

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

ANR v Nelson Farms, Inc.

22-ENV-00072

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on the 16th day of May, 2022 and filed with the Superior Court, Environmental Division, on this 20th day of July, 2022, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed July 20, 2022 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

STATE OF VERMONT

SUPERIOR COURT

**ENVIRONMENTAL DIVISION
Docket No.**

**SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff**

v.

**NELSON FARMS, INC., AND NELSON FARMS VT LLC,
Respondents**

VIOLATION

1. 10 V.S.A. § 1259(a): Unpermitted discharges to waters of the State

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency” or “ANR”) and Nelson Farms, Inc., and Nelson Farms VT LLC (“Respondents”) hereby enter into this Assurance of Discontinuance (“Assurance”), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATION

1. Prior to April 2022, Nelson Farms, Inc., was the owner and operator of a Large Farm Operation (the “Farm”) located on property it owns at 2742 Vermont Route 14 in Irasburg, Vermont (the “Property”).
2. The approximately 1,585-acre Property is located on both sides of Vermont Route 14, which bisects the Property in a north-south direction. Various Farm infrastructure is located on the westerly side of Route 14—including animal housing, a mortality composting pad, and a manure pit—along with several agricultural fields. Most of the Property on the easterly side of Route 14 consists of open or wooded areas where elk and bison are confined and fed.
3. Two unnamed surface waters are located on the Property, each originating on either side of Route 14 and converging south of the Farm infrastructure on the westerly side of Route 14.

The resulting unnamed surface water continues to flow in a southerly direction into Brighton Brook. Each of these surface waters are waters of the State.

4. On December 10, 2019, employees from the Agency of Agriculture, Food and Markets (“AAFM”) visited the Property and observed multiple agricultural waste streams discharging into the unnamed tributaries of Brighton Brook located on the Property.
5. On the westerly side of Route 14, leachate from mortality stacks near the composting pad was flowing through the agricultural fields, combining with field runoff, and entering the western tributary of Brighton Brook. Residual manure on the manure pit access road and the manure pit’s berms was flowing south and mixing with manure recently spread on saturated agricultural fields before entering the western tributary of Brighton Brook.
6. On the easterly side of Route 14, the land adjoining the eastern tributary of Brighton Brook was denuded and runoff was flowing into the surface water from the elk and bison feeding access point.
7. Under 10 V.S.A. § 1259(a), no person may discharge any waste, substance, or material into waters of the State without first obtaining a permit from the Secretary of the Agency of Natural Resources for that discharge.
8. Respondent Nelson Farms, Inc., removed and spread all mortality stacks in summer 2020 and reclaimed the engineered compost mortality pad. Nelson Farms, Inc., also represent that they modified their manure management practices to utilize satellite storage when field application of manure is not appropriate.
9. Nelson Farms, Inc., also constructed a new milking facility on the westerly side of Route 14 to the south of the Farm infrastructure. As of October 14, 2021, earthwork for the new milking facility obstructed the flow of runoff from the manure pit access road to the unnamed surface waters.
10. The ANR alleges that the above conduct constitutes a violation of 10 V.S.A. § 1259(a).
11. On April 28, 2022, Nelson Farms, Inc., transferred ownership of the Farm to Nelson Farms VT LLC, which did not exist at the time of the December 2019 site visit. While Nelson Farms, Inc., remains the owner of the Property, Nelson Farms VT LLC is responsible for operations at the Farm.

12. Respondents admit the factual findings described above solely for purposes of resolving this case.

AGREEMENT

Based on the foregoing Statement of Facts and Description of Violation, the parties agree as follows:

A. For the violation described above, Nelson Farms, Inc., shall pay a total penalty of \$ 7,875.00.

Payment shall be made by either:

1. Check made payable to the “Treasurer, State of Vermont” and forwarded to:

Administrative Assistant
Agency of Natural Resources
Environmental Compliance Division
1 National Life Drive, Davis 3
Montpelier, VT 05620-3803

Or

2. Credit card or electronic check payment through the ANR’s online system at:

https://anronline.vermont.gov/?formtag=ANR_EnforcementPenaltyPayment

Payment shall be received no later than thirty (30) consecutive calendar days following the Effective Date of this Assurance.

B. Respondents shall eliminate the discharge of wastes to the unnamed surface waters on the Property pursuant to a Corrective Action Plan approved by the ANR. The Corrective Action Plan shall include the following terms and conditions:

1. Mortality Management

a. No later than thirty (30) consecutive calendar days following the Effective Date of this Assurance, Respondents shall manage mortalities by making regular and primary use of the composting pad and grading any overflow composting area so that all runoff is captured by the manure pit.

2. Elk and Bison Feedlot

a. No later than September 1, 2022, Respondents shall relocate the feedlot fence as depicted on the map provided to the Agency on December 16, 2021, and reestablish

vegetation between the feedlot and the eastern tributary of Brighton Brook by permanently planting the area with perennial vegetation. If ANR determines that the fence relocation and vegetation reestablishment are not effective in eliminating the discharge, Respondents shall take all additional measures determined by ANR to be reasonable and necessary to eliminate the discharge.

3. Field Runoff of Manure

- a. Respondents shall implement the soil phosphorus drawdown strategy included within its Nutrient Management Plan for the fields located on the westerly side of Route 14 and to the northeast of the western tributary of Brighton Brook (Fields 201B, 201C, and 205).
- b. No later than July 1, 2022, Respondents shall plant as perennial vegetation a 50-foot minimum filter strip along the northern edge of the western tributary of Brighton Brook (in fields 201B, 201C, and 205) unless and until the ANR provides advanced written approval of an alternative to manage discharges.

4. No later than seven (7) consecutive calendar days following completion of all measures described in Paragraphs B(1)-(3), Respondents shall notify the ANR and obtain written confirmation of completion to the ANR's satisfaction.

C. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violation alleged above in order to resolve all outstanding disputes.

D. Respondents agree that the violation alleged is deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Nelson Farms, Inc.'s past record of compliance, such as permit review proceedings and calculating civil penalties under 10 V.S.A. § 8010. The violation will not be considered a "prior violation" of Nelson Farms VT LLC in any such proceedings.

E. The State of Vermont and the ANR reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth hereinabove.

- F. Nothing in this Assurance shall be construed as having relieved, modified, or in any manner affected the Respondents' on-going obligation to comply with all other federal, state or local statutes, regulations or directives applicable to the Respondents.
- G. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Division of the Superior Court (the "Effective Date"). When so entered by the Environmental Division, this Assurance shall become a judicial order. In the event that such order is vacated, the Assurance shall be null and void.
- H. The Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein occurring before the effective date of the Assurance, provided that the Respondents fully comply with the agreements set forth above.
- I. This Assurance 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 hereto or their legal representatives and incorporated in an order issued by the Environmental Division of the Superior Court. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.
- J. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. Chapters 201 and/or 211.
- K. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.


[Signatures on following pages.]

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Douglas Nelson, the undersigned, hereby state under oath that I am the President of Nelson Farms, Inc., that I have the power to contract on behalf of Nelson Farms, Inc., and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Derby, Vermont, this 16th day of May 2022.

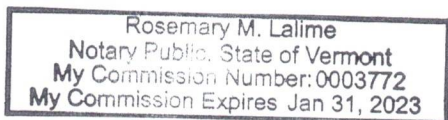
NELSON FARMS, INC.

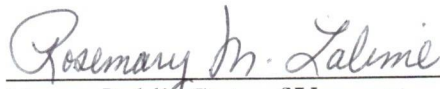
By: 
Douglas Nelson, President

STATE OF VERMONT

COUNTY OF Orleans, ss.

At Derby, Vermont, this 16th day of May 2022, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,




Notary Public State of Vermont

Printed Name Rosemary M. Lalime

Commission No. 0003772

My Commission Expires Jan. 31, 2023

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, Cyril Nelson, the undersigned, hereby state under oath that I am the Managing Member of Nelson Farms VT LLC, that I have the power to contract on behalf of Nelson Farms VT LLC, and that I have been duly authorized to enter into the foregoing Assurance of Discontinuance on behalf of that entity.

Dated at Derby, Vermont, this 16th day of May 2022.

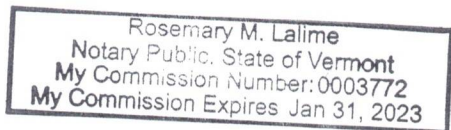
NELSON FARMS VT LLC

By: Cyril Nelson
Cyril Nelson, Managing Member

STATE OF VERMONT

COUNTY OF Orleans, ss.

At Derby, Vermont, this 16th day of May 2022, the above signatory personally appeared, signed, and swore to the truth of the foregoing. Before me,



Rosemary M. Lalime
Notary Public/State of Vermont

Printed Name Rosemary M. Lalime


Commission No. 0003772

My Commission Expires Jan. 31, 2023

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Montpelier, Vermont, this 13th day of June, 2022.

SECRETARY, AGENCY OF NATURAL RESOURCES

BY: 

John Beling, Interim Commissioner
Department of Environmental Conservation