

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

GORDON GARRISON,

Plaintiff,

vs.

NEW FASHION PORK LLP; and BWT
HOLDINGS LLLC,

Defendants.

No. 18-CV-3073-CJW-MAR

ORDER

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This matter is before the Court on Defendants’ Motion for Summary Judgment (Doc. 68), Plaintiff’s Objections to Magistrate’s Order Striking Plaintiff’s Expert’s Supplemental Report (“Objections to Magistrate’s Order”) (Doc. 86), and Defendants’ Motion to Strike Expert Reports Submitted with Plaintiff’s Resistance to Defendants’ Motion for Summary Judgment (“Motion to Strike Expert Reports”) (Doc. 88). Plaintiff timely resisted defendants’ Motion for Summary Judgment (Doc. 81) and defendants filed a timely reply (Doc. 90). Defendants timely resisted plaintiff’s Objections to Magistrate’s Order. (Doc. 94). Plaintiff also timely resisted defendants’ Motion to Strike Expert Reports (Doc. 93) and defendants filed a timely reply (Doc. 97). On February 27, 2020, the Court held a hearing on all the pending motions and the parties presented oral arguments. (Doc. 98).

For the following reasons, defendants’ motion for summary judgment (Doc. 68) is **granted**. Plaintiff’s Objections to Magistrate’s Order (Doc. 86) and defendants’ Motion to Strike Expert Reports (Doc. 88) are **denied as moot**.

I. FACTUAL BACKGROUND

The following background facts are undisputed unless otherwise indicated. The Court will discuss additional facts below as they become relevant to the Court’s analysis.

This case involves animal manure runoff from a confined animal feeding operation (“CAFO”) that is allegedly damaging a neighboring landowner’s property. Defendants

own and operate a CAFO in Emmet County, Iowa, on a piece of land known as the “Sanderson property.” (Docs. 79, at 1; 81-1, at 1). Defendants’ business and operations, however, are not limited to the CAFO on the Sanderson property. Instead, defendants and their subsidiaries own and operate a vast agricultural network related to their hog operations. For example, defendants own significant amounts of farmland on which they plant crops that have been fertilized with manure produced by their hogs. (Doc. 81-1, at 5). Defendants also sell excess manure to other farmers and generate revenue through other means related to raising hogs. (*Id.*, at 3-5).

Plaintiff is an individual who lives in Emmet County, Iowa. (Doc. 91, at 1). Plaintiff’s property is adjacent to the Sanderson property. (Doc. 79, at 1). Plaintiff alleges that defendants have previously misapplied and continue to misapply hog manure to defendants’ fields, which causes the manure to runoff into water on plaintiff’s property. (Doc. 60, at 6-7, 9). Plaintiff alleges that this misapplication of hog manure generated at the CAFO on the Sanderson property violates the Resource Conservation and Recovery Act (“RCRA”), the Clean Water Act (“CWA”), and Iowa statutes, regulations, and common law. (*Id.*, at 3-14).

The manure pit on the Sanderson property is scheduled to be emptied by defendants every fall after the crop harvest is complete. (Doc. 81-1, at 6). To empty the pit, defendants fill a tanker truck with the manure and then apply the manure directly into the soil. (*Id.*). The manure is directly injected into a small slit in the soil and then covered with another layer of soil. (*Id.*, at 6-7). Excess manure that is not applied to defendants’ fields is sold as fertilizer to other farms. (*Id.*, at 3-5).

Plaintiff alleges that on two separate occasions defendants improperly applied the manure to fields on the Sanderson property. First, in 2016, plaintiff observed defendants apply manure to the Sanderson property when the soil was saturated from recent rains. (*Id.*, at 7). Second, in the fall of 2018, defendants applied manure on top of frozen

ground and snow. (*Id.*). In the fall of 2018, the ground at the Sanderson property was too frozen and snow-covered to inject the manure into the soil. (*Id.*). Before applying the manure, defendants contacted the Iowa Department of Natural Resources (“DNR”) to get permission to spray manure onto the frozen ground rather than inject it. (*Id.*). The DNR approved the application and defendants sprayed manure onto the frozen ground with the stated intent that the manure would also freeze and soak into the ground during the spring thaw. (*Id.*). In December 2018, however, the weather became unseasonably warm, which caused the manure to unfreeze and run off the Sanderson property. (*Id.*, at 8). The DNR sent defendants a notice of violation for the December 2018 discharge. (*Id.*, at 12). Defendants entered into an Administrative Consent Order with the DNR which included an administrative penalty and an order for defendants to develop a standard procedure for applying manure. (*Id.*, at 12-13).

II. PROCEDURAL BACKGROUND

Plaintiff filed his first complaint in this case on December 20, 2018. (Doc. 1). In his first complaint, plaintiff asserted three federal claims based on RCRA, the CWA, and Federal Farm Bill violations. (*Id.*, at 4-10, 13-14). Plaintiff also asserted state law claims for manure management plan violations, unlawfully discharging manure through air emissions, violating drainage laws, nuisance, and trespass. (*Id.*, at 10-15). In the original complaint, however, plaintiff only alleged a single specific act that occurred in October 2016 giving rise to plaintiff’s claims. (*Id.*, at 7-8).

Defendants moved to dismiss plaintiff’s RCRA, CWA, and Federal Farm Bill claims. (Doc. 9). For plaintiff to assert RCRA and CWA claims plaintiff had to allege ongoing violations. Defendants argued the complaint failed to allege any ongoing violations, that the manure was not “solid waste” subject to RCRA, that there was no discharge into navigable waters, that RCRA’s anti-duplication provision precluded claims for both CWA and RCRA violations, and that the complaint did not cite to a specific

Federal Farm Bill violation. (Doc. 13, at 3-21). Defendants also moved to dismiss the remaining state law claims because, after dismissing the federal claims, the district court would lack supplemental jurisdiction. (*Id.*, at 21-22). Defendants requested oral argument (Doc. 17). The Court granted the request (Doc. 19) and held oral argument on defendants' motion (Doc. 25).

After oral argument, the Court found plaintiff could only point to a single specific violation and general statements that the manure was applied once or twice every year to support his claim that the violations were ongoing. (Doc. 31, at 7-10). The Court concluded a single specific violation was insufficient to show an ongoing violation. (*Id.*). The Court did, however, permit plaintiff to amend his complaint to allege additional facts that could show there was an ongoing violation of the CWA. (*Id.*, at 9).

To assert a claim under RCRA plaintiff also had to allege sufficient facts to support a finding that defendants were discarding "solid waste" as defined by RCRA. Based on the complaint and oral argument, the Court found that plaintiff had not alleged that defendants were applying manure to defendants' fields to discard it, and thus the manure was not "solid waste." (*Id.*, at 10-13). Because there was no solid waste, plaintiff's RCRA claim failed, and the Court dismissed the RCRA claim with prejudice. (*Id.*, at 13). The Court also found the Federal Farm Bill did not create a private right of action, so the Court dismissed plaintiff's Federal Farm Bill claim as well. (*Id.*, at 18-19). Finally, because the Court allowed plaintiff to amend his CWA claim, the Court declined to address its supplemental jurisdiction over the state law claims. (*Id.*, at 19-21).

Plaintiff responded to the Court's order by filing an amended and substituted complaint alleging a second specific violation of RCRA and the CWA. (Doc. 34). Plaintiff alleged that in the fall or early winter of 2018 defendants spread manure on fields that were "covered in snow and/or frozen." (*Id.*, at 9). Plaintiff also moved for the Court to amend or correct its judgment and for leave to amend his RCRA claim.

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