

STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CIVIL DIVISION  
Docket No. 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

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

NOW COMES the State of Vermont, Agency of Agriculture, Food and Markets and the Agency of Natural Resources, by and through its attorney, Attorney General William H. Sorrell, and pursuant to 6 V.S.A. § 1(a)(7), 6 V.S.A. § 4812(c), 10 V.S.A. § 1274(a) and 10 V.S.A. § 8221, and the court's general equitable jurisdiction, brings the following complaint against the Defendants Richard M. Nelson and Nelson Farms, Inc.

**PARTIES**

1. The Plaintiff State of Vermont is a sovereign entity of which the Agency of Agriculture, Food and Markets and the Agency of Natural Resources are

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

respectively created through 3 V.S.A. § 212(2) and 3 V.S.A. § 2802. The agencies cooperate and coordinate their efforts relating to agricultural water quality pursuant to 6 V.S.A. § 4810(b).

2. The Defendant Richard Nelson is a person who is engaged in farming in the Town of Derby, Vermont in Orleans County. The Defendant is engaged in an agricultural operation located at Main Street in Derby Center known as the Clydeside Farm, and formerly known as the Hackett Farm. The Defendant is also engaged in an agricultural operation located at U.S. Route 5 in Derby Line known as the Crystal Brook Farm, and formerly known as the Kelly Farm. Richard Nelson directs the agricultural activities at both farms.

3. The Defendant Nelson Farms, Inc. is a Vermont corporation, engaged in the farm products business, and which owns the real property described in paragraph 2 above, and, through its agents, is engaged in the agricultural operation located at Main Street in Derby Center known as the Clydeside Farm, and formerly known as the Hackett Farm, and engaged in the agricultural operation located at U.S. Route 5 in Derby Line known as the Crystal Brook Farm, and formerly known as the Kelly Farm. Agents of Nelson Farms, Inc. are involved in the management of agricultural activities at both farms.

4. The officers and principals of Nelson Farms, Inc. are Douglas Nelson, Sr., Douglas Nelson, Jr., the defendant Richard Nelson, and Cyril Nelson.

5. Because of the number of mature dairy animals and young stock housed at each farm, both the Clydeside Farm and the Crystal Brook Farm are and

were each operated by the Defendants under the coverage and authorization of the Vermont medium farm general permit.

## FACTUAL AND LEGAL ALLEGATIONS

### I.

#### Clydeside Farm

6. The Defendants' agricultural operation at the Derby Center Clydeside Farm facility involves the confinement, feeding, fencing, and watering of livestock, and the storage and handling of livestock wastes and by-products.

7. On March 18, 2013 Katie Gehr, an employee of the Agency of Agriculture, Food and Markets (Agency of Agriculture), observed that the manure pit at the Clydeside Farm was full to the brim and close to overflowing. The Defendant Richard Nelson was informed by Ms. Gehr that the "freeboard" clearance of the manure pit needed to be reduced to a one foot level below the brim in order to meet the required farm waste management system standards. The Defendant Richard Nelson stated to Ms. Gehr that he would move some of the manure from the pit at the Clydeside Farm to the manure pit at the Crystal Brook Farm in Derby Line in order to reduce the volume of manure in the pit.

8. On March 28, 2013 Katie Gehr of the Agency of Agriculture returned to the Clydeside Farm. She observed that manure had not been removed from the pit, and that the manure pit was then overflowing. She also observed that there was a hole in the berm of the manure pit, and that agricultural wastes were leaking out from the hole. She also observed that stormwater from a nearby farm field owned

by the Defendants was mixing with water containing agricultural wastes from the manure pit and that the water containing agricultural wastes was flowing away from the barnyard production area in a defined path and into an area of wet soils adjacent to the Clyde River.

9. On March 28, 2013 Ms. Gehr spoke with the farm manger "Tony" and showed him where the manure pit had overtopped and where manure from the pit had flowed towards the Clyde River.

10. The Clyde River is a water of the state.

11. On May 6, 2013 several employees of the Agency of Agriculture and the Department of Environmental Conservation went to the Clydeside Farm and conducted a further inspection of the farm and observed that there was evidence that the manure pit had recently overtopped. Although there was no active discharge on that day, a rain storm or the addition of more agricultural wastes to the manure pit would cause the manure pit at the Clydeside Farm to overtop and flow away from the barnyard production area in a defined path and into an area of wet soils adjacent to the Clyde River and would cause a repetition of, and a future water quality violation to, the Clyde River as set forth above in paragraph 8.

12. They also observed on May 6, 2013 that a rain storm or the addition of more agricultural wastes to the manure pit would cause the manure pit at the Clydeside Farm to overtop and mix with any water from a nearby field and flow away from the barnyard production area in a defined path and into an area of wet soils adjacent to the Clyde River and would cause a repetition of and a future water quality violation to the Clyde River as set forth above in paragraphs 8 and 11.

13. On May 6, 2013 employees of the Agency of Agriculture and the Department of Environmental Conservation also observed upon further inspection of the Clydeside Farm that silage leachate, spoiled feed, mortalities (dead cow) leachate and other agricultural wastes from the farm production area were mixing with clean water from barn roofs and from rain water onto the production area and flowing to a focal point in the production area and thence downhill from that focal point and into a gully and discharging directly into the Clyde River.

14. There was a significant volume of agricultural wastes, including a substantial amount of silage leachate, deposited in the flood plain of the Clyde River that clearly had and presently was on May 6, 2013 discharging directly from the production area of the Defendants' agricultural operation into the Clyde River. The Defendant Richard Nelson admitted that there was silage wastes deposited in in the Clyde River, and that the wastes came from the Defendants' farm.

15. On May 14, 2013 Katie Gehr of the Agency of Agriculture returned to the Clydeside Farm. She observed that the level of the manure pit had been lowered. She also observed on that day that an earthen berm had recently been constructed at the focal point where the silage leachate, spoiled feed and other agricultural wastes from the farm production area had previously been flowing towards the Clyde River in the gully referred to in paragraph 13 above.

16. On May 15, 2012 Ms. Gehr spoke with defendant Richard Nelson and told him that the earthen berm was only adequate as a temporary structure to contain the wastes from the production area of the farm, and that a permanent

structure was needed to prevent a discharge. She also informed him that rain was in the forecast and a permanent correction was necessary to avoid a discharge.

17. On June 20, 2013 Katie Gehr, and another employee of the Agency of Agriculture, returned to the Clydeside Farm. She observed on that day that the temporary earthen berm referred to in paragraphs 15 and 16 above had indeed breached, and that silage leachate, spoiled feed and other agricultural wastes from the farm production area were once again flowing downhill from the focal point of the production area and into the gully referred to in paragraph 13 above and discharging directly into the Clyde River.

18. On August 27, 2013 employees of the Agency of Agriculture and the Department of Environmental Conservation returned to the Clydeside Farm. They observed on that day that the temporary earthen berm, which had previously breached, had been repaired. The newer earthen berm was blocking the agricultural wastes from leaving the focal point of the production area at the time of the visit. However, the earthen berm is inadequate, and the lack of a clean water diversion system from the roofs of the barns in the production area and the lack of a permanent waste management system in the focal point of the production area will cause an ongoing continuation and repetition of and a future water quality violation to the Clyde River.

## II.

### Crystal Brook Farm

19. The Defendants' agricultural operation at the Derby Line Crystal Brook Farm facility involves the confinement, feeding, fencing, and watering of livestock, and the storage and handling of livestock wastes and by-products.

20. On March 18, 2013, when Katie Gehr of the Agency of Agriculture went to the Crystal Brook Farm with Defendant Richard Nelson to determine if there was capacity at the Crystal Brook Farm manure pit, she also observed that clean water from the milkhouse plate cooler in the farm production area was mixing with dirty water containing agricultural wastes.

21. On March 28, 2013, Katie Gehr of the Agency of Agriculture returned to the Crystal Brook Farm. She observed that water containing agricultural wastes from the area that she observed on March 18, 2013 was flowing away from the barnyard production area and was entering a defined channel and discharging into an area of wet soils and discharging directly into Crystal Brook.

22. Crystal Brook is a water of the state.

23. Ms. Gehr spoke with "Tony" the farm manager and showed him where the clean water containing agricultural wastes from the farm production area was flowing away from the production area and was entering a defined channel and discharging into an area of wet soils and directly into Crystal Brook.

24. On May 6, 2013 several employees of the Agency of Agriculture and the Department of Environmental Conservation went to the Crystal Brook Farm and

observed: 1.) that spilled manure from a ramp near the western side of the manure pit, as well as other agricultural wastes, were mixing with clean water from the milkhouse plate cooler and flowing into a channel and discharging directly into Crystal Brook; 2.) that silage wastes and other agricultural wastes were mixing with surface water on the east side of the production area and that the water and wastes were flowing into a stream and then discharging directly into Crystal Brook at a second point; 3.) that spilled manure from two ramps on the eastern side of the manure pit had entered the stream and was also discharging directly into Crystal Brook at the same second point as noted in section 2.) above; 4.) that a barnyard waste management system was not being properly managed by the Defendants, and that manure was flowing between two barns and, if not properly managed or controlled, the runoff of wastes to the stream and into Crystal Brook would not be prevented; and, 5.) that a cow crossing area on the north side of the production area of the farm was not being properly managed by the Defendants, and that eroded soils and manure had entered into a swale and ,if not properly managed or controlled, would not prevent the runoff of wastes to the stream and into Crystal Brook.

25. The agency employees spoke with the Defendant Richard Nelson about their observations set forth in paragraph 24 above, and about the concerns that their observations raised regarding the effect on water quality. The agency employees stated to Mr. Richard Nelson that permanent corrections needed to be made to eliminate and prevent direct discharges from the production area of the



farm, particularly the placement of a permanent concrete berm at the east side of the production area to which he agreed.

26. On May 14, 2013 Katie Gehr of the Agency of Agriculture returned to the Crystal Brook Farm. She observed on that day that clean water from the milkhouse plate cooler in the farm production area was still mixing with dirty water containing agricultural wastes and flowing away from the production area in a defined channel towards and discharging directly into Crystal Brook. She spoke with the farm manager "Tony" about diverting clean water away from the agricultural wastes in the production area in order to control discharges.

27. She also observed on May 14, 2013 that a permanent berm had not been installed on the east side of the production area of the farm in order to prevent the direct discharge of wastes from the production area into waters of the state. She observed on that day that agricultural wastes from the east side of the production area had entered into the stream, as described in paragraph 24 above, which then flows into Crystal Brook.

28. On June 6, 2013 Katie Gehr of the Agency of Agriculture returned to the Crystal Brook Farm with an employee of the U.S. Department of Agriculture Natural Resources Conservation Service. She observed on that day that clean water from the milkhouse plate cooler in the farm production area was still mixing with dirty water containing agricultural wastes and flowing away from the production area in a defined channel towards and still discharging directly into Crystal Brook. She also observed on that day that a permanent berm still had not been installed on the east side of the production area of the farm in order to prevent the direct

discharge of wastes from the production area into waters of the state as described in paragraphs 24 and 27 above.

29. On June 20, 2013 Katie Gehr and another employee of the Agency of Agriculture returned to the Crystal Brook Farm. Ms. Gehr observed on that day that clean water from the milkhouse plate cooler in the farm production area was still mixing with dirty water containing agricultural wastes and flowing away from the production area into a defined channel towards and discharging directly into Crystal Brook.

30. She also observed on June 20, 2013 that manure from the improperly managed barnyard waste management system in the farm production area, as described in paragraph 24 above, was now migrating between the two barns and edging closer to the stream that feeds into Crystal Brook. She observed evidence of a recent discharge of agricultural wastes into the stream from that location of the production area, described in paragraph 24 above, which flows into Crystal Brook. On that day the wastes were being blocked from entering the stream by a temporary earthen berm.

31. She also observed on June 20, 2013 that a permanent berm still had not been installed on the east side of the production area of the farm in order to prevent the direct discharge of wastes from the production area into waters of the state as described in paragraphs 24 and 27 above.

32. On August 27, 2013 employees of the Agency of Agriculture and the Department of Environmental Conservation returned to the Crystal Brook Farm. They observed on that day that the milkhouse cooler plate clean water was still

flowing into an area that had contained agricultural wastes. The area had been scraped of agricultural wastes at the time of the visit. The area is regularly used by the farm operation, and unless the milkhouse cooler plate water is diverted from the area, scraping the area will not prevent the direct discharge of agricultural wastes to Crystal Brook and will cause an ongoing continuation and repetition of and future water quality violations to Crystal Brook.

33. They also observed on that day that a temporary berm of sand had been placed on the east side of the production area of the farm in an effort to contain agricultural wastes from discharging into Crystal Brook on the day of the visit. Sand is not an impervious material, and the sand berm will not prevent the direct discharge of agricultural wastes into Crystal Brook and will cause an ongoing continuation and repetition of and future water quality violations to Crystal Brook.

34. They also observed on that day that the agricultural wastes in the production area within the barns had been scraped out and removed, but that the waste management system in that location of the production area of the farm needed to be permanently improved in order to prevent a continuation and repetition of and future water quality violations to Crystal Brook.

35. They also observed on that day that the cow crossing area on the north side of the production area of the farm had been fenced in order to narrow, but not prevent, the area where clean water can mix with water containing agricultural wastes and flow to an area of wet soils and into a ditch and thence to Crystal Brook.

III.

36. The Defendants' discharges from the production areas of their agricultural operations at the Clydeside Farm in Derby Center and at their Crystal Brook Farm in Derby Line were done in violation of the Medium Farm Operation General Permit and the Medium Farm Operation Rules of the Secretary of Agriculture. Those Rules require at subchapter XI. B.1. that farm practices be in place to assure that there are no direct discharges of wastes from the production areas of farms to waters of the state. Those Rules also require compliance with Vermont's Accepted Agricultural Practices (AAPs).

37. The Defendants' actions, as set forth, are a violation of Vermont's AAPs which provide in section 4.01(a) that:

Agricultural operations shall not create any direct discharge of wastes into the surface waters of the State from a discrete conveyance such as, but not limited to, a pipe, ditch, or conduit without a permit from the Secretary of ANR.

and in section 4.01(b) that:

Barnyards, manure storage areas, animal holding areas and production areas shall be managed or controlled to prevent runoff of wastes to adjoining waters, groundwater or across property boundaries.

38. 6 V.S.A. § 4812(c) provides that whenever the Secretary of Agriculture, Food and Markets believes that any person engaged in farming is in violation of the agricultural water quality laws in subchapter 2 of chapter 215 of title 6, or the rules adopted thereunder, an action may be brought in the name of the agency in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation. Vermont's AAPs, referred to

in paragraph 37 above, were adopted as rules under the authority of 6 V.S.A. § 4810(a), subchapter 2 of chapter 215.

39. 6 V.S.A. § 1(a)(7) provides that the Secretary of Agriculture, Food and Markets may seek and obtain temporary or permanent injunctions to restrain a violation of any law administered by the secretary whenever there are reasonable grounds to be that the law has been or will be violated.

40. The Defendants have and will violate Vermont's AAPs authorizing injunctive relief.

41. The Defendants' actions, as set forth above, are a violation of 10 V.S.A. § 1259(a) which provides that:

No person shall discharge any waste, substance or material into waters of the state, nor shall any person discharge any waste, substance or material into an injection well or discharge into a publicly owned treatment works any waste which interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in joint house resolution 7 of the 1971 session of the general assembly.

42. The Defendants did not have a permit from the Secretary of the Agency of Natural Resources to discharge agricultural wastes from the production areas of their agricultural operations into the waters of the state.

43. 10 V.S.A. § 1274(a) provides, among other things, that if the Secretary of Natural Resources finds that any person has discharged or is discharging any waste in violation of chapter 47 of title 10 the secretary may bring suit to enjoin the discharge and to obtain compliance. It further provides that the court may issue a

temporary injunction or order in any such proceedings and may exercise all the plenary powers available to it in addition to the power to, among other things, enjoin future discharges and levy civil penalties.

44. 10 V.S.A. § 8221 provides, among other things, that the Secretary of Natural Resources may bring an action in superior court to ensure compliance and obtain penalties to enforce the provisions of law specified in section 8003(a) of title 10 which includes, among other provisions, chapter 47 of title 10. It further provides that the court may grant temporary and permanent injunctive relief, and may, among other things, enjoin future activities, and order remedial actions to be taken to mitigate hazard to the environment, and levy civil penalties.

45. The Defendants' violations of Vermont's agricultural and environmental water quality laws can be remedied, and are and have been continuous and ongoing.

#### PRAYER FOR RELIEF

WHEREFORE, the State of Vermont, through the Agency of Agriculture, Food and Markets and the Agency of Natural Resources, respectfully requests that the court grant the State injunctive relief as set forth herein to enjoin the Defendants' violations of Vermont's water quality and water pollution control laws and rules, and levy civil penalties, to wit:

1. Preliminarily and permanently order the Defendants to cease and enjoin the Defendants from allowing or causing agricultural wastes from their Derby Center

Clydeside Farm and from their Derby Line Crystal Brook Farm agricultural operations to discharge to and into the waters of the state;

2. Preliminarily and permanently order and enjoin the Defendants to prevent agricultural wastes from their Derby Center Clydeside Farm and from their Derby Line Crystal Brook Farm agricultural operations to be discharged to and into the waters of the state;

3. Enjoin the Defendants to operate all waste management systems at their Derby Center Clydeside Farm and at their Derby Line Crystal Brook Farm in accordance with the applicable rules and standards adopted by the Vermont Agency of Agriculture and in accordance with the technical standards of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) to the satisfaction of the Plaintiffs;

4. Enjoin the Defendants to submit an application for their Derby Center Clydeside Farm and for their Derby Line Crystal Brook Farm to the Secretary of Natural Resources for discharge permits pursuant to 10 V.S.A. § 1263(g);

5. Enjoin the Defendants to employ a qualified person, subject to the approval of the Plaintiffs, to ensure that there are no direct discharges from their Derby Center Clydeside Farm and from their Derby Line Crystal Brook Farm agricultural operations into the waters of the state;

6. Order that agents of the Plaintiffs may enter upon the land of the Defendants at all reasonable hours between 6:00 AM and 9:00 PM to inspect, measure, survey, photograph, test and sample the Defendants' land to determine

whether the Defendants' continue to directly discharge from the farms' production areas into the waters of the state;

7. Levy civil penalties against the Defendants jointly and severally in accordance with 10 V.S.A. § 8221(b)(6) and § 1274(a); and

8. Award the State its costs, and such further relief as the court deems just and equitable.

Dated: September 20, 2013.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by: 

Michael O. Duane  
Assistant Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-3178

and: 

Justin E. Kolber  
Assistant Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-5620

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609