

STATE OF VERMONT

SUPERIOR COURT  
ORLEANS UNIT

CIVIL DIVISION  
Docket No. 280-10-13 Osev

STATE OF VERMONT, AGENCY )  
OF AGRICULTURE, FOOD AND )  
MARKETS and AGENCY OF )  
NATURAL RESOURCES, )  
Plaintiff, )  
 )  
v. )  
 )  
NELSON FARMS, INC, )  
Defendant. )

**STIPULATION FOR THE ENTRY OF CONSENT ORDER AND  
FINAL JUDGMENT ORDER**

In order to resolve the allegations of the Complaint filed in the above-captioned matter, the parties, Plaintiff, the State of Vermont, Agency of Agriculture, Food and Markets and Agency of Natural Resources (“the State”) by and through Vermont Attorney General William H. Sorrell, and Defendant, Nelson Farms, Inc., hereby stipulate and agree as follows:

WHEREAS, Defendant is a Vermont corporation, engaged in the farm products business, and which owns the Clydeside Farm located on Main Street in Derby Center, Vermont and the Crystal Brook Farm located at U.S. Route 5 in Derby Line, Vermont;

WHEREAS, Defendant is engaged in dairy farming at both locations;

WHEREAS, both the Crystal Brook Farm and the Clydeside Farm were classified as Medium Farm Operations (MFOs) by the Vermont Agency of Agriculture, Food and Markets (AAFV) during all times relevant to the Complaint;

WHEREAS, both farms were subject to the conditions of the MFO General Permit during all times relevant to the Complaint;

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

WHEREAS, the State alleged in its Complaint filed in this action that Defendant violated Vermont's agricultural and environmental laws at the Clydeside Farm and Crystal Brook Farm between March 2013 and August 2013;

WHEREAS, the State alleged in its Complaint that Defendant violated section 1259(a) of Title 10 of the Vermont statutes 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 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;

WHEREAS, the State alleged in its Complaint that Defendant violated section 1259(a) of Title 10 of the Vermont statutes 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;

WHEREAS, the State alleged in its Complaint that Defendant violated section 1259(a) of Title 10 of the Vermont statutes 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;

WHEREAS, the State alleged in its Complaint that Defendant operated its Clydeside Farm in violation of its MFO General Permit between March 18, 2013 and August 28, 2013

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

by discharging to waters of the state without a permit and failing to manage the farm in compliance with Vermont's Acceptable Agricultural Practices (AAPs);

WHEREAS, the State alleged in its Complaint that Defendant operated its 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;

WHEREAS, Defendant denied the alleged violations in the Complaint;

WHEREAS, the parties now desire to resolve the enforcement action via a stipulated Consent Order and Final Judgment Order of the Court;

WHEREAS, Defendant now admits that it committed these violations of Vermont's agricultural and environmental laws and regulations;

WHEREAS, under 10 V.S.A. § 8221, Defendant is potentially liable for civil penalties of up to \$85,000.00 for each violation and \$42,500.00 per violation for each day the violation continued;

WHEREAS, the Attorney General pursuant to 3 V.S.A., Chapter 5 has the general supervision of matters and actions in favor of the State and may settle such matters as the interests of the State require;

WHEREAS, the State has considered the criteria in 10 V.S.A. § 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violations and that Defendant knew or had reason to know the violations existed;

WHEREAS, section 4860(a) of Title 6 provides that when any person fails to comply with any permit provision of a General Permit, the Secretary of AAFM may take enforcement action;

WHEREAS, enforcement action under 6 V.S.A. § 4860(a) may include revocation of coverage under a General Permit and other remedies as provided in the statute, including seeking and obtaining temporary or permanent injunctions to restrain a violation of any law administered by the Secretary of AAFM whenever there are reasonable grounds to believe the law has been or will be violated;

WHEREAS, the Attorney General believes that this settlement is in the State's interests as it upholds the statutory regime of Title 6, Chapter 215, and Title 10, Chapter 47, in which these violations occurred; and

WHEREAS, this Stipulation for the Entry of Consent Order and Final Judgment Order has been negotiated by and among the State and Defendant in good faith;

NOW, THEREFORE, the State and Defendant hereby stipulate and agree as follows:

1. The attached Consent Order and Final Judgment Order may be entered by the Court;
2. As a part of the settlement pursuant to the Consent Order and Final Judgment Order, Defendant admits to liability for the following 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 water from the

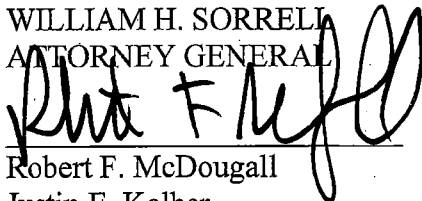
farm's milkhouse plate cooler to mix with agricultural waste from the farm's production area and flow into the Crystal Brook;

- 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;

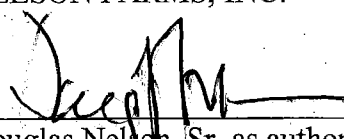
3. Any other alleged violations listed in the Complaint not admitted above shall be dismissed with prejudice; the settlement does not affect any other potential violations by Defendants at Crystal Brook Farm or Clydeside Farm not alleged in the Complaint;
4. As a part of the settlement pursuant to the Consent Order and Final Judgment Order, Defendant agrees to the following injunctive relief:
  - 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 submit the plans and P.E. certification to the State;
  - d. Defendant shall comply with all applicable rules, permits and laws relating to the Clydeside Farm and the Crystal Brook Farm; and
  - e. 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;
5. The Consent Order and Final Judgment Order has been negotiated by the State and Defendant in good faith;

6. The State and Defendants hereby waive all rights to contest or appeal the Final Judgment Order and they shall not challenge, in this or any other proceeding, the validity of any of the terms of the Final Judgment Order or of this Court's jurisdiction to enter the Final Judgment Order; and
7. The Final Judgment Order sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties' legal representatives and approved by the Court.

DATED at Montpelier, Vermont this 21<sup>st</sup> day of November, 2014.

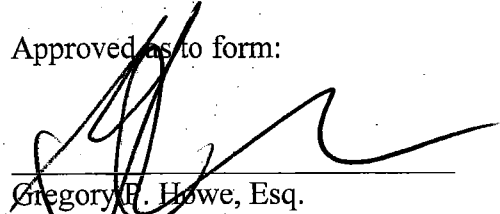
WILLIAM H. SORRELL  
ATTORNEY GENERAL  
By:   
Robert F. McDougall  
Justin E. Kolber  
Assistant Attorneys General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
(802) 828-3186

DATED at Deerby, Vermont this 20 day of November, 2014.

NELSON FARMS, INC.  
By:   
Douglas Nelson, Sr. as authorized  
agent for Nelson Farms, Inc.

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

Approved as to form:



---

Gregory F. Howe, Esq.  
Attorney for Nelson Farms, Inc.  
5346 US Rte 5  
Newport, VT 05855  
(802) 334-6718

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