

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
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CIVIL DIVISION
Case No. 25-CV-00070

John Aberth v. Vermont Department of Environmental Conservation

ENTRY REGARDING MOTION

Title: Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the Alternative, for Judgment on the Pleadings (Motion: 2)
Filer: Megan Renea Hodson Hereth
Filed Date: August 28, 2025

The motion is GRANTED.

The present matter arises from a short complaint filed by Plaintiff John Aberth who seeks an order compelling the Vermont Department of Environmental Conservation to enforce water pollution control provisions under 10 V.S.A. § 1259(a) against all trappers in the State of Vermont.¹

It is not clear from the face of the complaint what facts Mr. Aberth believes support his claim for relief or how the laws cited in his complaint give authority to issue an order requiring a state agency to take particular action against a general, unspecified group of individuals. Mr. Aberth did file a letter with the Court on July 30, 2025, in which he states that the “case has its origins in a complaint brought” against him by two trappers in early September 2021. This complaint led to a Notice of Alleged Violation (NOAV) against Mr. Aberth by the Department for a beaver enclosure that Mr. Aberth, who operates a beaver rescue, had placed in the waters of Flint Brook in Roxbury,

¹ Plaintiff’s limited complaint simply states that the Department has had “Prejudicial or discriminatory enforcement of Statute 1259a, regarding prohibited discharges into waters,” and that he seeks an “Injunction requiring enforcement of Statute 1259a, re all licensed trappers discharging traps into waters.” Pltf. Complaint. As a preliminary matter, Plaintiff’s complaint does not abide by the standards of V.R.C.P. 8(a), which requires the pleading to “contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.” V.R.C.P. 8(a); see also *Endres v. Endres*, 2006 VT 108, ¶ 4 (noting that Rule 8 requires fair notice of plaintiff’s claim and the grounds upon which it rests). While Plaintiff’s complaint is short and plain, it lacks any detail as to the nature of the claim, the grounds upon which it rests, and most of the initial briefing in this matter appears to have arisen from the resulting confusion and efforts by both sides to define or characterize the nature of the sparse pleading.

Vermont. Following receipt of this NOAV, Mr. Aberth met with representatives of the Department and removed the enclosure. As a result, no charges or notices of violation were filed. By Plaintiff's own account, this matter was closed shortly thereafter, and the Department has taken no further legal or regulatory action. Mr. Aberth, however, believes that if he cannot have the rescue enclosure in Flint Brook because of 10 V.S.A. § 1259, then no trapper should be able to put their cages in waters.

The problem with Mr. Aberth's complaint does not lie in his desire to see Section 1259 enforced or his reasoning that all should be treated equally under the law. Both of these are reasonable and laudable sentiments. The problem with Mr. Aberth's complaint, as noted in the Department's second motion to dismiss is that he lacks standing to bring the present complaint and has no legal basis to seek an order compelling the Department to take specific actions.

Plaintiffs in every case or controversy must have standing to bring their claims against the government. *Parker v. Town of Milton*, 169 Vt. 74, 77 (1980) ("An element of the case or controversy requirement is that plaintiffs must have standing, that is, they must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law."). As the Vermont Supreme Court in *Parker* noted, "[t]he existence of an actual controversy 'turns on whether the plaintiff is suffering the threat of actual injury to a protected legal interest, or is merely speculating about the impact of some generalized grievance.'" *Id.* (quoting *Town of Cavendish v. Vermont Pub. Power Supply Auth.*, 141 Vt. 144, 147–48 (1982)).

If a party lacks standing, then it lacks the immediacy of injury and the need for a remedy, and it is effectively asking the Court to rule on the law in the absence of a live dispute. This, in turn, renders any decision by the Court into an advisory opinion, which is disallowed. *Brod v. Agency of Natural Resources*, 2007 VT 87, ¶ 8 ("Vermont courts are without constitutional authority to issue advisory opinions.") (citing *Parker*, 169 Vt. at 77). The standing requirement also enforces the separation of powers between the branches of government. *Parker*, 169 Vt. at 77 ("The standing and case or controversy requirements thus enforce the separation of powers between the three different branches of government by confining the judiciary to the adjudication of actual disputes and preventing the judiciary from presiding over broad-based policy questions that are properly resolved in the legislative arena.").

To determine whether a plaintiff has standing, the Court applies the test articulated in *Lujan*, which the Vermont Supreme Court has expressly adopted. *Hinesburg Sand & Gravel Co., Inc., v. State*, 166 Vt. 337, 341 (1997) (adopting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). This test requires a plaintiff to establish three elements: (1) an injury in fact; (2) a causative link between the injury and the actions for the defendants; and (3) redressability. *Hinesburg Sand & Gravel Co., Inc.*, 166 Vt. at 341. Plaintiffs who are challenged on standing must show that their claim complies with all three elements. The test for standing seeks to weed out those who have personalized injuries and claims from those who allege a “generalized harm to the public.” *Parker*, 169 Vt. at 78. The doctrine also limits parties from bringing claims on behalf of others who have suffered harm. *Baird v. City of Burlington*, 2016 VT 6, ¶ 14 (rejecting plaintiff’s free speech claims on behalf of those who could not attend her rally).

After reviewing the pleadings and filings, the Court finds that Mr. Aberth cannot meet the standing requirements in this case based on the injury-in-fact and redressability elements.² While the Court need only find one element lacking to dismiss, the Court will discuss both elements as each offer separate reasons for dismissal.

The first element of standing is that a plaintiff must allege that he or she has suffered an injury-in-fact, which exists if the facts show that the plaintiff had a legally protected right and that the actions of the defendant invaded that right. *Turner v. Shumlin*, 2017 VT 2, ¶ 11. In this case, there has been no such injury. While Plaintiff has described the NOAV he was given as a triggering event, the incident in question was resolved and closed by consent without charges or penalties. It is no longer an active case and did not result in the invasion of a legally protected right. Thus, there is no present injury traceable to the Department. *Brod v. Agency of Natural Resources*, 2007 VT 87 ¶ 7 (quoting *Brigham v. State*, 1005 VT 105, ¶ 16 (mem.)). Plaintiff can allege that he had to comply with 10 V.S.A. § 1259, but compliance with the law is not an injury.³ Nor does Mr. Aberth have or cite to a legal interest in how the Department enforces its statutes against other parties. See *Housing Our*

² The Court is also not persuaded that Plaintiff meets the second issue of causation, but the Court need not reach this issue as analysis of the first and third element of standing provide more than ample basis for the dismissal.

³ To the extent that Mr. Aberth might have sought to challenge the Department’s interpretation or application of 10 V.S.A. § 1259, that issue is not before the Court as the voluntary compliance resolved this issue.

Seniors in Vermont, Inc. v. Agency of Commerce & Community Development, 2024 VT 12, ¶¶ 15, 16 (holding that an injury-in-fact does not arise if an individual did not have a legal entitlement to the right that they seek to enforce). In this case, Mr. Aberth may have a personal interest and a strong desire to see Section 1259 enforced, but these beliefs do not translate into a legal right or interest to such enforcement.⁴

The third necessary element of standing is redressability. To meet this element, Mr. Aberth must demonstrate that the court is able to redress the injury caused by the Department. *Brod*, 2007 VT 87 at ¶ 10. In this case, Mr. Aberth seeks to require the Department to enforce Section 1259 against others. Yet, the statutory enforcement framework around Section 1259 and the other water pollution statutes limit enforcement to the Department and do not include a private attorney general or private civil enforcement power. 10 V.S.A. §§ 1274, 1275 (vesting enforcement authority and the right to seek penalties in the Secretary of the Agency of Natural Resources. Even if the Court assumed some Rule 75 mandamus authority existed to compel the Department to take enforcement actions, this remedy does not connect to any invasion of Mr. Aberth's rights by the Department. In other words, an order to enforce Section 1259 would not address any injury specific to Mr. Aberth. It would be outwardly directed at other individuals.

Even under a Rule 75 mandamus, the Court does not have the authority to order the Department to prosecute cases against unidentified, potential offenders. Such an action would significantly overstep the Court's authority. The court has the power to interpret and apply the law; it does not have the power to either make the law or to enforce them administratively. *In re D.L.*, 164 Vt. 223, 228 (1995) ("Briefly stated, the legislative power is the power that formulates and enacts the laws; the executive power enforces them; and the judicial power interprets and applies them.").

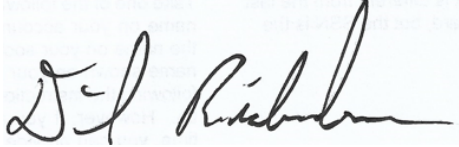
ORDER

For these reasons, the Court finds that Plaintiff Aberth lacks standing to bring the present claims, and Defendant Department of Environmental Conservation's Motion is **Granted**. The present action and all of Plaintiff's claims are **Dismissed** for lack of subject matter jurisdiction.

⁴ Nothing in title 10's water pollutions statutes suggests that Mr. Aberth has a right to enforce such provisions or act as a private attorney general. See 10 V.S.A. §§ 1274, 1275 (vesting enforcement authority and the right to seek penalties solely in the Secretary of the Agency of Natural Resources).

V.R.C.P. 12(b)(6). The present dismissal is a final judgment, and each side shall bear their own costs.

Electronically signed on 10/15/2025 12:02 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge