

STATE OF VERMONT

SUPERIOR COURT
ORLEANS UNIT

CIVIL DIVISION
Docket No. 172-8-17 Oscv

STATE OF VERMONT, AGENCY OF
NATURAL RESOURCES and AGENCY
OF AGRICULTURE, FOOD, and MARKETS,
Plaintiff,

v.

NELSON FARMS, INC. and DOUGLAS
NELSON, JR.,
Defendants.

FINAL JUDGMENT ORDER

The State of Vermont and Defendants Nelson Farms, Inc. and Douglas Nelson, Jr. have filed a Stipulation for the Entry of Final Judgment Order. Based upon that Stipulation and 10 V.S.A. § 8221, 6 V.S.A. § 4995, and the Court's inherent equitable powers, it is ORDERED as follows:

CIVIL PENALTY

1. Defendant Douglas Nelson, Jr. shall pay a civil penalty of sixty thousand dollars (\$60,000). Payments shall be made in eight parts, with the first payment of \$7,500 due within ninety (90) days of the Court's issuance of this Final Judgment Order. Remaining payments of \$7,500 each shall be made on April 1, 2020; July 1, 2020; October 1, 2020; January 1, 2021; April 1, 2021; July 1, 2021; and October 1, 2021.
2. Payments of the \$60,000 penalty shall be made to the "State of Vermont" and shall be sent to:

Laura B. Murphy
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609

3. In the event Defendant Douglas Nelson, Jr. fails to pay this penalty, or such other payment as may be established by the Court or State in a subsequent proceeding, such failure shall constitute a breach of this Final Judgment Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, beginning on the first day after the entire penalty has become due (October 1, 2021). Defendant Douglas Nelson, Jr. shall be liable for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

CORRECTIVE ACTIONS

4. Defendant Nelson Farms, Inc. (NFI) shall perform the following corrective actions at the farm at 982 Black River Road, Craftsbury, Vermont (the Craftsbury Farm):

Silage Leachate Discharge

- 1) Permanently eliminate silage leachate discharges from the Craftsbury Farm. To implement this corrective action, NFI shall:
 - a. Develop a long-term plan to permanently eliminate discharges, which plan is subject to review and approval by the Agency of Natural Resources (ANR) with consultation from the Agency of Agriculture, Food, and Markets (AAFV).
 - b. Submit a conceptual design for the long-term plan to ANR by October 28, 2019.
 - c. Submit a preliminary plan for the long-term plan to ANR by January 15, 2020.
 - d. Submit a final long-term plan to ANR by May 15, 2020.

- e. Implement the long-term plan, as approved by ANR, by September 1, 2020.
- f. If the long-term plan is not implemented September 1, 2020, all feed and any waste feed shall be removed from the silage bunk area by that time.

ANR will consider requests for extensions to the plan-submission deadlines if NFI shows it has made reasonable and good faith efforts to comply with the plan-submission deadlines, and if consistent with the final implementation deadline of September 1, 2020.

- 2) Until the long-term plan is implemented as described in Corrective Action (1), implement an interim plan. Under the interim plan, NFI shall:
 - a. Ensure that no wastes, not including feed, are stored or piled in the silage bunk area at any time.
 - b. Maintain a tanker and pump on site at all times.
 - c. Ensure that the collection basin/sump area in the silage bunk area is not used for snow storage.
 - d. Conduct weekly inspections of the collection basin, including the perimeter of the basin, and maintain a log of the inspections.
 - e. Conduct inspections within 24 hours of a rainfall event of 0.5" or greater, and within 24 hours of a snowmelt event that produces runoff.
 - f. Install a marker with a maximum fill depth line that corresponds to an elevation no less than 1 foot below the lowest elevation of the berm and not allow the contents of the basin to exceed this elevation such that a minimum of 1 foot of freeboard is maintained within the basin.
 - g. Transfer waste from the collection basin only to waste storage facilities that have adequate storage capacity as defined in the Natural Resources Conservation Service (NRCS) 313 waste storage facility standard.
- 3) Seed or establish perennial vegetation in the 2016 silage leachate discharge pathway, as identified in Attachment A, by September 30, 2019, and maintain vegetation in that area.

Production Area Discharge including Dirty Bedding/Manure Pile

- 4) Prevent runoff from the dirty bedding/manure pile identified in the Complaint, and any other waste piles on the Craftsbury Farm, by either:
 - a. Removing all waste from all impervious surfaces in the production area unless the impervious surface drains into a waste storage facility compliant with NRCS 313, or
 - b. For any waste piles that do not drain into a NRCS 313-compliant waste storage facility, following an AAFM-approved plan to cover all

waste so that precipitation does not reach any waste piled in the production area, and implement other housekeeping measures determined necessary by AAFM.

- 5) This Corrective Action (4) shall be implemented by October 28, 2019.
- 6) Any wastes piled outside of the production area need AAFM approval prior to stacking.

Barnyards

- 7) Prevent runoff of waste and eliminate gully erosion in both barnyards through submission of a barnyard plan subject to review and approval by AAFM. Management options may include revegetation, establishing cropping systems for the barnyard areas consistent with the Required Agricultural Practices and nutrient management plan standards, establishing rotational grazing consistent with NRCS standards, restricting animal access, and maintaining proper animal stocking density to maintain adequate vegetation in all areas of the barnyards if animals are to access these areas.
- 8) The plan shall be submitted to AAFM by October 28, 2019.
- 9) Final implementation of the AAFM-approved barnyard plan shall occur by June 30, 2020.
- 10) Until the plan is implemented, animals will not have access to the barnyards without AAFM approval.

Milkhouse Waste Pond

- 11) Remove waste from the milkhouse waste ponding area in accordance with a milkhouse waste plan subject to review and approval by AAFM. Under the plan:
 - a. Liquid should be pumped out; nutrient-rich soil should be removed, down to native earth; and it should be replaced with clean fill and/or appropriately regraded.
 - b. The purpose of all pipes that outlet in or near the milkhouse waste ponding area should be identified, and all pipes and/or drains that can carry waste and that outlet into the milkhouse waste ponding area should be capped or directed to a collection and transfer system.
- 12) The plan shall be submitted to AAFM by October 28, 2019.
- 13) Final implementation of the AAFM-approved milkhouse waste plan shall occur by September 1, 2020.
- 14) Until the plan is implemented, ensure the milkhouse waste pond does not overtop.
- 15) No milking can occur at the Craftsbury Farm unless an AAFM-approved milkhouse waste management system has been installed.

Streambank Erosion/Tributary

- 16) All animal access to areas near the tributary to Mud Pond in the southwest barnyard must be approved by AAFM prior to animals being present. As part of any approval, AAFM may require that:
- a. Animals shall not have access to the tributary except at defined crossings.
 - b. Livestock exclusion and proper watering systems shall be implemented if animals are to be present in areas near the tributary.

Monitoring and Inspections

- 17) Until the corrective actions above are implemented, NFI shall send a progress report to AAFM and ANR by the last day of each month. The report shall be sent via electronic mail to:
- a. Nathaniel Sands, AAFM – Nathaniel.sands@vermont.gov.
 - b. Chris Gianfagna, ANR – Chris.gianfagna@vermont.gov.
- 18) The progress report shall include a narrative description and photo documentation on each of the corrective action items. In addition:
- a. For the silage bunk area, the progress report shall include:
 - i. Photos taken on a weekly basis of both ends of the containment area, the flow path to the tributary, and the depth marker;
 - ii. Documentation of any transfer of waste from the silage area, including date, volume, and destination;
 - iii. A log of the weekly inspections of the collection basin (see Corrective Action 2(d)); and
 - iv. Notification of any discharges.
 - b. For the milkhouse waste pond, the progress report shall include:
 - i. Photos taken on a weekly basis showing the depth of the pond; and
 - ii. Documentation of any transfer of waste from the milkhouse waste pond area, including date, volume, and destination.
- 19) AAFM and ANR may inspect the farm at reasonable times to ensure compliance with the corrective actions.

OTHER PROVISIONS

5. The violations alleged in the Complaint shall together qualify as one prior violation for purposes of penalty assessment in any future proceeding against Douglas Nelson, Jr. arising under or related to Title 6 Chapter 215 and Title 10

section 1259, including permit proceedings and enforcement actions for administrative and civil penalties.

6. If Defendant Nelson Farms, Inc. complies with the Corrective Actions set forth in this order, the State will not separately enforce any water quality violations observed during its November 15, 2018 inspection of the Craftsbury Farm.
7. The parties waive: (a) all rights to contest or appeal this Final Judgment Order and (b) all rights to contest the obligations imposed upon Defendants under this Final Judgment Order, in this or any other administrative or judicial proceeding involving the State of Vermont.
8. This Final Judgment Order is binding upon Douglas Nelson, Jr. (penalty) and Nelson Farms., Inc. (Corrective Actions), and their successors and assigns. Any change in NFI's ownership, corporate, or other legal status, including any transfer of assets, shall in no way alter the responsibilities of NFI, its successors, assigns, or affiliated companies under this Final Judgment Order.
9. Nothing in this Final Judgment Order shall be construed to create or deny any rights for, or grant or deny any cause of action to, any person not a party to this Final Judgment Order.
10. This Final Judgment Order shall become effective only after it is entered as an order of the Court at which time it shall become final.
11. Any violation of this 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 6 V.S.A. Chapter 215, Subchapter 10, and 10 V.S.A. Chapters 201 and 211.

12. The State of Vermont and this Court reserve continuing jurisdiction to ensure future compliance with this Final Judgment Order.
13. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described in the Complaint or in the Stipulation for the Entry of Final Judgment Order.
14. Nothing in this Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all federal, state, and local statutes, regulations, permits, and directives applicable to Defendants.
15. The Court finds based on the representations of the parties that the parties have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged litigation between the parties, and that this Consent Order is fair, reasonable, and in the State of Vermont's interest.

SO ORDERED and ENTERED as FINAL JUDGMENT.

DATED at Newport, Vermont, this 14 day of November, 2019.

Hon. AG Rainville
Vermont Superior Court, Judge

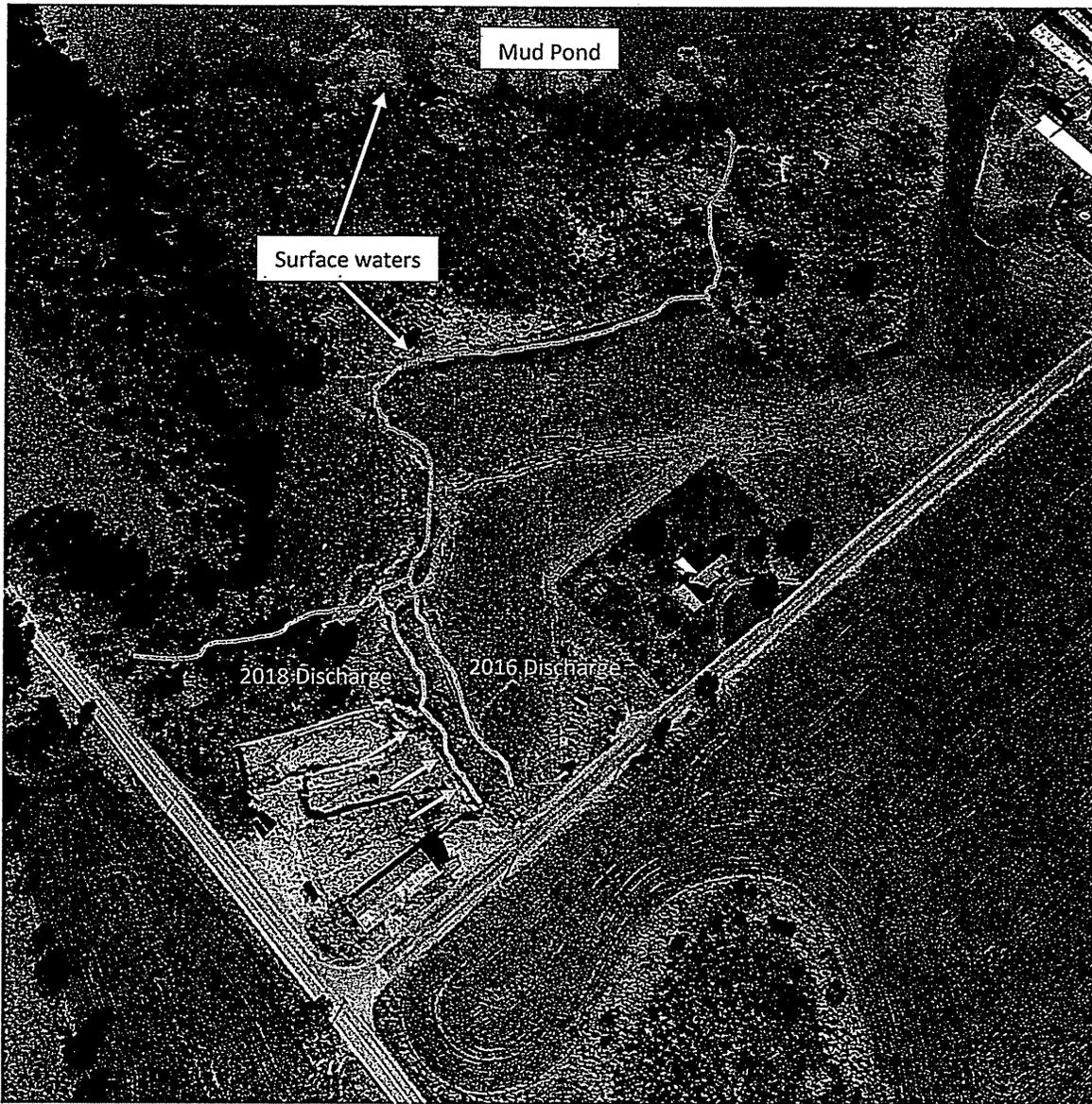


Figure 11: Craftsbury Farm Bunk Map.