

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-2985

JOHN BELTER, et al.,
Plaintiffs

v.

CITY OF BURLINGTON,
Defendant

DECISION ON MOTION

THIRD RULING ON CITY’S MOTION TO DISMISS

In this action, Plaintiffs seek to hold the City of Burlington liable for soil and water contamination caused by runoff from Burlington International Airport, which abuts their property in South Burlington. For decades, the City (which owns the airport) has leased part of the airport to the Vermont Air National Guard, which used aqueous film-forming foam (“AFFF”), a water-soluble fire suppressant that contains per- and polyfluoroalkyl substances (“PFAS”), as part of its firefighting activities. Plaintiffs’ soil and well water are contaminated with PFAS.

This Court previously dismissed all of Plaintiffs’ claims except Count 6 for failure to join a necessary and indispensable party, and also dismissed Counts 2-3, 5, and 7 on alternative grounds of municipal immunity. *See* 2022 WL 3027938 (July 08, 2022) (Hoar, J.); 2023 WL 3060960 (Mar. 24, 2023) (Toor, J.).¹ Last year, the Supreme Court affirmed the dismissal of Count 1 but otherwise reversed both bases for dismissal as to the other claims, and remanded “for the [trial] court to consider whether municipal immunity applies to the maintenance and operation activities alleged in the surviving counts of the complaint.” *Belter v. City of Burlington*, 2025 VT 35, ¶ 27, 346 A.3d 903, 913, *reargument denied* (July 28, 2025).

On remand, the City contends that “the current Amended Complaint prevents a complete determination of municipal immunity as framed by the Supreme Court. The Amended Complaint does not allege with specificity how the City has caused the contamination beyond upkeep on its stormwater; nor is it clear which allegations survive the dismissal of Count 1.” Def.’s Supp’l Mem. at 1 (Feb. 12, 2026). For that reason, and based on the parties’ recent supplemental briefing, the pending motion to dismiss is presently limited to Count 7, which alleges direct negligence by the City for discharging polluted water onto Plaintiffs’ property. Def.’s Supp’l Reply at 1-2 (filed Mar. 12, 2026).

In fact, it is even more limited than that. The City now no longer asks the Court to *dismiss* Count 7. Instead, it asks that the Court “find that actions relating to the maint[enance] of

¹ The parties stipulated to the dismissal with prejudice of Count 6 before the appeal.

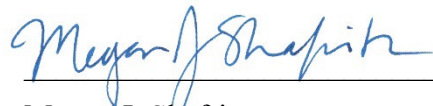
the [Vermont Air National Guard] base are subject to municipal immunity and defer the determination of immunity as to other allegations in the Amended Complaint for trial.” Def.’s Supp’l Mem. at 7. This is because, the City argues, “the making of the [National Guard] lease, unlike commercial airport activities, is purely governmental in nature” and therefore “[a]ny actions by the City to support the operations or maintenance of [the Guard’s] base or its mission are likewise governmental and subject to municipal immunity.” *Id.* at 6. The City further asserts that because “Plaintiffs’ Amended Complaint alleges discharges across the [airport] property, including within the [Guard’s] exclusive lease area,” and “because ARFF activities were conducted out of [the Guard’s] base, much of the alleged releases of PFAS are likely to have originated there.” *Id.* (citing Am. Compl. ¶¶ 3, 11, 13, and 38).

The record is insufficient for the Court to make such a determination at this juncture. While the Supreme Court directed this Court on remand to “consider whether municipal immunity applies to the maintenance and operation activities alleged in the surviving counts of the complaint,” *Belter*, 2025 VT 35, ¶ 27, the City itself recognizes that “it is not clear on the face of the complaint what those maintenance and operations activities are.” Def.’s Supp’l Mem. at 5. The Court cannot blindly decide whether all actions related to maintenance and operation activities for the National Guard base are subject to municipal immunity without knowing what those actions are with greater specificity.² Thus, the Court agrees that more factual development is needed on this issue before it can be ripe for determination.

Order

For the foregoing reasons, the City’s motion to dismiss (Mot. #1) is DENIED. As provided in the ADR stipulation approved by this Court on September 17, 2025, the parties shall file a full Alternate Dispute Resolution and Discovery Schedule within 14 days.

Electronically signed on May 27, 2026 at 2:16 PM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge

² In other words, the City essentially asks the Court to issue an improper advisory opinion. *See, e.g., In re Snowstone LLC Stormwater Discharge Authorization*, 2021 VT 36, ¶ 28, 214 Vt. 587 (“Courts are not authorized to issue advisory opinions because they exceed the constitutional mandate to decide only actual cases and controversies.” (citation omitted)).