

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. )  
 )  
 NELSON FARMS, INC, )  
 Defendant. )

FILED  
 DEC 24 2014  
 VERMONT SUPERIOR  
 COURT  
 ORLEANS UNIT

**CONSENT ORDER AND FINAL JUDGMENT ORDER**

This action came before the Court pursuant to the parties filing of a Stipulation for the Entry of Consent Order and Final Judgment Order. Based upon that Stipulation, and pursuant to 6 V.S.A. § 1(a)(7), 6 V.S.A. § 4812(c), 10 V.S.A. § 8221 and the Court’s inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

**ADJUDICATION FOR VIOLATIONS**

1. Defendant Nelson Farms, Inc. is adjudged liable for the following violations of Vermont’s agricultural and environmental laws and regulations at the agricultural operations at the Clydeside Farm and the Crystal Brook Farm:
  - a. violating 10 V.S.A. § 1259(a) between March 28, 2013 and June 20, 2013 by discharging from the Crystal Brook Farm into waters of the state without a permit from the Secretary of the Agency of Natural Resources by allowing clean water from the farm’s milkhouse plate cooler to mix with agricultural waste from the farm’s production area and flow into the Crystal Brook;

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05609

- b. violating 10 V.S.A. § 1259(a) between May 6, 2013 and May 14, 2013 by discharging from the Crystal Brook Farm into waters of the state without a permit from the Secretary of the Agency of Natural Resources by allowing agricultural waste on the eastern side of the farm's production area to flow into a stream and then into the Crystal Brook;
  - c. violating 10 V.S.A. § 1259(a) between May 6, 2013 and June 20, 2013 by discharging from the Clydeside Farm into waters of the state without a permit from the Secretary of the Agency of Natural Resources by allowing agricultural waste, including silage leachate, spoiled feed and mortalities leachate, to mix with rainwater at the farm's production area and collect at a focal point from where it flowed downhill, into a ditch, and then into the Clyde River;
  - d. operation of the Clydeside Farm in violation of its MFO General Permit between March 18, 2013 and August 28, 2013 by discharging to waters of the state without a permit and failing to manage the farm in compliance with Vermont's AAPs; and
  - e. operation of the Crystal Brook Farm in violation of its MFO General Permit between March 18, 2013 and August 28, 2013 by discharging to waters of the state without a permit and failing to manage the farm in compliance with Vermont's AAPs.
2. All other violations alleged by the State in the Complaint for which Defendant has not been adjudicated liable are dismissed with prejudice. This Consent Order and Final

Judgment Order does not affect any other potential violations by Defendant at the Crystal Brook Farm or Clydeside Farm not alleged in the Complaint.

### **PENALTIES**

3. For the violations described above, Defendant shall pay a civil penalty of forty-five thousand dollars (\$45,000.00).
4. Payment of the forty-five thousand dollars (\$45,000.00) penalty shall be made by check to the "State of Vermont" and shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT 05609. Payment of the forty-five thousand dollars (\$45,000.00) penalty shall be due in full no later than sixty (60) days after the 21-day public comment period has expired following the filing of the Stipulation and proposed Consent Order and Final Judgment Order. In the event that the payment is received by the State before the Court has approved the Consent Order and Final Judgment Order, the State shall hold the check in trust until approval. Should the Court reject the Consent Order and Final Judgment Order, the State will return the check to Defendant.
5. In the event that Defendant fails to pay the penalty described in paragraphs 3 and 4, such failure shall constitute a breach of this Consent Order and Final Judgment Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. Defendant shall also be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

## INJUNCTIVE RELIEF

6. Defendant is ordered to perform the following:
  - a. Defendant shall not make any unpermitted discharge into waters of the State from the Crystal Brook Farm or the Clydeside Farm;
  - b. Defendant shall submit to the State, in advance of any work, all future proposed improvements to the waste management system at the Crystal Brook Farm or the Clydeside Farm;
  - c. Defendant shall have a professional engineer (P.E.) certify that all future work done to any waste management system on either the Crystal Brook Farm or the Clydeside Farm meets all applicable standards and shall submit the plans and P.E. certification to the State; Defendant shall comply with all applicable rules, permits and laws relating to the Clydeside Farm and the Crystal Brook Farm; and
  - d. Defendant shall remain bound by all obligations contained in the Preliminary Injunction Order dated November 6, 2013, which are now incorporated by reference as a part of the Consent Order and Final Judgment Order

## OTHER PROVISIONS

7. The parties waive: (a) all rights to contest or appeal this Consent Order and Final Judgment Order; and (b) all rights to contest the obligations imposed upon Defendant Nelson Farms, Inc. under this Consent Order and Final Judgment Order in this or any other administrative or judicial proceeding involving the State of Vermont.

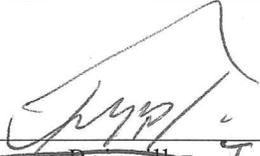
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8. This Consent Order and Final Judgment Order is binding upon the parties and all their successors and assigns.
9. Nothing in this Consent Order and Final Judgment Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order and Final Judgment Order, including any State agencies, subdivisions or other State entities.
10. This Consent Order and Final Judgment Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, the Consent Order and Final Judgment Order shall be final.
11. Any violation of this Consent Order and Final Judgment Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.
12. Nothing in this Consent Order and Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendant's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendant.
13. This Consent Order and Final Judgment Order may only be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and approved by this Court. Any representations not set forth in this Consent Order and Final Judgment Order,

whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

DATED at Newport, Vermont this 23<sup>rd</sup> day of December, 2014.

  
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Hon. ~~A. Gregory Rainville~~ T. Tomasi  
Orleans Superior Court Judge

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