

STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CIVIL DIVISION  
Docket No. 280-10-13 Oscv

STATE OF VERMONT  
Agency of Agriculture,  
Food and Markets and  
Agency of Natural Resources

Plaintiff

v.

RICHARD M. NELSON  
and  
NELSON FARMS, INC.

Defendants

**PRELIMINARY INJUNCTION ORDER**

The above-captioned matter came on before the court on Monday, October 21, 2013 for a hearing on a motion and application for a preliminary injunction filed by the plaintiff State of Vermont.

Appearing for the plaintiff State of Vermont were Assistant Attorneys General Michael O. Duane and Justin E. Kolber. Appearing for the defendants Richard M. Nelson and Nelson Farms, Inc. was Gregory P. Howe, Esq.

Before the taking of any evidence on the motion, the parties represented to the court, on the record, the terms of a stipulation and agreement that the court may enter an order, subject to the court's approval, of a preliminary injunction pending any final determination of the merits of the plaintiff's complaint.

Based upon that stipulation and agreement, it is hereby **ORDERED BY THE COURT:**

1. The Defendant shall not discharge any agricultural wastes from the production area of its Crystal Brook Farm in Derby Line to the waters of the state, in particular, to the Crystal Brook;
2. As soon as possible, but no later than October 29, 2013, the Defendant shall divert the milk house plate cooler output pipe water so that it does not flow onto the production area of the Crystal Brook Farm near the western side of the farm manure pit;
3. The Defendant shall immediately remove the 4-inch white PVC pipe that transects the berm on the eastern side of the production area of the Crystal Brook Farm;
4. The Defendant shall have and maintain a berm on the length of the eastern side of the production area of the Crystal Brook Farm that is impermeable in order to prevent any agricultural wastes from passing through, over or under the berm;
5. The Defendant shall develop and present to the Plaintiff by December 15, 2013 for the Plaintiff's approval, a plan to permanently eliminate the discharge of any agricultural wastes from the production area of the Crystal Brook Farm;
6. The Defendant shall not discharge any agricultural wastes from the production area of its Clydeside Farm in Derby Center to the waters of the state, in particular, to the Clyde River;
7. The Defendant shall, on an ongoing basis, remove all agricultural wastes and keep agricultural wastes from accumulating at the "focal point" of the Clydeside Farm production area, so-called in the Plaintiff's complaint.
8. The Defendant shall develop and present to the Plaintiff by December 15, 2013 for the approval of the Plaintiff, a plan to permanently eliminate the potential for any agricultural wastes accumulating at the "focal point" of the Clydeside Farm production area to discharge to the Clyde River.
9. The Defendant shall maintain one foot of "freeboard", or space, from the top level of any waste in the manure pit to the top of the manure pit at the Clydeside Farm;

10. The Defendant shall allow the employees and agents of the Plaintiff to enter upon the lands of the Defendant which are the subject of the action at all reasonable hours between 6:00AM and 9:00PM to inspect, measure, survey, photograph, test and sample the Defendant's land to determine whether there are any direct discharges from the production areas of the Defendant's Derby Line and Derby Center farms to the waters of the state. The employees and agents of the Plaintiff shall telephone Mr. Richard Nelson and Mr. Doug Nelson, Sr. to notify them, directly or by leaving a message, that they will be entering upon the lands. Nothing herein shall affect the specific authority granted under Vermont law for the Plaintiff to otherwise investigate violations of Vermont law.

Plaintiff's counsel, by their signature below, also voluntarily dismiss Richard M. Nelson as a Defendant in this action, without prejudice, pursuant to Rule 41(a)(1) of the Vermont Rules of Civil Procedure, no answer having been filed by him. Plaintiff's voluntary dismissal of Richard M. Nelson is based upon the representations of the Defendants' counsel that the officers or principals of Nelson Farms, Inc. will not change as presently constituted during the pendency of this action, or that if Mr. Richard M. Nelson ceases to be an officer or principal of Nelson Farms, Inc. during the pendency of this action, he thereupon agrees he shall be considered at all times to be an agent of Nelson Farms, Inc. for the purposes of this action.

Service of this ORDER shall be effective upon the Defendant Nelson Farms, Inc. and its officers, agents, servants, employees, by service upon Defendant's attorney Gregory P. Howe, Esq. by the mailing a copy of this ORDER to him by the Clerk after entry.

This matter shall be set for a status conference in approximately 45 days with respect to the Plaintiff's complaint and any other matter that may properly come before the court.

Dated at Newport, Vermont this \_\_\_\_ day of October, 2013.

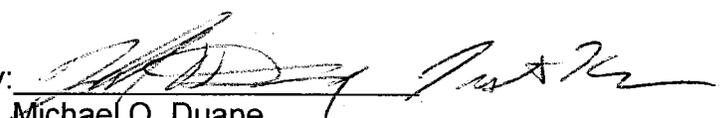
**SO ORDERED:**

\_\_\_\_\_  
Hon. Howard E. VanBenthuisen  
Vermont Superior Court Judge  
Orleans Unit Civil Division

Approved as to form and the voluntary dismissal of Richard M. Nelson.

WILLIAM H. SORRELL  
ATTORNEY GENERAL  
Attorney for the Plaintiff  
State of Vermont

Date: October 23, 2013

By:   
Michael O. Duane  
Justin E. Kolber  
Assistant Attorneys General

Approved as to form.

Date: \_\_\_\_\_

\_\_\_\_\_  
Gregory P. Howe, Esq.  
Attorney for the Defendant  
Nelson Farms, Inc.