

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

*Plaintiff,*

and

SIERRA CLUB,

*Intervener,*

v.

WALNUTDALE FAMILY FARMS, LLC,

and

KEVIN LETTINGA,

*Defendants.*

Civil Action No. 1-20-cv-397

Hon. Paul L. Maloney

Hon. Phillip J. Green

**CONSENT DECREE**

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WHEREAS Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action alleging that Defendants Kevin Lettinga and Walnutdale Family Farms, LLC violated Section 301 of the Clean Water Act (“CWA”), 33 U.S.C. § 1311, and the terms and conditions of two National Pollutant Discharge Elimination System (“NPDES”) permits issued under Section 402 of the CWA, 33 U.S.C. § 1342.

WHEREAS the Complaint alleges that Defendant Walnutdale Family Farms, LLC, owns and operates a dairy farm located at 4309 14<sup>th</sup> Street in Wayland, Michigan (the “Walnutdale Facility” or the “Facility”) and that Defendant Kevin Lettinga is an owner and the operator of Walnutdale Family Farms, LLC, and owns and operates, and otherwise exercises control over, the Facility.

WHEREAS the Complaint alleges that numerous violations occurred at the Facility, including unlawful discharges, failure to report discharges, inadequate operation and maintenance of Waste Storage Devices, failure to conduct Land Application in accordance with the permit requirements, and insufficient recordkeeping.

WHEREAS Plaintiff Sierra Club moved to intervene in this action on May 11, 2020.

WHEREAS Plaintiff Sierra Club was the first plaintiff to file a complaint against Walnutdale Farms Inc., Kevin Lettinga, and Ralph Lettinga concerning the Facility in 2000.

WHEREAS the United States previously filed a complaint against Walnutdale Farms, Inc., Kevin Lettinga, and Ralph Lettinga concerning the Facility in 2002. Kevin Lettinga and Ralph Lettinga previously operated the Facility through and under the name of Walnutdale Farms, Inc., which was dissolved on July 15, 2006 by the State of Michigan.

WHEREAS that case was consolidated with a case brought by the Sierra Club and its Michigan Chapter, proceeded into fact discovery, and was resolved through a consent decree

entered by the Court in 2004 (W.D. Mich. Civ. No. 4:00-cv-193, Dkt. 66) (the “2004 Consent Decree”).

WHEREAS on April 30, 2015, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, MDEQ issued general CAFO NPDES Permit No. MIG010000. MDEQ issued Certificate of Coverage No. MIG010063 under general CAFO NPDES Permit No. MIG010000 to Walnutdale Farms LLC on December 23, 2016.

WHEREAS the Defendants have provided documentation to identify and describe to EPA all areas and/or processes that contribute stormwater, manure, and/or process wastewater to the Facility’s waste storage structures, including the source and volume of the contribution from each area and/or process to each waste storage structure.

WHEREAS the Defendants have provided documentation to demonstrate, by listing the volume of storage remaining in each waste storage structure, that between November 1 and December 31, 2020, the Facility had an available operational volume in its WSDs equal to the volume of concentrated animal feeding operation waste generated from the operation of the Facility in a six-month or greater time period (including normal precipitation and runoff in the production area during the same time period.)

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over

the Parties. Venue properly lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395(a), because it is the judicial district where the Defendants are located and where the alleged violations occurred. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants consent to the Court's jurisdiction and consent to venue in this judicial district.

## **II. APPLICABILITY**

2. The obligations of this Consent Decree apply to and are binding upon the United States and Sierra Club and upon the Defendants and their officers, directors, employees, agents, servants, successors, assigns, or other entities or persons otherwise bound by law.

3. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Western District of Michigan, and the United States Department of Justice, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

4. Within thirty (30) Days after the Effective Date of this Consent Decree, the Defendants shall provide a copy of this Consent Decree to all officers, directors, employees, agents, and managers whose duties might reasonably include compliance with any substantive provision of this Consent Decree, as well as to a principal responsible officer or senior management official of any contractor retained to perform substantive work required under this Consent Decree.

Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. DEFINITIONS**

6. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. Terms not defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the NPDES Permit unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. Animal feeding operation (“AFO”), as defined in EPA’s implementing regulations at 40 C.F.R. § 122.23 (b)(1), shall mean a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

i. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

ii. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

b. Concentrated animal feeding operation (“CAFO”) has the definition in 502(14) of the CWA and in EPA’s implementing regulations at 40 C.F.R. § 122.23 (b)(2).

c. “CAFO Process Wastewater” shall mean water directly or indirectly used in the operation of a CAFO for any of the following:

- i. Spillage or overflow from animal or poultry watering systems;
  - ii. Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities;
  - iii. Direct contact swimming, washing, or spray cooling of animals;
  - iv. Dust control;
  - v. Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.
- d. “CAFO Waste” shall mean CAFO Process Wastewater, manure, production area waste, effluents from the properly and successfully operated treatment system, or any combination thereof.
- e. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Section XXII (Appendices). In the event of a conflict between this Decree and any appendix, this Decree shall control.
- f. “Date of Lodging” shall mean the date on which this Consent Decree is lodged with the United States District Court for the Western District of Michigan for a period of public comment.
- g. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last Day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business on the next business day.
- h. “Defendants” shall mean Kevin Lettinga and Walnutdale Family Farms, LLC and any officers, directors, agents, employees, successors, and assigns.

i. “Deliverable” shall mean any written document required to be prepared and/or submitted to EPA by or on behalf of Defendants in order to comply with a requirement of this Consent Decree.

j. The “East Manure Storage Facility” is identified as “P1” on Appendix A.

k. “Effective Date” shall have the definition provided in Section XIV of the Consent Decree.

l. “EGLE” shall mean the Michigan Department of Environment, Great Lakes, and Energy and any of its successor departments or agencies.

m. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

n. “Facility” or “Walnutdale Facility” shall mean the Walnutdale Family Farms, LLC dairy farm located at 4309 14th Street in Wayland, Michigan.

o. “Land Application” shall mean spraying or spreading of biosolids, CAFO Waste, wastewater and/or derivatives onto the land surface, injecting below the land surface, or incorporating into the soil so that the biosolids, CAFO Waste, wastewater and/or derivatives can either condition the soil or fertilize crops or vegetation grown in the soil.

p. “Land Application Area” shall mean land under the control of Defendants, whether it is owned, rented, leased, or subject to an access agreement, to which CAFO waste is or may be applied. Land Application Area includes land not owned by the Defendants but where the Defendants have control of the Land Application of CAFO Waste.

q. “Manure” shall mean animal excrement and is defined to include bedding, compost, and raw materials, or other materials commingled with animal excrement or set aside for disposal.



r. “MDEQ” shall mean the Michigan Department of Environmental Quality. MDEQ has been succeeded by EGLE.

s. “NPDES Permit” shall mean the general CAFO Permit No. MIG010000 issued by MDEQ on April 30, 2015 or CAFO Permit No. MIG01000 issued on March 27, 2020, including any revisions and modifications thereto, and any newly issued permits that replace these permit issued by EPA, EGLE, or any successor agency of the State of Michigan or the United States. The Permit for which the Facility has a Certificate of Coverage at the relevant time shall apply.

t. “Nutrient Management Plan” or “NMP” shall mean the requirements and limitations for Land Application described in the NPDES Permit.

u. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or letter.

v. “Parties” shall mean the United States of America on behalf of EPA, the Sierra Club, Defendant Kevin Lettinga, and Defendant Walnutdale Family Farms, LLC.

w. “Pit 7” is shown on Appendix A next to the structure marked B7.

x. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

y. “United States” shall mean the United States of America, acting on behalf of EPA, including its departments, agencies, and instrumentalities.

z. “Waste Storage Device” or “WSD” shall mean storage structures for CAFO Waste and includes both pond-type storage structures and fabricated storage structures.

#### **IV. COMPLIANCE REQUIREMENTS**

7. Storage Assessment. Within ninety days of the Effective Date, Defendants shall empty, survey, and assess the integrity of the East Manure Storage Device and Pit 7. Defendants

may begin this work prior to the Effective Date. Defendants shall prepare and submit to EPA for approval a work plan and an accompanying implementation timeline for the repair of any WSD with compromised integrity (including liner integrity problems such as air bubbles, tears, or holes) to ensure compliance with the NPDES Permit. Defendants shall complete all necessary repairs or replacements in accord with the implementation timeline, once approved.

8. Depth Markers. Defendants shall maintain depth markers in each of the Facility's waste storage devices. The Depth Markers must clearly indicate the following levels as defined in the NPDES Permit: (a) the freeboard level, (b) the emergency level, and (c) the operational level.

9. Woody Vegetation. Defendants shall remove woody vegetation as needed and before any repair or replacement of any liner to prevent further penetration or disturbance of any liners or WSDs to ensure compliance with NPDES Permit Section B.1.

10. Land Application. Defendants shall implement NMP provisions to ensure that over-application or misapplication of CAFO Waste and other nutrients does not occur.

a. Within 90 days of the Effective Date, Defendants shall use a method of calculating manure application that complies with the NPDES Permit, and that uses the most recent soil test results (within 3 years as required by Permit) and at least two prior years of land application data to ensure that phosphorus and nitrogen applications are being conducted as required by the NPDES Permit requirements.

b. If Defendants apply CAFO Waste associated with the cleanout of the WSDs to a Land Application Area, they must create a nutrient budget for those applications that complies with the NMP.

c. For each location at which Land Application of CAFO Waste occurs, if soil test results are above 75 ppm Phosphorus, Defendants shall base any Land Application on a rolling average of the three prior years' actual crop yield for that crop as opposed to realistic crop yields.

d. Defendants' nutrient calculations and Land Application shall comply with the requirements of Part I, Section B.3 of the NPDES Permit. If Defendants want to change their Nitrogen and/or Phosphorus rates from what is allowed in the NPDES Permit, the Defendants shall first submit supportive documentation and receive approval from EPA before seeking an amendment/change to the NPDES permit through EGLE. Defendants shall use the procedure for Deliverables outlined in Section V to seek approval from EPA to use a different nutrient rate.

11. Reporting.

a. Defendants shall revise their monitoring and recordkeeping forms as specified below and provide copies of all revised forms to EPA for approval.

i. *WSD Monitoring Forms.* Within 60 days of the Effective Date, Defendants shall begin including the following information on their WSD inspection forms: (i) whether the WSD is in its emergency freeboard or operational level; and (ii) record any event other than daily addition of manure or process wastewater that changes liquid levels including, but not limited to, precipitation events (record the approximate rainfall amount) and transfer operations which add greater than 250,000 gallons to a WSD (record the approximate amount transferred). If any drainage covers for catch basins that collect process wastewater in the production area are closed, Defendants shall note the closure on the WSD monitoring form.

ii. *WSD Maintenance Inspection Logs.* Within 60 days of the Effective Date, the WSD maintenance inspection logs shall be revised to require a description of: (i) the condition of all WSDs; (ii) the condition of all Depth Markers; (iii) the condition of all manure and process wastewater transfer devices; (iv) any maintenance or repairs to WSDs, depth markers, or transfer devices; and (v) presence of vegetation and any vegetation removal.

b. For the first year after the entry of this Consent Decree, Defendants shall submit on a quarterly basis completed Land Application records, WSD maintenance inspection

logs, and WSD monitoring forms to EPA (on April 30 for the period of January 1 through March 31, on July 31 for the period of April 1 through June 30, on October 31 for the period of July 1 through September 30, and on January 31 for the period of October 1 through December 31) and after such first year such records shall be submitted twice each year (on July 31 for the period of January 1 through June 30 and then January 31 for the period of July 1 through December 31) until this Consent Decree is terminated. Submissions under this subparagraph shall be made in accordance with subparagraph f.

c. Within ninety (90) days of the Effective Date, Defendants shall submit the following, to EPA:

- i. 2018 and 2019 Daily Manure Application Records
- ii. 2018 and 2019 Manure Analysis Results
- iii. 2018 and 2019 Summary of Crop and Nutrient Balance
- iv. 2018 and 2019 Manure Application Summary
- v. 2018 and 2019 Manure Application Plan Summary
- vi. 2018 and 2019 Commercial Fertilizer Report Summary

Submissions under this subparagraph shall be made in accordance with subparagraph f of this paragraph.

d. Defendants shall submit the following documents on an annual basis on April 1 of every year while this Consent Decree is in effect:

- i. Manure Analysis Results
- ii. Summary of Crop and Nutrient Balance
- iii. Manure Application Summary
- iv. Manure Application Plan Summary
- v. Commercial Fertilizer Report Summary

vi. Annual Reports Required by Part I.B.4.d of the NPDES Permit.

Submissions under this subparagraph shall be made in accordance with subparagraph f of this paragraph.

e. While this Consent Decree is in effect, Defendants shall submit to EPA the Facility's updated NMP within 30 days of each update submitted to EGLE. Defendants shall make the Facility's updated NMP available to Sierra Club within 30 days of its request. Submissions under this subparagraph shall be made in accordance with subparagraph f.

f. Defendants shall upload the documentation required under this paragraph to a cloud-based file-sharing website and make them available on that website until this Consent Decree is terminated. Defendants shall be responsible for providing EPA and Sierra Club access to the website. If EPA or Sierra Club is unable to access the cloud-based sharing site, EPA or the Sierra Club shall notify Defendants in writing of such a problem. Should technical or other difficulties prevent use of the website for any Party, or make use of the website impracticable for any Party, Defendants shall provide their submissions to EPA and Sierra Club by e-mail, in accordance with Section XIII. Except for the reporting required under this paragraph, all other submissions under this Consent Decree shall be made in accordance with Section XIII, unless another method of submission is approved by EPA.

12. Certification. Each Deliverable submitted to EPA under this Section shall be signed by an official of the submitting party and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

However, this certification requirement does not apply to emergency or similar notifications where compliance would be impractical. If a Deliverable is uploaded to a file-sharing site pursuant to Paragraph 11.f, Defendants shall submit a notice pursuant to Section XIII that Defendants or Defendants' agent or employee uploaded the Deliverable subject to the certification of this Paragraph.

13. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CWA or implementing regulations, or by any other federal, State, or local law, regulation, permit, or other requirement.

14. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law. The Defendants shall not object to the admissibility into evidence of any report, work plan, notice, or other document prepared in accordance with this Consent Decree or the information contained in said reports in any proceeding to enforce this Consent Decree.

## **V. REVIEW AND APPROVAL PROCEDURES**

15. Approval of Deliverables: After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, EPA shall in writing:

- a. Approve the submission;
- b. Approve part of the submission and disapprove the remainder; or
- c. Disapprove the submission.

EPA shall provide a written response within 90 days.

16. Approved Deliverables: If the Deliverable is approved pursuant to Paragraph 15.a, Defendants shall take all actions required by the Deliverable, in accordance with the schedules and

requirements of the Deliverable as approved. Defendants may address emergencies without waiting for EPA approval of their Deliverable, but shall comply with all applicable reporting requirements and shall consult with EPA as soon as practicable. If the Deliverable is approved only in part pursuant to Subparagraph 15.b, Defendants shall, upon written direction from EPA, take all actions required by the approved portions of the Deliverable that EPA determines are technically severable from any disapproved portions. Following EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree. Implementation of any approved portion of a Deliverable shall not relieve Defendants of any liability for stipulated penalties for any deficient portion of the Deliverable.

17. Disapproved Deliverables: If the Deliverable is disapproved in part or in whole pursuant to 15.b or 15.c, Defendants shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit to EPA the Deliverable, or disapproved portion thereof, for approval. If the resubmission of the Deliverable is approved in whole or in part, the Defendants shall take all actions required by the approved Deliverable or approved portions of the Deliverable, in accordance with the schedules and requirements of the Deliverable as approved.

18. Resubmitted Deliverables: If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, EPA may again require the Defendants to correct any deficiencies, in accordance with Paragraph 17. EPA also retains the right to modify or develop any disapproved portion of the resubmitted Deliverable. Upon EPA's correction of any such deficiencies, the resubmitted Deliverable, or portion thereof, shall be incorporated into and become enforceable under this Consent Decree, and the Defendants shall take all actions to immediately implement the EPA-corrected Deliverable in accordance with the schedules and/or terms of the Deliverable as

approved, subject to the Defendant's right to invoke Dispute Resolutions under Section IX (Dispute Resolution) of this Consent Decree and the right of EPA to seek stipulated penalties as set forth in Paragraph

19. Any stipulated penalties applicable to the original submission, as provided in Section VII (Stipulated Penalties), shall accrue during the forty-five (45) Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

## **VI. CIVIL PENALTY**

20. Within sixty (60) Days of the Effective Date of this Consent Decree, Defendants shall pay the sum of \$33,750 as a civil penalty, together with interest accruing from the lodging date of the Consent Decree, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Defendants shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the Western District of Michigan. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which the Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. At the time of payment, Defendants shall send notice that payment has been made to: (a) EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail to EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (b) the United States via email or regular mail in accordance with Section XIV (Notices); and (c) EPA in accordance with Section XIV (Notices).



Such notice shall state that the payment is for the civil penalty owed pursuant to this Consent Decree in United States and Sierra Club v. Kevin Lettinga and Walnutdale Family Farms, LLC, and shall reference the CDCS Number and the DOJ case number: 90-5-1-1-07515/1.

21. If in the event that full cash payment to the United States is not made by the due date, Defendants shall also pay to the United States interest on the balance due from the original due date through the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

22. Defendants shall not deduct the civil penalty paid under this Consent Decree in calculating their federal income tax.

## **VII. STIPULATED PENALTIES**

23. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan, assessment, or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

24. Late Payment of Civil Penalty. If the Defendants fail to pay the civil penalty required by Section VI (Civil Penalty) when due, the Defendants shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

25. Failure to Provide a Copy of Consent Decree. If the Defendants fail to provide a copy of this Consent Decree to any proposed transferee or to provide written notice to the United States of the prospective transfer as required by Section II (Applicability) of this Consent Decree, the Defendants shall pay a stipulated penalty of \$5,000 per occurrence.

26. Failure to Permit Entry. If Defendants fail to permit EPA or its authorized representatives or contractors to enter the Facility as required by Section X (Information Collection

and Retention) of this Consent Decree, the Defendants shall pay a stipulated penalty of \$1000 per Day per violation.

27. Failure to Meet Reporting Requirements. Defendants shall pay stipulated penalties, as set forth below, for each Day they fail to make a timely and complete submission required under paragraph 11.

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th day	\$250
15th through 30th day	\$500
31st day and beyond	\$1,000

28. Failure to Comply with NPDES Permit, Storage Assessment Requirements, Depth Marker Requirements, Woody Vegetation Requirements, or Land Application Requirements. Defendants shall pay stipulated penalties, as set forth below, per violation for each Day they fail to comply with the terms and conditions contained in the NPDES Permit or any requirement of Paragraphs 7, 8, 9, or 10.

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st through 14th day	\$500
15th through 30th day	\$1,000
31st day and beyond	\$2,000

29. Unauthorized Discharge. After the date of lodging of this Consent Decree, in the event of a discharge of Manure or Process Wastewater from the Facility into Waters of the United States, as defined in 40 C.F.R. § 122.2 (1993), in violation of the NPDES Permit, the Defendants shall pay a stipulated penalty of \$5,000 for each day of Discharge.

30. Other Violations of Consent Decree. For any violation of this Consent Decree for which the amount of the stipulated penalty is not specified above, Defendants shall pay a stipulated penalty of \$500 per violation per Day of violation.

31. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

32. Defendants shall pay stipulated penalties to the United States within thirty (30) Days of receiving the United States' written demand.

33. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree.

34. Stipulated penalties shall continue to accrue as provided in Paragraph 52 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA, and is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the Effective Date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If either Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

35. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Section VI (Civil Penalty), except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

36. Defendants shall not deduct the stipulated penalties paid under this Consent Decree in calculating their federal income tax.

37. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

38. The payment of penalties and interest, if any, shall not alter in any way the Defendants' obligation to complete performance of this Consent Decree.

39. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Defendants reserve all rights to contest any such additional actions taken by the United States against the Defendants.

40. Where a violation of this Consent Decree is also a violation of the CWA, Defendants shall be allowed a credit for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **VIII. FORCE MAJEURE**

41. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, or any entity controlled by Defendants, or

of Defendants' contractors, which delays or prevents the performance of any obligation under this Consent Decree or causes a violation of this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendants shall provide notice orally or by electronic transmission to EPA as soon as possible but not later than seventy-two (72) hours of when Defendants first know that the event might cause a delay. Within seven (7) Days thereafter, Defendants shall provide in writing to EPA, in accordance with Section XIII (Notices), an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a Force Majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

43. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

44. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Defendants in writing of its decision.

45. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 41 and 42. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **IX. DISPUTE RESOLUTION**

46. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the Defendants. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

49. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

50. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall

contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

51. Standard of Review

a. *Disputes Concerning Matters Accorded Record Review.* Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 48 pertaining to any items requiring approval by EPA under this Consent Decree, the adequacy of the performance of work undertaken pursuant to this Consent Decree, or any other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. *Other Disputes.* Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 48, the Defendants shall bear the burden of proving that their actions were in compliance with this Consent Decree; or, if the dispute concerns the interpretation of this Consent Decree, the Defendants shall bear the burden of demonstrating that their position complies with this Decree.

52. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 34. If



Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

**X. INFORMATION COLLECTION AND RETENTION**

53. The United States and its representatives, including attorneys and authorized contractors, and their representatives, shall have the right of immediate entry into any Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this Consent Decree;
- b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. Obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and
- e. Assess Defendants' compliance with this Consent Decree.

54. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.

55. Until five years after the termination of this Consent Decree, the Defendants shall retain, and shall instruct their contractors and agents to preserve, copies of any reports, plans, permits, and documents submitted to the United States pursuant to this Consent Decree, as well as any underlying research and data used to develop such submittals (hereinafter referred to as "Records"). This information-retention requirement applies regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, the Defendants shall provide copies of any Records required to be maintained under this Paragraph.

56. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least ninety (90) Days prior to the destruction of any Records subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

57. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

58. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, including Section 308 of the CWA, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal laws, regulations, or permits.

#### **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

59. This Consent Decree resolves the civil claims of the United States and Sierra Club for the violations alleged in the Complaint filed in this action through the Date of Lodging.

60. This Consent Decree also resolves the United States' and Sierra Club's claims for violations of, and any stipulated penalty incurred by Defendants under, the 2004 Consent Decree prior to the Date of Lodging of this Decree.

61. Upon the Effective Date, this Consent Decree terminates the 2004 Consent Decree and the 2004 Consent Decree will be of no further force or effect. Prior to the Effective Date, the 2004 Consent Decree remains in full force and effect under the terms and conditions therein.

62. The United States and Sierra Club reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CWA, its implementing regulations, or under other federal or State laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

63. In any subsequent administrative or judicial proceeding initiated by the United States or Sierra Club for injunctive relief, civil penalties, other appropriate relief relating to the Facilities or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 59.

64. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations,

and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations, or permits.

65. This Consent Decree does not limit or affect the rights of the Parties against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

66. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## **XII. COSTS**

67. Within sixty (60) days of the Effective Date, pursuant to CWA § 505, 42 U.S.C. § 1365(d), Defendants shall pay \$11,250 to Sierra Club for its costs of litigation.

68. Except as provided in paragraph 67, the Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce any provision of this Consent Decree or collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

## **XIII. NOTICES**

69. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-1-1-07515/1

As to the United States by mail: EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-07515/1

As to the United States Attorney for the Western District of Michigan:  
Civil Division Chief  
United States Attorney's Office  
Western District of Michigan  
P.O. Box 208  
Grand Rapids, Michigan 49501

As to Sierra Club: Aaron Isherwood  
Managing Attorney, Sierra Club  
Aaron.isherwood@sierraclub.org

Jessica Culpepper  
Attorney  
Public Justice  
jculpepper@publicjustice.net

As to EPA: Cheryl Burdett  
CAFO Project Manager  
r5weca@epa.gov (as a text searchable pdf)  
burdett.cheryl@epa.gov

Joanna Glowacki  
Associate Regional Counsel  
glowacki.joanna@epa.gov

Robert Thompson  
Associate Regional Counsel  
thompson.robertl@epa.gov

As to Defendants by email: James B. Doezenia  
Foster, Swift, Collins & Smith, P.C.  
[jdoezema@fosterswift.com](mailto:jdoezema@fosterswift.com)

Kevin Lettinga  
Kevin@walnutdalefarms.com

Aubrey VanLaan

Aubrey@walnutdalefarms.com

Austin Lettinga  
austin@walnutdalefarms.com

James DeYoung  
james@cjdfarmconsulting.com

As to Defendants by mail:

Kevin Lettinga/Aubrey VanLaan  
4309 14th street  
Wayland MI 49348

James DeYoung  
902 Ballard St. SE  
Grand Rapids, MI 49507

Foster, Swift, Collins & Smith, PC  
Attn: James B. Doezema  
1700 East Beltline, NE, Suite 200  
Grand Rapids, MI 49525

70. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

71. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XIV. EFFECTIVE DATE**

72. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### **XV. RETENTION OF JURISDICTION**

73. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section IX (Dispute Resolution) and Section XVI (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

## **XVI. MODIFICATION**

74. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

75. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 51, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XVII. TERMINATION**

76. After Defendants have completed the requirements of Section IV (Compliance Requirements) and have maintained satisfactory compliance with this Consent Decree for a period of three (3) years, and have paid the civil penalties and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

77. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

78. If the United States does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section IX of this Decree. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until 90 days after service of their

Request for Termination. This Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with the provisions of Section X (Dispute Resolution).

79. Regardless of whether Defendants have requested termination of the Consent Decree pursuant to Paragraph 76, the United States may seek the Court's approval to terminate this Consent Decree based upon the United States' determination that the Defendants have met the requirements for termination in accordance with this Section.

#### **XVIII. PUBLIC PARTICIPATION**

80. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Consent Decree.

#### **XIX. SIGNATORIES/SERVICE**

81. Each undersigned representative of Defendants, the Department of Justice, and Sierra Club certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

82. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by email and/or mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any



applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

**XX. INTEGRATION**

83. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**XXI. FINAL JUDGMENT**

84. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**XXII. APPENDICES**

85. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is an aerial photograph of the Walnutdale Facility.

“Appendix B” is a copy of the NPDES Permit.

“Appendix C” is the Certificate of Coverage.

**XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

86. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability),

Paragraph 4; Section IV (Compliance Requirements), Paragraphs 7-12; Section V (Review and Approval Procedures), paragraph 15-16, and Section X (Information Collection and Retention), Paragraphs 53-56, is restitution or required to come into compliance with law.

Dated and entered this \_\_\_\_ Day of \_\_\_\_\_, 2021.

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HON. PAUL L. MALONEY  
United States District Court Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. *Kevin Lettinga and Walnutdale Family Farms, LLC*.

For Plaintiff UNITED STATES OF AMERICA:

JEAN E. WILLIAMS  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division U.S. Department of Justice  
Washington, DC 20530

3/1/2021  
Date

  
KRISTIN M. FURRIE  
Senior Counsel  
LAUREN D. GRADY  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division U.S. Department of Justice  
PO Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
(202) 514-2794  
Lauren.grady@usdoj.gov

ANDREW B. BIRGE  
United States Attorney  
Western District of Michigan

RYAN D. COBB  
Assistant United States Attorney  
Western District of Michigan

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. *Kevin Lettinga and Walnutedale Family Farms, LLC*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

**Nathan Mark Pollins** Digitally signed by Nathan Mark Pollins  
Date: 2021.02.24 14:28:34 -05'00'

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MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**GRACIELA PENDLETON** Digitally signed by GRACIELA PENDLETON  
Date: 2021.02.17 16:26:54 -05'00'

---

GRACIE PENDLETON  
Attorney-Adviser  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. *Kevin Lettinga and Walnutedale Family Farms, LLC*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2/12/2021

Date

T. Leverett Nelson Digitally signed by T. Leverett Nelson  
Date: 2021.02.12 09:58:54 -06'00'

T. LEVERETT NELSON  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604

JOANNA GLOWACKI Digitally signed by JOANNA GLOWACKI  
Date: 2021.02.10 11:10:44 -06'00'

Date

JOANNA GLOWACKI  
Associate Regional Counsel  
Office of Regional Counsel  
Region 5  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, IL 60604

ROBERT THOMPSON Digitally signed by ROBERT THOMPSON  
Date: 2021.02.10 11:05:33 -06'00'

Date

ROBERT THOMPSON  
Associate Regional Counsel  
Office of Regional Counsel  
Region 5  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. *Kevin Lettinga and Walnutdale Family Farms, LLC*.

For Plaintiff SIERRA CLUB:



February 5, 2021  
Date

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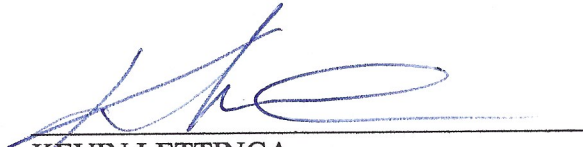
JESSICA CULPEPPER  
Attorney  
Public Justice  
1620 L Street NW, Suite 630  
Washington, DC 20036  
jculpepper@publicjustice.net

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. *Kevin Lettinga and Walnutdale Family Farms, LLC*.

For Defendants KEVIN LETTINGA and WALNUTDALE FAMILY FARMS, LLC:

2-3-21

Date

  
\_\_\_\_\_  
KEVIN LETTINGA  
4309 14th Street  
Wayland, MI 49348

84250:00001:5234346-1

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

*Plaintiff,*

and

SIERRA CLUB,

*Intervener,*

v.

WALNUTDALE FAMILY FARMS, LLC,

and

KEVIN LETTINGA,

*Defendants.*

Civil Action No. 1-20-cv-397

Hon. Paul L. Maloney

Hon. Phillip J. Green

**CONSENT DECREE - APPENDIX A**



# ATTACHMENT 1: AERIAL PHOTOGRAPH OF WALNUTDALE FARMS



Figure 1: The facilities are designated as follows: P1- East Manure Storage Facility, P2- Catch Basin waste storage structure, B1 through B3-Freestall barns, B4- Milking Parlor, and B5 through B7-Hoop Barns. The pasture surrounds P2. The north sample location was at the outlet of the stormwater pipe into the pasture.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

*Plaintiff,*

and

SIERRA CLUB,

*Intervener,*

v.

WALNUTDALE FAMILY FARMS, LLC,

and

KEVIN LETTINGA,

*Defendants.*

Civil Action No. 1-20-cv-397

Hon. Paul L. Maloney

Hon. Phillip J. Green

**CONSENT DECREE - APPENDIX B**

**PERMIT NO. MIG010000**  
**STATE OF MICHIGAN**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**WASTEWATER DISCHARGE GENERAL PERMIT**  
**CONCENTRATED ANIMAL FEEDING OPERATIONS**

In compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*, as amended; the "Federal Act"); Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); Part 41, Sewerage Systems, of the NREPA; and Michigan Executive Order 2011-1, Concentrated Animal Feeding Operations (CAFOs) are authorized to operate facilities specified in individual "Certificates of Coverage" (COCs) in accordance with effluent limitations, monitoring requirements and other conditions set forth in this general National Pollutant Discharge Elimination System (NPDES) permit (the "permit").

The applicability of this permit shall be limited to CAFOs that have not been determined by the Michigan Department of Environmental Quality (Department) to need an individual NPDES permit. New swine, poultry, and veal facilities with contaminated areas of the production area exposed to precipitation, including waste storage structures, are not eligible for this permit. New means populated after January 20, 2009. Discharges which may cause or contribute to a violation of a water quality standard are not authorized by this permit.

In order to constitute a valid authorization to discharge, this permit must be complemented by a COC issued by the Department and copies of both must be kept at the permitted CAFO. The following will be identified in the COC (as appropriate):

- The rainfall event magnitude at the production area [Part I.B.1.a.2)]
- The date by which existing CAFOs shall attain six months waste storage [Part I.B.1.a.4)]
- The date by which existing waste storage structures shall meet Natural Resources Conservation Services (NRCS) Practice Standard No. 313 [Part I.B.1.b.2)b)B)] along with a statement that specifies if the requirements specified in this permit or the requirements specified in the previous version of this permit, issued March 30, 2010, apply to existing waste storage structures
- The date by which the permittee shall cease using waste storage structures that do not meet standards and will not be upgraded [Part I.B.1.b.2)c)]
- Data for the application rate table for crops not listed in the permit [Part I.B.3.c.2)]
- Alternate land application rates and methodologies [Part I.B.3.c.2)]
- Total Maximum Daily Loads (TMDL) if the permittee's production or land application areas are located within a watershed(s) covered by an approved *E. coli*, biota, or dissolved oxygen TMDL (Part I.C.10.)
- Percent of outside materials allowed in the anaerobic digester associated with the CAFO permitted under this COC, if that percentage is greater than five (Part I.C.11.)

Compliance dates in reissued COCs shall be carried over from the expiring COC, unless modified by the Department.

Unless specified otherwise, all contact with the Department required by this permit shall be to the position indicated in the COC.

**This permit takes immediate effect on the date of issuance.** The provisions of this permit are severable. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term in accordance with applicable laws and rules.

This permit shall expire at midnight, **April 1, 2020**.

**Issued:** April 30, 2015.

Original Permit Signed by Philip Argiroff  
Philip Argiroff, Chief  
Permits Section  
Water Resources Division

**PERMIT NO. MIG010000**

**Page 2 of 35**

## **PERMIT FEE REQUIREMENTS**

In accordance with Section 324.3120 of the NREPA, the permittee shall make payment of an annual permit fee to the Department for each October 1 the permit is in effect regardless of occurrence of discharge. The permittee shall submit the fee in response to the Department's annual notice. The fee shall be postmarked by January 15 for notices mailed by December 1. The fee is due no later than 45 days after receiving the notice for notices mailed after December 1.

## **CONTESTED CASE INFORMATION**

The terms and conditions of this permit shall apply to an individual facility on the effective date of a COC for the facility. The Department of Licensing and Regulatory Affairs may grant a contested case hearing on this permit in accordance with the NREPA. Any person who is aggrieved by this permit may file a sworn petition with the Michigan Administrative Hearing System within the Michigan Department of Licensing and Regulatory Affairs, c/o the Michigan Department of Environmental Quality, setting forth the conditions of the permit which are being challenged and specifying the grounds for the challenge. The Department of Licensing and Regulatory Affairs may reject any petition filed more than 60 days after issuance as being untimely.

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**PART I****Section A. Effluent Limitations And Monitoring Requirements****1. Authorized Discharges and Overflows**

During the period beginning on the effective date of this permit and lasting until the expiration of this permit, the permittee is authorized to discharge the following, provided that the discharge does not cause or contribute to an exceedance of Michigan's Water Quality Standards:

- a. CAFO waste in the overflow from the storage structures for cattle, horses and sheep, and existing swine, poultry, and veal facilities identified in Part I.B.1. below, when all of the following conditions are met:
  - 1) These structures are properly designed, constructed, operated, and maintained.
  - 2) Precipitation events cause an overflow of the storage structures to occur.
  - 3) The production area is operated in accordance with the requirements of this permit.
- b. Precipitation caused runoff from land application areas and areas listed in Part I.B.3.h. that are managed in accordance with the NMP (see Part I.B. below).

This permit does not authorize any discharge to the groundwaters. Such discharge may be authorized by a groundwater discharge permit issued pursuant to the Michigan Act.

**2. Monitoring Discharges and Overflows from Storage Structures**

The discharge authorized in Part I.A.1.a., above, shall be monitored four times daily (every six hours) by the permittee as specified below on any day when there is a discharge:

<b><u>Parameter</u></b>	<b><u>Units</u></b>	<b><u>Sample Type</u></b>
Overflow Volume (at storage structure)	MGD	Report Total Daily Volume
Discharge to Surface Waters Volume	MGD	Report Total Daily Volume
Overflow Observation (at storage structure)	---	Report Visual Condition of the Overflow
Discharge to Surface Waters Observation	---	Report Physical Characteristics (see below)

Any physical characteristics of the discharge at the point of discharge to surface waters (i.e., unnatural turbidity, color, oil film, odor, floating solids, foams, settleable solids, suspended solids, or deposits) shall be reported concurrently with the discharge reporting required in Part II.C.6. and included in the discharge report required by Part I.C.1.

**3. Prohibited Discharges**

During the period beginning on the effective date of this permit and lasting until the expiration of this permit, the permittee is prohibited from having any dry weather discharge or discharging any CAFO waste and/or runoff that fails to meet the requirements of Part I.A.1. Discharges due to overflows from storage structures at new swine, poultry, or veal facilities are prohibited. Discharges from land application activities that do not meet the requirements of Part I.A.1. or that cause an exceedance of Michigan's Water Quality Standards are prohibited.



**PART I****Section B. Nutrient Management Plan**

The permittee shall implement the following requirements.

**1. CAFO Waste Storage Structures****a. Volume Design Requirements**

The permittee shall have CAFO waste storage structures in place and operational at all times that are adequately designed, constructed, maintained, and operated to contain the total combined volume of all of the following:

- 1) All CAFO waste generated from the operation of the CAFO in a six-month or greater time period (including normal precipitation and runoff in the production area during the same time period). This is the operational volume of the storage structure.
- 2) For cattle, horses, and sheep, and existing (populated prior to January 20, 2009) swine, poultry, and veal facilities, all production area waste generated from the 25-year 24-hour rainfall event. The magnitude of the rainfall event will be specified in the COC. This is an emergency volume to be kept available to contain large rainfall events. New (populated on or after January 20, 2009) swine, poultry, and veal facilities shall be designed to have all contaminated areas of the production area, including waste storage structures, totally enclosed and not subject to precipitation and, therefore, not needing room for the emergency volume in their storage structures.
- 3) An additional design capacity of a minimum of 12 inches of freeboard for storage structures that are subject to precipitation caused runoff. For storage structures that are not subject to precipitation-caused runoff, the freeboard shall be a minimum of 6 inches. This is the freeboard volume.
- 4) Records documenting the current design volume of any CAFO waste storage structures, including volume for solids accumulation, design treatment volume, total design volume, volumes of the operational, emergency, and freeboard volumes, and approximate number of days of storage capacity shall be included in the permittee's CNMP. For CAFOs not previously permitted, the COC may specify the date by which the permittee shall attain six months storage volume capacity, but that date shall be no more than three years after the COC issuance date.

**b. Physical Design & Construction Requirements****1) Depth Gauge**

CAFO waste storage structures shall include an easily visible, clearly marked depth gauge. Clear, major divisions shall be marked to delineate the operational, emergency, and freeboard volumes as specified above in Part I.B.1.a. (two volumes for new swine, poultry, and veal facilities). The top mark of the gauge shall be placed level with the lowest point on the top of the storage structure wall or dike. The elevation for the gauge shall be re-established as necessary but not less than every five years to adjust for any movement or settling. Materials used must be durable and able to withstand freezing and thawing (examples: large chain, heavy-duty PVC, steel rod). Any depth gauges that are destroyed or missing must be replaced immediately. Under-barn storages may be measured with a dip-stick or similar device. For solid stackable CAFO waste storage, depth gauge levels may be permanently marked on sidewalls.

**2) Structural Design**

Records documenting or demonstrating the current structural design as required below, including as-built drawings and specifications, of any CAFO waste storage structures, whether or not currently in use, shall be kept with the permittee's CNMP until such structure is permanently closed in accordance with Part I.C.3. Included in the CNMP submitted to the Department shall be a short description of the structural design of each structure (type of structure; dimensions including depth; liner material, thickness, and condition; depth from the design bottom elevation to the seasonal high water table), a statement whether the engineer's evaluation has been completed or not, and a brief description of the results of the evaluation (meets NRCS 313 2014 or provides environmental performance equivalent to NRCS 313 2005 or 2014).

**a) New Storage Structures (constructed after the effective date of the COC)**

Except as otherwise required by this permit, CAFO waste storage structures shall, at a minimum, be constructed in accordance with NRCS 313 2014.

**b) Existing Storage Structures at Newly-Permitted CAFOs (facilities without prior NPDES permit coverage) and Previously-Permitted CAFOs (storage structures constructed prior to the issuance of the CAFO's first COC)**



**PART I****Section B. Nutrient Management Plan**

- A) In a permit application for coverage under this permit, the applicant shall either:
  - i) For each existing storage structure document through an evaluation by a professional engineer that each structure is constructed in accordance with NRCS 313 2005 or 2014. Submit to the Department documentation signed by an engineer verifying that each structure is constructed in accordance with NRCS 313 2005 or 2014. Complete as-built plans, specifications, drawings, etc. shall be kept at the farm with the CNMP and do not need to be submitted, or
  - ii) For each existing storage structure, on a form provided by the Department and submitted to the Department, demonstrate environmental performance equivalent to NRCS 313 2014. The demonstration shall be accomplished through an evaluation by a professional engineer.
- B) If the applicant for a Newly-Permitted CAFO cannot provide the documentation or demonstration required by (1) or (2) above, the applicant may request that the COC specify a date by which the permittee shall provide storage structures that attain (1) above, but that date shall be no more than three years after the COC issuance date.
- C) Previously evaluated storage structures at permitted CAFOs shall have documentation demonstrating that the structure was constructed to, or provides equivalent environmental protection to, NRCS 313 2003 or 2005.
- c) Existing Storage Structures not Meeting Standards  
Usage, for the storage of large CAFO waste, of existing storage structures that do not meet the requirements above in Part B) and will not be upgraded to meet NRCS 313 Standards by the date in the COC, shall be discontinued by that same date in the COC. Such structures shall be maintained or permanently closed in accordance with Part I.C.3. Records of usage, maintenance, or closure shall be included in the CNMP.

## c. Inspection Requirements

The permittee shall develop a Storage Structure Inspection Plan and inspect the CAFO waste storage structures a minimum of one time weekly year-round. The inspection plan shall be included in the CNMP and results of the inspections shall be kept with the CNMP on a form provided by the Department. Individual results shall be kept for a period of five years. The plan shall include all of the following inspections:

- 1) The CAFO waste storage structures for cracking, inadequate vegetative cover, woody vegetative growth, evidence of overflow, leaks, seeps, erosion, slumping, animal burrowing or breakthrough, and condition of the storage structure liner
- 2) The depth of the CAFO waste in the storage structure and the available operating capacity as indicated by the depth gauge
- 3) The collection system, lift stations, mechanical and electrical systems, transfer stations, control structures, and pump stations to assure that valves, gates, and alarms are set correctly and all are properly functioning.

## d. Operation &amp; Maintenance Requirements

The permittee shall implement a Storage Structure Operation and Maintenance Program that incorporates all of the following management practices. The permittee shall initiate steps to correct any condition that is not in accordance with the Storage Structure Operation and Maintenance Program. A copy of the program shall be included in the CNMP. Specific records below shall be kept with the CNMP unless specified otherwise below.

- 1) In the event that the level of CAFO waste in the storage structure rises above the maximum operational volume level and enters the emergency volume level, the Department shall be notified. The level in the storage structure shall be reduced within one week, unless a longer time period is authorized by the Department (the removed CAFO waste shall be land applied in accordance with this permit or the Department shall be notified if another method of disposal is to be used) and the emergency volume shall be restored. Descriptions of such events shall be recorded in the CNMP.
- 2) At some point in time during the period of November 1 to December 31 of each year, there shall be an available operational volume in the CAFO waste storage structures equal to the volume of CAFO waste generated from the operation of the CAFO in a six-month or greater time period (including normal precipitation and runoff in the production area during the same time period). The date of this occurring

**PART I****Section B. Nutrient Management Plan**

shall be recorded in the CNMP and reported to the Department in accordance with Part II.C.5, Compliance Dates Notification.

3) Vegetation shall be maintained at a height that stabilizes earthen CAFO waste storage structures, provides for adequate visual inspection of the storage structures, and protects the integrity of the storage structure liners. The vegetation shall have sufficient density to prevent erosion. Woody vegetation shall be removed promptly from waste storage berms and other areas where roots may penetrate or disturb waste storage facility liners or waste treatment facilities.

4) Dike damage caused by erosion, slumping, or animal burrowing shall be corrected immediately and steps taken to prevent occurrences in the future.

5) The integrity of the CAFO waste storage structure liner shall be protected. Liner damages shall be corrected immediately and steps taken to prevent future occurrences.

6) Problems with the collection system, lift stations, mechanical and electrical systems, transfer stations, control structures, and pump stations shall be corrected as soon as possible. Records of these inspections and records documenting any actions taken to correct deficiencies shall be kept with the CNMP for a minimum of five years. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors causing the delayed correction.

7) CAFO waste shall be stored only in storage structures as described above, except for solid stackable manure collected in-barn prior to transfer to storage.

**2. Best Management Practices Requirements**

The following are designed to achieve the objective of preventing unauthorized discharges to waters of the state from production areas and land application activities.

a. **Conservation Practices**

The permittee shall maintain specific conservation practices near or at production areas, land application areas, and heavy use areas within pastures associated with the CAFO that are sufficient to control the runoff of pollutants to surface waters of the state in quantities that may cause or contribute to a violation of water quality standards. These practices shall be consistent with NRCS Conservation Practices and in compliance with the requirements of this permit. The permittee shall include within the CNMP a list of conservation practices used near or at production areas and land application areas. This list does not need to include temporary practices or other practices already required by this permit.

b. **Divert Clean Water**

The permittee shall design and implement structures and management practices to divert clean storm water to prevent contact with contaminated portions of the production areas. Clean storm water may include roof runoff, runoff from adjacent land, and runoff from feed or silage storage areas where such runoff has not contacted feed, silage, or silage leachate. Describe in the CNMP structures and management practices used to divert clean water from the production area and/or beneficial uses of diverted water if it will be collected for reuse.

c. **Prevent Direct Contact of Animals with Waters of the State**

There shall be no access of animals to surface waters of the state at the production area of the CAFO. The permittee shall develop and implement appropriate controls to protect water quality by preventing access of animals to waters of the state and shall describe such controls in the CNMP.

d. **Animal Mortality**

The permittee shall handle and dispose of dead animals in a manner that prevents contamination of waters of the state. Mortalities must not be disposed of in any liquid CAFO waste or storm water storage structure that is not specifically designed to treat animal mortalities. A description of mortality management practices shall be included in the CNMP. Records of mortality handling and disposal shall be kept with the permittee's CNMP for a minimum of five years.

**PART I****Section B. Nutrient Management Plan**

- e. **Chemical Disposal**  
The permittee shall prevent introduction of hazardous or toxic chemicals (for purposes of disposal) into CAFO waste storage structures. Examples of hazardous and toxic chemicals are pesticides and petroleum products/by-products. Identify in the CNMP appropriate practices that ensure chemicals and other contaminants handled at the CAFO are not disposed of in any CAFO waste or storm water storage or treatment system.
- f. **Inspection, Proper Operation, and Maintenance**  
The permittee shall develop and implement an Inspection, Operation, and Maintenance Program that includes periodic visual inspections, proper operation, and maintenance of all CAFO waste-handling equipment including piping and transfer lines, and all runoff management devices (e.g., cleaning separators, barnyards, catch basins, screens) to prevent unauthorized discharges to surface water and groundwater. A copy of the program shall be included in the CNMP. Specific inspection requirements include, but are not limited to, all of the following:
  - 1) Weekly visual inspections of all clean storm water diversion devices and outlets.
  - 2) Daily visual inspections of water lines, including drinking water and cooling water lines, and above-ground piping and transfer lines, or an equivalent method of checking for water line leaks that incorporates the use of water meters, pressure gauges, or some other monitoring method.
  - 3) All CAFO waste-handling equipment including piping and transfer lines, and all runoff management devices shall be accessible such that required visual inspections may occur. This may necessitate frequent removal of vegetation, snow, or other obstructions.
  - 4) Any deficiencies shall be corrected as soon as possible.
  - 5) Records of these inspections and records documenting any actions taken to correct deficiencies shall be recorded on a form provided by the Department and shall be kept in the CNMP for a minimum of five years. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors causing the delayed correction.

**3. Land Application of CAFO Waste**

- a. **Field-by-Field Assessment**  
The permittee shall conduct a field-by-field assessment of all land application areas. Each field shall be assessed prior to use for land application of CAFO waste. The assessment shall include field maps with location information and identify field-specific conditions, including, but not limited to, slopes, soil type, locations of tile outlets, tile risers and tile depth, conservation practices, and offsite conditions, such as buffers and distance or conveyance to surface waters. The assessment shall also identify areas which, due to topography, activities, or other factors, have a potential for erosion. The assessment shall also identify fields, or portions of fields, that will be used for surface application of CAFO waste without incorporation to frozen or snow-covered ground in accordance with the Department 2005 Technical Standard for the Surface Application of CAFO Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection (last page of this permit). The results of this assessment, along with consideration of the form and source of the CAFO waste and all nutrient inputs in addition to those from large CAFO waste, shall be used to ensure that the amount, timing, and method of application of CAFO waste:
  - 1) does not exceed the capacity of the soil to assimilate the CAFO waste
  - 2) is in accordance with field-specific nutrient management practices that ensures appropriate agricultural utilization of the nutrients in the CAFO waste
  - 3) does not exceed the maximum annual land application rates specified in Part I.B.3.c., below
  - 4) will not result in unauthorized discharges
 All assessments shall be kept in the CNMP. An assessment for a particular field can be deleted from the CNMP once that field is no longer used for land application.  
Any new fields shall be assessed prior to their use for land application activities. The Department shall be notified of the new fields prior to their use through submittal of a permit modification request that includes the field-by-field assessment, a map showing the entire field, its size in acres, location information, planned crops, and realistic crop yield goals. The request will be public noticed. The permittee may use the field eighteen calendar days after submittal of the request unless notified otherwise by the Department.

## PART I

### Section B. Nutrient Management Plan

#### b. Field Inspections

Prior to conducting land application of CAFO waste to fields determined to be suitable under Part I.B.3.a. above, the permittee shall perform the following inspections at the indicated frequency to ensure that unauthorized discharges do not occur as a result of the land application of CAFO waste. Records of inspections, monitoring, and sampling required by this section shall be recorded in the Land Application Log required by Part I.B.3.d.

1) CAFO waste shall be sampled a minimum of once per year to determine nutrient content and analyzed for total Kjeldahl nitrogen (TKN), ammonium nitrogen, and total phosphorus. CAFO waste shall be sampled in a manner that produces a representative sample for analysis. Guidance for CAFO waste sampling protocols can be found in Bulletin NCR 567 available from Michigan State University Extension. Analytical methods shall be as required by Part II.B.2. The CAFO waste test results shall be used to determine land application rates as described in c) below. Record the nutrient levels and analysis methods in the Land Application Log and include in the CNMP.

2) Soils at land application sites shall be sampled a minimum of once every three years, analyzed to determine phosphorus levels, and the soil test results shall be used to determine land application rates as described in c) below. Sample soil using an 8-inch vertical core, and take 20 or more cores in a random pattern spread evenly over each uniform field area. A uniform field area shall be no greater than 20 acres or it can be up to 40 acres if that field has one soil map unit and has been managed as a single field for the last ten years. The 20 cores shall be composited into one sample and analyzed using the Bray P1 method. Alternate methods may be used upon approval of the Department. Record the phosphorus levels in the Land Application Log and in the CNMP. Additional information on soil sampling can be found in Michigan State University Extension Bulletins E2904 and E498.

3) The permittee shall inspect each field no earlier than 48 hours prior to each land application of CAFO waste to that field to evaluate the current suitability of the field for application. This inspection shall include, at a minimum, the state of all tile outlets, evidence of soil cracking, the moisture-holding capacity of the soil, crop maturity, and the condition of designated conservation practices (i.e., grassed waterways, buffers, diversions). Results and findings of all inspections shall be recorded in the Land Application Log.

4) The permittee shall visually inspect all tile outlets draining a given field immediately prior to the land application of CAFO wastes to that field. Tile outlets shall be inspected again upon the completion of the land application to the field, or at the end of the working day should application continue on that field for more than one day (include in the Land Application Log written descriptions of tile outlet inspection results, and observe and compare color and odor of tile outlet effluents before and after land application).

5) All tiled fields to which CAFO wastes have been applied in the prior 30 days shall be visually inspected within 24 hours after the first rain event of one-half inch or greater, for signs of a discharge of CAFO waste. Written descriptions of tile inspection results shall be retained in the Land Application Log. If an inspection reveals a discharge with color, odor, or other characteristics indicative of an unauthorized discharge of CAFO waste, the permittee shall immediately notify the Department of the suspected unauthorized discharge in accordance with the reporting procedures contained in Part II.C.6 and record such findings in the Land Application Log.

6) The permittee shall inspect all land application equipment daily during use for leaks, structural integrity, and proper operation and maintenance. Land application equipment shall be calibrated annually to ensure proper application rates. Written records of inspections and calibrations shall be retained in the Land Application Log.

#### c. Maximum Annual Land Application Rates

The permittee may choose to use the Bray P1 numerical limits or the Michigan Phosphorus Risk Assessment (MPRA) tool (Version 2.0, Nov. 2012) to determine application rates. The permittee must use one system for its entire land application area for the life of the permit. For purposes of this permit, the MPRA is for rate calculations only and "Distance to surface water and/or surface inlets" is interpreted as described in g) below. The permittee shall comply with all of the following maximum annual land application rates:

**PART I****Section B. Nutrient Management Plan**

- 1) Land Application Rate Prohibitions  
All of the following land application rate prohibitions apply.
- a) If the Bray P1 soil test result is 150 parts per million (ppm) or more, CAFO waste applications shall be discontinued until nutrient use by crops reduces the Bray P1 soil test result to less than 150 ppm phosphorus (P) including when MPRA is used.
  - b) Fields where the MPRA risk is HIGH, CAFO waste shall not be applied.
  - c) The application rate shall not exceed the nitrogen (N) fertilizer recommendation (removal value for legumes) for the first crop year grown after the CAFO waste is applied as specified in b) below.
  - d) The application rate shall not exceed four years of P for each of the four crops planned for the next four years as calculated using the formula in b) below.
  - e) The total amount of N and P, regardless of source (manure, organic waste, commercial fertilizer, etc.), shall not exceed the first crop year nutrient requirements unless applying multiple crop years of P as allowed in 2) below. However, only one year of N can be applied as stated in c) above, unless samples or other relevant data shows additional N is needed for or will be beneficial to the crop. Documentation justifying additional N must be kept with the farm's CNMP.

- 2) Phosphorus Levels
- a) If the Bray P1 soil test result is 75 ppm P or more, but less than 150 ppm P or a MPRA risk of MEDIUM, application rates shall be based on the maximum rates of P in annual pounds per acre as calculated using the following formula:

The realistic yield goal per acre, using the units specified in the table below, for the planned crop multiplied by the number in the P column for that crop. The maximum annual application rates as calculated above shall be achieved by using the CAFO waste test results for P to determine the amount of CAFO waste that may be land applied per acre per year.

The result is the maximum annual pounds per acre of P that may be applied for the first crop planned after application of CAFO waste. If the one year rate is impractical due to spreading equipment or crop production management, the permittee may apply up to two years of P at one time, but no P may be applied to that field for the second year. The two year P application rate shall be the results calculated using the formula above for each of the two crops planned for the next two years and those two annual results shall be added together to determine the maximum P application rate. In no case may the application rate exceed the N application rate as specified below.

- b) If the Bray P1 soil test result is less than 75 ppm P or a MPRA risk of LOW, the annual rate of CAFO waste application shall not exceed the N fertilizer recommendation (removal value for legumes) for the first crop year grown after the CAFO waste is applied. (Information to determine N fertilizer recommendations or removal values can be found in Michigan State University Extension Bulletin E2904.) In no case may the application rate exceed four years of P calculated using the formula in a) above for each of the four crops planned for the next four years and those four annual results shall be added together to determine the maximum application rate. The maximum annual application rates as calculated above shall be achieved by using the CAFO waste test results for N to determine the amount of CAFO waste that may be land applied per acre per year.

P<sub>2</sub>O<sub>5</sub> values are included for reference purposes.

Crop	Harvest Form	Unit of Realistic Yield Goal per Acre	P	P <sub>2</sub> O <sub>5</sub>
			- - lb/unit of yield - -	
Alfalfa	Hay	ton	5.72	13.1
Alfalfa	Haylage	ton	1.41	3.2
Apple	Fruit	ton	0.19	0.44
Asparagus	Shoots	ton	1.1	2.51
Barley	Grain	bushel	0.17	0.38
Barley	Straw	ton	1.41	3.2
Beans (dry edible)	Grain	cwt	0.53	1.2



**PART I****Section B. Nutrient Management Plan**

Beans (green, fresh)	Pods	ton	1.22	2.8
Blueberry	Fruit	ton	0.20	0.46
Bromegrass	Hay	ton	5.72	13
Buckwheat	Grain	bushel	0.11	0.25
Canola	Grain	bushel	0.40	0.91
Carrots	Root	ton	0.79	1.81
Cherries (sour)	Fruit	ton	0.3	0.69
Cherries (sweet)	Fruit	ton	0.37	0.85
Clover	Hay	ton	4.4	10
Clover-grass	Hay	ton	5.72	13
Corn	Grain	bushel	0.16	0.37
Corn	Stover	ton	3.61	8.2
Corn	Silage	ton	1.45	3.3
Corn	Sweet	ton	1.23	2.8
Cucumbers	Fruit	ton	0.47	1.1
Grapes	Fruit	ton	0.26	0.6
Millet	Grain	bushel	0.11	0.25
Mint	Hay	Ton	3.81	8.72
Oats	Grain	bushel	0.11	0.25
Oats	Straw	ton	1.23	2.8
Orchardgrass	Hay	ton	7.48	17
Peaches	Fruit	ton	0.24	0.55
Pears	Fruit	ton	0.23	0.53
Peppers, Green	Fruit	Ton	0.6	1.37
Plums	Fruit	ton	0.2	0.46
Potato	Tubers	cwt	0.06	0.13
Rye	Grain	bushel	0.18	0.41
Rye	Straw	ton	1.63	3.7
Rye	Silage	ton	0.66	1.5
Sorghum	Grain	bushel	0.17	0.39
Sorghum-Sudangrass	Hay	ton	6.6	15
Sorghum-Sudangrass	Haylage	ton	2.02	4.6
Soybean	Grain	bushel	0.35	0.8
Spelts	Grain	bushel	0.17	0.38
Squash	Fruit	ton	0.76	1.74
Sugar beets	Roots	ton	0.57	1.3
Sunflower	Grain	bushel	0.53	1.2
Timothy	Hay	ton	7.48	17
Tomatoes	Fruit	ton	0.57	1.3
Trefoil	Hay	ton	5.28	12
Wheat	Grain	bushel	0.28	0.63
Wheat	Straw	ton	1.45	3.3

Numbers for the tables above for crops not listed above shall be proposed in the permit application in a format similar to the above. The Department will review the proposal and approved numbers will be listed in the COC. The permittee may propose alternate land application rates and methodologies in the permit application. The Department will review the proposal and acceptable rates and methods will be included in the COC issued under this permit.

Methodology and calculations consistent with this Part, and their results, shall be recorded in the Land Application Log.

**PART I****Section B. Nutrient Management Plan****d. Land Application Log**

The results of land application inspections, monitoring, testing, and recordkeeping shall be recorded in a "Land Application Log" which shall be kept up-to-date and kept with the CNMP. Log records shall be kept for a minimum of five years. The permittee shall document in the log in writing, at a minimum, records required by Part I.B.3. and all of the following information and inspection results in the specified document:

- 1) Daily Land Application Record
  - a) The time, date, quantity, method, location, and application rate for each location at which CAFO wastes are land applied
  - b) A written description of weather conditions at the time of application and for 24 hours prior to and following application based on visual observation
  - c) a statement whether the land was frozen or snow-covered at the time of application
- 2) Annual Report Form
  - a) The crop, the realistic yield goal, and actual yield for each location at which CAFO wastes are land applied
  - b) Methodology and calculations showing the total nitrogen and phosphorus to be applied to each field receiving CAFO waste, identifying all sources of nutrients, including sources other than CAFO waste
  - c) The total amount of nitrogen and phosphorus actually applied to each field receiving CAFO waste, irrespective of source, including documentation of calculations for the total amount applied
- 3) Printouts of weather forecasts from the time of land application. Weather forecasts may also be saved as electronic files, in which case the files do not need to be physically located in the Land Application Log, but the log shall reference the location where the files are stored.

**e. Prohibitions**

Appropriate prohibitions, in compliance with the following, shall be included in the CNMP.

- 1) CAFO waste shall not be applied on land that is flooded or saturated with water at the time of land application.
- 2) CAFO waste shall not be applied during rainfall events.
- 3) CAFO waste shall not be surface applied without incorporation to frozen or snow-covered ground, except in accordance with the Department 2005 Technical Standard for the Surface Application of CAFO Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection (last page of this permit) and to fields where the MARI score is Low or Very Low potential for manure movement from the field.
- 4) CAFO waste shall not be transferred to another person (a recipient as described in Part I.C.9.) where such waste will be surface applied without incorporation to frozen or snow-covered ground during the months of January, February or March unless the recipient agrees to follow the Department 2005 Technical Standard for the Surface Application of CAFO Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection (last page of this permit).
- 5) CAFO waste application shall be delayed if rainfall exceeding one-half inch, or less if a lesser rainfall event is capable of producing an unauthorized discharge, is forecasted by the National Weather Service (NWS) during the planned time of application and within 24 hours after the time of the planned application. Forecast models to be used can be found on the internet at <http://www.weather.gov/mdl/synop/products.php>. Model data to be used for one-half inch shall be:
 

GFS MOS (MEX) Text Message by Station Forecast: If the Q24 is 4 and the P24 is 70 or more for the same time period, or the Q24 is 5 or greater (with any P24 number), then CAFO waste land application shall be delayed until the Q24 is less than 4 or both the Q24 is less than 5 and the P24 is less than 70 for the same time period. The station to be used shall be that which is closest to the land application area. If no station is close, then use the closest 2 or 3 stations. Different model data shall be used if it is determined that rainfall less than one-half inch on a particular field is capable of causing an unauthorized discharge. For example, using a Q24 rating of 3 or greater may be appropriate on higher risk fields. If the NWS Web site is revised and the required forecast models are not available, the permittee shall contact the Department for information on which forecast models to use. Instructions for using this Web site are available from the Department. Other forecast services may be used upon approval of the Department.

**PART I****Section B. Nutrient Management Plan****f. Methods**

CAFO waste shall be subsurface injected or incorporated into the soil within 24 hours of application. CAFO waste subsurface injected into frozen or snow-covered ground shall have substantial soil coverage of the applied CAFO waste. The following exceptions apply:

1) Injection or incorporation may not be feasible where CAFO wastes are applied to pastures, perennial crops such as alfalfa, wheat stubble, or where no-till practices are used. CAFO waste may be applied to pastures or perennial crops such as alfalfa, wheat stubble, or where no-till practices are used, only if the CAFO waste will not enter waters of the state. CAFO waste shall not be applied if the waste may enter waters of the state.

2) On ground that is frozen or snow-covered, CAFO waste may be surface applied and not incorporated within 24 hours only if there is a field-by-field demonstration, in accordance with the Department 2005 Technical Standard for the Surface Application of CAFO Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection (last page of this permit), showing that such land application will not result in a situation where CAFO waste may enter waters of the state. Demonstrations shall be kept with the Land Application Log and submitted to the Department prior to use of the field. CAFO waste surface applied to ground that is frozen or snow-covered shall be limited to no more than 1 crop year of P per winter season, including pastures, perennial crops such as alfalfa, wheat stubble, or where no-till practices are used.

**g. Setbacks**

The permittee shall comply with any of the following setback requirements:

1) CAFO waste shall not be applied closer than 100 feet to any ditches that are conduits to surface waters, surface waters except for up-gradient surface waters, open tile line intake structures, sinkholes, or agricultural well heads.

2) The permittee may substitute the 100-foot setback required in 1) above, with a 35-foot wide vegetated buffer. CAFO waste shall not be applied within the 35-foot buffer.

3) CAFO waste shall not be applied within grassed waterways and swales that are conduits to surface waters.

Setbacks shall be measured from the ordinary high water mark, where applicable, or from the upper edge of the bank if the ordinary high water mark cannot be determined. Setbacks for each field shall be shown on the CNMP field maps.

**h. Non-Production Area Storm Water Management**

The permittee shall implement practices including preventative maintenance, good housekeeping, and periodic inspections of at least once per year, to minimize and control pollutants in storm water discharges associated with the following areas:

1) Immediate access roads and rail lines used or traveled by carriers of raw materials, waste material, or by-products used or created by the facility

2) Sites used for handling material other than CAFO waste including new sand to be used as bedding (not sand previously used as bedding)

3) Refuse sites

4) Sites used for the storage and maintenance of material handling equipment

5) Shipping and receiving areas

Records and descriptions of non-production area storm water management practices shall be kept in the CNMP.

**4. Comprehensive Nutrient Management Plan (CNMP)**

The CNMP shall apply to both production areas and land application areas and shall be a written document that describes the practices, methods, and actions the permittee takes to meet all of the requirements of the Nutrient Management Plan, Part I.B.

**a. Approval**

The CNMP shall be approved by a Certified CNMP Provider.



**PART I****Section B. Nutrient Management Plan****b. Submittal**

The CNMP shall be submitted to the Department with the application for coverage under this permit. The permittee is encouraged to submit all or parts of the CNMP in electronic form. Electronic form means a digital file in a standard, common format provided on a compact disc or other media readily readable by a Windows-based personal computer.

**c. Contents**

The CNMP submitted to the Department shall include all of the information and requirements specified in the NMP Section, Part I.B. and a map of the production area that includes all of the items specified in the permit application and that shows all clean water and production area waste flow paths, pipes, control structures, valves, etc.

**d. Annual Review and Report**

The permittee shall annually review the CNMP and update the CNMP as necessary to meet the requirements of Part I.B.

The permittee shall submit an annual report for the preceding January 1 through December 31 (reporting period) to the Department by April 1 of each year. The annual report shall be submitted on a form provided by the Department. The annual report shall include, but is not limited to, all of the following:

- 1) The average number of animals, maximum number of animals at any one time, and the type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other)
- 2) Estimated amount of total CAFO waste generated by the CAFO during the reporting period (tons or gallons)
- 3) Estimated amount of total CAFO waste transferred to other persons (manifested waste) by the CAFO during the reporting period (tons or gallons)
- 4) Total number of acres for land application covered by the CNMP developed in accordance with this permit
- 5) Total number of acres under control of the CAFO that were used for land application of CAFO waste during the reporting period
- 6) A field-specific spreading plan which identifies where and how much CAFO waste will be applied to fields for the upcoming 12 months, what crops will be grown on those fields, and the realistic crop yield goals of those crops. The plan must account for all CAFO waste expected to be generated in the upcoming 12 months including waste to be transferred under manifest.
- 7) The following land application records for the reporting period for each field harvested during the reported period which utilized nutrients from previously-applied CAFO waste: actual crops planted, crop yield goals, actual crop yields, actual N and P content of land-applied CAFO waste, calculations conducted and data used in accordance with Part I.B.3.c., quantity of CAFO waste land applied (application rate), soil testing results, the amount of any supplemental fertilizer applied, N credits from previous crops, total amount of N and P applied (all sources), and the basis for the application rate.
- 8) A statement indicating whether the current version of the CAFO's CNMP was developed or approved by a certified CNMP provider
- 9) A summary of all CAFO waste discharges from the production area that have occurred during the reporting period, including date, time, and approximate volume
- 10) The retained self-monitoring certification as required by Part II.C.3

**e. CNMP Revisions**

Prior to a significant change in the operation of the CAFO, whenever there is an unauthorized discharge (see Parts I.A.1. and I.A.3.) where future discharges could be prevented by revisions to the CNMP, or if the Department determines that the CNMP is inadequate in preventing pollution, the CNMP shall be revised and the revisions approved by a Certified CNMP Provider. Within ninety (90) days of a significant change, an unauthorized discharge, or a Department-requested revision; the revised portions of the CNMP shall be submitted to the Department with a copy of the Certified CNMP Provider certification that the revised CNMP has been approved. Revisions to the CNMP, especially due to a significant change, may result in a permit modification, after opportunity for public comment.

## **PART I**

### **Section B. Nutrient Management Plan**

Significant change includes, but is not limited to, any of the following:

- 1) An increase in the number of animals that results in a greater than or equal to 10 percent increase in the volume of either the manure alone or the total CAFO waste generated per year as compared to the volumes identified in the application, as a cumulative total over the life of the COC
- 2) An increase in the number of animals that results in a decrease in the waste storage capacity time, as identified in the application, by 10 percent or greater, as a cumulative total over the life of the COC
- 3) An increase in the number of animals, where the CAFO waste generated by the livestock requires more land for its application than is available at the time of the increase
- 4) A decrease in the number of acres available for land application, where the CAFO waste generated requires more land for application than will be available after the decrease
- 5) The construction of a new animal housing facility or waste storage facility

## PART I

### Section C. Other Requirements

#### 1. Reporting of Overflows and Discharges from CAFO Waste Storage Structures and Land Application

If, for any reason, there is an overflow from CAFO waste storage structures and/or a discharge of pollutants to a surface water of the state from CAFO waste storage structures, production areas, or land application areas, the permittee shall report the overflow and/or discharge to the Department in accordance with the reporting procedures contained in Part II.C.6. Discharges to surface waters shall also be reported to the Clerk of the local unit of government and the County Health Department. In addition, the permittee shall keep a copy of the report together with the approved CNMP. The report shall include all of the following information:

- a. A description of the overflow and/or discharge and its cause, including a description of the flow path to the surface water of the state
- b. The period of overflow and/or discharge, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent recurrence of the overflow and/or discharge
- c. Monitoring results as required by Part I.A.2
- d. In the event of a discharge through tile lines, the permittee shall identify and document, for field(s) from which the discharge occurred, the location of tile and depth of tile. The permittee shall also document field conditions at the time of the discharge, determine why the discharge occurred, and how to prevent future discharges.
- e. If the permittee believes that the discharge is an authorized discharge, then the permittee shall include a demonstration that the discharge meets the requirements of Part I.A.1.a. and/or Part I.A.1.b., as appropriate.

#### 2. Construction of New Waste Storage Structures or Facilities

Before the construction or alteration of a waste storage structure, facility, or portions thereof, written notification shall be submitted to the Department. New waste storage and transfer structures shall be built to NRCS 313 2014 standard. Complete as-built plans, specifications, drawings, etc. shall be kept at the farm with the CNMP. As-built plans must be signed and stamped by a licensed professional engineer and state that the structure was built to the NRCS 313 2014 standard. Signed and stamped design drawings do not constitute as-built plans. Required supporting documentation may include soils reports documenting suitability of liner material, groundwater investigations reports, pictures, survey notes, concrete batch tickets, etc.

#### 3. Closure of Structures and Facilities

The following conditions shall apply to the closure of lagoons, CAFO waste storage structures, earthen or synthetic lined basins, other manure and wastewater facilities, and silage facilities (collectively referred to as "structure(s)" for the remainder of this Part):

No structure shall be permanently abandoned. Structures shall be maintained at all times until closed in compliance with this section. All structures must be properly closed if the permittee ceases operation. In addition, any structure that is not in use for a period of twelve (12) consecutive months must be properly closed, unless the permittee intends to resume use of the structure at a later date and either: (a) maintains the structure as though it were actively in use, to prevent compromise of structural integrity and assure compliance with final effluent limitations, or (b) removes CAFO waste to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall conduct routine inspections, maintenance, and recordkeeping in compliance with this permit as though the structure were in use. The permittee shall notify the Department in writing prior to closing structures, or upon making a determination that the structures will be maintained as specified in (a) or (b) above. Prior to restoration of the use of the structure, the permittee shall notify the Department in writing and provide the opportunity for inspection.

The permittee shall accomplish closure by removing all waste materials to the maximum extent practicable. This shall include agitation and the addition of clean water as necessary to remove the waste materials. The permittee shall utilize as guidance the closure techniques contained in NRCS Conservation Practice Standard No. 360, Waste Facility Closure. All removed materials shall be utilized or disposed of in accordance with the permittee's approved CNMP, unless otherwise authorized by the Department.

**PART I****Section C. Other Requirements**

Unless the structure is being maintained for possible future use in accordance with the requirements above, completion of closure for structures shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless otherwise authorized by the Department.

**4. Standards, Specifications and Practices**

The published standards, specifications, and practices referenced in this permit are those which are in effect upon the effective date of this permit, unless otherwise provided by law. NRCS Conservation Practice Standards referred to in this permit are currently contained in Section IV, Conservation Practices and Michigan Construction Specifications, of the Michigan NRCS Field Office Technical Guide.

**5. Facility Contact**

The "Facility Contact" was specified in the application. The permittee may replace the facility contact at any time, and shall notify the Department in writing within 10 days after replacement (including the name, address, and telephone number of the new facility contact). The Department shall be notified in writing within 10 days after a change in any of the contact information (such as address or telephone number) from what was specified in the application.

- a. The facility contact shall be any of the following (or a duly authorized representative of this person):
  - For a corporation or a company, a principal executive officer of at least the level of vice president, or a designated representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the permit application or other NPDES form originates
  - For a partnership, a general partner
  - For a sole proprietorship, the proprietor
  - For a municipal, state, or other public facility, either a principal executive officer, the mayor, village president, city or village manager or other duly authorized employee
- b. A person is a duly authorized representative only if both of the following requirements are met:
  - The authorization is made in writing to the Department by a person described in paragraph a. of this section.
  - The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the facility (a duly authorized representative may thus be either a named individual or any individual occupying a named position).

Nothing in this section obviates the permittee from properly submitting reports and forms as required by law.

**6. Expiration and Reissuance**

On or before October 1, 2019, a permittee seeking continued authorization under this permit beyond the permit's expiration date shall submit to the Department a written application containing such information, forms, and fees as required by the Department. Without an adequate application, a permittee's authorization will expire on April 1, 2020. With an adequate application, a permittee shall continue to be subject to the terms and conditions of the expired permit until the Department takes action on the application, unless this permit is terminated or revoked. However, the permittee need not seek continued permit coverage or reapply for a permit if both of the following apply:

- a. The facility has ceased operation or is no longer a CAFO.
- b. The permittee has demonstrated to the satisfaction of the Department that there is no remaining potential for a discharge of CAFO waste that was generated while the operation was a CAFO.

If this permit is terminated or revoked, all authorizations to discharge under the permit shall expire on the date of termination or revocation.

If this permit is modified, the Department will notify the permittee of any required action. Without an adequate response, a permittee's authorization to discharge will terminate on the effective date of the modified permit.

**PART I****Section C. Other Requirements**

With an adequate response, a permittee shall be subject to the terms and conditions of the modified permit on the effective date of the modified permit unless the Department notifies the permittee otherwise.

If the facility has ceased operation or is no longer a CAFO, the permittee shall request termination of authorization under this permit.

**7. Compliance Dates for Existing Permittees**

Compliance dates and associated requirements for permittees covered under the version of this permit issued March 30, 2010, shall be carried over, shall remain in effect, and shall be specified in COCs issued under this permit, unless the Department modifies the compliance date in the reissued COC.

**8. Requirement to Obtain Individual Permit**

The Department may require any person who is authorized to discharge by a COC and this permit to apply for and obtain an individual NPDES permit if any of the following circumstances apply:

- a. the discharge is a significant contributor to pollution as determined by the Department on a case-by-case basis
- b. the discharger is not complying, or has not complied, with the conditions of the permit
- c. a change has occurred in the availability of demonstrated technology or practices for the control or abatement of waste applicable to the point source discharge
- d. effluent standards and limitations are promulgated for point source discharges subject to this permit, or
- e. the Department determines that the criteria under which the permit was issued no longer apply.

Any person may request the Department to take action pursuant to the provisions of Rule 2191 (Rule 323.2191 of the Michigan Administrative Code).

**9. Requirements for Land Application Not Under the Control of the CAFO Permittee**

In cases where CAFO waste is sold, given away, or otherwise transferred to another person (recipient) such that the land application of that CAFO waste is no longer under the operational control of the CAFO owner or operator that generates the CAFO waste (generator), a manifest shall be completed and used to track the transfer and use of the CAFO waste.

- a. Prior to transfer of the CAFO waste, the CAFO owner or operator shall do all of the following:
  - 1) Prepare a manifest for tracking the CAFO waste before transferring the CAFO waste
  - 2) Designate on the manifest the recipient of the CAFO waste
- b. The generator shall use a manifest form which is approved by the Department and which provides for the recording of all of the following information:
  - 1) A manifest document number
  - 2) The generator's name, mailing address, and telephone number
  - 3) The name and address of the recipient of the CAFO waste
  - 4) The nutrient content of the CAFO waste to be transferred, in sufficient detail to determine the appropriate land application rates
  - 5) The total quantity, by units of weight or volume, and the number and size of the loads or containers used to transfer that quantity of CAFO waste
  - 6) A statement that informs the recipient of his/her responsibility to properly manage the land application of the CAFO waste as necessary to assure there is no illegal discharge of pollutants to waters of the state
  - 7) The following certification by the generator: "I hereby declare that the CAFO waste is accurately described above and is suitable for land application"
  - 8) Other certification statements as may be required by the Department
  - 9) The address or other location description of the site or sites used by the recipient for land application or other disposal or use of the CAFO waste
  - 10) Signatures of the generator and recipient with dates of signature
- c. The generator shall do all of the following with respect to the manifest:
  - 1) Sign and date the manifest certification prior to transfer of the CAFO waste.
  - 2) Obtain a dated signature of the recipient on the manifest and the date of acceptance of the CAFO waste.

**PART I****Section C. Other Requirements**

- 3) Retain a copy of the signed manifest.
- 4) Provide a signed copy to the recipient.
- 5) Advise the recipient of his or her responsibilities to complete the manifest and, if not completed at time of delivery, return a copy to the generator within 30 days after completion of the land application or other disposal or use of the CAFO waste.
- d. One manifest may be used for multiple loads or containers of the same CAFO waste transferred to the same recipient. The manifest shall list separately each address or location used by the recipient for land application or other disposal or use of the CAFO waste. Each different address or location listing shall include the quantities of CAFO waste transferred to that location and dates of transfer.
- e. The generator shall not sell, give away, or otherwise transfer CAFO waste to a recipient if any of the following are true:
  - 1) The recipient fails or refuses to provide accurate information on the manifest in a timely manner.
  - 2) The use or disposal information on the manifest indicates improper land application, use, or disposal.
  - 3) The generator learns that there has been improper land application, use, or disposal of the manifested CAFO waste.
  - 4) The generator has been advised by the Department that the Department or a court of appropriate jurisdiction has determined that the recipient has improperly land applied, used, or disposed of a manifested CAFO waste.
- f. If the generator has been prohibited from selling, giving, or otherwise transferring CAFO waste to a particular recipient under Part I.C.9.e, above, and the generator wishes to resume selling, giving, or otherwise transferring CAFO waste to that particular recipient, then one of the following shall be accomplished:
  - 1) For improper paperwork only, such as incomplete or inaccurate information on the manifest, the recipient must provide the correct, complete information.
  - 2) For improper land application, use, or disposal of the CAFO waste by the recipient, the generator must demonstrate, in writing, to the Department that the improper land application, use, or disposal has been corrected, and the Department has provided approval of the demonstration.
- g. All manifests shall be kept on-site with the CAFO owner or operator's CNMP for a minimum of five years and made available to the Department upon request.
- h. The requirements of Part I.C.9. do not apply to quantities of CAFO waste less than one pickup truck load, one cubic yard, or one ton per recipient per day.

**10. Water Quality Impaired Waters**

- a. Nitrogen or Phosphorus Impairment  
The Department expects that full compliance with the conditions of this permit will allow the permittee to meet the pollutant loading capacity(ies) set forth for nitrogen or phosphorus in an approved Total Maximum Daily Load (TMDL).
- b. *Escherichia coli*, Biota, Dissolved Oxygen Impairment  
The permittee's COC will indicate if the permittee's production area or land application areas are located within a watershed(s) covered by an approved *E. coli*, biota, or dissolved oxygen TMDL. The Department will develop and publish guidance regarding how to evaluate operations and determine additional pollutant control measures. After the guidance is published, the permittee shall complete the following actions within 15 months of receiving notification from the Department:
  - 1) Conduct a comprehensive evaluation of its operations.
  - 2) Determine whether additional pollutant control measures need to be identified and implemented to meet the permittee's pollutant loading (or "concentration" in the case of *E. coli*) capacity(ies) set forth in the approved TMDL.
  - 3) Submit a written report to the Department based on one of the following:
    - a) If the permittee determines that the pollutant loading or concentration capacity(ies) established in the approved TMDL is not being exceeded, then the written report submitted to the Department shall justify that determination, or



## **PART I**

### **Section C. Other Requirements**

b) If the permittee determines that the pollutant loading or concentration capacity(ies) established in the approved TMDL is being exceeded, then the written report submitted to the Department shall identify additional pollutant control measures that need to be implemented by the permittee to achieve compliance with the pollutant loading capacity(ies) established in the approved TMDL. The permittee's written report shall also include an implementation schedule for each identified additional pollutant control measure.

Upon approval of the Department, and if the written report identifies needed additional pollutant control measures, the permittee shall implement the additional pollutant control measures according to the schedule. The approved written report detailing the additional pollutant control measures and the associated implementation schedule shall be included in the CNMP and shall be an enforceable part of this permit.

### **11. Treatment System**

The CAFO may include an anaerobic digester-based treatment system. The application for coverage under this permit shall include a description of the construction and operation of the anaerobic digester-based treatment system, including a schematic or flow diagram of the process, a listing of all outside materials (non-CAFO waste) to be added to the digester, the percentage input to the digester comprised of outside materials, and a contingency plan in the event of system failures including computer malfunctions. The contingency plan shall address the actions to be taken by the permittee if the digester-based treatment system must be by-passed for any reason, including handling and storage of partially-digested contents.

Up to 20 percent of outside materials may be added to the digester to enhance operation. Quantities above 5 percent will be listed in the COC issued under this permit. The Department may prohibit the use of certain outside materials. The permittee shall keep with the CNMP the quantities and identity of outside materials added to the digester. Outside materials not listed in the application shall not be added to the digester without prior approval from the Department. The outputs from the treatment system shall be stored and managed in accordance with the permit. The digester shall be operated consistently with the information provided in the application for coverage under this permit.

### **12. Document Availability**

Copies of all documents required by this permit, including the CNMP, Land Application Log, inspection records, etc., shall be kept at the permitted farm and made available to the Department upon request.

## PART II

Part II may include terms and /or conditions not applicable to discharges covered under this permit.

### Section A. Definitions

**Animal Feeding Operation (AFO)** means a lot or facility that meets both of the following conditions:

1. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12-month period
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over the portion of the lot or facility where animals are confined

Two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the disposal of wastes. Common area includes land application areas.

**Concentrated Animal Feeding Operation (CAFO)** means any AFO that requests coverage under the permit for which the Department determines that this permit is appropriate for the applicant's operation. A CAFO includes both production areas and land application areas.

**CAFO Process Wastewater** means water directly or indirectly used in the operation of a CAFO for any of the following:

1. Spillage or overflow from animal or poultry watering systems
2. Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities
3. Direct contact swimming, washing, or spray cooling of animals
4. Dust control
5. Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding

**CAFO Waste** means CAFO process wastewater, manure, production area waste, effluents from the properly and successfully operated treatment system, or any combination thereof.

**Certificate of Coverage (COC)** is a document, issued by the Department, which authorizes a discharge under a general permit.

**Certified CNMP Provider** is a person that attains and maintains certification requirements through a program approved by the United States Department of Agriculture Natural Resources Conservation Service (NRCS).

**CNMP** means Comprehensive Nutrient Management Plan and is the plan developed by the permittee to implement the requirements of the NMP.

**Department** means the Michigan Department of Environmental Quality.

**Discharge** as used in this permit means the addition of any waste, waste effluent, wastewater, pollutant, or any combination thereof to any surface water of the state.

**Grassed Waterway** means a natural or constructed channel for storm water drainage that originates and is located within a field used for growing crops, and that is used to carry surface water at a non-erosive velocity to a stable outlet and is established with suitable and adequate permanent vegetation.

**Incorporation** means a mechanical operation that physically mixes the surface-applied CAFO waste into the soil so that a significant amount of the surface-applied CAFO waste is not present on the land surface within one hour after mixing. Incorporation also means the soaking into the soil of "liquids being used for irrigation water" such that liquids and significant solid residues do not remain on the land surface. "Liquids being used for irrigation water" are contaminated runoff, milk house waste, or liquids from CAFO waste treated to separate liquids and solids. "Liquids being used for irrigation water" does not include untreated liquid manures.

**Land Application** means spraying or spreading of biosolids, CAFO waste, wastewater and/or derivatives onto the land surface, injecting below the land surface, or incorporating into the soil so that the biosolids, CAFO waste, wastewater and/or derivatives can either condition the soil or fertilize crops or vegetation grown in the soil.

**Land Application Area** means land under the control of an AFO owner or operator, whether it is owned, rented, leased, or subject to an access agreement to which CAFO waste is or may be applied. Land application area includes land not owned by the AFO owner or operator but where the AFO owner or operator has control of the land application of CAFO waste.



## PART II

### Section A. Definitions

**Large CAFO** is an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cattle (whether milked or dry cows)
2. 1,000 veal calves
3. 1,000 cattle other than mature dairy cows or veal calves. Cattle include heifers, steers, bulls, calves, and cow/calf pairs
4. 2,500 swine each weighing 55 pounds or more
5. 10,000 swine each weighing less than 55 pounds
6. 500 horses
7. 10,000 sheep or lambs
8. 55,000 turkeys
9. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system
10. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system
11. 82,000 laying hens, if the AFO uses other than a liquid manure handling system

Large CAFOs are required to obtain NPDES permits under Michigan Rule No. 323.2196.

**Manure** means animal excrement and is defined to include bedding, compost, and raw materials, or other materials commingled with animal excrement or set aside for disposal.

**Maximum Annual Phosphorus Land Application Rate** means the maximum quantity, per calendar year, of phosphorus (usually expressed in pounds per acre) that is allowed to be applied to crop fields where CAFO waste is spread, including the phosphorus contained in the CAFO waste.

**MGD** means million gallons per day.

**New CAFO** means a CAFO that is newly built and was not in production (i.e., animals were not on site) prior to January 30, 2004. New CAFO also means existing facilities where, due to expansion in production, the process or production equipment is totally replaced or new processes are added that are substantially independent of an existing source at the same site, after February 27, 2004. This does not include replacement due to acts of God or upgrades in technology that serve the existing production. This definition does not apply to "New" as used for swine, poultry, and veal facilities in Part I.B.1.a.2) on page 6.

**NMP** means Nutrient Management Plan and is the section in the permit that sets forth requirements and conditions to assure that water quality standards are met.

**No Till Practices** means where the field will not receive tillage from time of land application until after harvest of the next crop. .

**NRCS** means the Natural Resources Conservation Service of the United States Department of Agriculture.

**NRCS 313 (date)** means the NRCS Michigan Statewide Technical Guide, Section IV, Conservation Practice No. 313, Waste Storage Facility, dated either June 2003 or November 2005.

**Overflow** means a release of CAFO waste resulting from the filling of CAFO waste storage structures beyond the point at which no more CAFO waste or storm water can be contained by the structure.

**Pasture Land** is land that is primarily used for the production of forage upon which livestock graze. Pasture land is characterized by a predominance of vegetation consisting of desirable forage species. Sites such as loafing areas, confinement areas, or feedlots which have livestock densities that preclude a predominance of desirable forage species are not considered pasture land. Heavy-use areas within pastures adjacent to, or associated with, the CAFO are part of the pasture and are not part of the production area. Examples of heavy-use areas include livestock travel lanes and small areas immediately adjacent to feed and watering stations.

**Perennial** means a plant that has a life cycle of more than two years.

## PART II

### Section A. Definitions

**Production Area** is the portion of the CAFO that includes all areas used for animal product production activities. This includes, but is not limited to: the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways (not within pasture areas), and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials [new sand to be used as bedding (not sand previously used as bedding) is excluded from this definition]. The waste containment area includes settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of "production area" is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities. Production areas do not include pasture lands or land application areas.

**Production Area Waste** means manure and any waste from the production area and any precipitation (e.g., rain or snow) which comes into contact with, or is contaminated by, manure or any of the components listed in the definition for "production area." Production area waste also includes contaminated runoff from digester and treatment system areas. Production area waste does not include clean water that is diverted nor does it include water from land application areas.

**Realistic Crop Yield Goals** means expected crop yields based on soil productivity potential, the crop management practices utilized, and crop yield records for multiple years for the field. Yield goals shall be adjusted to counteract unusually low or high yields. When a field's history is not available, another referenced source shall be used to estimate yield goal. A realistic crop yield goal is one which is achievable in three out of five crop years. If the goal is not achieved in at least three out of five years, then the goal shall be re-evaluated and revised.

**Regional Administrator** is the Region 5 Administrator, United States Environmental Protection Agency (USEPA), located at R-19J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**Silage Leachate** means a liquid, containing organic constituents, that results from the storage of harvested plant materials, which usually has a high water content.

**Solid Stackable Manure** means manure and manure mixed with bedding that can be piled up or stacked and will maintain a piled condition. It will also have the characteristic that it can be shoveled with a pitchfork.

**Swale** means a shallow, channel-like, linear depression within a field used for growing crops that is at a low spot on a hillslope and is used to transport storm water. It may or may not be vegetated.

**Waste Storage Structure** means both pond-type storage structures and fabricated storage structures.

**Tile** means a conduit, such as corrugated plastic tubing, tile, or pipe, installed beneath the ground surface to collect and/or convey drainage water.

**Vegetated Buffer** means a narrow, permanent strip of dense perennial vegetation, established parallel to the contours of and perpendicular to the dominant slope of the field, for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

**Water Quality Standards** means the Part 4 Water Quality Standards developed under Part 31 of Act No. 451 of the Public Acts of 1994, as amended, being Rules 323.1041 through 323.1117 of the Michigan Administrative Code.

**25-year, 24-hour rainfall event** or **100-year, 24-hour rainfall event** means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years or 100 years, respectively, as defined by the "Rainfall Frequency Atlas of the Midwest," Huff and Angel, Illinois State Water Survey, Champaign, Bulletin 71, 1992, and subsequent amendments, or equivalent regional or state rainfall probability information developed there from.

## PART II

### Section B. Monitoring Procedures

#### 1. Representative Samples

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

#### 2. Test Procedures

Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304(h) of the Federal Act (40 CFR Part 136 – Guidelines Establishing Test Procedures for the Analysis of Pollutants), unless specified otherwise in this permit. **Test procedures used shall be sufficiently sensitive to determine compliance with applicable effluent limitations.** Requests to use test procedures not promulgated under 40 CFR Part 136 for pollutant monitoring required by this permit shall be made in accordance with the Alternate Test Procedures regulations specified in 40 CFR 136.4. These requests shall be submitted to the Chief of the Permits Section, Water Resources Division, Michigan Department of Environmental Quality, P.O. Box 30458, Lansing, Michigan, 48909-7958. The permittee may use such procedures upon approval.

The permittee shall periodically calibrate and perform maintenance procedures on all analytical instrumentation at intervals to ensure accuracy of measurements. The calibration and maintenance shall be performed as part of the permittee's laboratory Quality Control/Quality Assurance program.

#### 3. Instrumentation

The permittee shall periodically calibrate and perform maintenance procedures on all monitoring instrumentation at intervals to ensure accuracy of measurements.

#### 4. Recording Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information: 1) the exact place, date, and time of measurement or sampling; 2) the person(s) who performed the measurement or sample collection; 3) the dates the analyses were performed; 4) the person(s) who performed the analyses; 5) the analytical techniques or methods used; 6) the date of and person responsible for equipment calibration; and 7) the results of all required analyses.

#### 5. Records Retention

All records and information resulting from the monitoring activities required by this permit including all records of analyses performed and calibration and maintenance of instrumentation and recordings from continuous monitoring instrumentation shall be retained for a minimum of three (3) years, or longer if requested by the Regional Administrator or the Department.

## PART II

### Section C. Reporting Requirements

#### 1. Start-up Notification

If the permittee will not discharge during the first 60 days following the effective date of this permit, the permittee shall notify the Department within 14 days following the effective date of this permit, and then 60 days prior to the commencement of the discharge.

#### 2. Submittal Requirements for Self-Monitoring Data

Part 31 of the NREPA, specifically Section 324.3110(3) and R 323.2155(2) of Part 21, allows the Department to specify the forms to be utilized for reporting the required self-monitoring data. Unless instructed on the effluent limitations page to conduct "Retained Self-Monitoring" the permittee shall submit self-monitoring data via the Department's Electronic Environmental Discharge Monitoring Reporting (e2-DMR) system.

The permittee shall utilize the information provided on the e2-Reporting website at <https://secure1.state.mi.us/e2rs/> to access and submit the electronic forms. Both monthly summary and daily data shall be submitted to the Department no later than the 20<sup>th</sup> day of the month following each month of the authorized discharge period(s). The permittee may be allowed to submit the electronic forms after this date if the Department has granted an extension to the submittal date.

#### 3. Retained Self-Monitoring Requirements

If instructed on the effluent limits page (or otherwise authorized by the Department in accordance with the provisions of this permit) to conduct retained self-monitoring, the permittee shall maintain a year-to-date log of retained self-monitoring results and, upon request, provide such log for inspection to the staff of the Department. Retained self-monitoring results are public information and shall be promptly provided to the public upon request.

The permittee shall certify, in writing, to the Department, on or before January 10th (April 1st for animal feeding operation facilities) of each year, that: 1) all retained self-monitoring requirements have been complied with and a year-to-date log has been maintained; and 2) the application on which this permit is based still accurately describes the discharge. With this annual certification, the permittee shall submit a summary of the previous year's monitoring data. The summary shall include maximum values for samples to be reported as daily maximums and/or monthly maximums and minimum values for any daily minimum samples.

Retained self-monitoring may be denied to a permittee by notification in writing from the Department. In such cases, the permittee shall submit self-monitoring data in accordance with Part II.C.2., above. Such a denial may be rescinded by the Department upon written notification to the permittee. Reissuance or modification of this permit or reissuance or modification of an individual permittee's authorization to discharge shall not affect previous approval or denial for retained self-monitoring unless the Department provides notification in writing to the permittee.

#### 4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report. Such increased frequency shall also be indicated.

Monitoring required pursuant to Part 41 of the NREPA or Rule 35 of the Mobile Home Park Commission Act (Act 96 of the Public Acts of 1987) for assurance of proper facility operation shall be submitted as required by the Department.

## PART II

### Section C. Reporting Requirements

#### 5. Compliance Dates Notification

Within 14 days of every compliance date specified in this permit, the permittee shall submit a *written* notification to the Department indicating whether or not the particular requirement was accomplished. If the requirement was not accomplished, the notification shall include an explanation of the failure to accomplish the requirement, actions taken or planned by the permittee to correct the situation, and an estimate of when the requirement will be accomplished. If a written report is required to be submitted by a specified date and the permittee accomplishes this, a separate written notification is not required.

#### 6. Noncompliance Notification

Compliance with all applicable requirements set forth in the Federal Act, Parts 31 and 41 of the NREPA, and related regulations and rules is required. All instances of noncompliance shall be reported as follows:

- a. **24-Hour Reporting**  
Any noncompliance which may endanger health or the environment (including maximum and/or minimum daily concentration discharge limitation exceedances) shall be reported, verbally, within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five (5) days.
- b. **Other Reporting**  
The permittee shall report, in writing, all other instances of noncompliance not described in a. above at the time monitoring reports are submitted; or, in the case of retained self-monitoring, within five (5) days from the time the permittee becomes aware of the noncompliance.

Written reporting shall include: 1) a description of the discharge and cause of noncompliance; and 2) the period of noncompliance, including exact dates and times, or, if not yet corrected, the anticipated time the noncompliance is expected to continue, and the steps taken to reduce, eliminate and prevent recurrence of the noncomplying discharge.

#### 7. Spill Notification

The permittee shall immediately report any release of any polluting material which occurs to the surface waters or groundwaters of the state, unless the permittee has determined that the release is not in excess of the threshold reporting quantities specified in the Part 5 Rules (R 324.2001 through R 324.2009 of the Michigan Administrative Code), by calling the Department at the number indicated on the second page of this permit (or, if this is a general permit, on the COC); or, if the notice is provided after regular working hours, call the Department's 24-hour Pollution Emergency Alerting System telephone number, 1-800-292-4706 (calls from **out-of-state** dial 1-517-373-7660).

Within ten (10) days of the release, the permittee shall submit to the Department a full written explanation as to the cause of the release, the discovery of the release, response (clean-up and/or recovery) measures taken, and preventative measures taken or a schedule for completion of measures to be taken to prevent reoccurrence of similar releases.

## PART II

### Section C. Reporting Requirements

#### 8. Upset Noncompliance Notification

If a process "upset" (defined as an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee) has occurred, the permittee who wishes to establish the affirmative defense of upset, shall notify the Department by telephone within 24 hours of becoming aware of such conditions; and within five (5) days, provide in writing, the following information:

- a. that an upset occurred and that the permittee can identify the specific cause(s) of the upset;
- b. that the permitted wastewater treatment facility was, at the time, being properly operated and maintained (note that an upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation); and
- c. that the permittee has specified and taken action on all responsible steps to minimize or correct any adverse impact in the environment resulting from noncompliance with this permit.

No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

In any enforcement proceedings, the permittee, seeking to establish the occurrence of an upset, has the burden of proof.

#### 9. Bypass Prohibition and Notification

- a. Bypass Prohibition  
Bypass is prohibited, and the Department may take an enforcement action, unless:
  - 1) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - 2) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass; and
  - 3) the permittee submitted notices as required under 9.b. or 9.c. below.
- b. Notice of Anticipated Bypass  
If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass, and provide information about the anticipated bypass as required by the Department. The Department may approve an anticipated bypass, after considering its adverse effects, if it will meet the three (3) conditions listed in 9.a. above.
- c. Notice of Unanticipated Bypass  
The permittee shall submit notice to the Department of an unanticipated bypass by calling the Department at the number indicated on the second page of this permit (if the notice is provided after regular working hours, use the following number: 1-800-292-4706) as soon as possible, but no later than 24 hours from the time the permittee becomes aware of the circumstances.



## PART II

### Section C. Reporting Requirements

d. Written Report of Bypass

A written submission shall be provided within five (5) working days of commencing any bypass to the Department, and at additional times as directed by the Department. The written submission shall contain a description of the bypass and its cause; the period of bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass; and other information as required by the Department.

e. Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of 9.a., 9.b., 9.c., and 9.d., above. This provision does not relieve the permittee of any notification responsibilities under Part II.C.11. of this permit.

f. Definitions

- 1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- 2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

### 10. Bioaccumulative Chemicals of Concern (BCC)

Consistent with the requirements of R 323.1098 and R 323.1215 of the Michigan Administrative Code, the permittee is prohibited from undertaking any action that would result in a lowering of water quality from an increased loading of a BCC unless an increased use request and antidegradation demonstration have been submitted and approved by the Department.

### 11. Notification of Changes in Discharge

The permittee shall notify the Department, in writing, as soon as possible but no later than 10 days of knowing, or having reason to believe, that any activity or change has occurred or will occur which would result in the discharge of: 1) detectable levels of chemicals on the current Michigan Critical Materials Register, priority pollutants or hazardous substances set forth in 40 CFR 122.21, Appendix D, or the Pollutants of Initial Focus in the Great Lakes Water Quality Initiative specified in 40 CFR 132.6, Table 6, which were not acknowledged in the application or listed in the application at less than detectable levels; 2) detectable levels of any other chemical not listed in the application or listed at less than detection, for which the application specifically requested information; or 3) any chemical at levels greater than five times the average level reported in the complete application (see the first page of this permit, for the date(s) the complete application was submitted). Any other monitoring results obtained as a requirement of this permit shall be reported in accordance with the compliance schedules.

## PART II

### Section C. Reporting Requirements

#### 12. Changes in Facility Operations

Any anticipated action or activity, including but not limited to facility expansion, production increases, or process modification, which will result in new or increased loadings of pollutants to the receiving waters must be reported to the Department by a) submission of an increased use request (application) and all information required under R 323.1098 (Antidegradation) of the Water Quality Standards or b) by notice if the following conditions are met: 1) the action or activity will not result in a change in the types of wastewater discharged or result in a greater quantity of wastewater than currently authorized by this permit; 2) the action or activity will not result in violations of the effluent limitations specified in this permit; 3) the action or activity is not prohibited by the requirements of Part II.C.10.; and 4) the action or activity will not require notification pursuant to Part II.C.11. Following such notice, the permit or, if applicable, the facility's COC may be modified according to applicable laws and rules to specify and limit any pollutant not previously limited.

#### 13. Transfer of Ownership or Control

In the event of any change in control or ownership of facilities from which the authorized discharge emanates, the permittee shall submit to the Department 30 days prior to the actual transfer of ownership or control a written agreement between the current permittee and the new permittee containing: 1) the legal name and address of the new owner; 2) a specific date for the effective transfer of permit responsibility, coverage and liability; and 3) a certification of the continuity of or any changes in operations, wastewater discharge, or wastewater treatment.

If the new permittee is proposing changes in operations, wastewater discharge, or wastewater treatment, the Department may propose modification of this permit in accordance with applicable laws and rules.

#### 14. Operations and Maintenance Manual

For wastewater treatment facilities that serve the public (and are thus subject to Part 41 of the NREPA), Section 4104 of Part 41 and associated Rule 2957 of the Michigan Administrative Code allow the Department to require an Operations and Maintenance (O&M) Manual from the facility. An up-to-date copy of the O&M Manual shall be kept at the facility and shall be provided to the Department upon request. The Department may review the O&M Manual in whole or in part at its discretion and require modifications to it if portions are determined to be inadequate.

At a minimum, the O&M Manual shall include the following information: permit standards; descriptions and operation information for all equipment; staffing information; laboratory requirements; record keeping requirements; a maintenance plan for equipment; an emergency operating plan; safety program information; and copies of all pertinent forms, as-built plans, and manufacturer's manuals.

Certification of the existence and accuracy of the O&M Manual shall be submitted to the Department at least sixty days prior to start-up of a new wastewater treatment facility. Recertification shall be submitted sixty days prior to start-up of any substantial improvements or modifications made to an existing wastewater treatment facility.



## **PART II**

### **Section C. Reporting Requirements**

#### **15. Signatory Requirements**

All applications, reports, or information submitted to the Department in accordance with the conditions of this permit and that require a signature shall be signed and certified as described in the Federal Act and the NREPA.

The Federal Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

The NREPA (Section 3115(2)) provides that a person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit, COC, or order issued or rule promulgated under this part, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or COC or in a notice or report required by the terms and conditions of an issued permit or COC, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the Department, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, permit, or COC of the Department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

#### **16. Electronic Reporting**

Upon notice by the Department that electronic reporting tools are available for specific reports or notifications, the permittee shall submit electronically all such reports or notifications as required by this permit.

## **PART II**

### **Section D. Management Responsibilities**

#### **1. Duty to Comply**

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit, more frequently than, or at a level in excess of, that authorized, shall constitute a violation of the permit.

It is the duty of the permittee to comply with all the terms and conditions of this permit. Any noncompliance with the Effluent Limitations, Special Conditions, or terms of this permit constitutes a violation of the NREPA and/or the Federal Act and constitutes grounds for enforcement action; for permit or Certificate of Coverage (COC) termination, revocation and reissuance, or modification; or denial of an application for permit or COC renewal.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### **2. Facilities Operation**

The permittee shall, at all times, properly operate and maintain all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures.

#### **3. Power Failures**

In order to maintain compliance with the effluent limitations of this permit and prevent unauthorized discharges, the permittee shall either:

- a. provide an alternative power source sufficient to operate facilities utilized by the permittee to maintain compliance with the effluent limitations and conditions of this permit; or
- b. upon the reduction, loss, or failure of one or more of the primary sources of power to facilities utilized by the permittee to maintain compliance with the effluent limitations and conditions of this permit, the permittee shall halt, reduce or otherwise control production and/or all discharge in order to maintain compliance with the effluent limitations and conditions of this permit.

#### **4. Adverse Impact**

The permittee shall take all reasonable steps to minimize or prevent any adverse impact to the surface waters or groundwaters of the state resulting from noncompliance with any effluent limitation specified in this permit including, but not limited to, such accelerated or additional monitoring as necessary to determine the nature and impact of the discharge in noncompliance.

## PART II

### Section D. Management Responsibilities

#### 5. Containment Facilities

The permittee shall provide facilities for containment of any accidental losses of polluting materials in accordance with the requirements of the Part 5 Rules (R 324.2001 through R 324.2009 of the Michigan Administrative Code). For a Publicly Owned Treatment Work (POTW), these facilities shall be approved under Part 41 of the NREPA.

#### 6. Waste Treatment Residues

Residuals (i.e. solids, sludges, biosolids, filter backwash, scrubber water, ash, grit, or other pollutants or wastes) removed from or resulting from treatment or control of wastewaters, including those that are generated during treatment or left over after treatment or control has ceased, shall be disposed of in an environmentally compatible manner and according to applicable laws and rules. These laws may include, but are not limited to, the NREPA, Part 31 for protection of water resources, Part 55 for air pollution control, Part 111 for hazardous waste management, Part 115 for solid waste management, Part 121 for liquid industrial wastes, Part 301 for protection of inland lakes and streams, and Part 303 for wetlands protection. Such disposal shall not result in any unlawful pollution of the air, surface waters or groundwaters of the state.

#### 7. Right of Entry

The permittee shall allow the Department, any agent appointed by the Department, or the Regional Administrator, upon the presentation of credentials and, for animal feeding operation facilities, following appropriate biosecurity protocols:

- a. to enter upon the permittee's premises where an effluent source is located or any place in which records are required to be kept under the terms and conditions of this permit; and
- b. at reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect process facilities, treatment works, monitoring methods and equipment regulated or required under this permit; and to sample any discharge of pollutants.

#### 8. Availability of Reports

Except for data determined to be confidential under Section 308 of the Federal Act and Rule 2128 (R 323.2128 of the Michigan Administrative Code), all reports prepared in accordance with the terms of this permit, shall be available for public inspection at the offices of the Department and the Regional Administrator. As required by the Federal Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Federal Act and Sections 3112, 3115, 4106 and 4110 of the NREPA.

#### 9. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or the facility's COC, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

## **PART II**

### **Section E. Activities Not Authorized by This Permit**

#### **1. Discharge to the Groundwaters**

This permit does not authorize any discharge to the groundwaters. Such discharge may be authorized by a groundwater discharge permit issued pursuant to the NREPA.

#### **2. POTW Construction**

This permit does not authorize or approve the construction or modification of any physical structures or facilities at a POTW. Approval for the construction or modification of any physical structures or facilities at a POTW shall be by permit issued under Part 41 of the NREPA.

#### **3. Civil and Criminal Liability**

Except as provided in permit conditions on "Bypass" (Part II.C.9. pursuant to 40 CFR 122.41(m)), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance, whether or not such noncompliance is due to factors beyond the permittee's control, such as accidents, equipment breakdowns, or labor disputes.

#### **4. Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under Section 311 of the Federal Act except as are exempted by federal regulations.

#### **5. State Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Federal Act.

#### **6. Property Rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize violation of any federal, state or local laws or regulations, nor does it obviate the necessity of obtaining such permits, including any other Department of Environmental Quality permits, or approvals from other units of government as may be required by law.

**PART III****Technical Standard for the Surface Application of Concentrated Animal Feeding Operations Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection**

When Concentrated Animal Feeding Operation (CAFO) waste is surface-applied to frozen or snow-covered ground, without incorporation or injection, and that application is followed by rainfall or temperatures rising above freezing, the CAFO waste can run off into lakes, streams, or drains. Documented evidence shows that this runoff can cause resource damage to the surface waters of the state. Therefore, in accordance with Title 40 of the Code of Federal Regulations, Section 123.36, Establishment of Technical Standards for Concentrated Animal Feeding Operations, and State Rule 323.2196(5), CAFO Permits, the Michigan Department of Environmental Quality, Water Bureau, establishes the following Technical Standard. This Technical Standard shall be used for field-by-field assessments, as required by National Pollutant Discharge Elimination System permits issued to CAFOs, to assure that the land application of CAFO waste to frozen or snow-covered ground, without incorporation or injection, will not result in CAFO waste entering the waters of the state.

Based on the frozen and/or snow-covered conditions, the minimal settling and breaking down of the waste during these conditions, and the inability to predict or control snowmelt and rainfall, there are no practices that can ensure the runoff from fields with surface-applied waste on frozen or snow-covered ground will not be polluted. This standard assumes that surface runoff from snowmelt and/or rainfall will occur, and that the runoff will be polluted if CAFO waste is surface-applied on frozen or snow-covered ground. Therefore, the way to prevent these discharges is to apply CAFO waste only to fields, or portions of fields, where the runoff will not reach surface waters.

A field-by-field assessment must be completed, and all of the following requirements must be met and documented:

1. The Natural Resources Conservation Service's Manure Application Risk Index (MARI)\* has been completed to identify fields, or portions of fields, that scored 37 or lower on the MARI.
2. An on-site field inspection of the entire field, or portion of field, that scored 37 or lower under the MARI has been completed. The inspection will take into consideration the slope and location of surface waters, tile line risers, and other conduits to surface water.
3. Based on the on-site field inspection, the Comprehensive Nutrient Management Plan (CNMP) will include documentation on topographic maps, the fields or portions of fields where the runoff will not flow to surface waters, and designate those areas as the only areas authorized for surface application without incorporation to frozen or snow-covered ground.
4. The findings of the inspection and documentation in the CNMP will be approved by a certified CNMP provider.

This assessment must be incorporated into the CNMP, and submitted as part of the CNMP Executive Summary each year.

\* Grigar, J., and Lemunyon, J. A Procedure for Determining the Land Available for Winter Spreading of Manure in Michigan. NRCS publication. (Available on the MDEQ NPDES website)

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ORIGINAL SIGNED

Richard A. Powers, Chief  
Water Bureau

\_\_\_\_\_  
April 19, 2005

Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

*Plaintiff,*

and

SIERRA CLUB,

*Intervener,*

v.

WALNUTDALE FAMILY FARMS, LLC,

and

KEVIN LETTINGA,

*Defendants.*

Civil Action No. 1-20-cv-397

Hon. Paul L. Maloney

Hon. Phillip J. Green

**CONSENT DECREE - APPENDIX C**

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

*Authorized by Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451,  
as Amended*

**CERTIFICATE OF COVERAGE (COC)**

Under General Permit No. MIG010000  
CAFO General Permit

CERTIFICATE OF COVERAGE NO.: MIG010063  
DESIGNATED NAME: Walnutdale Farms Dorr Twp-CAFO  
PERMITTEE: Walnutdale Farms LLC  
MAILING ADDRESS: 4309 14th Street  
Wayland, MI 49348

This COC requires the Walnutdale Farms LLC to operate facilities in accordance with the conditions set forth in General Permit MIG010000. The Walnutdale Farms Dorr TWP facility is located at 4309 14th Street, Wayland, Michigan 49348.

References in the General Permit to the Department of Environmental Quality (DEQ) shall be defined as the Kalamazoo District Office of the Water Resources Division and is located at: 7953 Adobe Road, Kalamazoo, Michigan, 49009-5025, Telephone: 269-567-3500; Fax: 269-567-9440.

The magnitude of the 25-year, 24-hour storm at the Walnutdale Farms Dorr TWP facility is 4.45 inches of rain.

Land application rates for additional crops grown at the Walnutdale Farms Dorr TWP facility are shown in the table below. The information shown in the table shall be considered an enforceable part of Part I.A.4.b.7)c) of General Permit No. MIG010000.

Crop	Harvest Form	Unit of Realistic Yield Goal Per Acre	P	P <sub>2</sub> O <sub>5</sub>
			--lb/unit of yield--	
Triticale	Silage	Ton	3.08	7.0

The permittee's production area or land application areas are located within a watershed(s) covered by the following approved *E. coli*, biota, or dissolved oxygen Total Maximum Daily Loads (TMDL) and the permittee is thereby required to comply with Part I.C.10. of General Permit No. MIG010000.

Name of TMDL	Pollutant of Concern
Buck Creek	E. coli

Any person who is aggrieved by this COC may file a sworn petition with the Michigan Administrative Hearing System within the Michigan Department of Licensing and Regulatory Affairs, c/o the Michigan Department of Environmental Quality (MDEQ), setting forth the conditions of the COC that are being challenged and specifying the grounds for the challenge. The Michigan Department of Licensing and Regulatory Affairs may reject any petition filed more than 60 days after issuance as being untimely.

This COC is based on a complete application received by the MDEQ on April 7, 2016. The permittee is subject to all conditions specified in General Permit No. MIG010000 issued April 30, 2015, expiring April 1, 2020. This COC may be modified, terminated, reissued, or revoked as allowed for in General Permit No. MIG010000. On its effective date, this COC shall supersede COC No. MIG010063 (expiring April 1, 2015).

This COC takes effect on the date of issuance.

December 23, 2016  
Date Issued

Original signed by Sylvia Heaton  
Sylvia Heaton, Chief  
Lakes Michigan & Superior Permits Unit  
Permits Section  
Water Resources Division