

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

TOWN OF ESSEX, and JAMES Z. MORGAN, JR., as
Superintendent of Highways of the Town of Essex,

Plaintiffs,

- vs -

LEWIS FAMILY FARM, INC.,

Defendant.

AFFIDAVIT

Index No. 000047-07

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

MARCO TURCO, being duly sworn, deposes and says that:

1. I am employed as the Manager of an organic farm (the "Farm") owned and operated by Lewis Family Farm, Inc. ("Lewis Family Farm").
2. Lewis Family Farm has employed me as Manager of the Farm since March 2005.
3. The Farm is located in the Town of Essex, County of Essex, State of New York.
4. Cross Road, a Town Highway within the Town of Essex, runs adjacent to portions of the Farm.
5. Plaintiff Town of Essex (the "Town") is responsible for the care and maintenance of Cross Road.
6. Upon information and belief, for several years, up to and continuing to the present, the Town has spread mine tailings on Cross Road that contain the mineral Wollastonite (i.e., calcium silicate).
7. Upon information and belief, Wollastonite is a mining byproduct, has a high pH, and contains calcium, sodium, and other elements.

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8. Upon conversations with organic farming experts, I understand that Wollastonite damages agricultural soil and crop production by tying up desirable minerals, raising the pH of soil that it contacts, and reducing plant absorption of essential nutrients.
9. The Town has spread, and continues to spread Wollastonite rich mine tailings on Cross Road.
10. Wollastonite, from the mine tailings spread by the Town on Cross Road, has leached into the Farm's soil through rain run-off, contaminating the Farm's soil and reducing its productivity.
11. The Farm is a certified organic farm, as defined in the Organic Foods Production Act of 1990 (the "OFPA"), 7 U.S.C. §§ 6501-6522 (2000).
12. The leached Wollastonite threatens the Farm's status as a certified organic farm under the OFPA.
13. Lewis Family Farm has notified the Town that its use of Wollastonite rich mine tailings on Cross Road causes severe damage to the Farm, but the Town has continued to spread Wollastonite rich mine tailings on Cross Road.
14. In order to protect against further damage to the Farm's soil, Lewis Family Farm, at great expense, constructed protective roads on the Farm (the "Farm Roads").
15. As a result, Lewis Family Farm informed the Town of its intention to construct the Farm Roads. When the Town continued to spread Wollastonite on Cross Road, Lewis Family Farm began building the Farm Roads.
16. Upon information and belief, Lewis Family Farm has constructed approximately ten miles of Farm Roads at a cost in excess of \$1,000,000.
17. The Farm Roads run parallel to portions of Cross Road, adjacent to fields 31, 41, and 42.

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18. The Farm Roads reduce the amount of Wollastonite that leaches into the Farm's soil by creating a buffer between Cross Road and the Farm.
19. The Farm Roads also play an important role in increasing crop production by preventing sheeting across the Farm, stabilizing top soil, and reducing soil compaction.
20. Lewis Family Farm had the Farm Roads constructed to exacting professional standards that exceed those used by the Town.
21. The rock used in constructing the Farm Roads drains exceptionally well.
22. The Farm Roads lie entirely within the private property of the Lewis Family Farm.
23. No portions of the Farm Roads lie within the Cross Road right-of-way.
24. The elevation of the Farm Roads is such that the Farm Roads act as a natural snow fence for Cross Road.
25. The elevation of the Farm Roads does not impede the removal of snow from Cross Road by the Town of Essex.
26. There is a drainage culvert that passes under Cross Road in the area of the Farm.
27. During the construction of the Farm Roads, the culvert was maintained and protected, and in no way was the culvert blocked or disabled.
28. Upon information and belief, the culvert remains unblocked and functions properly.

Dated: February 9, 2007
Essex, New York



Marco Turco

Sworn to before me
February 9, 2007


Notary Public
JOHN T. MANNING
Notary Public, State of New York
Essex County - 214-778-1481
Commission Expires October 31, 2010

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