 99701

ORAVEC LAW GROUP, LLC

4/14/15
Re-sent to Oravec
at different address

SS

000211

AMENDED FINAL JUDGMENT
Lanser v. Riddle dba Fairbanks Pumping & Thawing

Case No. 4FA-11-3118 CI
Page 4 of 4

003886

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT RIDDLE, dba)
 FAIRBANKS PUMPING & THAWING,)
)
 Defendant.)

Case No. 4FA-11-3117 CI

ORDER RE: ATTORNEY'S FEES

This civil case began in 2011. After several years of litigation, on November 26, 2014 this court entered judgment in favor of Eric Lanser against Robert Riddle and issued a permanent injunction enjoining Riddle from creating or maintaining an odor nuisance. Recently, the court granted Lanser's request to amend the final judgment, including in the Amended Final Judgment a provision for attorney's fees, costs, post-judgment interest, and sanctions, if appropriate.

This matter is now before the court on Lanser's Civil Rule 82(B)(3) motion for enhanced attorney's fees & costs, filed on December 11, 2014. Lanser requests that the court order Riddle to pay one hundred percent of his attorney's fees and court costs because of Riddle's conduct during the pendency of the matter and the unique nature of the case. Riddle opposes Lanser's motion for enhanced fees and requests that the court deny Lanser's motion and enter an order granting Lanser's fees in an amount not to exceed \$22,498.28.

I. Issues Presented

1. Is Lanser entitled to Civil Rule 37 discovery sanctions?
2. Is Lanser entitled to 100 percent reimbursement of costs and 30 percent reimbursement of attorney's fees as a prevailing party under the Alaska Rules of Civil Procedure?
3. Is Lanser entitled to reimbursement of 100 percent costs and fees under Alaska Rule of Civil Procedure 82(B)(3)?

II. Discussion

1. Civil Rule 37(g) fees shall be awarded.

Despite Riddle's assertions that Lanser waived all pending motions for sanctions, this court recently determined that Lanser did not withdraw his Civil Rule 37 motion for attorney's fees and costs when he withdrew a motion sanctions against Riddle's attorney.¹ Lanser is correct that the Civil Rule 37 motion "was not waived, would not have been waived, and that his counsel independently reviewed the two pending motions brought by plaintiff and withdrew one, retaining the Civil Rule 37 motion for good cause."² As this court previously explained, "[t]he Civil Rule 37 motion is still pending and will be considered by the court in issuing a final judgment in this case."³

On December 10, 2012, Lanser filed a motion for attorney fees and costs for defendant's discovery non-compliance under Civil Rule 37(g). In this motion, Lanser sought costs not otherwise allowable under Civil Rule 79, but which would be allowed under Civil Rule 37's provision for when a party fails to cooperate in discovery. The relevant portion of Civil Rule 37 reads as follows:

¹ See Order Granting Motion to Amend Final Judgment, 3.

² Reply in Support of Attorney Fees, 2.

³ Order Granting Motion to Amend Final Judgment, 4.

Failure to Cooperate in Discovery or to Participate in the Framing of a Discovery Plan: If a party or a party's attorney engages in unreasonable, groundless, abusive, or obstructionist conduct during the course of discovery or fails to participate in good faith in the development and submission of a proposed discovery plan as required by Civil Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the conduct.⁴

The total amount Lanser requested under this provision of Civil Rule 37 in his original motion was \$11,762 in attorney's fees, \$288 in paralegal fees, and \$3,364.76 in costs.⁵ In his most recent motion for attorney's fees and costs, Lanser clarifies that the costs he is requesting under the Civil Rule 37 provision are \$2,953.53, because certain costs are now included in the cost bill on final judgment and this is only the portion of costs associated with just the Civil Rule 37 motion.⁶ Therefore, the court concludes that Lanser currently requests \$12,050 in attorney's fees⁷ and \$2,953.53 in costs under Civil Rule 37(g), all of which were incurred as a result of Riddle's conduct during discovery.⁸

Lanser's Civil Rule 37(g) motion for fees and costs arose out of the court's order granting plaintiff's motion to compel under Civil Rule 37(a), filed on November 27, 2012.⁹ In that order, the court concluded that "Defendant's refusal to respond to the discovery requests w[as]

⁴ Alaska R. Civ. P. 37(g); *see also Strong Enterprises, Inc. v. Seaward*, 980 P.2d 456, 462 (Alaska 1999) ("Rule 37(g) allows the court, when faced with a party who engages in unreasonable, groundless, abusive, or obstructionist conduct during the course of discovery ... to require such party ... to pay to any other party the reasonable expenses ... caused by the conduct.").

⁵ Motion for Attorney Fees and Costs Under Civil Rule 37(g).

⁶ *See* Memorandum in Support of Plaintiff's Motion for Enhanced Attorney Fees and Costs, 2, n.2.

⁷ This is attorney fees plus paralegal fees, which are calculated together.

⁸ Memorandum in Support of Plaintiff's Motion for Enhanced Attorney Fees and Costs, 2.

⁹ Order Granting Plaintiff's Motion for Civil Rule 37(a) and Compelling Defendant's Responses to Discovery Requests and Compliance with Plaintiff's Civil Rule 34 Requests for Entry Upon Land for Inspection and Other Purposes.

unreasonable under Civil Rule 37(g), and may form the basis for an award to plaintiff of reasonable expenses, including attorney's fees, caused by the conduct."¹⁰ Defendant was also given an opportunity to respond to Plaintiff's Civil Rule 37(g) motion in writing and at a hearing.

Based on Riddle's conduct during the discovery stages of this litigation, a grant of fees and costs caused by Riddle's conduct under Civil Rule 37(g) is warranted. Fees and costs may be awarded if the conduct undertaken by a party or party's attorney during discovery is "unreasonable, groundless, abusive, or obstructionist."¹¹ Here, this court has already entered a finding that Defendant's refusal to comply with discovery, which necessitated Plaintiff's motion to compel, was unreasonable under Civil Rule 37(g), and necessitated Lanser's motion to compel.¹² In light of this underlying order and Riddle's conduct during discovery, which caused unnecessary delays and higher litigation costs, the court now grants Lanser's Civil Rule 37(g) motion for fees and costs caused by Riddle's unreasonable conduct. Riddle shall pay Lanser \$12,050 for attorney's fees and \$2,953.53 for costs pursuant to Civil Rule 37(g).

2. Lanser is entitled to reimbursement of costs and 40 percent reimbursement of attorney's fees as a prevailing party under the Alaska Rules of Civil Procedure.

a. Costs

Lanser requests the full amount of costs and fees allowed under the Alaska Rules of Civil Procedure to a prevailing party. Alaska court rules provide that the prevailing party in a civil suit

¹⁰ Order Granting Plaintiff's Motion for Civil Rule 37(a) and Compelling Defendant's Responses to Discovery Requests and Compliance with Plaintiff's Civil Rule 34 Requests for Entry Upon Land for Inspection and Other Purposes, 1-2.

¹¹ Alaska R. Civ. P. 37(g).

¹² Order Granting Plaintiff's Motion for Civil Rule 37(a) and Compelling Defendant's Responses to Discovery Requests and Compliance with Plaintiff's Civil Rule 34 Requests for Entry Upon Land for Inspection and Other Purposes, 1-2.

is entitled to recover its full costs and a portion of reasonable attorney's fees from the non-prevailing party. According to Civil Rule 54(d), costs shall be awarded to the prevailing party unless the court otherwise directs.¹³ These costs must have been necessarily incurred in the action, and the amount awarded for each item will be the amount specified in the rules or, if no amount is specified by the rules, the cost actually incurred by the party to the extent it is reasonable.¹⁴ Allowable costs are delineated specifically in Civil Rule 79(f).¹⁵ Unlike attorney's fees, costs may be awarded in full.¹⁶

Here, Riddle does not dispute that Lanser is the prevailing party in this case. As a result, Lanser has submitted a cost bill in the amount of \$4,146.17 as allowed under Civil Rule 79(f).

b. Attorney's Fees

The prevailing party in a civil case shall be awarded attorney's fees calculated under Civil Rule 82.¹⁷ According to Civil Rule 82, in a case that involves no money judgment, the court shall award the prevailing party 30 percent of their reasonable actual attorney's fees which were necessarily incurred.¹⁸ "For purposes of awarding fees pursuant to Civil Rule 82, the general rule is that the prevailing party is the one who has successfully prosecuted or defended against the action, the one who is successful on the main issue of the action and in whose favor the decision or verdict is rendered and the judgment entered."¹⁹

¹³ Alaska R. Civ. P. 54.

¹⁴ Alaska R. Civ. P. 79(a) Allowance to Prevailing Party.

¹⁵ Alaska R. Civ. P. 79(f) Allowable Costs.

¹⁶ *CTA Architects of Alaska, Inc. v. Active Erectors & Installers, Inc.*, 781 P.2d 1364, 1367 (Alaska 1989).

¹⁷ Alaska R. Civ. P. 82(a) Allowance to Prevailing Party.

¹⁸ Alaska R. Civ. P. 82(b)(2).

¹⁹ *Day v. Moore*, 771 P.2d 436, 437 (Alaska 1989) (internal citations and quotations omitted).

Here, the court entered judgment in favor of Lanser against Riddle, but awarded no money judgment. Therefore, Lanser is entitled under Civil Rule 82(b)(2) to thirty percent of his reasonable attorney's fees necessarily incurred in bringing the litigation.

The parties currently dispute the actual amount of attorney's fees that the court may award Lanser under the civil rules. Lanser avers that he is entitled to at least \$59,917.80, which he calculated as 30 percent of his actual attorney's fees. However, Riddle disputes this amount, claiming that Lanser is entitled to a smaller portion of attorney's fees than requested because Lanser performed "hours of unnecessary work and now demands that Mr. Riddle bear the burden of compensating Plaintiff for that work."²⁰ Therefore, before determining the amount of fees Lanser may be awarded in this case, the court must first decide which attorney's fees may be justly included in the "pool" from which reimbursement is drawn. Riddle opposes Lanser's submitted "pool" of attorney's fees based on two main contentions: (1) that the court should not consider fees that were part of "extra-judicial attempts to shut down Mr. Riddle's farm, Plaintiff's claim against ADEC, and numerous records depositions"; and (2) that the court "should not award attorney's fees for invoices that were not submitted with Plaintiff's Motion [for fees and costs]."²¹

Regarding Riddle's first contention—that the court should not award attorney's fees for Plaintiff's attempts to shut down Riddle's farm during the pendency of the lawsuit through other means—the court agrees with Riddle. Approximately 35.2 hours were devoted to these extra-judicial attempts, and Riddle asks that the court omit \$7,668 from Lanser's allowable fees

²⁰ Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees, 3.

²¹ See Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees at 3-8.

accordingly. The Alaska Supreme Court has held that “[t]he purpose of Civil Rule 82 is to compensate a prevailing party partially, not fully, for attorney’s fees incurred *in litigation*.”²² Whether or not these fees were incurred in good faith efforts to “secure voluntary compliance”²³ by Lanser and his counsel is irrelevant, because they were not directly involved in litigating this case. Here, Riddle is correct in his conclusion that he should not be responsible for attorney’s fees incurred by Lanser when he sought to stop Riddle’s conduct through means outside this litigation. Therefore, the court will exclude from Lanser’s request for attorney’s fees any expenses for completing tasks outside the scope of this case, such as contacting the EPA and the Fairbanks Soil and Water Conservation District Board and petitioning the local municipality to change existing ordinances. As a result, \$7,668 shall be omitted from Plaintiff’s recoverable attorney’s fees.

The court will also omit any charges for fees incurred in Lanser’s defense against the Attorney General’s motion to dismiss his claim against the Alaska Department of Environmental Conservation (ADEC). Lanser, in his reply to Riddle’s opposition, agrees that “Riddle should not pay for Lanser’s defense against the AG’s motion to dismiss,” but asks the court to note that Lanser only incurred \$4,995 in opposing ADEC’s motion to dismiss and in filing a motion for reconsideration against ADEC, and that approximately half of the fees claimed were in fact incurred by Lanser to oppose Riddle’s concurrent motion to dismiss.²⁴ Looking at Lanser’s billing statement, this is a reasonable conclusion. Therefore, the court will disallow \$4,995 from

²² *Demoski v. New*, 737 P.2d 780, 788 (Alaska 1987) (emphasis added).

²³ See Reply in Support of Attorney Fees at 7.

²⁴ Reply in Support of Attorney Fees, 8.

the total \$8,747 that Riddle claims is unallowable, because the other half of this sum was incurred to oppose Riddle's concurrent motion to dismiss.

Next, Riddle contends that he should not be forced to compensate Lanser for attorney's fees associated with "Plaintiff's impatience during the discovery process."²⁵ Riddle requests that the court exclude \$4,927.50 attributable to these discovery efforts from Lanser's recoverable attorney's fees.²⁶ Riddle bases this on the fact that Lanser conducted records depositions instead of waiting for Riddle to comply with discovery requests or filing a motion to compel discovery.²⁷ While it may be true that Lanser could have taken a different course of action when Riddle did not initially comply with discovery requests in this case, it was ultimately Riddle's noncooperation that led to Lanser incurring the additional fees. Lanser and his counsel attempted to gather needed information from Riddle, but Riddle did not cooperate. Lanser explains in his reply that he "had to request information from third parties, including hiring an expert to estimate how much septage was in the ponds, because Riddle, the primary resource, refused to participate."²⁸

The court finds that Riddle may not disclaim responsibility for fees incurred while Lanser was gathering information necessary to the litigation, especially when Riddle's own conduct in hindering discovery was the reason that Lanser incurred these fees. Therefore, the court will not omit the requested \$4,927.50 from Lanser's recoverable attorney's fees.

²⁵ Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees, 5.

²⁶ Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees, 6.

²⁷ Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees, 5.

²⁸ Reply in Support of Attorney Fees, 11.

Riddle also contends that Lanser failed to submit invoices for \$28,395 in attorney's fees and that the court should therefore subtract this amount from the total fees that Lanser may recover.²⁹ In response, Lanser states that several of the claimed missing invoices were in fact included in the original motion for enhanced fees. He explains that the other invoices were erroneously omitted from his filings.³⁰ According to Lanser, the fees were plainly requested and specifically identified in the fee affidavit and accompanying spreadsheet, establishing that he intended to include the invoices in the materials he submitted to the court and that the omission of these invoices was an oversight.³¹ Lanser attached the missing invoices to his reply. Lanser also points out that "at no time did counsel for Riddle call to request the omitted invoices once they were noted to be missing," and that this should be viewed as further evidence of Riddle's bad faith conduct throughout the litigation.

In Riddle's surreply, submitted after Lanser filed the missing invoices, Riddle claims that the newly-submitted invoices indicate that Lanser spent approximately \$12,075 before sending a demand letter to him.³² Riddle contends that the demand letter initiated the case and that the expenditures made prior to that were not nominal or reasonable pre-litigation expenditures. Riddle takes particular issue with charges incurred by Lanser while he and his attorneys attempted to abate the nuisance through administrative means. According to Riddle, he "should

²⁹ Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees, 6.

³⁰ Reply in Support of Attorney Fees, 4.

³¹ Reply in Support of Attorney Fees, 4.

³² Surreply to Plaintiff's Reply in Support of Plaintiff's Motion for Enhanced Attorney Fees under Rule 82, 7.

not have to bear the burden of Plaintiff's appeals to ADEC, which were fruitless, or Plaintiff's decision to sue ADEC when it refused to act against Mr. Riddle."³³

It is within the court's discretion to award pre-litigation expenses to a prevailing party, because "[a]ll attorney's fees incurred in connection with litigation are not necessarily incurred after formal commencement of the litigation."³⁴ In this case, some of Lanser's billing invoices for the dates before this litigation officially commenced are in some way related to research, records requests, and other preparation for this litigation. But many other entries are related to either non-litigation attempts to "shut down" Riddle's operation or to Lanser's lawsuit against ADEC. The court has reviewed the invoices for the time period through December 2011 and now omits \$6,850 from Lanser's recoverable attorney's fees for this period. This amount was calculated by removing charges that were clearly for administrative attempts to abate the odors from Riddle's property, preparation and filing suit against ADEC, and any entry that did not clearly apply to Lanser's lawsuit against Riddle, because the entry was redacted and/or was too vague to be useful to the court. Because Lanser used block billing on the invoices submitted, the court has equitably partitioned charges that were entered both for activities pertaining to the case and non-recoverable activities. For example, a charge of \$300 on March 29, 2011 was reduced to \$150 as recoverable fees because that entry partially concerned writing a letter to the Fairbanks North Star Borough about the Borough's requirements in enforcing Riddle's permit.³⁵

³³ Surreply to Plaintiff's Reply in Support of Plaintiff's Motion for Enhanced Attorney Fees under Rule 82, 8.

³⁴ *Bowman v. Blair*, 889 P.2d 1069, 1075 (Alaska 1995) ("All attorney's fees incurred in connection with litigation are not necessarily incurred after formal commencement of the litigation. It is within the trial court's discretion to consider a party's pre-litigation fees in determining the award.").

³⁵ See Reply in Support of Attorney Fees, Exhibit 1, page 8.

3. Lanser is entitled to enhanced reimbursement of fees under Alaska Rule of Civil Procedure 82(b)(3).

Under Civil Rule 82(b)(3), a court may vary its award of attorney's fees otherwise prescribed by Civil Rule 82(b)(2). This adjustment is based upon several identified factors: (A) the complexity of the litigation; (B) the length of trial; (C) the reasonableness of the attorneys' hourly rates and the number of hours expended; (D) the reasonableness of the claims and defenses pursued by each side; (G) vexatious or bad faith conduct; (H) the relationship between the amount of work performed and the significance of the matters at stake; (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts; (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and (K) other equitable factors deemed relevant.³⁶

Here, Plaintiff Lanser seeks an enhancement of his recoverable attorney's fees under this rule, arguing that the balance of the Civil Rule 82(b)(3) factors weigh in favor of holding Riddle responsible for 100 percent of Lanser's attorney's fees. The parties' arguments regarding each factor are as follows:

(A) Complexity of the Litigation

Lanser argues that the complexity of the litigation warrants enhanced fees. This claim is based on Lanser's assertion that, while the facts of the case were not complex, Riddle's shifting positions required "deep knowledge of EPA regulations, state statutes and regulations governing

³⁶ Alaska R. Civ. P. 82(b)(3).

treatment of wastewater, landfills, sewage solid monofills, and surface and underground water,”³⁷ and that “Riddle’s defenses drastically enhanced the complexity of the case because of the additional time and trial preparation needed to prepare for unknown and unorthodox contingencies.”³⁸ In Riddle’s opposition, he argues that this case was not unusually long or complex for a superior court matter.³⁹

(B) Length of Trial

Lanser argues that the length of trial in this case warrants enhanced fees. Because of continuances and additional evidentiary hearings and related follow up proceedings, Lanser states that this litigation spanned a total of more than three weeks trial on the issues in this case, which Lanser argues is “far above the normal civil trial calendar.”⁴⁰ Lanser also contends that in addition to trial delays, the overall litigation has taken a long time to resolve, due in part to a lag in final judgment because Riddle insisted he be provided more time to abate the nuisance.

In response, Riddle argues that this case only involved two weeks of trial, and does not warrant enhanced fees on this basis. Riddle also compared this litigation to another case that was pending for over five years, where there was extensive pretrial discovery, numerous complex legal issues, the trial lasted thirteen days, and the court only awarded the prevailing party in the litigation 30 percent attorney’s fees.⁴¹ Finally, Riddle argues that to shorten the litigation,

³⁷ Memorandum in Support of Plaintiff’s Motion for Enhanced Attorney Fees and Costs, 4-5.

³⁸ Memorandum in Support of Plaintiff’s Motion for Enhanced Attorney Fees and Costs, 5.

³⁹ Opposition to Plaintiff’s Motion for Rule 82(B)(3) Fees, 20.

⁴⁰ Memorandum in Support of Plaintiff’s Motion for Enhanced Attorney Fees and Costs, 5.

⁴¹ Opposition to Plaintiff’s Motion for Rule 82(B)(3) Fees, 20 (citing *Van Huff v. Sohio Alaska Petroleum Co.*, 835 P.2d 1181, 1189 (Alaska 2011)).

Plaintiff could have propounded an offer of judgment on Riddle, and that “such an offer of judgment arguably would have provided the basis for an enhanced award.”⁴²

(C)(D)(E) Reasonableness of the hourly rates and the number of hours expended; reasonableness of the number of attorneys used, and the efforts to minimize fees

Lanser contends that these three factors all weigh in favor of awarding enhanced fees, because Lanser only had one attorney at a time for the majority of the case, attorney hourly rates were at or below market, attorneys did not do excessive work on the case, and made efforts to minimize fees by writing off significant amounts of time and by attempting to resolve the nuisance without resorting to expensive litigation.

Riddle argues that Lanser actually had five attorneys during the pretrial and trial phase and that there were overall seven attorneys involved in this case, which necessarily caused delay, confusion, and excessive work throughout the course of litigation.⁴³

(F) The reasonableness of the claims and defenses pursued by each side

Lanser claims that his claims were reasonable and consistent: Riddle’s operation was causing a nuisance and it should be abated. According to Lanser, Riddle’s claims were constantly changing: first he agreed to abate, then he claimed the Right to Farm Act and refused to abate, then he said he wasn’t required to comply with his permit. Again Lanser mentions Riddle’s refusal to provide discovery and comply with the court’s motion to compel.⁴⁴ Lanser

⁴² Opposition to Plaintiff’s Motion for Rule 82(B)(3) Fees, 20.

⁴³ Opposition to Plaintiff’s Motion for Rule 82(B)(3) Fees, 24-25.

⁴⁴ Memorandum in Support of Plaintiff’s Motion for Enhanced Attorney Fees and Costs, 7.

claims that “the bulk of the trial was devoted to Riddle’s machinations” and this is reason for enhanced fees under this factor.⁴⁵

In response, Riddle insists that his Right to Farm defense was legitimate and that he should not be penalized for bringing a claim that was ultimately unsuccessful, as this would deter future farmer-litigants from asserting this defense.⁴⁶

(G) Vexatious or bad faith conduct

Lanser claims that there were two forms of vexatious conduct in this case: (1) Riddle’s conduct with respect to accumulating septage on his property, in violation of his permit, and refusing to abate the odors, and (2) Riddle’s conduct during the litigation, including his conduct during discovery. Lanser also accuses Riddle of lying about abating the odors, claiming he was not composting when he was, and notes his “shifting stories and excuses” when it came to his “absolute financial incentive to resist voluntarily abating.”⁴⁷

Riddle responds again that his Right to Farm defense was not brought in bad faith and that he didn’t immediately comply with Lanser’s demands or shut down his operations because he was determining what his legal options were.⁴⁸ He also claims that there can be no award of 100 percent attorney’s fees without an explicit finding of vexatious or bad faith conduct.⁴⁹

⁴⁵ Memorandum in Support of Plaintiff’s Motion for Enhanced Attorney Fees and Costs, 8.

⁴⁶ Opposition to Plaintiff’s Motion for Rule 82(B)(3) Fees, 26.

⁴⁷ Memorandum in Support of Plaintiff’s Motion for Enhanced Attorney Fees and Costs, 10.

⁴⁸ Surreply to Plaintiff’s Reply in Support of Plaintiff’s Motion for Enhanced Attorney Fees under Rule 82, 9-10.

⁴⁹ Surreply to Plaintiff’s Reply in Support of Plaintiff’s Motion for Enhanced Attorney Fees under Rule 82, 12-13.

(H) The relationship between the amount of work performed and the significance of the matters at stake

Lanser contends that the matters in this case were hotly contested and of interest to the public at large, and that most of the positive public benefit that finally resulted (ADEC pulling Riddle's permit and the community's relief from the noxious odors) was largely a result of this litigation.⁵⁰ Lanser also contends that he would have been legally considered a public interest litigant under Civil Rule 82 had his constitutional claim against ADEC not been dismissed, and the court should consider this "de facto" public interest litigant status as part of the reason to award enhanced fees.

Riddle answers that Lanser cannot be considered a public interest litigant and that his claim was for a private nuisance, which is no reason to enhance his fees.⁵¹

(I) The extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts

Lanser argues that this provision does not apply here, because Riddle "made hundreds of thousands of dollars during the litigation delay and should not be heard to cry pauper now."⁵² Additionally, Lanser states that failure to reimburse him here would serve to deter future plaintiffs seeking to abate private nuisances across the state from using the court system.

⁵⁰ Memorandum in Support of Plaintiff's Motion for Enhanced Attorney Fees and Costs, 11.

⁵¹ Surreply to Plaintiff's Reply in Support of Plaintiff's Motion for Enhanced Attorney Fees under Rule 82, 10-11.

⁵² Memorandum in Support of Plaintiff's Motion for Enhanced Attorney Fees and Costs, 12.

Riddle responds that awarding enhanced fees would in fact deter future similarly-situated litigants from raising a Right to Farm defense, and scare away farmers from bringing defenses to nuisance claims.⁵³

(J) The extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer

Neither party discussed this factor.

(K) Other equitable factors deemed relevant

Regarding this factor, Lanser wished the court to know that his only option was to file suit against Riddle once ADEC gave notice that they did not intend to enforce the permit or require odor abatement. According to Lanser, he was procedurally left with the lawsuit as his only course of action after the state agency failed to follow its own policies.

Examining all these factors, the court places particular emphasis on whether Riddle's conduct was "vexatious or bad faith conduct" and on the "reasonableness of the claims and defenses pursued by both sides." Turning specifically to these factors, the court finds that it is appropriate to enhance Lanser's attorney's fees above the standard 30 percent reimbursement provided by the Civil Rules. This is because Riddle misrepresented his use of his property and did not bring his Right to Farm defense in good faith. Riddle "made material misrepresentations to both the Borough and to the DEC when he applied for his original permits" regarding his intended use of the land.⁵⁴ These misrepresentations included misrepresenting the manner in which the septage would be stored, the scope of the septage dumping he had planned for his

⁵³ Opposition to Plaintiff's Motion for Rule 82(B)(3) Fees, 27.

⁵⁴ Order, 15.

land, and the size of the septage storage lagoons, which ultimately were the primary source of extreme odor emanating from his property. Although Riddle claimed that dumping would occur only in the summer and that he intended to spread the septage as fertilizer, the evidence presented at trial reflects that he always intended to operate a year-round septage dumping business.⁵⁵ “The evidence shows that Riddle acted recklessly and/or intentionally.”⁵⁶ Riddle’s Right to Farm defense was therefore unreasonable, because although he may have intended to use his property for farming operations down the road, this contravenes the purpose of the Act, which “protects a farming activity that later becomes a nuisance because of subsequent expansion.”⁵⁷

Lanser is also correct in pointing out that Riddle’s misrepresents the legal effect of Judge Olsen’s denial of a temporary injunction at the beginning of the litigation. The fact that Judge Olsen denied the request for a temporary injunction does not have any bearing on whether Riddle’s defense was brought in good faith. To assert otherwise is to distort the standard of proof and the depth of evidence required to obtain a preliminary injunction compared to that which is considered when making a final judgment. That Lanser could not demonstrate, prior to the discovery process, a likelihood of success on the merits has no bearing on the factual findings at the conclusion of this case, when the court concluded that Riddle was “using the lagoons to treat and dispose of septage rather than to support his limited agricultural operations.”⁵⁸

⁵⁵ Order, 15.

⁵⁶ Order, 15.

⁵⁷ Order, 21.

⁵⁸ Order, 21.

As previously discussed, Riddle's conduct during the discovery process substantially delayed a timely resolution of the case. His reluctance to comply with discovery requests and with court orders regarding discovery and abatement has not gone unnoticed, although this may be appropriately accounted for by allowing for Civil Rule 37 attorney's fees.⁵⁹

In short, because Riddle did misrepresent his intentions and actions both before and during litigation and because his good faith compliance could have prevented several thousand dollars' worth of attorney's fees from being incurred (by both parties), the court will enhance Lanser's recoverable percentage of attorney's fees under Civil Rule 82(b)(3). However, it would be manifestly unreasonable to award 100 percent fees to Lanser; the facts do not establish that Riddle's conduct was so egregious that it warrants placing the entire financial burden of the litigation upon his shoulders. Therefore, Riddle shall be held responsible for 40 percent of Lanser's recoverable attorney's fees and for full fees under Civil Rule 37 for all extra charges incurred as a result of Riddle's failure to reasonably cooperate with discovery, as discussed previously.

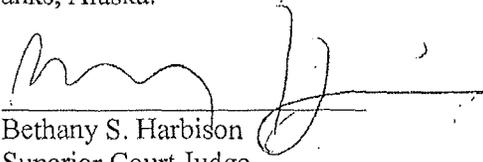
III. Conclusion

Lanser, as the prevailing party in this case, is entitled to recover fees and costs provided by Civil Rule 82. However, these fees do not include the \$19,513 incurred by Lanser for work conducted both before and during the litigation that applied only to Lanser's claims against ADEC and his non-litigation efforts to abate the nuisance through legislative and administrative action. Additionally, Lanser shall be awarded full attorney's fees under Civil Rule 37(g) for

⁵⁹ See *supra* discussion of Rule 37(g) attorney fees.

work done as a result of Riddle's discovery resistance, so this amount, \$15,003.53 is subtracted from Lanser's final allowable fees under Civil Rule 82 to avoid double recovery for those fees. With these reductions, Lanser's total allowable fees incurred in bringing this case amount to \$178,810.65, 40 percent of which shall be paid by Riddle. Therefore, Riddle is responsible for \$71,524.26 in Civil Rule 82 fees and an additional \$15,003.53 in Civil Rule 37 fees.

Dated this 27 day of April, 2015, at Fairbanks, Alaska.


Bethany S. Harbison
Superior Court Judge

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT RIDDLE, dba)
 FAIRBANKS PUMPING & THAWING,)
)
 Defendant.)

Case No. 4FA-11-03117 CI

COST BILL

Date shown in the clerk's certificate of distribution on the judgment: December 1, 2014.

Plaintiff seeks to recover the costs listed below. These costs are allowable under Civil Rule 79(f) and were necessarily incurred in the action. The amount listed for each item is the amount specified in the rule or the cost actually incurred.

		Date Incurred (if relevant under Civil Rule 68)
1.	Filing fee	\$150.00
2.	Service of process	\$478.73
3.	Other process server fees	\$112.50
4.	Publication	\$0.00
5.	Premiums for undertakings, bonds, and other security	\$0.00
6.	Depositions	
	a. Court reporter's fee	\$105.70
	b. Court reporter's travel expenses	\$0.00
	c. Audio and audio-visual deposition costs	\$495.45
	d. Transcript	\$1888.35
	e. List deponents: Davies, Gloria Plessinger, Spiers Davies, Etchererry	

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ORAVEC LAW GROUP, LLC

330 Wendell Street, Suite E
Fairbanks, AK 99701
TEL 907.458.8844
FAX 907.458.8845

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DEC 1 2014

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415 First Avenue, Suite A
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TEL 907.458.8844
FAX 907.458.8845

7.	Witness Fees	
	a. Non-expert witnesses	\$125.00
	List: Brunsberg, Spiers, Paul, Golden Heart Utilities, Lemeta, Glacier Point, Bigfoot, Paul, Fairbanks Pumping, Bailey	
	b. Expert witnesses	\$0.00
8.	Interpreter and translator fees	\$0.00
9.	Total travel	\$0.00
10.	Long distance telephone charges for Telephonic participation at court proceedings, depositions, the meeting of the parties, and witness interviews	\$0.00
11.	Computerized legal research	\$0.00
12.	Copying	
	a. In-house copies (\$.15 per page)	\$0.00
	b. Outside copy costs (actual cost)	\$149.97
	c. Other:	
	Fairbanks North Star Borough Records	\$41.00
	Videographer, J Run Productions	\$575.00
13.	Exhibit preparation	\$24.47
14.	Court-ordered transcripts	\$0.00
15.	Other costs allowed by statute.	\$0.00
	TOTAL COSTS	\$4,146.17

December 9, 2014
Date


Signature

415 First Avenue, Suite A
Fairbanks, Alaska 99701
907-458-8844 office
907-978-7848 cell
907-458-8845 fax

000232

COST BILL
Lanser v. Riddle dba Fairbanks Pumping & Thawing

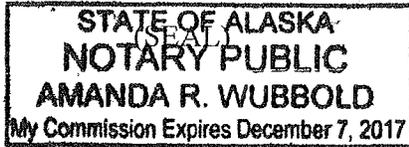
Case No. 4FA-11-3118 CI
Page 2 of 3

Verification

I state on oath or affirm that I have read this cost bill and its attachments and that all statements and costs contained in these documents are true and correct.

Scott A. Oravec
Scott A. Oravec

Subscribed and sworn to or affirmed before me at Fairbanks, Alaska, on December 9, 2014.
(date)



Amanda R. Wubbold
Clerk of Court, Notary Public, or other person authorized to administer oaths.
My commission expires: 12/7/17

I certify that on 12/11/14 a copy of this cost bill was served via U.S. Mail on:

William Satterberg
Law Offices of William R. Satterberg Jr.
709 Fourth Avenue
Fairbanks, AK 99701

By: [Signature]

CLERK'S RULING ON COST BILL

Costs are hereby taxed in favor of Eric Lanser
and against Robert Riddle dba Fairbanks Pumping & Thawing in the amounts of \$2267.42 noted above.

Remarks: Pursuant to Civil Rule 79(f)(6), transcripts in the amount of \$1,081.00 were disallowed. Videographer fees could not be established as an approved cost, therefore disallowed. Minor adjustments made due to calculation error.

7-20-15
Date

[Signature]
Clerk of Court

I certify that on 7-30-15 a copy of this ruling was sent to: Oravec Satterberg

000233

Clerk: [Signature]

COST BILL
Lanser v. Riddle dba Fairbanks Pumping & Thawing

Case No. 4FA-11-3118 CI
Page 3 of 3

ORAVEC LAW GROUP, LLC
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September 19

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ERIC LANSER,)
)
Plaintiff,)
)
vs.)
)
ROBERT RIDDLE, dba)
FAIRBANKS PUMPING & THAWING,)
)
Defendant.)

Case No. 4FA-11-03117 CI

AMENDED FINAL JUDGMENT

The Court, being fully advised in the premises, and pursuant to the decisions of the Court dated November 7, 2013 and April 4, 2014, and subsequent status hearings on July 8 and October 15, 2014, it is hereby ORDERED as follows:

1. Judgment is entered in favor of Plaintiff Eric Lanser against Defendant Robert Riddle dba Fairbanks Pumping & Thawing.

2. By this order, the court declares that Riddle has ^(B1) created a ~~created an unabated~~ private nuisance.¹

3. By this order, a permanent injunction is issued to enjoin Defendant Robert Riddle dba Fairbanks Pumping and Thawing from creating or maintaining an odor nuisance, ~~by storing, accumulating, treating, and land applying domestic septage~~ on the following property:
(B1)

¹ Order, dated November 7, 2013.

² Order, dated April 4, 2013, at p. 2, 3. The property identified herein is reflected on Plaintiff's Trial Exhibit 26. Tract A and Tract B of D&I Farmstead are reflected as Lot 3 D&I Farmstead on Plaintiff's 26.

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DEC 08 2014

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Fairbanks, AK 99701
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D

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TRACT A D&I FARMSTEAD FIRST ADDITION according to the plat filed October 9, 2009 as Plat No. 2009-99, Records of the Fairbanks Recording District, Fourth Judicial District.

TRACT B D&I FARMSTEAD FIRST ADDITION according to the plat filed October 9, 2009 as Plat No. 2009-99, Records of the Fairbanks Recording District, Fourth Judicial District.

Lot 4 of D&I FARMSTEAD according to the plat filed November 18, 2005 as Plat No. 2005-165 and amended by plat recorded December 22, 2008 as Plat No. 2008-132, Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

Lot 5 of D&I FARMSTEAD according to the plat filed November 18, 2005 as Plat No. 2005-165 and amended by plat recorded December 22, 2008 as Plat No. 2008-132, Records of the Fairbanks Recording District, Fourth Judicial District.

Lot 3 of COBEN FARMSTEAD, according to the plat filed November 18, 2005 as Plat No. 2005-164, Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska

Lot 4 of COBEN FARMSTEAD, according to the plat filed November 18, 2005 as Plat No. 2005-164, Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

Lot 1 of SEBAUGH SUBDIVISION according to the plat filed March 31, 1999 as Plat Number 99-21; Recorded in Fairbanks Recording District, Fourth Judicial District, State of Alaska.

4. By this order, Defendant Robert Riddle dba Fairbanks Pumping and Thawing is required to meet the terms of the following odor abatement plan:

- a. Riddle shall apply BioStreme 201 & BioStreme 211 to his septage lagoons in a manner recommended by Ecolo.
- b. Riddle shall operate the odor control system he purchased from Ecolo, including the AirStreme Misting System, as recommended by Ecolo. The misting shall occur for a minimum of 30 seconds every 5 minutes during daylight hours. The system shall be moved to the location recommended by Ecolo, between the lagoons and the Arctic Fox subdivision.
- c. Riddle shall monitor and keep records of the amounts of septage dumped into the lagoons by his own company, Fairbanks Pumping and Thawing.

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FAX 907.458.8845

- d. Riddle shall be available to receive any odor complaints and to address them by manually distributing the neutralizing chemicals on an as-needed basis.
- e. The odor control system must be placed in operation and must be operated until the lagoons are frozen. If necessary, Riddle shall use propylene glycol to prevent the system from freezing. The odor control system must be operated each year from March 15 until the lagoons are frozen.
- f. Riddle shall employ Nortech to advise him on achieving abatement of the odors and shall follow any additional recommendations made by that company. Riddle shall also involve the Ecolo technician in his abatement efforts and shall follow Ecolo's recommendations regarding operating the system.
- g. Riddle shall keep and maintain records of his abatement efforts and of any odor complaints he receives. He shall keep and maintain records of his discussions with Nortech and Ecolo and of the recommendations they make to him.

5. ~~The court retains jurisdiction over Riddle's compliance with the abatement plan.~~

6. Plaintiff Eric Lanser shall recover from and against Defendant Robert Riddle dba

Fairbanks Pumping and Thawing:

- a. Sanctions: 15,003.26
Date Awarded: 4-27-15
- b. Attorney Fees: 71,524.26
Date Awarded: 4-27-15
- c. Costs: \$2,267.42
Date Awarded: 7-20-15
Clerk: RMeica
- d. TOTAL JUDGMENT 88,794.94
- e. Post-Judgment Interest Rate: 3.75%

DATED this 1 day of April, 2015, at Fairbanks, Alaska.

I certify that on 4-2-15
copies of this form were sent to:
Clerk: cl satterberg-cc
Oravec
W/BIANKS

[Signature] 000236
Hon. Bethany A. Harbison
Superior Court Judge

ORAVEC LAW GROUP, LLC

415 First Avenue, Suite A
Fairbanks, AK 99701
TEL 907.458.8844
FAX 907.458.8845

Certificate of Service

The undersigned hereby certifies that on the 8th day of December, 2014,, true and complete copies of the foregoing were sent via U.S. Mail to:

William Satterberg
Law Offices of William R. Satterberg Jr.
709 Fourth Avenue
Fairbanks, AK 99701



[Signature]
ORAVEC LAW GROUP, LLC

STATE OF ALASKA)
FOURTH JUDICIAL DISTRICT) SS

I, the undersigned, certify that this is a true and full copy of an original document on file in the Trial Courts, Fourth Judicial District, State of Alaska.

Witness my hand and the seal of the court this 30 of July, 20 15 at Fairbanks, Alaska.
[Signature] By [Signature] Deputy
Clerk of the Trial Courts

*4/14/15
Re-sent to Oravec
at different address*

SS

REDISTRIBUTION

I certify that on 7-30-15 copies of this form were sent to:

Clerk: [Signature]

*Oravec - cert
Satterberg - cert*

000237

AMENDED FINAL JUDGMENT

Lanser v. Riddle dba Fairbanks Pumping & Thawing

Case No. 4FA-11-3118 CI

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Fairbanks Pumping & Thawing

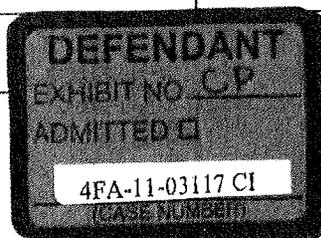
1948 Badger Road
North Pole, AK 99705

Sales Receipt

Date	Sale No.
8/23/2008	

Sold To
Buzz & Renee Otis P.O. Box 72441 Fairbanks, AK 99707

Description	Qty	Rate	Amount	Check No.	Payment Method	Project
				1030	Check	
re: Hay sale - sold by Robert		425.00	425.00			
						000238
				Total		\$425.00



Fairbanks Pumping & Thawing
 1948 Badger Road
 North Pole, AK 99705

Invoice

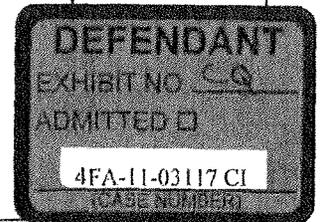
Date	Invoice #
1/1/2007	

Bill To
Kurkowski, James 2436 Aster Dr. North Pole, AK 99705



P.O. No.	Terms	Job

Qty	Description	Item	Rate	Amount
	Hay Sales	Gravel Sales	1,190.00	1,190.00



Thank you for your business.

Phone #	Fax #	E-mail
(907)488-6844	(907)488-7668	fpt@acsalaska.net

Total	\$1,190.00
Payments/Credits	\$-1,190.00
Balance Due	\$0.00

000239

Camp Li-Wa

590 Wigwam Way
Fairbanks, AK 99712
907-457-6059
Victory Ministries of Alaska

September 1, 2008

Robert Riddle
1948 Badger
North Pole, AK 99705

Dear Robert

I just wanted to thank you for all the hay you have donated to Camp Li-Wa. We appreciate the generosity in helping our programs that we run at Li-Wa that involve the horses and petting farm animals to be as cost effective as possible.

People like you willing to share your resources, allows us to be a more effective ministry. Thank you again for the donation of hay.

Sincerely



David Goff
Director

000240

