

ATTACHMENT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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JAN 04 2006

REPLY TO THE ATTENTION OF:

WQ-16J

DEC 21 2005

Richard A. Powers, Chief
Water Division
Michigan Department of Environmental Quality
PO Box 30273
Lansing, Michigan 48909-7773

Dear Mr. Powers:

The United States Environmental Protection Agency (USEPA) has completed review of the revisions to Michigan Department of Environmental Quality's (MDEQ) rules, submitted by MDEQ as part of its Triennial Review. These rules became effective March 16, 2005, and were certified by the Attorney General on June 7, 2005. These revisions amend MDEQ's rules at: R 323.1041, R 323.1043, R 323.1044, R 323.1050, R 323.1053, R 323.1055, R 323.1057, R 323.1060, R 323.1062, R 323.1064, R 323.1065, R 323.1069, R 323.1082, R 323.1090, R 323.1092, R 323.1096, R 323.1097, R 323.1100, R 323.1105, R 323.1116, R 323.1117, R 323.1203, R 323.1205, R 323.1209, R 323.1211, R 323.1213, R 323.1217, R 323.1219, and R 323.1221.

Consistent with Section 303(c)(3) of the Clean Water Act (CWA) and Federal regulations at 40 CFR 131.21, USEPA is required to review and approve State water quality standards. USEPA has reviewed the revised rules and the supporting information submitted in support of the revised rules. Based on our review, we have determined that some of the provisions included in the submission fall under other USEPA authorities and, are therefore, not addressed by this letter. These provisions are MDEQ's rules at: R 323.1203, R 323.1205, R 323.1209, R 323.1211, R 323.1213, R 323.1217, R 323.1219, R 323.1221. USEPA, by this letter, approves all of the remaining revisions to Michigan's water quality standards under the authority of Section 303(c)(3) of the CWA and Federal regulations at 40 CFR 131.21.

Consistent with Section 7 of the Endangered Species Act and Federal Regulations at 50 CFR Part 402, USEPA is required to consult with the United States Fish and Wildlife Service on any action that may affect federally-listed threatened and endangered species. Because USEPA has determined that these actions have no effect, consultation is not required.



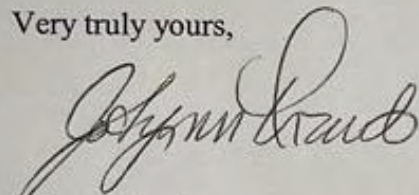
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If you have any questions regarding this letter, please contact me, Mari Nord, or Dave Pfeifer of my staff. Ms. Nord may be reached at (312) 886-3017 and Mr. Pfeifer may be reached at (312) 353-9024.

Very truly yours,



Jo Lynn Traub
Director, Water Division

cc: ☒ Sylvia Heaton, MDEQ
Mike Decapita, USFWS, East Lansing Field Offices, East Lansing, MI

ATTACHMENT 2

PERMIT NO. MIG019000
STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENT
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, as amended (33 U.S.C. 1251 *et seq.*) (the "Federal Act"), Michigan Act 451, Public Acts of 1994, as amended (the "Michigan Act"), Parts 31 and 41, and Michigan Executive Orders 1991-31, 1995-4, and 1995-18, Concentrated Animal Feeding Operations (CAFOs) are authorized to operate facilities specified in individual "Certificates of Coverage" (COC) in accordance with the 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 Natural Resources and Environment (the "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 cause or contribute to an exceedance of a water quality standard are not authorized by this permit.

In order to constitute a valid authorization, 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.A.4.a.1)b)
- The date by which existing CAFOs shall attain six months waste storage (Part I.A.4.a.1)
- The date by which existing waste storage structures shall meet Natural Resources Conservation Services (NRCS) Practice Standard No. 313 [Part I.A.4.a.2)b)B)ii) & C)] 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 November 18, 2005, 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.A.4.a.2)b)D)]
- Data for the application rate table for crops not listed in the permit [Part I.A.4.b.7)c)]
- Alternate land application rates and methodologies [Part I.A.4.b.7)c)]
- Total Maximum Daily Loads (TMDL) 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
- 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.B.10.)
- The date by which the permittee shall have an operator certified by the Department (Part II.D.2.)

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 general permit shall take effect **April 1, 2010**. 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 general permit shall expire at midnight, **April 1, 2015**.

Issued March 30, 2010.

Daniel Dell, Chief
 Permits Section
 Water Bureau

PERMIT FEE REQUIREMENTS

In accordance with Section 324.3120 of the Michigan Act, 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 general permit shall apply to an individual facility on the effective date of a COC for the facility. The Department of Energy, Labor, and Economic Growth may grant a contested case hearing on this general permit in accordance with the Michigan Act. Any person who is aggrieved by this permit may file a sworn petition with the State Office of Administrative Hearings and Rules of the Michigan Department of Energy, Labor, and Economic Growth, setting forth the conditions of the permit which are being challenged and specifying the grounds for the challenge. The Department of Energy, Labor, and Economic Growth may grant a contested case hearing on the COC issued to an individual facility under this general permit in accordance with Rule 2192(c) (Rule 323.2192 of the Michigan Administrative Code).

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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.A.4.a. 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.A.4.b.8) that are managed in accordance with the NMP (see Part I.A.4., 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:

<u>Parameter</u>	<u>Units</u>	<u>Sample Type</u>
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.B.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. An overflow that causes the washout or collapse of the storage structure dikes, sides, or walls is not an authorized discharge. 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.

4. Nutrient Management Plan (NMP)

The permittee shall implement the following requirements.

- a. CAFO Waste Storage Structures
 - 1) 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:

 - a) 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.

PART I**Section A. Effluent Limitations And Monitoring Requirements**

b) For cattle, horses, and sheep, and existing 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. Existing means populated prior to January 20, 2009. This is an emergency volume to be kept available to contain large rainfall events. New 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. New means populated on or after January 20, 2009.

c) 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.

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 existing CAFOs, the COC will 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. CAFOs previously permitted under General Permit No. MIG019000, issued November, 2005, shall continue to be subject to any compliance dates set forth in the previously-issued COC.

2) **Physical Design & Construction Requirements**

a) **Depth Gauge**

CAFO waste storage structures shall include an easily visible, clearly marked depth gauge. Clear, major divisions shall be marked to delineate each of the three volumes specified above in Part I.A.4.a.1) (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 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.

b) **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.B.2. 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 2005 or provides environmental performance equivalent to NRCS 313 2005).

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 2005.

B) **Existing Storage Structures at Newly-Permitted CAFOs (facilities without prior NPDES permit coverage)**

i) In a permit application for coverage under this permit, the applicant shall either:

- (1) For each existing storage structure document through an evaluation by a professional engineer that each structure is constructed in accordance with NRCS 313 2005. Submit to the Department documentation signed by an engineer verifying that each structure is constructed in accordance with NRCS 313 2005. Complete as-built plans, specifications, drawings, etc. shall be kept at the farm with the CNMP and do not need to be submitted, or

PART I**Section A. Effluent Limitations And Monitoring Requirements**

- (2) For each existing storage structure, on a form provided by the Department and submitted to the Department, demonstrate environmental performance equivalent to NRCS 313 2005. The demonstration shall be accomplished through an evaluation by a professional engineer.
- ii) If the applicant 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) Existing Storage Structures at Previously-Permitted CAFOs
CAFOs previously permitted under General Permit No. MIG019000, issued November 2005, shall comply with the requirements for storage structures as contained in that permit, including NRCS 313 2003 and any compliance dates set forth in the previously-issued COC, unless the Department modifies the compliance date in the reissued COC. Submittals shall be as follows:
- i) For structures that meet NRCS 313 2003, submit to the Department documentation signed by an engineer verifying that each structure is constructed in accordance with NRCS 313 2003. Complete as-built plans, specifications, drawings, etc. shall be kept at the farm with the CNMP and do not need to be submitted.
- ii) For demonstrations of environmental performance equivalent to NRCS 313 2003 submit the demonstration as accomplished through an evaluation by a professional engineer to the Department, on a form provided by the Department.
- D) 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 Parts B) and C) 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.B.2. Records of usage, maintenance, or closure shall be included in the CNMP.
- 3) 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. Individual results shall be kept for a period of five years. The plan shall include all of the following inspections:
- a) The CAFO waste dikes 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
- b) The depth of the CAFO waste in the storage structure and the available operating volume as indicated by the depth gauge
- c) 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.
- 4) Operation & 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.

PART I**Section A. Effluent Limitations And Monitoring Requirements**

- a) 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.
- b) At some point in time during the period of November 1 to December 31 of each year, there shall be a minimum 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 shall be recorded in the CNMP.
- c) 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.
- d) Dike damage caused by erosion, slumping, or animal burrowing shall be corrected immediately and steps taken to prevent occurrences in the future.
- e) 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.
- f) 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.
- g) 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.

b. 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.

1) 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.

2) Divert Clean Water

The permittee shall design and implement structures and management practices to divert clean storm water and floodwaters 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.

3) 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.

PART I**Section A. Effluent Limitations And Monitoring Requirements****4) 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.

5) 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.

6) 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:

- a) Weekly visual inspections of all clean storm water and floodwater diversion devices.
- b) 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.
- c) Any deficiencies shall be corrected as soon as possible.
- d) Records of these inspections and records documenting any actions taken to correct deficiencies 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.

7) 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 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:

- A) does not exceed the capacity of the soil to assimilate the CAFO waste
- B) is in accordance with field-specific nutrient management practices that ensures appropriate agricultural utilization of the nutrients in the CAFO waste
- C) does not exceed the maximum annual land application rates specified in Part I.A.4.b.7)c), below
- D) will not result in unauthorized discharges

PART I

Section A. Effluent Limitations And Monitoring Requirements

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 not use the field until the permittee has been notified by the Department that processing of the permit modification is complete. 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.

b) Field Inspections

Prior to conducting land application of CAFO waste to fields determined to be suitable under Part I.A.4.b.7)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.A.4.b.7)d).

A) 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.

B) 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.

C) 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.

D) 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).

E) 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.

PART I**Section A. Effluent Limitations And Monitoring Requirements**

F) 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 shall comply with all of the following maximum annual land application rates:

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 P.

B) If the Bray P1 soil test result is 75 ppm P or more, but less than 150 ppm P, application rates shall be based on the maximum rates of phosphorus (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 nitrogen application rate as specified below.

C) If the Bray P1 soil test result is less than 75 ppm P, the annual rate of CAFO waste application shall not exceed the nitrogen fertilizer recommendation (removal value for legumes) for the first crop year grown after the CAFO waste is applied. (Information to determine nitrogen 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 B) 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 nitrogen to determine the amount of CAFO waste that may be land applied per acre per year.

P₂O₅ values are included for reference purposes.

Crop	Harvest Form	Unit of Realistic Yield Goal per Acre	P	P ₂ O ₅
			- - 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
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

PART I**Section A. Effluent Limitations And Monitoring Requirements**

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
Cucumbers	Fruit	ton	0.47	1.1
Grapes	Fruit	ton	0.26	0.6
Millet	Grain	bushel	0.11	0.25
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
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.

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. Certain records, as specified in Part I.A.5.c.2)g)D) through F), shall be included in 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.A.4.b.7) and all of the following information and inspection results:

- A) The time, date, quantity, method, location, and application rate for each location at which CAFO wastes are land applied
- B) The crop, the realistic yield goal, and actual yield for each location at which CAFO wastes are land applied and a statement whether the land was frozen or snow-covered at the time of application

PART I**Section A. Effluent Limitations And Monitoring Requirements**

- C) 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
- D) 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
- E) A written description of weather conditions at the time of application and for 24 hours prior to and following application based on visual observation
- F) 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.

- A) CAFO waste shall not be applied on land that is flooded or saturated with water at the time of land application.
- B) CAFO waste shall not be applied during rainfall events.
- C) 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).
- D) 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.

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:

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

PART I**Section A. Effluent Limitations And Monitoring Requirements**

B) 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, forage 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:

A) 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.

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

C) 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 in the CNMP (may be shown on field maps).

8) **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:

- a) 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
- b) Sites used for handling material other than CAFO waste
- c) Refuse sites
- d) Sites used for the storage and maintenance of material handling equipment
- e) Shipping and receiving areas

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

5. 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.A.4.

a. **Approval**

The CNMP shall be approved by a Certified CNMP Provider.

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:

- 1) CAFO Waste Storage Structures - ensure adequate storage capacity of production area waste and CAFO process wastewater [Section A.4.a.]

PART I**Section A. Effluent Limitations And Monitoring Requirements**

a) Volume Design Requirements [Section A.4.a.1)]

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 portions, and approximate number of days of storage capacity

b) Physical Design and Construction Requirements [Section A.4.a.2)]

A short description of the structural design, a statement whether the engineer's evaluation has been completed or not, and a brief description of the results of the evaluation for each structure, whether or not currently in use, shall be included until such structure is permanently closed in accordance with Part I.B.2

c) Inspection Requirements [Section A.4.a.3)]

The Storage Structure Inspection Plan

d) Operation and Maintenance [Section A.4.a.4)]

The Storage Structure Operation and Maintenance Program, along with specific records as specified below

- i. Descriptions of events where the level of CAFO waste in the storage structure rises above the maximum operational volume level and enters the emergency volume level
- ii. The date between November 1 to December 31 of each year where a minimum 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 was achieved

2) Best Management Practices Requirements [Section A.4.b.]

a) Conservation Practices [Section A.4.b.1)]

The permittee shall include 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 [Section A.4.b.2)]

Describe structures and management practices used to divert clean water from the production area.

c) Prevent Direct Contact of Animals with Waters of the State [Section A.4.b.3)]

The permittee shall describe controls used to protect water quality by preventing access of the confined animals to waters of the state in the production area.

d) Animal Mortality [Section A.4.b.4)]

A description of mortality management practices

e) Chemical Disposal [Section A.4.b.5)]

Identify appropriate practices that ensure chemicals and other contaminants handled at the CAFO are not disposed in the CAFO waste or storm water storage or treatment system

f) Inspection, Proper Operation, and Maintenance [Section A.4.b.6)]

The Inspection, Operation, and Maintenance Program for CAFO wastewater and runoff-handling equipment and management devices

g) Land application of CAFO Waste [Section A.4.b.7)]

- A) Field-by-field assessments of all land application areas
- B) Records of the CAFO waste testing nutrient levels and analysis methods
- C) Records of the phosphorus levels from soil tests
- D) The date, quantity, method, location, and application rate for each location at which CAFO wastes are land applied and a statement whether the land was frozen or snow-covered at the time of application
- E) The crop, the realistic yield goal, and actual crop yield for each location at which CAFO wastes are land applied
- F) The amount of nitrogen and phosphorus from each source and the total amount of nitrogen and phosphorus actually applied to each field
- G) Appropriate prohibitions and methods for land application
- H) Setback requirements for each field (may be shown on field maps)

h) Non-Production Area Storm Water Management [Section A.4.b.8)]

Records and descriptions appropriate non-production area storm water management practices.

PART I**Section A. Effluent Limitations And Monitoring Requirements****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.A.4.

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.
- 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.A.4.b.7.c., quantity of CAFO waste land applied, soil testing results, and the amount of any supplemental fertilizer applied
- 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.

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

PART I

Section B. 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. 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, Closure of Waste Impoundments. All removed materials shall be utilized or disposed of in accordance with the permittee's approved CNMP, unless otherwise authorized by the Department.

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.

3. 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, Practice Standards and Specifications, of the Michigan NRCS Field Office Technical Guide.

PART I**Section B. Other Requirements****4. 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.

5. Expiration and Reissuance

On or before October 1, 2014, 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, 2015. 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. 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.

6. Compliance Dates for Existing Permittees

Compliance dates and associated requirements for permittees covered under the version of this permit issued November 18, 2005, 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.

PART I

Section B. Other Requirements

7. 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).

8. 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.
 - 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.

PART I

Section B. Other Requirements

- 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.B.8.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.B.8. do not apply to quantities of CAFO waste less than one pickup truck load, one cubic yard, or one ton per recipient per day.

9. 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
 - 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.

PART I**Section B. Other Requirements****10. 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.

11. 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

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.

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 Natural Resources and Environment (formerly 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.

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.

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.

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. 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.

PART II

Section A. Definitions

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 Monitoring and Sampling

Monitoring shall be representative of the monitored activity. Samples and measurements taken as required herein shall be representative of both the CAFO waste that is applied to the land and the soils that receive the CAFO waste.

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. 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 Bureau, Michigan Department of Environmental Quality, P.O. Box 30273, Lansing, Michigan, 48909-7773. 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. 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.

4. 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 five (5) 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 populate with animals during the first 60 days following the effective date of the certificate of coverage issued under this permit then the permittee shall notify the Department within 14 days following the effective date of the certificate of coverage issued under this permit. Subsequently, the Department shall be notified 60 days prior to population with animals.

2. Submittal Requirements for Self-Monitoring Data

Part 31 of Act 451 of 1994, as amended, specifically Section 324.3110(3) and Rule 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 Michigan DEQ Electronic Environmental Discharge Monitoring Reporting (e2-DMR) system.

The permittee shall utilize the information provided on the e2-Reporting website @ <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 **20th day of the month** following each month of the authorized discharge period(s).

3. Retained Self-Monitoring Requirements

The permittee shall maintain with the CNMP a year-to-date log of inspection, monitoring and record keeping results required by this permit and, upon request, provide such log for inspection to the staff of the Department. Such inspection, monitoring and record keeping results shall be submitted to the Department upon request.

The permittee shall certify, in writing, to the Department, on or before April 1st 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 animal feeding operation.

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.

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.

PART II

Section C. Reporting Requirements

6. Discharge and Noncompliance Reporting

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

- a. 6-hour reporting – Any discharge shall be reported, verbally, as soon as practicable but no later than 6 hours from the time the permittee becomes aware of the discharge. A written report 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 or inspection results or records, 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/or cause of noncompliance and steps taken to correct the noncompliance; and 2) the period of noncompliance, including exact dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and the steps taken to reduce, eliminate and prevent recurrence of the noncomplying discharge. All reporting shall be to all of the following: the Department, the clerk of the local unit of government and the county health department. Verbal reporting to the Department after regular working hours shall be made by calling 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). Verbal reporting to the clerk of the local unit of government and the county health department after regular working hours shall be made as soon as those agencies are next open for business unless those agencies provide after hours contact information.

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 (Rules 324.2001 through 324.2009 of the Michigan Administrative Code), by calling the Department at the number indicated in the certificate of coverage, 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.

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
- 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.

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

PART II

Section C. Reporting Requirements

9. Bypass Prohibition and Notification

- a. Bypass Prohibition - Bypass is prohibited 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 in the certificate of coverage (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.
- 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 assure 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.10. 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.

PART II

Section C. Reporting Requirements

10. Notification of Changes in Discharge

The permittee shall notify the Department, in writing, within 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 certificate of coverage 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.

11. 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 Rule 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.12.; and 4) the action or activity will not require notification pursuant to Part II.C.10. Following such notice, the permit may be modified according to applicable laws and rules to specify and limit any pollutant not previously limited.

12. Bioaccumulative Chemicals of Concern (BCC)

Consistent with the requirements of Rules 323.1098 and 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.

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.

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 and the facility's certificate of coverage (COC). The discharge of any pollutant identified in this permit and/or the facility's COC 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 and the facility's COC. Any noncompliance with the Effluent Limitations, Special Conditions, or terms of this permit or the facility's COC constitutes a violation of the Michigan Act and/or the Federal Act and constitutes grounds for enforcement action; for 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. Operator Certification

The permittee shall have the waste treatment facilities under direct supervision of an operator certified at the appropriate level for the facility certification by the Department, as required by Sections 3110 and 4104 of the Michigan Act.

3. 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.

4. 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.

5. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to the surface waters or groundwaters of the state resulting from noncompliance with any requirement of 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.

6. 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 (Rules 324.2001 through 324.2009 of the Michigan Administrative Code).

PART II**Section D. Management Responsibilities****7. 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 Michigan Act, 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.

8. 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 following appropriate biosecurity protocols:

- a. to enter upon the permittee's premises where an effluent source is located, production areas, land application areas or any place in which any 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.

9. Availability of Reports

Except for data determined to be confidential under Section 308 of the Federal Act and Rule 2128 (Rule 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 Michigan Act.

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 Michigan Act.

2. Facility Construction

This permit does not authorize or approve the construction or modification of any physical structures or facilities. Such approvals, if required, shall be obtained in accordance with applicable law.

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 Natural Resources and Environment 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)

ORIGINAL SIGNED

Richard A. Powers, Chief
Water Bureau

April 19, 2005

Date

ATTACHMENT 3

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 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 III

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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:

<u>Parameter</u>	<u>Units</u>	<u>Sample Type</u>
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 & 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:

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- 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.

P₂O₅ values are included for reference purposes.

Crop	Harvest Form	Unit of Realistic Yield Goal per Acre	P	P ₂ O ₅
			- - 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

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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.

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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.

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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 *(The link provided was broken and has been removed)* to access and submit the electronic forms. Both monthly summary and daily data shall be submitted to the Department no later than the 20th 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)

ORIGINAL SIGNED _____

Richard A. Powers, Chief
Water Bureau

April 19, 2005 _____

Date

ATTACHMENT 5

Exhibit B

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of the Petition of
the Michigan Farm Bureau, the Michigan
Milk Producers Association, Michigan Pork
Producers Association, Michigan Allied
Poultry Industries, Foremost Farms USA,
Dairy Farmers of America, Select Milk
Producers, Inc. and 126 CAFO Permit
Applicants

File No.: __ - __ - ____ - P

MIG010000

Part: 31, Water Resources Protection

Agency: Department of Environment, Great,
Lakes, and Energy

_____/ Case Type: Water Resources Division

PETITION FOR A CONTESTED CASE HEARING

Petitioners, the Michigan Farm Bureau, the Michigan Milk Producers Association, the Michigan Pork Producers Association, Michigan Allied Poultry Industries, Foremost Farms USA, Dairy Farmers of America, and Select Milk Producers, Inc. (collectively, the “Association Petitioners”), together with 126 livestock farms listed on the attached “Exhibit A” (collectively, the “Permit-Applicant Petitioners”), hereby file this Petition for a contested case hearing under MCL 324.3112(5), Mich Admin Code, R 792.10303, and the Michigan Administrative Procedures Act, MCL 24.201, *et seq.*

Petitioners appeal the Michigan Department of Environment, Great Lakes, and Energy’s (“MEGLE”) General Permit for Concentrated Animal Feeding Operations (“CAFOs”), Permit No. MIG010000, issued March 27, 2020 with an effective date of April 1, 2020 (“the General Permit”) (attached as “Exhibit B”), and request that this Tribunal schedule a hearing to evaluate the legality of certain conditions imposed by the General Permit that have a tenuous relation to water quality and cumulatively will have a significant adverse impact on food production in Michigan.

INTRODUCTION

1. This is a case of administrative overreach that arises out of MEGLE's imposition of novel and industry-altering set of rules on Michigan's CAFOs in excess of MEGLE's legislatively-delegated authority, contrary to governing federal and state laws, contrary to the United States and Michigan constitutions, without sufficient factual justification, and in an arbitrary and capricious manner.

2. Through these newfangled conditions of the General Permit for CAFOs, MEGLE seeks to impose burdensome regulations on farming practices and the use of farmland by large livestock farms that are of minimal environmental benefit and have a dubious connection to protecting the quality of the waters of the State.

3. MEGLE's added conditions to the General Permit impose costly and cumbersome requirements on Michigan's agricultural economy that, among other things:

- a. Presumptively ban CAFOs from land-applying agriculturally beneficial manure and other CAFO waste to fields during a three-month period every year;
- b. Prohibit outright CAFOs from manifesting their manure and other CAFO waste to other entities that land-apply such nutrient enhancing substances during those same three months;
- c. Arbitrarily restrict the amount of phosphorus in soil to which CAFO waste may be land applied;
- d. Mandate that CAFOs install *permanent*, 35-foot vegetated buffer strips around every surface water, tile-line intake, and ditch located on any land to which their CAFO waste is applied, and thereby mandate that crop farmers severely limit the amount of land that can be crop farmed or, alternatively, deny CAFOs the ability to dispose of CAFO waste in an environmentally and agriculturally beneficial manner;
- e. Supersede the Michigan Agriculture Environmental Assurance Program ("MAEAP") by denying environmentally conscious and compliant farms the

promised benefit of the MAEAP program and imposing additional restrictions based on such farms' location within a Total Maximum Daily Load ("TMDL") watershed; and

- f. Write a blank check to MEGLE to impose additional conditions on CAFOs based on their location within a TMDL watershed, thereby transforming coverage under the General Permit into what is akin to an individual permit for such farms.

4. Each of these newly-added conditions of the General Permit seeks to impose legally binding requirements on Michigan's farms that come with significantly increased costs and threaten the viability of members of Michigan's already stressed agricultural industry.

5. Worse still, MEGLE has imposed these substantial costs on Michigan's largest family farms during a time when our Country's health and economy have been ravaged by COVID-19 a/k/a "the Coronavirus" and our dependence on such farms to provide an abundant, stable, and healthy food-supply system is even greater than ever.

6. Because MEGLE's mandates are factually unsupported and contrary to law, Petitioners request that this Tribunal schedule a contested case hearing on the General Permit MIG010000.

PARTIES

7. Petitioners in this matter include associations representing Michigan's agricultural industry along with many of Michigan's largest farms that are applicants to the 2020 CAFO General Permit or are applicants to individual CAFO permits, the terms of which will be largely set by the revised General Permit.

Association Petitioners

8. Petitioner Michigan Farm Bureau ("Farm Bureau") is a grassroots organization that exists to promote and represent the interests of the agricultural industry across the State of

Michigan. Farm Bureau represents the full spectrum of Michigan's agricultural diversity, from crops and livestock to fruits and vegetables, greenhouses, forestry, and more.

9. Petitioner Farm Bureau's membership includes both large and small livestock farms across the State of Michigan, including numerous farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000. Farm Bureau's members include CAFOs that raise chickens for egg and meat production, dairy cows for milk production, cattle for beef, pigs for pork, and a variety of other animals for their capacity to efficiently produce food essentials that feed Michiganders at affordable prices.

10. Petitioner the Michigan Milk Producers Association ("MMPA") is a dairy farmer owned cooperative and dairy processor. Founded in 1915, MMPA serves hundreds of dairy farmers in Michigan. MMPA's membership includes many large dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

11. Petitioner the Michigan Pork Producers Association ("Pork Producers") is a state-affiliate of the National Pork Producers Council, a national organization of pork industry producers. Pork Producers' membership includes large pork farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

12. Petitioner Michigan Allied Poultry Industries ("Allied Poultry") is a non-profit statewide trade organization representing Michigan's egg, chicken, and turkey farmers, and their young stock network of breeders, hatcheries, and pullet growers. Allied Poultry's membership includes large poultry farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

13. Petitioner Foremost Farms USA ("Foremost Farms") is a dairy business with cooperative ownership owned by the dairy farm families who supply milk consumed by

Michiganders. Foremost Farms' cooperative members includes many of Michigan's large dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

14. Petitioner Dairy Farmers of America ("Dairy Farmers") is a global dairy cooperative owned by dairy farmers who supply milk consumed by Michiganders. Dairy Farmers cooperative members includes many of Michigan's large dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

15. Petitioner Select Milk Producers, Inc. ("Select") is a dairy farmer owned cooperative with dairy farm members located in Michigan, among other states. Select also owns dairy processing facilities located in Michigan and supplies milk from its member farms to other Michigan dairy processors. Select's cooperative members include Michigan dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

Permit-Applicant Petitioners

16. The individual Petitioners listed on "Exhibit A" (the "Permit-Applicant Petitioners") are large livestock farms representative of the poultry, pork, cattle, and dairy farming industry within the State of Michigan.

17. Each of the Permit-Applicant Petitioners has been either defined or designated as a CAFO by MEGLE under the criteria of Mich Admin Code, R 323.2102(i), Mich Admin Code, R 323.2103(g) & (m), and Mich Admin Code, R 323.2196(3).

18. Additionally, each of the Permit-Applicant Petitioners has either applied for coverage under General Permit No. MIG010000—the revised 2020 CAFO General Permit—or has applied for an individual NPDES permit as a CAFO, the terms of which will be largely set by

the revised 2020 CAFO General Permit. The Permit-Applicant Petitioners are designated on “Exhibit A” by their COC number or Permit number, as appropriate.

Respondent MEGLE-WRD

19. Respondent MEGLE is a principal department of the executive branch of government under Michigan’s constitution, as defined by Const 1963, Art V, § 2.

20. Respondent MEGLE is the agency assigned by statute to regulate the discharge of waste into the waters of the state under Part 31 of NREPA. MCL 324.3101 *et seq.*; Executive Order No 2019-2.

21. The Water Resources Division (“WRD”) of Respondent MEGLE is the Division of MEGLE that is responsible for the administration of Part 31 of NREPA, including administering environmental regulations and enforcement involving CAFOs.

STATUTORY AND REGULATORY BACKGROUND

Regulation of CAFOs under the Clean Water Act and Part 31

22. Per the terms of the Clean Water Act, large animal-raising farms are designated as CAFOs and CAFOs are regulated as point sources. 33 USC 1362(14) (defining “point source” as “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, *concentrated animal feeding operation*, or vessel . . . from which pollutants are or may be discharged.”) (emphasis added).

23. As point sources, CAFOs are defined as the “*lot or facility where . . . : (i) 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” 40 CFR 122.23(b)(1) (emphasis added). In other words, for

regulatory purposes, a CAFO is the physical location where animals are stabled or confined—not the entirety of the livestock farming operation.

24. Because discharges from point sources must be permitted under the National Pollutant Discharge Elimination System (NPDES), 33 USC 1311(a); 33 USC 1342(a)(1), CAFOs with regulated discharges must also be permitted under that program as well.

25. State law specifies many of the requirements that must be included within a CAFO permit or a CAFO's Comprehensive Nutrient Management Plant ("CNMP"). See Mich Admin Code, R 323.2196(5).

26. Federal law likewise specifies many conditions to be included in the farms' permits or CNMPs through promulgated regulations that address CAFOs and are codified under the Code of Federal Regulations. 40 CFR 122.23(h)(1); 40 CFR 122.42(e); & 40 CFR 412.4(c).

27. MEGLE's regulatory authority over farms is premised on the State's grant of administrative primacy under the Clean Water Act, 33 USC 1251 *et seq.*, an act that is focused on preventing pollution from pipes and other methods of conveying pollutants into the nation's waters. 33 USC 1362(12); 33 USC 1342(a).

MEGLE's Use of General Permits to Impose Additional Mandates

28. An NPDES "general permit" is an administrative tool that is intended to serve the convenience of the regulator and regulated entities by establishing the conditions under which a certain category of discharges will be permitted.

29. A general permit contrasts with an individual permit in that it does not adjudicate a permit applicant's individual circumstances.

30. Rather, with a general permit, the regulator issues a single permit intended to cover a broad category of discharges that the agency has determined "can be appropriately and

adequately controlled by a general permit,” and the regulator authorizes regulated entities to discharge if they obtain coverage under that permit. Mich Admin Code, R 323.2191(1).

31. The agency then determines who may obtain coverage under the general permit by granting or denying an applicant’s request for coverage under the general permit. Mich Admin Code, R 323.2191(3)–(6).

32. Importantly, MEGLE controls whether a regulated entity who applies for coverage under a general permit will receive coverage under the general permit or will be required to obtain coverage under an individual permit. Mich Admin Code, R 323.2191(3) & (4).

33. Where the agency determines that an individual is ineligible for coverage under the General Permit, it is generally because the agency believes an individual applicant’s circumstances require greater restrictions or higher standards to obtain a permit. See Mich Admin Code, R 323.2191(3)(a) & (3)(b) (allowing EGLE to require an individual permit in cases where “[t]he discharge is a significant contributor to pollution as determined by the department on a case-by-case basis” or where “[t]he discharger is not complying, or has not complied, with the conditions of the general permit.”)

34. Moreover, MEGLE customarily exercises unbridled discretion to require even a regulated entity who *prefers* to be covered by an individual permit to seek coverage under an applicable general permit.

35. For example, Michigan Administrative Code, Rule 323.2191(5) explains that “[t]he department may deny an application for an individual national permit *if [MEGLE] determines that the general permit is more appropriate.*” (Emphasis added).

36. Likewise, Michigan Administrative Code, Rule 323.2192(d) provides that “[t]he department may terminate the individual national permit and include the discharge under the

coverage of the general permit *if the department determines that the general permit is more appropriate.*" (Emphasis added).

37. Farms in Michigan obtain coverage under the CAFO General Permit by applying for a "Certificate of Coverage" ("COC") under the General Permit. Mich Admin Code, R 323.2196(1)(b).

38. Once granted, a COC modifies the General Permit only to the extent specified under the terms of the certificate of coverage.

Authority to Set Permit Conditions

39. As with all permits, a general permit is an act of licensing, and it is not exempt from the constraints and limitations imposed by law on an agency's licensing authority.

40. A permit may only contain such conditions as are either required by law or are factually determined to be "necessary to achieve compliance" with the law. See MCL 324.1307(5).

41. For NPDES permits, that means that the terms of the permit must reflect the requirements of Part 31 of NREPA as applied to the subject matter of the permit. See MCL 324.3106.

FACTS AND CONDUCT SUPPORTING A CONTESTED CASE¹

42. Respondent MEGLE issued the General Permit for CAFOs, Permit No. MIG010000, on March 27, 2020 with an effective date of April 1, 2020 by and through its WRD, and with the input and assistance of the WRD's Permits Section. (Ex. B.)

43. MEGLE will soon be acting on these farms' application for coverage under the General Permit by issuing COCs that apply the General Permit to these farms.

¹ Petitioners do not here provide a more detailed factual background because it is unavailable. Petitioners submitted Freedom of Information Act requests to MEGLE in February. But the agency has not provided any responsive documents.

44. Upon issuance of these COCs, the General Permit's standards will be enforceable against each of these farms under Part 31 as the violation of a permit condition is subject to both the threat of injunctive action to enforce the permit and to civil fines. See, e.g., MCL 324.3115(1).

ISSUES TO BE RAISED

45. Petitioners challenge both the legal and factual basis of many of the new conditions inserted by MEGLE in the revised General Permit.

46. The challenged permit conditions include, but are not limited to:

- a. MEGLE's reduction of the limits on the amount of phosphorus allowed in land to which CAFO waste is land applied. (General Permit, Sections I.B.3.C.1.a, I.B.3.C.2.a., & I.B.3.C.2.b);
- b. MEGLE's further reduction of such limits for farms who are located within a Total Maximum Daily Load (TMDL) watershed, (*Id.*);
- c. MEGLE's mandate that farms *both* (1) avoid applying CAFO waste "within 100 feet of any surface water of the state, open tile line intake structures, sinkholes, [or] agricultural well heads, including but not limited to roadside ditches that are conduits to surface waters of the state" and (2) "install and maintain a 35-foot wide *permanent* vegetated buffer along any surface water of the state, open tile line intake structure, sinkholes, agricultural well heads, including but not limited to roadside or any ditches that are conduits to surface waters of the state" (*Id.* at Section I.B.3.h.);
- d. MEGLE's presumptive ban on land applying CAFO waste during the winter months, (*Id.* at Section I.B.3.f.3);
- e. MEGLE's outright ban on manifesting CAFO waste during the winter months, (*Id.* at Section I.C.8);
- f. MEGLE's mandated inclusion of additional, unspecified permit restrictions for many farms located within a TMDL, (*Id.* at Section I.C.9.b.); and
- g. Such other conditions as may be specified through the course of this Tribunal's contested case hearing process.

47. MEGLE's added permit conditions are unlawful as they exceed the regulatory authority of the agency under Part 31 of NREPA.

48. MEGLE's added permit conditions are unlawful as contrary to the U.S. Constitution and the Michigan Constitution of 1963.

49. MEGLE's added permit conditions are unlawful as contrary to federal and state law regulating CAFOs.

50. MEGLE's added permit conditions are not factually justified under the standard for setting permit conditions under Part 31 of NREPA.

51. Further, MEGLE's added permit conditions are arbitrary and capricious.

RELIEF SOUGHT

52. Based on the foregoing, this Tribunal should hold that MEGLE's actions in setting the challenged permit conditions are: (1) *ultra vires* and without support in the federal or state law governing CAFOs; (2) contrary to law; (3) an unjustified exercise of the authority to set permitting conditions under Part 31 of NREPA; and/or (4) arbitrary and capricious.

53. Accordingly, Petitioners ask this Tribunal to invalidate each of the challenged conditions and to strike them from the General Permit.

Respectfully submitted,

CLARK HILL PLC

/S/ Michael J. Pattwell
Michael J. Pattwell (P72419)
Zachary C. Larsen (P72189)
212 East Cesar E. Chavez Ave.
Lansing, MI 48906
(517) 318-3100
MPattwell@clarkhill.com
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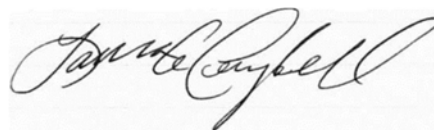
Dated: May 26, 2020

VERIFICATION AND AFFIRMATION

Per the requirements of MCL 324.3112(5), I, Laura Campbell, being first duly sworn, depose and say the following:

1. I hold the position of Manager of the Agricultural Ecology Department with the Michigan Farm Bureau, and I am duly authorized to sign this Verification for and on behalf of Petitioners in this matter.

2. I declare under the penalties of perjury that this Verified Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.



 Laura A. Campbell
 Manager
 Agricultural Ecology Department
 Michigan Farm Bureau

Subscribed and sworn to before me
 this 26 day of May 2020.



 April Cantrell, Notary Public
Eaton County, Michigan
 My Commission expires: October 19, 2026
 Acting in the county of Eaton.

PROOF OF SERVICE

I, Michael J. Pattwell, do hereby certify that on May 26, 2020 a copy of **Petitioner Michigan Farm Bureau, et al.'s Petition for Contested Case Hearing, along with a copy of this Proof of Service** were served upon the following individuals via email transmission:

- Director Liesl Eichler Clark, ClarkL20@michigan.gov
- Deputy Directory Aaron Keatley, KeatleyA@michigan.gov
- Water Resources Division Director Teresa Seidel, SEIDELT@michigan.gov
- Water Resources Division, Permits Section Manager Christine Alexander, ALEXANDERC2@michigan.gov

I, Michael J. Pattwell, do further hereby certify that on May 26, 2020 a copy of **Petitioner Michigan Farm Bureau, et al.'s Petition for Contested Case Hearing, along with a copy of this Proof of Service** were served upon the following individuals via 1st class mail:

Michigan Dep't of Environment, Great Lakes, and Energy
Water Resources Division
PO Box 30458
Lansing, MI 48909-7958

Michigan Dep't of Environment, Great Lakes and Energy
Executive Office
Constitution Hall
PO Box 30473
Lansing, MI 48909-7973

Dated: May 26, 2020

/s/ Michael J. Pattwell

ATTACHMENT 6

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY	SUMMONS	CASE NO. 23-000048-MZ Thomas C. Cameron
Court address Court of Claims, Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48933		Court telephone no. 517-373-0807
Plaintiff's name, address, and telephone no. Michigan Farm Bureau, et al.	v	Defendant's name, address, and telephone no. Michigan Department of Environment, Great Lakes, and Energy Constitution Hall 525 W. Allegan Street Lansing, MI 48933 (517) 284-6700
Plaintiff's attorney, bar no., address, and telephone no. Michael J. Pattwell (P72419) Zachary C. Larsen (P72189) Clark Hill PLC 215 S. Washington Square, Ste. 200 Lansing, Michigan 48933 (517) 318-3100		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☒ this court, ☐ _____ Court, where

it was given case number 20-000148-MZ and assigned to Judge Cynthia Diane Stephens

The action ☐ remains ☒ is no longer pending.

Summons section completed by court clerk.

SUMMONS



NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date April 12, 2023	Expiration date* July 11, 2023	Court clerk <i>Jerome W. Zimmer Jr.</i>
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

Summons (3/23)

Case No. 2023 -000048-MZ

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

☐ I served ☐ personally ☐ by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

☐ I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

☐ I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

☐ I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____ Date and time _____

Signature _____ on behalf of _____

Name (type or print) _____

STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN FARM BUREAU; MICHIGAN MILK PRODUCERS ASSOCIATION; MICHIGAN PORK PRODUCERS ASSOCIATION; MICHIGAN ALLIED POULTRY INDUSTRIES; DAIRY FARMERS OF AMERICA; SELECT MILK PRODUCERS, INC.; MICHIGAN CATTLEMEN'S ASSOCIATION; ADAM PORK POWERHOUSES LLC; SNIDER FARMS, LLC d/b/a and permitted as Airport View Turkeys; ALPINE PORK, LLC; ATE FARMS, LLC; BEBOW DAIRY FARM, INC.; BENNETT FARMS LIVESTOCK, LLC; BENTHEM BROTHERS INC.; BERLYN ACRES, LLC; BLEICH FAMILY FARMS, LLC, d/b/a and permitted as Bleich Dairy; BRADFORD DAIRY FARMS, LLC.; BROOK VIEW DAIRY, LLC; BURNS FAMILY FARM, LLC; BURNS POULTRY FARMS, INC.; CAR-MIN-VU FARMS, LLC d/b/a and permitted as Car-Min-Vu Dairy; CARY DAIRY FARM, INC.; CARY'S PIONEER FARM, INC.; CENTERWOOD FARMS, LLC; CENTRAL MICHIGAN MILK PRODUCTION, LLC; CLOVER FARMS, LLC d/b/a and permitted as Clover Family Farms; CONTRACT FINISHERS, INC.; COURTER FARMS EAST FEEDLOT, LLC, d/b/a and permitted as Courter Farms East; COURTER FARMS WEST FEEDLOT, LLC d/b/a and permitted as Courter Farms West; CROSSROADS DAIRY, LLC; D & K FARMS; DJN CATTLE FARMS, INC., d/b/a and permitted as Halliwill Farms; DAVIS FARMS, LLC; DAVIS PORK, LLC; DEN DULK DAIRY FARM, LLC; DEYOUNG PORK, INC., d/b/a and permitted as DeYoung Pork Inc.-Plainwell; DOUBLE QUAD FARMS, LLC; DUTCH MEADOWS DAIRY, LLC, d/b/a and permitted as Meadowbrook Dairy; DYKHUIS FARMS, INC., d/b/a and permitted as Baseline Farm, Ehinger Farm, Riverbend Farm, Shamrock Farm, and Village Central Sandy Ridge; DYNASTY DAIRY, LLC; EDGE WOOD DAIRY, LLC; FAIRGROVE FARMS, INC.; FLOWER CREEK SWINE, LLC; GDW FARMS, LLC; GDW TURKEY FARM-FILLMORE; GDW TURKEY FARMS-LAND OF TURKEY; GW DAIRY, LLC; GAGNON FARMS, LLC, d/b/a and permitted as

No. 23- 000048 -MZ

HON. Thomas C. Cameron

Gagnon Hog Farm; GALLAGHER DAIRY FARM, INC.; GEERLINGS HILLSIDE FARMS, LLC d/b/a and permitted as Hillside Farms – Fennville, Hillside Farms-Overisel, and Hillside Farms-Overisel Hog Barns; GERNAAT DAIRY, LLC, d/b/a and permitted as Gernaat Family Farms; GRAND RIVER GRAIN, LLC; GRAND RIVER GRAIN NORTH; HALBERT DAIRY, LLC; HARVEST HILL FARM, by its permittee Ron Klein; HASS FEEDLOT, LLC, d/b/a and permitted as Hass Feedlot Home Farm and Hass Feedlot 2; HIGH LEAN PORK, INC. d/b/a and permitted as High-Lean Pork 3 – Hoover; HEINZE PORK; HICKORY GABLES, INC.; HIGHLAND DAIRY, LLC; HOEVE FARMS; HOGQUEST FARMS LLC; HOLLOO FARMS, LLC; HURON PORK, LLC; INGLESIDE FARMS; J & J RUSSCHER PROPERTIES, LLC; J AND A PORK, LLC; JAHN FARMS, LLC; JBC DAIRY RECYCLING, LLC; JMAX, LLC d/b/a and permitted as JMax Dairy; JOHN B. SCHAENDORF DAIRY, LLC; KARNEMAAT'S, LLC; KLEINHEKSEL FARMS LAND, LLC, d/b/a and permitted as Kleinheksel Farms; KOBER FARMS, LLC; KONOS, INC., d/b/a and permitted as Konos, Inc., and Konos Martin Organics; KY-10 FARMS, LLC; LAIER FARMS, INC.; LIBERTY FARMS, LLC, d/b/a and permitted as Liberty Beef Farm; LITTLE BEND PIGGERY, LLC; LORENZ FAMILY FARMS, LLC; LUCKY 7 DAIRY, LLC; LUCKY 7 FARMS, LLC; MAKIN BACON FARM, LLC; MEADOWBROOK FARMS LLC; MYERS FARMS, LLC; NEW FLEVO DAIRY, INC.; NOBIS FARMS, LLC d/b/a and permitted as Nobis Dairy Farms; NVF, INC.; OOMEN BROTHERS, INC. d/b/a and permitted as Oomen Brothers Hogs; OOMEN FARMS LTD.; PACKARD FARMS, LLC; PAYLA MEADOWS, LLC; PEACEFUL ROAD FARM, LLC d/b/a and permitted as Peaceful Road Farms; PERFORMANCE FARMS, LLC; POLL FARMS, INC.; PRAIRIE VIEW DAIRY, LLC; PRECISION PORK FARM, INC; PREFERRED HOG FARMS, INC. d/b/a and permitted as Preferred Hog 146th; SCHAPER FARMS, LLC, d/b/a and permitted as Les Schaper Farm; PRIDGEON FARMS, LLC; PSY FARMS; R & R PORK, LLC; RAPID RIDGE FARMS, LLC d/b/a and permitted as Rapid Ridge; RED ARROW

DAIRY, LLC; RICH-RO DAIRY, LLC, d/b/a and permitted as Rich-Ro Dairy-North and Rich-Ro Dairy-South; RIVER RIDGE FARMS, INC.; RUGGLES BEEF FARMS, LLC; S&T BARNs, LLC d/b/a and permitted as S & T Barns – Booth, S & T Barns - Fawn River, S&T Barns – TSC, and S & T Barns-Haenni; SAND CREEK DAIRY, LLC; SANDY RIDGE DAIRY, LLC; SCENIC VIEW DAIRY, LLC; SCHURING FARMS, LLC; SCHURING SWINE, LLC; SCOTT MCKENZIE FARMS; SELDOM REST HOG FARM, LLC; SHUPE DAIRY INC.; SIDE STREET PORK, LLC; SIMON DAIRY FARM, LLC; SKINNER FARMS, LLC; SLATER FARMS, LLC; SOL VISTA, LLC; STEENBLIK DAIRY INC.; STEWART FARMS, LLC; STOREY FARMS, LLC; STOUGHTON CREEK FARMS, LLC; STUTZMAN POULTRY FARMS, LLC, d/b/a and permitted as Stutzman Poultry – Graber; SWISSLANE DAIRY FARMS, INC. d/b/a and permitted as Swisslane Farms; T AND H FARMLAND DEVELOPMENT, LLC, d/b/a and permitted as T & H Dairy; THE PRESTON FARMS, LLC, d/b/a and permitted as Preston Hog Farms; TERREHAVEN FARMS, INC.; TERRELL PORK, LLC; TIMMERMAN FARMS, LLC; TRESTLE TOWN TURKEYS, INC.; VALLEY VIEW PORK, LLC; VAN OEFFELEN FARM SERVICES, LLC; VANDERPLOEG HOLSTEINS, LLC; VDS FARMS, LLC d/b/a and permitted as VDS Farms-Fulton and VDS Farms-S Avenue; VELD FARMS, LLC; WALNUTDALE FARMS, INC. d/b/a and permitted as Walnutdale Farms Dorr Twp; WHITE ACRES TURKEY FARMS; WHITE FARMS; WIL-LE FARMS, INC.; WILLOW CREEK FARMS FEED MILL, LLC, d/b/a and permitted as Willow Creek Farms; WILLOW POINT DAIRY, LLC; WILSON CENTENNIAL FARM, LLC; Y B FARMIN LLC; BAKERLADS FARM; DEER CREEK FARMS, INC., d/b/a and permitted as Deer Creek Poultry Farm; HARTLAND FARMS, INC.; HEASLEY SEEDS, LLC, d/b/a and permitted as Heasley Farm; MAYFLOWER DAIRY, LLC; MEADOW ROCK, LLC d/b/a and permitted as Meadow Rock Dairy; NOBEL FAMILY DAIRY, LLC; OTTAWA TURKEY FARM, permitted as Ottawa Turkey Farm

112th; and CROCKERY CREEK TURKEY FARMS,
LLC d/b/a and permitted as Crockery Creek – 74th and
Crockery Creek – 80th,

Plaintiffs,

v

MICHIGAN DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY,

Defendant.

The transactions and occurrences alleged in this complaint arise out of and relate to Court of Claims Case No. 20-000148-MZ, which was subsequently appealed to the Michigan Court of Appeal in Case No. 356088. Defendant's Application for Leave to Appeal is currently pending in Michigan Supreme Court in Docket No. 165166.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Michigan Farm Bureau, Michigan Milk Producers Association, Michigan Pork Producers Association, Michigan Allied Poultry Industries, Dairy Farmers of America, and Select Milk Producers, Inc. (collectively, the "Association Plaintiffs"); and 163 livestock farms identified individually below who are regulated as Concentrated Animal Feeding Operations ("CAFOs") (collectively, the "Permit-Applicant Plaintiffs") (all together, the "Plaintiffs"), by and through their attorneys, Michael J. Pattwell and Zachary C. Larsen of Clark Hill PLC, hereby bring this Complaint for Declaratory and Injunctive Relief and state as follows in support:

INTRODUCTION

1. This action seeks to enforce the holding the Michigan Court of Appeals has already made in the prior, related case of *Michigan Farm Bureau, et al v Department of Environment, Great Lakes, and Energy*, __ Mich App __; __ NW2d __ (2022) (Docket No. 356088) (**Ex. A**), when it concluded that the Michigan Department of Environment, Great Lakes, and Energy's

(“EGLE”) unilateral attempt to impose a novel and industry-altering set of rules on Michigan’s CAFOs by incorporating those rules into its CAFO General Permit (“2020 CAFO General Permit”) (**Ex. B**)—despite an existing set of promulgated standards on the same subject—unlawfully “circumvented” the process required under Michigan’s Administrative Procedures Act (“APA”), MCL 24.201 *et seq.*

2. The Court of Appeals dismissed the prior case for lack of jurisdiction but did so expressly “without prejudice” to Plaintiffs’ ability to refile suit. *Michigan Farm Bureau*, at 16. In relevant part, the Court held that a “prerequisite to commencing an action for a declaratory judgment under MCL 24.264 is a request for a declaratory ruling from the agency.” *Id.* at 14. But, in so doing, the Court of Appeals also necessarily determined that EGLE improperly developed “rules” outside of the APA’s prescribed process. *Id.* at __.

3. Plaintiffs have since taken the step directed by the Court of Appeals and asked EGLE to issue a declaratory ruling holding its own unpromulgated rules to be procedurally invalid. (**Ex. C.**) Predictably, EGLE denied that request. (**Ex. D.**)

4. Plaintiffs now refile this suit under MCL 24.264 and MCR 2.605 and ask this Court to apply the Court of Appeals’ holding that these conditions of the General Permit constitute “rules” that have not been promulgated in the manner required by the APA and therefore enjoin EGLE from including those conditions in its permit until it complies with all APA requirements.

5. EGLE’s 2020 CAFO General Permit seeks to impose costly and cumbersome requirements on Michigan’s agricultural economy. These requirements include:

- (a) Presumptively banning CAFOs from land-applying agriculturally beneficial “CAFO waste” (hereinafter, “manure”) to crop fields during a three-month period every year by setting conditions precedent to applying manure that are overly burdensome and difficult to meet;¹

¹ One of the novel regulations EGLE now seeks to impose by way of administrative edict—a presumptive winter land application ban—has been considered and expressly rejected by the

- (b) Outright prohibiting CAFOs from transferring their manure to other entities that land-apply such nutrient-enhancing substances during those same three months;
- (c) Arbitrarily restricting the amount of phosphorus permitted in soil to which manure may be land applied without any scientific support for its determination;
- (d) Mandating that CAFOs and any farms that receive manure from CAFOs both install *permanent*, 35-foot vegetated buffer strips *and* prevent application of manure within 100 feet of every surface water, tile-line intake, drain, and roadside ditch located on any land to which their manure is applied, thus severely limiting the amount of land that can be crop farmed or, alternatively, denying CAFOs the ability to use the nutrients in manure for crop production in an environmentally and agriculturally beneficial manner;
- (e) Superseding the Michigan Agriculture Environmental Assurance Program (“MAEAP”) by denying environmentally conscious and legally compliant farms the promised benefit of the MAEAP program and imposing additional restrictions based on such farms’ location within a Total Maximum Daily Load (“TMDL”) watershed;
- (f) Vastly expanding the jurisdictional reach of CAFO permitting to govern the activities of wholly separate legal entities that are not regulated as CAFOs; and
- (g) Writing a blank check to EGLE to impose additional conditions on CAFOs based on their location within a TMDL watershed, thereby transforming coverage under the General Permit into what is akin to an individual permit for such farms.

6. As the Court of Appeals ruled, these new conditions “set rigid standards with which CAFOs and CAFO waste recipients must comply[,]” and they are “not merely guidelines but have the force and effect of ‘rules’ not formally promulgated.” *Michigan Farm Bureau*, at 13. Indeed, “[c]lose analysis of the new conditions indicates that they go beyond the scope of the promulgated rule, Mich Admin Code R 323.2196.” *Id.* And “[t]he record indicates that EGLE chose not to follow the applicable APA procedures to adopt a new rule or amend the existing rule pertaining to CAFO permits.” *Id.* Instead, EGLE “essentially created an agency regulation, standards, and

Michigan Legislature over the course of the last several legislative sessions. See, e.g., 2019 SB 247; 2019 HB 4418; 2017 SB 639; & 2017 HB 5185.

instructions of general applicability that implements or applies law enforced or administered by the agency.” *Id.* Accordingly, the Court of Appeals concluded that EGLE has “sidestepped its statutory obligation to promulgate [these new conditions] as required under the APA.” *Michigan Farm Bureau*, unpublished order on EGLE’s motion for reconsideration, entered November 17, 2022 (Docket No. 356088).

7. Because EGLE requires the vast majority of CAFOs to obtain permit coverage under its CAFO General Permit, the agency has sought to broadly apply these mandates to the industry.

8. Each of the challenged standards and mandates delimited above force Michigan’s largest farms to incur substantial costs and threaten the viability and continued operations of some farms. But rather than lobbying the Legislature to pass legislation or, at least, vetting those novel mandates and standards through Michigan’s rigorous rule-promulgation process, EGLE has chosen to impose its mandates on Michigan farms through the much less rigorous procedures of general permitting.

9. As just a few examples, EGLE’s avoidance of statutorily mandated rulemaking procedures has circumvented important process and:

- (a) enabled the agency to ignore the legislative directive that it must justify its policies with a Regulatory Impact Statement and Cost Benefit Analysis (“RIS-CBA”) that would estimate the economic impact of its CAFO standards on business, small business, and local governments;
- (b) permitted EGLE to eschew legislative oversight of the agency’s proposals; and
- (c) allowed EGLE to skirt the scrutiny of the recently formed Environmental Rules Review Committee, which includes representatives from the agricultural industry.

10. EGLE has likewise ignored Michigan law prohibiting an agency from adopting standards at the state level that are more restrictive than the corresponding federal standards

without first finding a “clear and convincing need to exceed” the federal standard. MCL 24.232(8). Instead, EGLE has adopted mandates that are far more restrictive than applicable federal regulations without any such findings.

11. EGLE has thus imposed massive and industry-altering legal mandates through unelected officials without legislative approval and without even the quasi-legislative veneer of rulemaking—even though the People’s elected officials in the Legislature have repeatedly rejected less-demanding standards when proposed as amendments to Part 31 of the Natural Resources and Environmental Protection Act (“NREPA”), MCL 324.3101. See *Michigan Farm Bureau*, unpublished order on EGLE’s motion for reconsideration, entered November 17, 2022 (Docket No. 356088) (“The case at bar presents as a procedural challenge to the validity of a new set of ‘conditions’ that were attached to a preexisting general permit. *Those conditions were not promulgated as rules, but should have been. The agency sidestepped its statutory obligation to promulgate them as required under the APA.*”) (emphasis added).

12. Worse still, EGLE seeks to impose these substantial costs on Michigan’s largest family farms as the country faces rampant inflation and a potential recession and immediately after the country’s health and economy have been ravaged by the COVID-19 pandemic—a time when our dependence on farms to provide an abundant and healthy food supply is more transparent than ever.

13. And though here, as in most cases, the process by which something is created and vetted significantly impacts the quality and character of the final product, EGLE’s failings are not limited to ignoring the legislatively mandated APA process.

14. EGLE's permit conditions also exceed the agency's delegated authority under statute, they are contrary to the language and intent of Part 31, and they are arbitrary and capricious—rendering these rules substantively invalid as well.

15. Moreover, EGLE's actions are unconstitutional under both the state and federal constitution in several ways. *First*, EGLE has deprived Plaintiffs of due process of law by failing to adhere the Legislature's prescribed procedures and promised protections, depriving these farms of liberty and property through arbitrary executive action, and asserting authority under unconstitutionally vague pronouncements. *Second*, EGLE exceeded its limited statutory authority and usurped legislative power in violation of the Separation of Powers Clause of the Michigan Constitution. Const 1963, art III, § 2. *And third*, EGLE's mandate to convert economically beneficial farmland into economically useless wilderness violates the Takings Clauses of both the Michigan Constitution and U.S. Constitution. Const 1963, art X, § 2; U.S. Const, Amend V.

16. For those reasons, Plaintiffs ask this Court to declare that the challenged mandates and standards in EGLE's 2020 CAFO General Permit are: (a) "rules" under the APA; (b) procedurally invalid as they have been improperly adopted outside of the APA's rulemaking process; (c) substantively invalid as EGLE lacks the authority to adopt them, they are contrary to Part 31, and they are otherwise arbitrary and capricious; (d) invalid and unenforceable as violating due process; (e) unconstitutional as contrary to the Separation of Powers of Michigan's Constitution; and (f) violative of the Takings Clauses of the Michigan Constitution and U.S. Constitution.

PARTIES

17. Plaintiffs in this matter include associations representing Michigan's agricultural industry and many of Michigan's largest farms that are applicants to the 2020 CAFO General Permit.

Association Plaintiffs

18. Plaintiff Michigan Farm Bureau ("Farm Bureau") is a grassroots organization that exists to promote and represent the interests of the agricultural industry across the State of Michigan. Farm Bureau represents the full spectrum of Michigan's agricultural diversity, from crops and livestock to fruits and vegetables, greenhouses, forestry, and more.

19. Plaintiff Farm Bureau's membership includes both large and small livestock farms across the State of Michigan, including numerous farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000, as well as non-CAFO crop and livestock farms within Michigan. Farm Bureau's members include CAFOs that raise chickens for egg and meat production, dairy cows for milk, cheese, ice cream, and other dairy product production, cattle for beef, pigs for pork, and a variety of other animals for their capacity to efficiently produce food essentials that feed Michiganders at affordable prices.

20. Plaintiff Michigan Milk Producers Association ("MMPA") is a dairy farmer owned cooperative and dairy processor. Founded in 1915, MMPA serves hundreds of dairy farmers in Michigan. MMPA's membership includes many large dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

21. Plaintiff Michigan Pork Producers Association ("Pork Producers") is a state affiliate of the National Pork Producers Council, a national organization of pork industry

producers. Pork Producers' membership includes large pork farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

22. Plaintiff Michigan Allied Poultry Industries ("Allied Poultry") is a non-profit statewide trade organization representing Michigan's egg, chicken, and turkey farmers, and their young stock network of breeders, hatcheries, and pullet growers. Allied Poultry's membership includes large poultry farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

23. Plaintiff Dairy Farmers of America ("Dairy Farmers") is a global dairy cooperative owned by dairy farmers who supply milk consumed by Michiganders. Dairy Farmers cooperative members includes many of Michigan's large dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

24. Plaintiff Select Milk Producers, Inc. ("Select") is a dairy farmer owned cooperative with dairy farm members located in Michigan, among other states. Select also owns dairy processing facilities located in Michigan and supplies milk from its member farms to other Michigan dairy processors. Select's cooperative members include Michigan dairy farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

25. Plaintiff Michigan Cattlemen's Association ("MCA") is a nonprofit organization representing over 15,000 cattle producers in Michigan. MCA exists to foster, promote, and protect and an environment conducive to profitable beef production. MCA's members include Michigan cattle farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

Permit-Applicant Plaintiffs

26. Plaintiff Adam Pork Powerhouses, LLC, is a swine farm located at 3920 Gettel Rd., Sebawaing, MI 48759. Adam Pork Powerhouses, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010177, and has applied for coverage under the 2020 General Permit.

27. Plaintiff Snider Farms, LLC d/b/a and permitted as Airport View Turkeys is a turkey farm located at 1716 W Baseline Rd., Hart, Michigan. Airport View Turkeys is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010269, and has applied for coverage under the 2020 General Permit.

28. Plaintiff Alpine Pork, LLC is a swine farm located at 15713 Pierce, West Olive, Michigan. Alpine Pork, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010217, and has applied for coverage under the 2020 General Permit.

29. Plaintiff ATE Farms, LLC is a swine farm located at 10890 West Weidman Rd., Weidman, Michigan. ATE Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010203, and has applied for coverage under the 2020 General Permit.

30. Plaintiff Bebow Dairy Farm, Inc. is a dairy farm located at 9119 North Baldwin Rd., St. Louis, Michigan. Bebow Dairy Farm is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010141, and has applied for coverage under the 2020 General Permit.

31. Plaintiff Bennett Farms Livestock, LLC is a swine farm located at 8170 S. Brucker Ave., Fremont, Michigan. Bennett Farms Livestock is regulated by Defendant EGLE as a CAFO,

was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010166, and has applied for coverage under the 2020 General Permit.

32. Plaintiff Benthem Brothers, Inc., is a farm located at 7927 W. Stoney Corners Rd., McBain, MI 49657. Benthem Brothers, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010191, and has applied for coverage under the 2020 General Permit.

33. Plaintiff Berlyn Acres, LLC, is a farm located at 10839 E 5th St., Fowler, MI 48835. Berlyn Acres, LLC, is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010078, and has applied for coverage under the 2020 General Permit.

34. Plaintiff Bleich Family Farms, LLC d/b/a and permitted as Bleich Dairy, is a dairy farm located at 14501 Steward Rd., Hudson, Michigan. Bleich Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010060, and has applied for coverage under the 2020 General Permit.

35. Plaintiff Bradford Dairy Farms, LLC is a dairy farm located at 11435 Sparta Ave., P.O. Box 378, Sparta, MI 49345. Bradford Dairy Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010120, and has applied for coverage under the 2020 General Permit.

36. Plaintiff Brook View Dairy, LLC is a dairy farm located at 10560 Freeport Ave., Freeport, Michigan. Brook View Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010089, and has applied for coverage under the 2020 General Permit.

37. Plaintiff Burns Family Farm, LLC is a farm located at 5380 Arbela Rd., Millington, MI 48746. Burns Family Farm, LLC. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010151, and has applied for coverage under the 2020 General Permit.

38. Plaintiff Burns Poultry Farms, Inc. is a poultry farm located at 9922 Irish Rd., Millington, Michigan. Burns Poultry Farms, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010031, and has applied for coverage under the 2020 General Permit.

39. Plaintiff Car-Min-Vu Farms, LLC d/b/a and permitted as Car-Min-Vu Dairy is a dairy farm located at 2965 Howell Rd., Webberville, Michigan. Car-Min-Vu Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010205, and has applied for coverage under the 2020 General Permit.

40. Plaintiff Cary Dairy Farm, Inc. is a dairy farm located at 6625 Poorman Rd., Battle Creek, Michigan. Cary Dairy Farm, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010087, and has applied for coverage under the 2020 General Permit.

41. Plaintiff Cary's Pioneer Farm, Inc. is a cattle farm located at 3977 North Bliss Rd., Alma, Michigan. Cary's Pioneer Farm, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010053, and has applied for coverage under the 2020 General Permit.

42. Plaintiff Centerwood Farms, LLC is a swine farm located at 3623 Pierce Road, Remus, Michigan. Centerwood Farms, LLC is regulated by Defendant EGLE as a CAFO, was

permitted under the 2015 General Permit under Certificate of Coverage Number MIG010255, and has applied for coverage under the 2020 General Permit.

43. Plaintiff Central Michigan Milk Production, LLC is a dairy farm located at 9119 North Baldwin Rd., St. Louis, Michigan. Central Michigan Milk Production is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010230, and has applied for coverage under the 2020 General Permit.

44. Plaintiff Clover Farms, LLC d/b/a and permitted as Clover Family Farms is a swine farm located at 2412 Stage Rd., Ionia, Michigan. Clover Family Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010094, and has applied for coverage under the 2020 General Permit.

45. Plaintiff Contract Finishers, Inc. is a swine farm located at 5792 136th Ave., Hamilton, Michigan. Contract Finishers, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010068, and has applied for coverage under the 2020 General Permit.

46. Plaintiff Courter Farms East Feedlot, LLC d/b/a and permitted as Courter Farms East is a cattle farm located at 10068 Luce Rd., Alma, Michigan. Courter Farms East is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010025, and has applied for coverage under the 2020 General Permit.

47. Plaintiff Courter Farms West Feedlot, LLC d/b/a and permitted as Courter Farms West is a cattle farm located at 8495 Monroe Rd., Elwell, Michigan. Courter Farms West is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010184, and has applied for coverage under the 2020 General Permit.

48. Plaintiff Crossroads Dairy, LLC is a dairy farm located at 588 3 Mile Rd. NW, Suite 203, Grand Rapids, Michigan. Crossroads Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010071, and has applied for coverage under the 2020 General Permit.

49. Plaintiff D & K Farms is a swine farm located at 7751 West Allan Rd., Elsie, Michigan. D & K Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010294, and has applied for coverage under the 2020 General Permit.

50. Plaintiff DJN Cattle Farms, Inc., d/b/a and permitted as Halliwill Farms, is a cattle and dairy farm located at 2450 Wilkinson Rd., Adrian, Michigan. Halliwill Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010192, and has applied for coverage under the 2020 General Permit.

51. Plaintiff Davis Farms, LLC is a farm located at 67715 M 40, White Pidgeon, MI 49099. Davis Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010073, and has applied for coverage under the 2020 General Permit.

52. Plaintiff Davis Pork, LLC is a swine farm located at 16693 Brownsville Rd., Vandalia, MI 49095. Davis Pork, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010223, and has applied for coverage under the 2020 General Permit.

53. Plaintiff den Dulk Dairy Farm, LLC is a dairy farm located at 588 3 Mile Rd. NW, Suite 203, Grand Rapids, Michigan. den Dulk Dairy Farm, LLC is regulated by Defendant EGLE

as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010112, and has applied for coverage under the 2020 General Permit.

54. Plaintiff DeYoung Pork, Inc. d/b/a and permitted as DeYoung Pork Inc.-Plainwell is a swine farm located at 381 114th Ave., Plainwell, Michigan. DeYoung Pork, Inc.-Plainwell is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010082, and has applied for coverage under the 2020 General Permit.

55. Plaintiff Double Quad Farms, LLC is a swine farm located at 9755 East Polk Rd., Wheeler, Michigan. Double Quad Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010017, and has applied for coverage under the 2020 General Permit.

56. Plaintiff Dutch Meadows Dairy, LLC, d/b/a and permitted as Dutch Meadows Dairy and Meadowbrook Dairy, is a dairy farm located at 11481 Blue Spruce Dr., Fowler, Michigan. Dutch Meadows Dairy and Meadowbrook Dairy are regulated by Defendant EGLE as a CAFO, were permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010096 and MIG010257, and have applied for coverage under the 2020 General Permit.

57. Plaintiff Dykhuis Farms, Inc. is the parent company of five farms headquartered at 3759 46th St., Hamilton, Michigan and is doing business and is permitted through wholly owned subsidiaries as Baseline Farm, Ehinger Farm, Riverbend Farm, Shamrock Farm, and Village Central Sandy Ridge. Each farm is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010075, MIG010186, MIG010132, MIG010074, and MIG010122; and each farm has applied for coverage under the 2020 General Permit.

58. Plaintiff Dynasty Dairy, LLC is a dairy farm located at 9175 Toppin Rd., Harbor Beach, MI 48441. Dynasty Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010039, and has applied for coverage under the 2020 General Permit.

59. Plaintiff Edge Wood Dairy, LLC is a dairy farm located at 588 3 Mile Rd., NW Ste. 203, Grand Rapids, Michigan. Edge Wood Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010212, and has applied for coverage under the 2020 General Permit.

60. Plaintiff Fairgrove Farms, Inc. is a swine farm located at 69676 Balk Rd., Sturgis, Michigan. Fairgrove Farms, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010242, and has applied for coverage under the 2020 General Permit.

61. Plaintiff Flower Creek Swine, LLC, is a swine farm located at 2922 Holton Rd., Twin Lake, MI 49437. Flower Creek Swine, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0060245, and has applied for coverage under the 2020 General Permit.

62. Plaintiff GDW Farms, LLC is a farm located at 2298 104th Ave., Zeeland, MI 49464. GDW Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010242, and has applied for coverage under the 2020 General Permit.

63. Plaintiff GDW Turkey Farm-Fillmore, is a turkey farm located at 16304 Fillmore St., West Olive, MI 49460. GDW Turkey Farm-Fillmore is regulated by Defendant EGLE as a

CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MINPTD008, and has applied for coverage under the 2020 General Permit.

64. Plaintiff GDW Turkey Farms-Land of Turkey, is a turkey farm located at 13581 Stanton St., West Olive, MI 49460. GDW Turkey Farm-Fillmore is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MINPTD007, and has applied for coverage under the 2020 General Permit.

65. Plaintiff GW Dairy, LLC is a dairy farm located at 1910 E. Meyering Rd., Marion, Michigan. GW Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010145, and has applied for coverage under the 2020 General Permit.

66. Plaintiff Gagnon Hog Farm, LLC, is a swine farm located at 3025 West 80th Ave., Newaygo, MI 49337. Gagnon Hog Farm, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010251, and has applied for coverage under the 2020 General Permit.

67. Plaintiff Gallagher Dairy Farm, Inc. is a dairy farm located at 667 West Gallagher Rd., West Branch, MI 48861. Gallagher Dairy Farm, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010287, and has applied for coverage under the 2020 General Permit.

68. Plaintiff Geerlings Hillside Farms, LLC d/b/a and permitted as Hillside Farms – Fennville is a swine farm located at 186 W 35th St., Holland, Michigan. Hillside Farms – Overisel is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010207, and has applied for coverage under the 2020 General Permit.

69. Plaintiff Geerlings Hillside Farms, LLC d/b/a and permitted as Hillside Farms-Overisel Hog Barns is a swine farm located at 5834 Natilyn Dr., Hamilton, Michigan. Hillside Farms-Overisel Hog Barns is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010130, and has applied for coverage under the 2020 General Permit.

70. Plaintiff Gernaat Dairy, LLC, d/b/a and permitted as Gernaat Family Farms is a dairy farm located at 11800 S. Hoekwater Rd., Marion, Michigan. Gernaat Family Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010102, and has applied for coverage under the 2020 General Permit.

71. Plaintiff Grand River Grain, LLC, is a farm located at 9997 Leonard St., Coopersville, MI 49404. Grand River Grain, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010008, and has applied for coverage under the 2020 General Permit.

72. Plaintiff Grand River Grain North is a farm located at 15585 68th Ave., Coopersville, MI 49404. Grand River Grain North is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010292, and has applied for coverage under the 2020 General Permit.

73. Plaintiff Halbert Dairy, LLC is a dairy farm located at 23675 Banfield Rd., Battle Creek, Michigan. Halbert Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010051, and has applied for coverage under the 2020 General Permit.

74. Plaintiff Harvest Hill Farm by its permittee Ron Klein is a swine farm located at A-4438 140th Ave., Holland, Michigan. Harvest Hill Farm is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010069, and has applied for coverage under the 2020 General Permit.

75. Plaintiff Hass Feedlot, LLC d/b/a and permitted as Hass Feedlot Home Farm and Hass Feedlot 2 operates cattle farms located at 775 Carpenter Rd., Bad Axe, Michigan and 2258 Thomas Rd., Bad Axe, MI 48413. Hass Feedlot Home Farm and Hass Feedlot 2 are regulated by Defendant EGLE as CAFOs, were permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010040 & MIG010042, and have applied for coverage under the 2020 General Permit.

76. Plaintiff Heinze Pork, is a swine farm located at 8568 Holland Rd., Six Lakes, MI 48886. Heinze Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010108, and has applied for coverage under the 2020 General Permit.

77. Plaintiff Hickory Gables, Inc. is a dairy farm located at 15565 Lockshore Road, Hickory Corners, Michigan. Hickory Gables, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010200, and has applied for coverage under the 2020 General Permit.

78. Plaintiff High Lean Pork, Inc. d/b/a and permitted as High-Lean Pork 3 – Hoover, is a swine farm located at 11304 Edgewater Dr., Allendale, Michigan. High Lean Pork, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010229, and has applied for coverage under the 2020 General Permit.

79. Plaintiff Highland Dairy, LLC is a dairy farm located at 8549 Stein Rd., Sebewaing, Michigan. Highland Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010018, and has applied for coverage under the 2020 General Permit.

80. Plaintiff Hoeve Farms is a farm located at A-4253 40th St., Holland, MI 49423. Hoeve Farms is regulated by Defendant EGLE as a CAFO and has been permitted under the 2015 General Permit under Certificate of Coverage Number MIG010275, and has applied for coverage under the 2020 General Permit.

81. Plaintiff Hogquest Farms, LLC is a farm located at 5221 136th Ave., Hamilton, MI 49419. Hogquest Farms, LLC is regulated by Defendant EGLE as a CAFO and has been permitted under the 2015 General Permit under Certificate of Coverage Number MIG010119, and has applied for coverage under the 2020 General Permit.

82. Plaintiff Holloo Farms, LLC is a dairy farm located at 20849 F. Drive South, Marshall, Michigan. Holloo Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010167, and has applied for coverage under the 2020 General Permit.

83. Plaintiff Huron Pork, LLC is a swine farm located at 11304 Edgewater Dr., Suite A, Allendale, Michigan. Huron Pork, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010013, and has applied for coverage under the 2020 General Permit.

84. Plaintiff Ingleside Farms is a cattle farm located at 8891 36-Mile Rd., Romeo, Michigan. Ingleside Farms is regulated by Defendant EGLE as a CAFO, was permitted under the

2015 General Permit under Certificate of Coverage Number MIG10157 and has applied for coverage under the 2020 General Permit.

85. Plaintiff J & J Russcher Properties, LLC is a swine farm located at A-4721 40th St., Zeeland, Michigan. J & J Russcher Properties, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010180, and has applied for coverage under the 2020 General Permit.

86. Plaintiff J and A Pork, LLC is a swine farm located at 5774 Fenwick Rd., Greenville, Michigan. J and A Pork is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010020, and has applied for coverage under the 2020 General Permit.

87. Plaintiff Jahn Farms is a farm located at 5139 N. Lakeshore Rd., Port Hope, MI 48468. Jahn Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010241, and has applied for coverage under the 2020 General Permit.

88. Plaintiff JBC Dairy Recycling, LLC is a dairy farm located at 4922 147th, Zeeland, MI 49464. JBC Dairy Recycling, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010281, and has applied for coverage under the 2020 General Permit.

89. Plaintiff JMax LLC d/b/a and permitted as JMax Dairy is a dairy farm located at 7084 West 72nd St., Fremont, Michigan. JMax Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010227, and has applied for coverage under the 2020 General Permit.

90. Plaintiff John B. Schaendorf Dairy, LLC, d/b/a and permitted as John Schaendorf Dairy, is a dairy farm located at 3083 30th St., Hopkins, MI 49328. John B. Schaendorf Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010103, and has applied for coverage under the 2020 General Permit.

91. Plaintiff Karnemaats, LLC is a swine farm located at 5118 West 72nd St., Fremont, Michigan. Karnemaats, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010077, and has applied for coverage under the 2020 General Permit.

92. Plaintiff Kleinheksel Farms Land, LLC, d/b/a and permitted as Kleinheksel Farms, is a farm located at 5124 138th Ave., Holland, MI 49423. Kleinheksel Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010104, and has applied for coverage under the 2020 General Permit.

93. Plaintiff Kober Farms, LLC is a swine farm located at 8990 Peach Ridge Ave. NW, Sparta, Michigan. Kober Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010055, and has applied for coverage under the 2020 General Permit.

94. Plaintiff Konos, Inc. is a farm located at 1240 8th St., Martin, MI 49070. Konos, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0058561, and has applied for coverage under the 2020 General Permit.

95. Plaintiff Konos, Inc., d/b/a and permitted as Konos, Inc., is a farm located at 1240 8th St., Martin, MI 49070. Konos, Inc., Martins Organics is regulated by Defendant MEGLE as a

CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0059676, and has applied for coverage under the 2020 General Permit.

96. Plaintiff KY-10 Farms, LLC is a swine farm located at 14093 Portage Rd., Vicksburg, Michigan. KY-10 Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010221, and has applied for coverage under the 2020 General Permit.

97. Plaintiff Laier Farms, Inc. is a dairy farm located at 7416 Argentine Rd., Howell, Michigan. Laier Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010064, and has applied for coverage under the 2020 General Permit.

98. Plaintiff Liberty Farms, LLC is a cattle farm d/b/a and permitted as Liberty Beef Farms located at 3407 58th St., Hamilton, MI 49419. Liberty Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010139, and has applied for coverage under the 2020 General Permit.

99. Plaintiff Litle Bend Piggery, LLC is a swine farm located at 3390 N. Concord Rd., Concord, MI 49237. Litle Bend Piggery, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010282, and has applied for coverage under the 2020 General Permit.

100. Plaintiff Lorenz Family Farms, LLC is farm located at 3534 Smithfield Way, Kalamazoo, MI 49009. Lorenz Family Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010140, and has applied for coverage under the 2020 General Permit.

101. Plaintiff Lucky 7 Dairy, LLC is a dairy farm located at 10550 Strief Rd., McBain, Michigan. Lucky 7 Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010261, and has applied for coverage under the 2020 General Permit.

102. Plaintiff Lucky 7 Farms, LLC is a swine farm located at 14093 Portage Rd., Vicksburg, Michigan. Lucky 7 Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010225, and has applied for coverage under the 2020 General Permit.

103. Plaintiff Makin Bacon Farm, LLC is a swine farm located at P.O. Box 116, Vicksburg, MI 49097. Makin Bacon Farm, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MINPTD014, and has applied for coverage under the 2020 General Permit.

104. Plaintiff Meadowbrook Farms, LLC is a swine farm located at P.O. Box 32, Hamilton, MI 49419. Meadowbrook Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010137., and has applied for coverage under the 2020 General Permit.

105. Plaintiff Myers Farms, LLC is a dairy farm located at 7565 40th St. S, Scotts, Michigan. Myers Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010276, and has applied for coverage under the 2020 General Permit.

106. Plaintiff New Flevo Dairy, Inc. is a dairy farm located at 9650 Plank Road, Clayton, Michigan. New Flevo Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the

2015 General Permit under Certificate of Coverage Number MIG010258, and has applied for coverage under the 2020 General Permit.

107. Plaintiff Nobis Farms, LLC d/b/a and permitted as Nobis Dairy Farms is a dairy farm located at 5813 W. Walker Rd., Saint Johns, Michigan. Nobis Dairy Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010058, and has applied for coverage under the 2020 General Permit.

108. Plaintiff NVF, Inc. is a dairy farm located at 11691 East Walton Rd., Shepherd, Michigan. NVF, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010041, and has applied for coverage under the 2020 General Permit.

109. Plaintiff Oomen Brothers, Inc., d/b/a and permitted as Oomen Brothers Hogs is a swine farm located at 2157 East Jackson Rd., Hart, Michigan. Oomen Brothers, Inc., d/b/a Oomen Brothers Hogs is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010001, and has applied for coverage under the 2020 General Permit.

110. Plaintiff Oomen Farms Ltd. is a farm located at 2211 E. Minke Rd., Hart, MI 49420. Oomen Farms Ltd. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010079, and has applied for coverage under the 2020 General Permit.

111. Plaintiff Packard Farms, LLC is a dairy farm located at 6584 S. Brand Ave., Clare, Michigan. Packard Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010034, and has applied for coverage under the 2020 General Permit.

112. Plaintiff Payla Meadows, LLC is a swine farm located at 14093 Portage Rd., Vicksburg, Michigan. Payla Meadows, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010211, and has applied for coverage under the 2020 General Permit.

113. Plaintiff Peaceful Road Farm, LLC d/b/a and permitted as Peaceful Road Farms is a dairy farm located at 1125 122nd Ave., Martin, Michigan. Peaceful Road Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010209 and has applied for coverage under the 2020 General Permit.

114. Plaintiff Performance Farms, LLC is a swine farm located at 1944 17 Mile Rd., Remus, Michigan. Performance Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010226, and has applied for coverage under the 2020 General Permit.

115. Plaintiff Poll Farms, Inc. is a swine farm located at 4406 134th Ave., Hamilton, Michigan. Poll Farms, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010148, and has applied for coverage under the 2020 General Permit.

116. Plaintiff Prairie View Dairy, LLC is a dairy farm located at 12850 Parker Rd., Delton, Michigan. Prairie View Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010123, and has applied for coverage under the 2020 General Permit.

117. Plaintiff Precision Pork Farm, Inc. is a swine farm located at 5014 Perry St., Zeeland, Michigan. Precision Pork Farm is regulated by Defendant EGLE as a CAFO, was

permitted under the 2015 General Permit under Certificate of Coverage Number MIG010086, and has applied for coverage under the 2020 General Permit.

118. Plaintiff Preferred Hog Farms, Inc. d/b/a and permitted as Preferred Hog 146th is a swine farm located at A-5136 146th Ave., Holland, Michigan. Preferred Hog 146th is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010208, and has applied for coverage under the 2020 General Permit.

119. Plaintiff Pridgeon Farms, LLC is a swine farm located at 1115 Pridgeon Rd., Montgomery, Michigan. Pridgeon Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010105, and has applied for coverage under the 2020 General Permit.

120. Plaintiff PSY Farms is a swine farm located at 2501 East Galien-Buchanan Rd., Buchanan, Michigan. PSY Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010124, and has applied for coverage under the 2020 General Permit.

121. Plaintiff Randy Petroskus, LLC, d/b/a and permitted as Petro Farms is a dairy farm located at 3387 102nd Ave., Gobles, Michigan. Petro Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010062, and has applied for coverage under the 2020 General Permit.

122. Plaintiff Schaper Farms, LLC, d/b/a and permitted as Les Schaper Farm is a farm located at 2056 Brown Rd., Sebawaing, MI 48759. Schaper Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010036, and has applied for coverage under the 2020 General Permit.

123. Plaintiff R&R Pork, LLC is a swine farm located at 25430 Featherstone Rd., Sturgis, Michigan. R&R Pork is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010263, and has applied for coverage under the 2020 General Permit.

124. Plaintiff Rapid Ridge Farms, LLC d/b/a and permitted as Rapid Ridge is a dairy farm located at 4903 Toles Rd., Mason, Michigan. Rapid Ridge is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010274, and has applied for coverage under the 2020 General Permit.

125. Plaintiff Red Arrow Dairy, LLC is a dairy farm located at 50 South 64th Ave., Coopersville, Michigan. Red Arrow Dairy, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010210, and has applied for coverage under the 2020 General Permit.

126. Plaintiff Rich-Ro Dairy, LLC d/b/a and permitted as Rich-Ro Dairy North, is a dairy farm located at 3565 N. Forest Hill Rd., Saint Johns, MI 48879. Rich-Ro Dairy North is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010118, and has applied for coverage under the 2020 General Permit.

127. Plaintiff Rich-Ro Dairy, LLC d/b/a and permitted as Rich-Ro Dairy South, is a dairy farm located at 3565 N. Forest Hill Rd., Saint Johns, MI 48879. Rich-Ro Dairy South is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010033, and has applied for coverage under the 2020 General Permit.

128. Plaintiff Ruggles Beef Farms, LLC is a cattle farm located at 6327 Sanilac Rd., Kingston, Michigan. Ruggles Beef Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010253, and has applied for coverage under the 2020 General Permit.

129. Plaintiff S&T Barns, LLC d/b/a and permitted as S&T Barns - Booth is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S&T Barns - Booth is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010272, and has applied for coverage under the 2020 General Permit.

130. Plaintiff S & T Barns, LLC d/b/a and permitted as S & T Barns - Fawn River is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S & T Barns - Fawn River is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010283, and has applied for coverage under the 2020 General Permit.

131. Plaintiff S & T Barns, LLC d/b/a and permitted as S & T Barns – TSC is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S& T Barns – TSC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010273, and has applied for coverage under the 2020 General Permit.

132. Plaintiff S & T Barns, LLC d/b/a and permitted as S & T Barns-Haenni is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S & T Barns-Haenni is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010271, and has applied for coverage under the 2020 General Permit.

133. Plaintiff Sand Creek Dairy, LLC is a dairy farm located at 1045 Soloman Rd., Hastings, Michigan. Sand Creek Dairy, LLC is regulated by Defendant EGLE as a CAFO, was

permitted under the 2015 General Permit under Certificate of Coverage Number MIG010138, and has applied for coverage under the 2020 General Permit.

134. Plaintiff Sandy Ridge Dairy, LLC is a dairy farm located at 3024 North Wright Rd., Fowler, MI 48835. Sandy Ridge Dairy, LLC is regulated by Defendant E GLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010169, and has applied for coverage under the 2020 General Permit.

135. Plaintiff Scenic View Dairy, LLC is a dairy farm located at 186 West 35th St., Holland, Michigan. Scenic View Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010106, and has applied for coverage under the 2020 General Permit.

136. Plaintiff Schuring Farms, LLC is a swine farm located at 3971 Hayes Rd., Muir, Michigan. Schuring Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010049, and has applied for coverage under the 2020 General Permit.

137. Plaintiff Schuring Swine, LLC is a swine farm located at 2659 Struble Rd., Michigan. Schuring Swine, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010095, and has applied for coverage under the 2020 General Permit.

138. Plaintiff Scott McKenzie Farms is a swine farm located at 53721 Hemlock Lake Rd., Marcellus, Michigan. Scott McKenzie Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010098, and has applied for coverage under the 2020 General Permit.

139. Plaintiff Seldom Rest Hog Farm, LLC is a swine farm located at A4098 146th Ave., Holland, Michigan. Seldom Rest Hog Farm is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010117, and has applied for coverage under the 2020 General Permit.

140. Plaintiff Shupe Dairy, Inc. is a dairy farm located at 1891 North Pinnebog Rd., Elkton, MI 48731. Shupe Dairy, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010224, and has applied for coverage under the 2020 General Permit.

141. Plaintiff Side Street Pork, LLC is a swine farm located at 4843 North Johnson Rd., Weidman, Michigan. Side Street Pork is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010228, and has applied for coverage under the 2020 General Permit.

142. Plaintiff Simon Dairy Farm, LLC is a dairy farm located at 11951 East Maple Rd., Westphalia, MI 48894. Simon Dairy Farm, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010178, and has applied for coverage under the 2020 General Permit.

143. Plaintiff Skinner Farms, LLC is a swine farm located at 377 S. Alger Rd., Ithaca, Michigan. Skinner Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010003, and has applied for coverage under the 2020 General Permit.

144. Plaintiff Slater Farms, LLC is a farm located at 9061 W. 88th St., Fremont, MI 49412. Slater Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the

2015 General Permit under Certificate of Coverage Number MIG010204, and has applied for coverage under the 2020 General Permit.

145. Plaintiff Sol Vista, LLC is a farm located at 5118 W. 72nd St., Fremont, MI 49412. Slater Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010249., and has applied for coverage under the 2020 General Permit.

146. Plaintiff Steenblik Dairy Inc. is a dairy farm located at 3844 N. Hubbardston Rd., Pewamo, Michigan. Steenblik Dairy Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010080, and has applied for coverage under the 2020 General Permit.

147. Plaintiff Stewart Farms, LLC is a swine farm located at 7596 Wilson Rd., Bannister, Michigan. Stewart Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010021, and has applied for coverage under the 2020 General Permit.

148. Plaintiff Storey Farms, LLC is a swine farm located at 1328 6 Mile Rd., Remus, Michigan. Storey Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010032, and has applied for coverage under the 2020 General Permit.

149. Plaintiff Stoughton Creek Farms, LLC is a swine farm located at 10580 Blackmer Rd., Carson City, Michigan. Stoughton Creek Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010183, and has applied for coverage under the 2020 General Permit.

150. Plaintiff Stutzman Poultry Farms, LLC, d/b/a and permitted as Stutzman Poultry – Graber, is a poultry farm located at 70103 Scott Rd., White Pigeon, MI 49099. Stutzman Poultry Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0059636, and has applied for coverage under the 2020 General Permit.

151. Plaintiff Swisslane Dairy Farms, Inc. d/b/a and permitted as Swisslane Farms is a dairy farm located at 12877 84th St., Alto, Michigan. Swisslane Farms, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010052, and has applied for coverage under the 2020 General Permit.

152. Plaintiff T & H Farmland Development, LLC d/b/a and permitted as T & H Dairy is a dairy farm located at 3024 North Wright Rd., Fowler, MI 48835. T & H Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010126, and has applied for coverage under the 2020 General Permit.

153. Plaintiff The Preston Farms, LLC d/b/a and permitted as Preston Hog Farms is a swine farm located at 1097 Central Rd., Quincy, Michigan. Preston Hog Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010099, and has applied for coverage under the 2020 General Permit.

154. Plaintiff Terrehaven Farms, Inc. is a cattle farm located at 3007 Wolf Creek Hwy., Adrian, Michigan. Terrehaven Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010061, and has applied for coverage under the 2020 General Permit.

155. Plaintiff Terrell Pork, LLC is a swine farm located at 9588 Meridian Rd., Bannister, MI 48807. Terrell Pork, LLC is regulated by Defendant EGLE as a CAFO, was permitted under

the 2015 General Permit under Certificate of Coverage Number MIG010264, and has applied for coverage under the 2020 General Permit.

156. Plaintiff Timmerman Farms, LLC is a farm located at 5134 138th Ave., Holland, MI 49423. Timmerman Farms, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010190, and has applied for coverage under the 2020 General Permit.

157. Plaintiff Trestle Town Turkeys, Inc., is a turkey farm located at 3372 47th Street, Hamilton, Michigan 49419. Trestle Town Turkeys, Inc. is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010267, and has applied for coverage under the 2020 General Permit.

158. Plaintiff Valley View Pork, LLC is a swine farm located at P.O. Box 158, Allendale, Michigan. Valley View Pork is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010081, and has applied for coverage under the 2020 General Permit.

159. Plaintiff Van Oeffelen Farm Services, LLC is a dairy farm located at 305 Hoover St., Conklin, Michigan. Van Oeffelen Farm Services, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010270, and has applied for coverage under the 2020 General Permit.

160. Plaintiff Vanderploeg Holsteins, LLC is a dairy farm located at 1223 South Begole Rd., Ithaca, Michigan. Vanderploeg Holsteins is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010092, and has applied for coverage under the 2020 General Permit.

161. Plaintiff VDS Farms, LLC d/b/a and permitted as VDS Farms-Fulton and VDS Farms-S Avenue operates dairy farms located at 14461 S. 44th St., Fulton, Michigan and 8426 East S. Ave., Fulton, Michigan. VDS Farms-Fulton and VDS Farms-S Avenue are regulated by Defendant EGLE as CAFOs, were permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010278 and MIG010279, and have applied for coverage under the 2020 General Permit.

162. Plaintiff Veld Farms, LLC is a swine farm located at 1261 136th Ave., Wayland, Michigan. Veld Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010121, and has applied for coverage under the 2020 General Permit.

163. Plaintiff Walnuthdale Farms, Inc., d/b/a and permitted as Walnuthdale Farms Dorr Twp., is a dairy farm located at 4309 14th St., Wayland, Michigan. Walnuthdale Farms Dorr Twp is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010063, and has applied for coverage under the 2020 General Permit.

164. Plaintiff White Acres Turkey Farm is a turkey farm located at 15585 68th Ave., Coopersville, MI 49404. White Acres Turkey Farm is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010147, and has applied for coverage under the 2020 General Permit.

165. Plaintiff White Farms is a farm located at 113160 Lime Lake Rd., Hudson, MI 49247. White Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010168, and has applied for coverage under the 2020 General Permit.

166. Plaintiff Wil-Le Farms, Inc. is a dairy farm located at 2445 North Van Dyke Rd., Bad Axe, Michigan. Wil-Le Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG440027, and has applied for coverage under the 2020 General Permit.

167. Plaintiff Willow Creek Farms Feed Mill, LLC, d/b/a and permitted as Willow Creek Farms, is a swine farm located at 305 East Roosevelt Rd., Ashley, Michigan. Willow Creek Farms is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010114, and has applied for coverage under the 2020 General Permit.

168. Plaintiff Willow Point Dairy, LLC is a dairy farm located at 588 3 Mile Rd. NW, Ste. 203, Grand Rapids, Michigan. Willow Point Dairy is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010259, and has applied for coverage under the 2020 General Permit.

169. Plaintiff Wilson Centennial Farm, LLC is a dairy farm located at 11624 West Wilson Rd., Carson City, Michigan. Wilson Centennial Farm, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010286, and has applied for coverage under the 2020 General Permit.

170. Plaintiff Y B Farmin, LLC is a farm located at 1165 Mendon Rd., Sherwood, MI 49089. Y B Farmin, LLC is regulated by Defendant EGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010237., and has applied for coverage under the 2020 General Permit.

171. Plaintiff Bakerlads Farm is a dairy farm located at 10960 Cadmus Rd., Clayton, Michigan. Bakerlads Farm is regulated by Defendant EGLE as a CAFO and has been permitted

under an individual National Pollutant Discharge Elimination System (NPDES) CAFO permit under Permit No. MI0059009.

172. Plaintiff Deer Creek Farms, Inc., d/b/a and permitted as Deer Creek Poultry Farm, is a poultry farm located at 24868 US-12 Sturgis, Michigan. Deer Creek Poultry Farm is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0059948.

173. Plaintiff Hartland Farms, Inc. is a dairy farm located at 1580 Hughes Hwy., Clayton, Michigan. Hartland Farms is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0057536.

174. Plaintiff Heasley Seeds, LLC, d/b/a and permitted as Heasley Farms, is a farm located at 4580 28th St., SW, Byron Center, Michigan. Heasley Farms is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MIG010134.

175. Plaintiff Mayflower Dairy, LLC is a dairy farm located at 588 3-Mile Rd., Suite 203, Grand Rapids, Michigan. Mayflower Dairy, LLC is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0059294.

176. Plaintiff Meadow Rock, LLC d/b/a and permitted as Meadow Rock Dairy is a dairy farm located at 588 3-Mile Rd., Suite 203, Grand Rapids, Michigan. Meadow Rock Dairy is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MIG010136.

177. Plaintiff Nobel Family Dairy, LLC is a dairy farm located at 25360 12th Ave., Gobles, Michigan. Nobel Family Dairy, LLC is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0059149.

178. Plaintiff Ottawa Turkey Farm permitted as Ottawa Turkey Farm 112th is a turkey farm located at 11306 Polk St., Holland, Michigan. Ottawa Turkey Farm is regulated by Defendant EGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0058448.

179. Plaintiff Crockery Creek Turkey Farms, LLC, d/b/a and permitted as Crockery Creek – 74th and Crockery Creek – 80th, is a turkey farm located at 11170 Radcliff Dr., Allendale, Michigan. Crockery Creek – 74th and Crockery Creek – 80th are regulated by Defendant EGLE as CAFOs. Crockery Creek – 74th has been provided a “No Potential to Discharge” determination under MINPTD010 that currently exempts the farm from the requirements of either the CAFO General Permit or a similarly modeled individual permit, but as a CAFO, the farm remains subject to Part 31 and Defendant EGLE may later require the farm to apply for either an individual permit of a COC under the General Permit based on circumstances described under Mich Admin Code, R 323.2196(4)(f). Crockery Creek – 80th has been provided a “No Potential to Discharge” determination under MINTD004 that currently exempts the farm from the requirements of either the CAFO General Permit or a similarly modeled individual permit, but as a CAFO, the farm remains subject to Part 31 and Defendant EGLE may later require the farm to apply for either an individual permit of a COC under the General Permit based on circumstances described under Mich Admin Code, R 323.2196(4)(f).

Defendant EGLE

180. Defendant EGLE is a principal department of the executive branch of government under Michigan’s constitution, as defined by Const 1963, Art V, § 2.

181. Defendant EGLE is the agency assigned by statute to regulate the discharge of waste and waste effluent into the waters of the state under Part 31 of NREPA. MCL 324.3101 *et seq.*; Executive Order No 2019-2.

JURISDICTION, VENUE, AND POSTURE

182. Plaintiffs first brought their declaratory relief action against EGLE in Court of Claims Case No. 20-000148-MZ. That case was dismissed on jurisdictional grounds, *Michigan Farm Bureau*, at 14, and Plaintiffs subsequently appealed. *Id.* at 1.

183. The Court of Appeals affirmed this Court’s dismissal on procedural grounds. In its holding, it concluded that: (1) this Court had jurisdiction generally over this challenge under MCL 24.264; (2) the conditions of the 2020 CAFO General Permit are “rules” under MCL 24.207; and (3) Plaintiffs were required to ask EGLE for a declaratory ruling under MCL 24.263 and could do so “without prejudice” to refiling suit.

184. After the Court of Appeals’ decision, Plaintiffs filed a request for declaratory ruling with EGLE as directed. (**Ex. C.**)

185. EGLE denied Plaintiffs’ request, stating “the existence of contested, relevant facts necessary to respond to this Request prohibits EGLE from granting this Request.” *Id.*

186. Plaintiffs now refile suit under MCL 24.264 after having satisfied the declaratory ruling request requirement as directed by the Court of Appeals.²

187. Generally, the Revised Judicature Act (“RJA”) confers on the Michigan Court of Claims “exclusive” jurisdiction over most claims that may be brought against the State. MCL 600.6419(1).

² EGLE filed an application for leave to appeal, which—as of the date of this filing—remains pending. Plaintiffs refile based on the parties’ oral agreement to hold this matter in abeyance pending the conclusion of that application.

188. That includes authority “*to hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.*” MCL 600.6419(1)(a) (emphasis added).

189. MCL 24.264 directs that a claim for declaratory judgment under Michigan’s APA “shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham County.” Per *Michigan Farm Bureau*, unpub op at 14, Plaintiffs have thus satisfied the prerequisite condition for commencing a declaratory judgment action in the Court of Claims.

190. Nonetheless, the instruction of MCL 600.6419(1)(a), as revised by 2013 PA 164, that this Court possesses exclusive jurisdiction over claims for declaratory relief against the State governs and requires this suit to be filed in this Court. *See, e.g., Telford v Michigan*, 327 Mich App 195, 198–201; 933 NW2d 347 (2019) (holding that this provision of the RJA impliedly repealed contrary provisions addressing Headlee Amendment suits).

191. Further, per MCR 2.605(A)(2), an action for declaratory judgment under that court rule “is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.”

192. Because the Court of Claims now has jurisdiction over all claims for declaratory judgment over the State, an action under the court rule is similarly within the jurisdiction of this Court. MCL 600.6419(1)(a).

193. Additionally, the Court of Claims has jurisdiction over Plaintiffs' constitutional claims under MCL 600.6419(1)(a).

194. Venue is proper in this Court under MCL 600.1615 and MCL 600.6413.

STATEMENT OF FACTS

Michigan's Agricultural Economy

195. Michigan's largest family farms play a significant role in both employing and feeding Michiganders.

196. More than 99% of *all* U.S. farms, and greater than 90% of dairy farms are family owned—including the great majority of the largest livestock farms.³

197. Nationwide, livestock farms produce \$176.5 billion in agricultural goods, including poultry and egg farms, hog farms, dairy farms, cattle farms, and others.⁴

198. Within Michigan, dairy farms contribute \$1.9 billion in direct economic impact to the economy and in total contribute \$2.8 billion in both direct and indirect economic impacts, including employment and allied economic activity. Similarly, cattle farms contribute more than \$600 million in direct and more than \$800 million in indirect impact, hog farms account for more than \$350 million in direct impact and \$500 million in indirect impact, and poultry farms account for more than \$500 million in direct impact and more than \$700 million in indirect impact to Michigan's economy.⁵

³ U.S. Department of Agriculture Economic Research Service. 2016. *America's Diverse Family Farms: 2016 Edition*. Economic Information Bulletin Number 164. Retrieved from: <https://www.ers.usda.gov/webdocs/publications/81408/eib-164.pdf?v=2587.7>.

⁴ U.S. Department of Agriculture Economic Research Service. 2020. Farming and Farm Income. *Ag and Food Statistics: Charting the Essentials*. Retrieved from: <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/>.

⁵ Knudson, W. 2018. *The Economic Impact of Michigan's Food and Agriculture System*. Michigan State University Product Center, retrieved from:

199. Among all farms, the largest scale family farms account for 45.9% of all production.⁶

200. The same is generally true in Michigan. Dairy farms with a herd size of over 1,000 head account for 48.9% of the value of milk sold, cattle farms with a herd size of over 1,000 head account for 31.5% of value of cattle sold, hog farms with herd sizes over 2,000 hogs account for 88% of the value of hogs sold, and egg farms with a flock size of over 50,000 account for roughly 98% of the value of poultry sold.⁷

201. These larger farms benefit from economies of scale that allow both costs and regulatory burdens to be more efficiently distributed and that reduce the cost per unit to meet global competition for production of farm products that meet the price demands of the end-users who consume the farm's products: you and me.

202. By way of example, within the typical dairy organization, the cost of production falls as herd size increases. A farm with more than 2,000 head of dairy cows has an average of 16% lower cost per head than a dairy farm with 1,000 to 1,999 head and 24% lower cost per head than a farm with 500 to 999 head.⁸

https://www.canr.msu.edu/miim/uploads/kundson_william_economic_impact_food-ag_system_201807.pdf.

⁶ U.S. Department of Agriculture Economic Research Service. 2020. Farming and Farm Income. *Ag and Food Statistics: Charting the Essentials*. Retrieved from: <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/>.

⁷ U.S. Department of Agriculture National Agriculture Statistics Service. 2019. *2017 Census of Agriculture: Michigan State and County Data, Volume 1, Geographic Area Series Part 22*. Retrieved from: https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Michigan/.

⁸ MacDonald, J. M., Cessna, J., and Mosheim, R. 2016. Changing Structure, Financial Risks, and Government Policy for the U.S. Dairy Industry. U.S. Department of Agriculture Economic Research Service Report Number 205. Retrieved from: https://www.fb.org/files/2019FMMO/USDA_ERS_-

203. Similarly, a pig-farming operation with over 2,000 pigs is able, on average, to achieve a cost-per-animal that is 35% less than the cost for a similar farming operation with 500 or fewer pigs.⁹

204. These cost savings are necessary to compete with other states and countries for a food-buying market that demands high quality and low prices typical in American markets, where an average of only 9.5% of income is spent on food.¹⁰

205. Thus, large livestock farms are a vital part of Michigan's broader agricultural community and ensuring that community's ability to both feed and employ Michiganders.

Regulation of CAFOs under the Clean Water Act and Part 31

206. Michigan's largest livestock farms are subject to extensive existing environmental regulation under the statutory and regulatory regimes of both the Clean Water Act, 33 USC 1251 *et seq.*, and Part 31 of NREPA, MCL 324.3101, *et seq.*

207. Per the terms of the Clean Water Act, large livestock farms are designated as CAFOs and CAFOs are regulated as point sources. 33 USC 1362(14) (defining "point source" as "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, *concentrated animal feeding operation*, or vessel . . . from which pollutants are or may be discharged.") (emphasis added).

[Changing Structure Financial Risks and Government Policy for the U.S. Dairy Industry.pdf](#).

⁹ McBride, W.D. and Key, N. 2004. Characteristics and Production Costs of U.S. Hog Farms, 2004. U.S. Department of Agriculture Economic Research Service Bulletin Number 32. Retrieved from: https://www.ers.usda.gov/webdocs/publications/44212/12879_eib32.pdf?v=0.

¹⁰ U.S. Department of Agriculture Economic Research Service. 2020. Food Prices and Spending. *Ag and Food Statistics: Charting the Essentials*. Retrieved from: <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-prices-and-spending/>.

208. As point sources, CAFOs are defined as the “*lot or facility where . . . : (i) 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 . . .*” 40 CFR 122.23(b)(1) (emphasis added). In other words, for regulatory purposes, a CAFO is the physical location where animals are stabled or confined—not the entirety of the livestock farming operation.

209. Because discharges from point sources must be permitted under the National Pollutant Discharge Elimination System (“NPDES”), 33 USC 1311(a); 33 USC 1342(a)(1), CAFOs must also be permitted under that program as well.

210. Michigan has primacy under the Clean Water Act to administer its NPDES program, meaning that EGLE is the agency charged with issuing and administering permits, its program must be no less stringent than federal standards, and a state-issued permit satisfies the federal permitting requirements.

211. But, by legislative decree, Michigan standards may not be any more stringent than federal standards unless the director of the agency that is promulgating the rules has made specific findings that there is a “clear and convincing need” justifying an exceedance of federal standards. MCL 24.232(8).

212. Permits for CAFOs go well beyond setting effluent limitations (the rates for the discharge of a pollutant below which the operations may lawfully discharge) for discharges from the physical site of a CAFO.

213. Instead, CAFO permits require Comprehensive Nutrient Management Plans (“CNMPs”) that in turn govern nearly every aspect of the farm’s operation:

- (a) from setting parameters for controlling the use of water in the production area, Mich Admin Code, R 323.2196(5)(a)(iii), to setting the boundaries where animals may roam, Mich Admin Code, R 323.2196(5)(a)(iv);

- (b) from mandating storage requirements for the manure produced by the animals and prescribing rules for the maintenance and operation of storage facilities, Mich Admin Code, R 323.2196(5)(a)(i), to mandating the type of records a farm must maintain, Mich Admin Code, R 323.2196(5)(a)(x); and
- (c) even regulating the CAFO operator's activities outside of the area that is designated as the "CAFO," such as the land application of manure onto farm fields off site and not owned by the CAFO, Mich Admin Code, R 323.2196(5)(a)(viii) & (5)(a)(ix)—and much more. See Mich Admin Code, R 323.2196(5)(a).

214. This extraordinarily broad assertion of regulatory authority over farms is purportedly premised on the State's grant of administrative primacy under the Clean Water Act, 33 USC 1251 *et seq.*, an act that is focused on preventing pollution from pipes and other methods of conveying pollutants into the nation's waters. 33 USC 1362(12); 33 USC 1342(a).

215. And both federal and state law set, by statute or rule, conditions to be required within a CAFO's NPDES permit.

216. Federal law specifies many conditions to be included in the farms' CNMPs and permits through promulgated regulations that address CAFOs and are codified under the Code of Federal Regulations. 40 CFR 122.23(h)(1); 40 CFR 122.42(e); & 40 CFR 412.4(c).

217. Likewise, Michigan's law does the same, providing by promulgated administrative rules many conditions that must be included within the NPDES permits for CAFOs. Mich Admin Code, R 323.2196(5)(a).

218. Of particular importance to this case, Mich Admin Code, Rule 323.2196 ("Rule 2196") governs CAFO permits and defines the scope of regulation specifying how (and to what extent) a CAFO can handle, use, apply, dispose, and transport CAFO production waste and wastewater.

219. Rule 2196 provides that CAFO permits shall include a number of requirements, including but not limited to: (1) a requirement to develop and implement a comprehensive nutrient

management plan; (2) a requirement to conduct field-by-field assessments of land application areas to address the form, source, amount, timing, rate, and method of application of nutrients; (3) a requirement to comply with special requirements when applying CAFO process wastewater to flooded, frozen, or snow covered areas; and (4) a requirement to set forth all things a CAFO owner or operator shall do to track CAFO wastewater and its transport. Mich Admin Code 323.2196(5)(a).

220. To comply with these regulatory mandates and to prevent pollution from entering into the State's surface waters, Michigan's family farms already expend significant sums of money annually.

221. For instance, dairy CAFOs spend between \$116 and \$129 per cow per year on hauling manure for agronomic land application for total annual costs ranging between \$81,000 and \$450,000.¹¹

222. Constructing manure storage structures that meet permitting requirements costs between \$0.50 per cubic foot for a typical dairy structure, and \$1.50 per cubic foot for a typical hog structure for total costs ranging between \$160,000 and \$1.4 million.¹²

223. Manure has great value as a nutrient source, providing up to 16 pounds each of nitrogen and phosphorus per ton for dairy manure, up to 20 pounds of nitrogen and 13 pounds of

¹¹ Harrigan, T. 2011. Economics of Liquid Manure Transport and Land Application. *Michigan Dairy Review*, 16(4), retrieved from: <https://www.canr.msu.edu/uploads/234/76582/liquidmanure.pdf>.

¹² Kammel, D. W. 2015. Building Cost Estimates – Dairy Modernization. University of Wisconsin Extension. Retrieved from: <https://fyi.extension.wisc.edu/dairy/files/2015/11/Building-Cost-Estimates-Dairy-Modernization.pdf>.

phosphorus for beef manure, up to 27 pounds of nitrogen and 62 pounds of phosphorus for swine manure, and up to 111 pounds of nitrogen and 96 pounds of phosphorus from poultry manure.¹³

224. Manure is additionally a complete nutrient, supplying micronutrients and building soil carbon, which also carry significant costs if they must instead be supplied with fertilizer inputs.

225. Fertilizer costs vary widely depending on the formulation and timing of purchase, but Michigan State University recently reported averages of \$517 per ton for phosphorus and \$417 for nitrogen.¹⁴

226. Therefore, on Michigan's average-sized farm of 205 acres¹⁵ applying at crop removal rates, if a farmer must use phosphorus and nitrogen fertilizer instead of manure, the farmer might need to spend \$10,000 to \$12,000 more per year for crop nutrients.

227. Despite these existing, all-encompassing regulatory mandates that are identified in promulgated rules and the agency's incorporation of those rules into its CAFO General Permits (and the associated significant regulatory costs), EGLE now seeks to insert into the General Permit legislatively rejected and never-before promulgated substantive legal requirements as a way of regulating farm operations without adhering to rigorous APA procedure or the constitutional separation of powers.

¹³ Warncke, D., Dahl, J. and Jacobs, L. 2009. Nutrient Recommendations for Field Crops in Michigan. *Michigan State University Extension Bulletin E2904*, retrieved from: <http://www.soils.msu.edu/wp-content/uploads/2014/06/MSU-Nutrient-recomdns-field-crops-E-2904.pdf>.

¹⁴ Silva, 2018. Year-End Fertilizer Prices. Michigan State University Extension, retrieved from: <https://www.canr.msu.edu/news/year-end-fertilizer-prices>.

¹⁵ U.S. Census of Agriculture: Michigan. United States Department of Agriculture, retrieved from: https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Michigan/.

228. These added requirements are nowhere mandated by law, they are far beyond federal and state regulatory requirements, and in some cases, they are contrary to those requirements.

EGLE's Use of General Permits to Impose Additional Mandates

229. An NPDES general permit is an administrative tool that is intended to serve the convenience of the regulator and the regulated entities by establishing the conditions under which a certain category of discharges will be permitted.

230. A general permit contrasts with an individual permit in that it does not adjudicate a permit applicant's individual circumstances.

231. Rather, with a general permit, the regulator issues a single permit intended to cover a broad category of discharges that the agency has determined "can be appropriately and adequately controlled by a general permit," and the regulator authorizes regulated entities to discharge if they obtain coverage under that permit. Mich Admin Code, R 323.2191(1).

232. In other words, a general permit is only appropriate for a category of discharges if EGLE first determines that the source of such discharges: (1) involve the same or substantially similar types of operations; (2) involve the same types of waste; (3) require the same effluent limitations or operating conditions; and (4) require the same or similar monitoring. *Id.*; see also Mich Admin Code R 323.2191(2). Thus, having made the decision that a general permit is appropriate, EGLE has determined that CAFOs involve similar operations, similar types of waste, similar effluent limitations or operating conditions, and similar monitoring and has set conditions that are generally applicable to such operations.

233. The agency then determines who may obtain coverage under the general permit by granting or denying an applicant's request for coverage under the general permit. Mich Admin Code, R 323.2191(3)–(6).

234. Importantly, EGLE controls whether a regulated entity who applies for coverage under a general permit will receive coverage under the general permit or will be required to obtain coverage under an individual permit. Mich Admin Code, R 323.2191(3) & (4).

235. Where the agency determines that an individual is ineligible for coverage under a general permit, it is generally because the agency believes an individual applicant's circumstances require greater behavioral restrictions or higher standards than those included in that general permit. See Mich Admin Code, R 323.2191(3)(a) & (3)(b) (allowing EGLE to require an individual permit in cases where “[t]he discharge is a significant contributor to pollution as determined by the department on a case-by-case basis” or where “[t]he discharger is not complying, or has not complied, with the conditions of the general permit.”)

236. CAFOs who exceed 5,000 animal units, for example, move outside of an exemption for regulating groundwater discharges, so those CAFOs trigger a groundwater discharge standard different from that legally required for CAFOs under the General Permit, Mich Admin Code, R 323.2210(f), and cannot obtain coverage under a general permit.

237. Moreover, EGLE also holds unbridled discretion to require even a regulated entity who generally qualifies for and *prefers* to be covered by an individual permit to seek coverage under an applicable general permit.

238. For example, Michigan Administrative Code, Rule 323.2191(5) explains that “[t]he department may deny an application for an individual national permit *if [EGLE] determines that the general permit is more appropriate.*” (Emphasis added).

239. Likewise, Michigan Administrative Code, Rule 323.2192(d) provides that “[t]he department may terminate the individual national permit and include the discharge under the coverage of the general permit *if the department determines that the general permit is more appropriate.*” (Emphasis added).

240. Farms in Michigan obtain coverage under the CAFO General Permit by applying for a “certificate of coverage” under the General Permit. Mich Admin Code, R 323.2196(1)(b).

241. Once granted, a certificate of coverage modifies the General Permit only to the limited extent specified under the terms of the certificate of coverage.

242. As with all permits, a general permit is an act of licensing, and it is not exempt from the limitations on an agency’s licensing authority.

243. A permit may only contain such conditions as are either required by law or are “necessary to achieve compliance” with the law. See MCL 324.1307(5).

244. For NPDES permits, that means that the terms of the permit must reflect the requirements of Part 31 of NREPA. See MCL 324.3106.

245. Per EGLE’s practice, the CAFO General Permit is issued every five years and offers regulated entities coverage for a five-year period under the conditions specified within the permit.

246. EGLE’s CAFO General Permit governs nearly all large farms who are regulated as “CAFOs” within the livestock industry.

247. Some very large farms are regulated as “Super CAFOs” and are therefore required by EGLE to submit to individual permits, principally for the reasons of the groundwater discharge permit requirements identified above.

248. Twelve such farms in Michigan are regulated as “Super CAFOs.”

249. EGLE has also required a few other farms to apply for individual permits because of compliance disputes with the agency. See Mich Admin Code, R 323.2191(3) & (4).

250. And just a very few other farms are under individual permits because they either manifest all of their waste for land application to fields that are not under their operational control or because they use waste treatment systems.

251. All told, 256 of the 277 largest livestock farms that are regulated as CAFOs as of April 1, 2020 (or 92.4%) are covered under and are governed by the terms of the General Permit.¹⁶

252. Moreover, those farms that are covered under individual permits are not governed by less strict permit conditions than the conditions placed in the General Permit. The individual permit requirements are ordinarily *more* strict.

253. Consequently, when EGLE writes a condition into the CAFO General Permit other than those that are mandated by federal or state statute or regulation, it is setting a policy of general applicability on the agency's implementation or enforcement of Part 31 of NREPA.

254. EGLE's adoption of such conditions represent generally applicable policy as such conditions govern the vast majority of CAFOs whom the agency expects and requires to be permitted under the General Permit.

255. By writing conditions into the General Permit that are not mandated by statute or regulation, EGLE is making an affirmative policy statement that such conditions implement or apply the underlying law (Part 31 of NREPA); otherwise, EGLE has no authority to act.

¹⁶ An additional 10 farms have been determined to have "no potential to discharge" and therefore do not currently need an NPDES permit, though they are still obligated to meet performance requirements required in the Administrative Rules and can become subject to permit with changes in operation or management. Mich Admin Code, R 323.2196(1)(b) & (4).

256. And, by such conditions, the agency has effectively set a minimum floor for the behaviors and the requirements EGLE demands of all large livestock farms that are regulated as CAFOs in order for those farms to receive a permit.

257. Some such farms may have to do *more* or may have the rule adapted to a unique circumstance. But these General Permit conditions nonetheless set EGLE's default policy, standards, and regulatory requirements for CAFOs.

Requirements of the Michigan APA

258. Michigan's Administrative Procedures Act ("APA"), MCL 24.101 *et seq*, applies to all agencies of the executive branch of Michigan's government.

259. Though agencies are creatures of statute and thus inherently limited to those functions authorized by the Legislature, the APA further limits agencies' ability to exercise regulatory authority by imposing both procedural and substantive restrictions on their exercise of those powers that have been granted to them.

260. One such limitation is that administrative agencies may not adopt regulations, statements, standards, policies, rulings, or instructions of general applicability that implement or apply the law enforced or administered by the agency without following prescribed procedures. MCL 24.207; MCL 24.243(1).

261. Such a "regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency" is termed a "rule" under the APA. MCL 24.207.

262. And a "rule" must be promulgated through the rulemaking process. *Detroit Base Coalition for Human Rights of Handicapped v Dep't of Social Servs*, 431 Mich 172, 178–79 &

183; 428 NW2d 335 (1988); *American Federation of State, Co & Muni Employees (AFSCME), AFL-CIO v Dep't of Mental Health*, 452 Mich 1, 3–4, & 13; 550 NW2d 190 (1996).

263. That process is intended “to ‘ensure that none of the essential functions of the legislative process are lost in the course of the performance by agencies of many law-making functions once performed by our legislatures.’” *Detroit Base Coalition*, 431 Mich at 178.

264. Thus, the process includes pre-approval for rulemaking by a central office with direct accountability to the Governor, stakeholder notice and comment, legislative oversight, attempts to minimize the impact of the rules on small business, cost-benefit analyses requiring estimates of the regulatory burdens on those subject to the rules and expected benefits to the citizens, analysis of the effect of rules on the revenue of state and local government, and more. (Ex. E); see MCL 24.239, MCL 24.239a, MCL 24.240, MCL 24.241, MCL 24.242, 24.245, & MCL 24.245a.

265. It does not matter whether an agency refers to its standards or policies as a “rule,” places some other label on its action, or adopts such policies by some other procedure. *Detroit Base Coalition*, 431 Mich at 183.

266. Because the intent of the APA is to constrain and regulate an agency’s exercise of authority, the definition of a “rule” is intended to apply broadly to all agency action of whatever label if that action sets generally applicable policy. *Id.*

267. Indeed, the APA buttresses the definition of “rule” by prohibiting agencies from adopting non-binding documents that set generally applicable policy, such as by issuing “a guideline in lieu of a rule.” MCL 24.226.

268. Accordingly, if an agency sets generally applicable policy, it must follow the rule-promulgation process in order to ensure that the procedural protections provided to stakeholders

are fully complied with and that the substantive restrictions on the agency's authority are not exceeded. *AFSCME, AFL-CIO*, 452 Mich at 9.

EGLE's 2020 CAFO General Permit Revisions

269. EGLE has used the vehicle of the General Permit to set regulations, standards, and policies of general applicability that purport to implement or apply Part 31 of NREPA—a law administered by the agency.

270. Nonetheless, the agency wholly failed to follow the legislatively prescribed mandates of the APA.

271. Egregiously, in doing so, EGLE has even set requirements and regulations, standards, and policies on large livestock farms that the Legislature has previously considered and repeatedly rejected.

272. EGLE has thus wielded quasi-legislative power to set such standards while circumventing the quasi-legislative procedures required for the agency to do so.

273. And it has done so in express contravention to the will of the People's representatives in the Legislature.

274. Those regulations, standards, and policies of general applicability include but are not limited to:

- (a) Presumptively banning CAFOs from land-applying agriculturally beneficial manure to crop fields during a three-month period every year;
- (b) Outright prohibiting CAFOs from transferring their manure to other entities that land-apply such nutrient-enhancing substances during those same three months;
- (c) Arbitrarily restricting the amount of phosphorus permitted in soil to which manure may be land applied without any scientific support for its determination;
- (d) Mandating that CAFOs and any farms that receive manure both install *permanent*, 35-foot vegetated buffer strips *and* prevent application of manure within 100 feet of every surface water, tile-line intake, drain, and roadside ditch located on any

land to which their manure is applied, thus severely limiting the amount of land that can be crop farmed or, alternatively, denying CAFOs the ability to use the nutrients in manure for crop production in an environmentally and agriculturally beneficial manner;

- (e) Superseding the Michigan Agriculture Environmental Assurance Program (“MAEAP”) by denying environmentally conscious and legally compliant farms the promised benefit of the MAEAP program and imposing additional restrictions based on such farms’ location within a Total Maximum Daily Load (“TMDL”) watershed;
- (f) Vastly expanding the jurisdictional reach of CAFO permitting to govern the activities of wholly separate legal entities that are not regulated as CAFOs; and
- (g) Writing a blank check to EGLE to impose additional conditions on CAFOs based on their location within a TMDL watershed, thereby transforming coverage under the General Permit into what is akin to an individual permit for such farms.

275. Each of these requirements in turn is discussed as only exemplary of EGLE’s improper exercise of legislative authority in writing conditions of the General Permit that extend beyond the requirements of Part 31 and its implementing regulations.

EGLE’s Presumptive Ban on Land Application During the Winter Months

276. First, EGLE has wielded legislative authority and acted both arbitrarily and beyond its administrative powers in presumptively banning the land application of manure during the months of January through March.

277. In prior general permits, EGLE allowed land application at any time during the year, depending on the condition of the field receiving the waste, and subject to condition-specific procedures.

278. For example, the 2015 CAFO General Permit required manure to be incorporated or injected if applied to frozen or snow-covered ground unless it was land applied in compliance with the Department’s 2005 “Technical Standard for the Surface Application of CAFO Waste on

Snow-Covered Ground Without Incorporation or Injection” and in accordance with the Manure Application Risk Index (“MARI”). (2015 General Permit, Part I.B.3.e.3.)

279. The same standard had been applied in EGLE’s 2005 and 2010 General Permits, thus governing farm practices for 15 years, and the 2020 permit still directs farmers to apply this standard for application on frozen or snow covered ground any month outside January through March.

280. This approach looked to the condition of the field—“a field-specific assessment of the potential for nitrogen and phosphorus transport from the field,” 40 CFR 412.4(c)(1) & (c)(2)—to determine when land application may occur, consistent with the federal standard.

281. In its 2020 CAFO General Permit, EGLE has taken an approach that is both much more restrictive than and, in fact, contrary to this federal regulatory requirement.

282. Rather than determining a CAFO’s ability to apply manure based on a “field-specific assessment of the potential for [nutrient] transport,” EGLE has crafted a different standard that effectively creates a presumptive ban on the application of manure “during the months of January, February, or March” (2020 General Permit, Part I.B.3.f.3.)

283. EGLE has allowed exceptions to this presumptive ban during January through March only if CAFOs meet extremely restrictive conditions, including (1) demonstrating the field receiving manure has soil phosphorus concentrations below 68 parts per million (i.e., half the standard for all other times of year); (2) requiring that there is less than two inches of frost and four inches of snow on site; (3) requiring that the manure is immediately incorporated or injected; and (4) insisting that the farm submits to EGLE 24-hour prior notification of their intent to land apply manure—onerous requirements that are inconsistent with the existing (and still required) standard to land apply manure to fields during other times of the year. (*Id.*)

284. The soil phosphorous concentration requirement alone disqualifies a significant percentage of land from receiving land application during these months.

285. EGLE's industrywide, presumptive ban on land application for three months each year ignores both the existing standard for reducing risk of runoff on frozen or snow-covered ground and the field-specific conditions that may exist during those months, despite Michigan Legislature's rejection of manure application bans on at least two prior occasions. See, e.g., 2019 SB 247; 2019 HB 4418; 2017 SB 639; 2017 HB 5185.

286. This is a particularly egregious end-run around the will of the People's elected representatives as EGLE has forbid via permit, and without adherence to the Legislature's mandated procedures (which include legislative oversight), a practice that the Legislature has repeatedly refused to proscribe.

287. And it is plainly an exercise of quasi-legislative authority by setting generally applicable policy presumptively banning an essential agricultural activity (land application of manure) industrywide for nearly a quarter of the year.

288. The presumptive ban on spreading manure during winter months is also far afield from EGLE's regulatory authority.

289. EGLE has presumptively forbidden the act of fertilizing the soil through the land application of manure under authority that is limited to controlling discharges of pollution into waters of the State. See MCL 324.3109(1)(a) & MCL 324.3112(1).

290. And EGLE has done so in a plainly arbitrary manner by establishing an entirely different standard during certain times of the year—regardless of the field-specific conditions—for farms to take actions that are otherwise allowed under similar conditions using an existing standard during the rest of the year.

291. The 2020 CAFO General Permit admits that manure may be land applied to frozen ground and allows CAFOs to do so during other times of the year when there may be frozen or snow-covered ground so long as certain practices are followed to prevent discharge of manure into surface waters, like assessing the field using the Manure Application Risk Index¹⁷ to ensure it has a low risk of runoff. (General Permit, Part I.B.3.g.)

292. But EGLE's General Permit presumptively prohibits the same actions in January, February, or early March.

293. Similarly, ground temperatures during the blocked-out months can (and often *do*) exceed freezing.

294. For instance, based on data from the Michigan State University's East Lansing weather station, soil temperatures at two inches' depth between January and March 2020 dropped below freezing temperatures *only* between February 20 through February 22 (i.e., for just three days).

295. In 2019, two-inch depth soil temperatures dropped below freezing on January 10 through February 3, February 9 through February 23, and February 25 through March 9 during the same months. And in 2018, two-inch soil depth temperatures *only* dropped below freezing between January 1 and January 7 during those months.¹⁸

¹⁷ U.S. Department of Agriculture Natural Resources Conservation Service. 2013. Manure Application Risk Index (MARI) Spreadsheet 4.0 and the Procedure - Determining Land Available for Winter Spreading of Manure. Agronomy Technical Note #35. Retrieved from: https://efotg.sc.egov.usda.gov/references/public/MI/No_35_MARI_Spreadsheet_4_and_Winter_Spreading_Manure_2013.pdf.

¹⁸ Michigan State University. 2020. Enviroweather: East Lansing Soil Conditions. Retrieved from: https://enviroweather.msu.edu/run.php?stn=msu&mod=w_sc&da1=1&mo1=1&da2=31&mo2=3&yr=2018&mc=397&ds=cd.

296. This means that, during the last three years, the majority of the days in the months of January through March would have been appropriate to land apply manure in the mid-Michigan area using the typical management practices already required for permitted farms to prevent discharges such as using soil tests and manure tests to set proper land application rates, not applying on saturated ground, during precipitation events, or when rain is predicted in the next 24 hours, and incorporating the manure into the soil within 24 hours of application. (General Permit, Part I, Section B).

297. Nonetheless, EGLE has presumptively banned land application during these months on days where the soil presents precisely the same condition as it is at other times of the year. And EGLE has done so for no reason other than the day's location on the calendar and despite the fact that the risk of discharge is no greater on such a day than the risk of discharge in a comparable day in the fall or spring months.

298. Reducing the risk of a discharge is already addressed in EGLE's previous general permits by establishing management practices for applying manure on thawed soils, and a separate standard for frozen soils. But EGLE's arbitrary, date-based restrictions has prevented farms from making rational waste-management decisions that account for changing weather conditions without sound reason.

299. EGLE has thus acted wholly arbitrarily and without regard to any governing principle in setting a virtual land-application ban for a quarter of the year.

300. Indeed, even some environmental groups that have otherwise sought to restrict the land-application of manure by farms have expressed their opinion that EGLE's calendar-based ban is "arbitrary."

301. And it is likely to result in the unintended consequence of more application as soon as the calendar allows application instead of being responsive to the local conditions.¹⁹

302. Further, EGLE has admitted that this rule banning land application for three months a year is not required by any aspect of federal law.

303. Rather, EGLE has both exceeded and, in fact, contradicted the federal regulatory standards that require land-application rates to be governed by field-specific assessments rather than the progress of the earth's rotation around the sun.

EGLE's Ban on Manifesting Manure During the Winter Months

304. In addition to its presumptive ban on land-applying manure in January, February, and March, EGLE has outright banned CAFOs from transferring manure to persons other than a CAFO for land application during those same months. (General Permit, Part I.B.3.f.4.)

305. In other words, while CAFOs have a limited ability to land-apply manure *themselves* to the fields they either control or have access to, they cannot transfer waste to another person for land application—such as crop-servicing companies or crop farmers who wish to receive manure from CAFOs as fertilizer—during those time periods no matter the field condition when the waste is applied.

306. EGLE has thus wholly banned the transfer of manure within the state by such farms for three months of each year by the allegedly “administrative” act of assembling a general permit and purportedly under authority that is directed at preventing water pollution.

¹⁹ EGLE. 2020. National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) General Permit MIG010000, April 2020-2025: Response to Public Comment Document from the Public Meetings Held on December 3, 5, and 9, 2019, and the Public Comment Period from October 30, 2019 to December 18, 2019: Prohibitions (Winter Spreading). Retrieved from: <https://miwaters.deq.state.mi.us/nsite/map/results/detail/8418558114575098770/documents>.

307. The detrimental effects of this ban on CAFO's operations cannot be overstated.

308. Livestock does not stop producing manure for three months each year merely because the farms are unable to land apply it for crop production. And while CAFOs are required to have six months of storage available for livestock manure, there are frequently occasions in which it makes more sense to apply manure or transfer it to another farmer for land application during winter months: spring rains may make spring application more difficult, manure handling equipment may break down, unusually high precipitation may reduce available space in manure storage structures, or farmers may encounter difficulties with the timing of application in the spring when they are busy with many other farm tasks.

309. Instead, EGLE's decision effectively requires farms either to build greater storage capacity for manure at significant expense on already limited farm facilities or to attempt to obtain land—if available within an economic distance (typically, less than 2 miles from the farm)²⁰—to which they can themselves apply manure under the narrow circumstances that EGLE will allow farms to do so during those months.

310. Either imposes catastrophic costs on Michigan's already stretched farmers during a time when Americans depend upon the viability of our farms even more than ever.

311. And the potentially industry-altering consequences of this ban on transferring waste demonstrates that EGLE's unilateral imposition of this condition by the stroke of a pen or strike of a computer keyboard is not the place for such drastic policy decisions. Those decisions belong at the Legislature or—at a minimum—within the quasi-legislative setting of an APA rulemaking process.

²⁰ Harrigan, T. 2011. Economics of Liquid Manure Transport and Land Application. *Michigan Dairy Review*, 16(4), retrieved from: <https://www.canr.msu.edu/uploads/234/76582/liquidmanure.pdf>.

EGLE's Expansion of Regulatory Jurisdiction to Non-CAFOs ("Co-Permitting")

312. Further restricting farms' economical options for disposing of manure, EGLE has also attempted to significantly expand its jurisdictional authority under Part 31 to non-CAFOs.

313. EGLE has done so by going beyond existing requirements for farms to maintain records of manure transferred to other farms in order to account for the distribution of the total amount of manure produced on the farm, to treating the land application of manure on farms owned by wholly separate legal entities to whom manure has been manifested as the land application of manure by the CAFO itself.

314. EGLE has thereby asserted that activities that are conducted on land that is neither farm-owned nor farm-controlled must nonetheless be brought within a CAFO permit's CNMP.

315. In these instances, EGLE has asserted that the land-application activities are within the "operational control" of the CAFO. (General Permit, Part I.C.8.)

316. But EGLE has not defined the parameters of what constitutes "operational control"—often asserting that a farm has operational control by reason of some vague connection between the CAFO and the entity receiving the manure.

317. EGLE's assertion of authority over such farms and activities are beyond the authority conferred on EGLE by Part 31 of NREPA.

318. Moreover, EGLE's application of the "operational control" standard is so vague and undefined as to be contrary to the due-process clauses of the Michigan and U.S. constitutions.

319. And, as a matter of impact, EGLE's attempt to include non-CAFO farms or crop-servicing companies within a farms' permit—just to do business with a CAFO—greatly discourages such non-CAFOs from accessing the valuable nutrients in manure and from helping

CAFOs land apply their waste in an agronomically beneficial manner at a reasonable hauling distance and cost.

EGLE's Arbitrary Reduction of Phosphorus Levels

320. EGLE's 2020 CAFO General Permit further limits the available land to which CAFOs may land apply manure by reducing the threshold for phosphorus concentration in the soil to which manure is applied. (General Permit, Part I.B.3.c.1.a.)

321. The agency's prior general permits have uniformly held that, if using a Bray P1 soil test, land may receive manure if the test results indicate less than 150 parts per million (ppm) of phosphorus within the soil. (2015 General Permit, Part I.B.3.c.1.a.)

322. This standard was originally set based on scientific data conducted extensively throughout Michigan comparing Michigan's soil types and finding that soil test results in excess of 150 ppm present a risk that phosphorus in the soil could be transported off site into surface waters.²¹

323. No research has recommended a different soil phosphorus concentration limit for Michigan soils, and the 150-ppm limit has been adopted for Michigan State University crop nutrient guidance²² and Michigan's Generally Accepted Agricultural and Management Practices.²³

²¹ Warncke, D., Dahl, J. and Jacobs, L. 2009. Nutrient Recommendations for Field Crops in Michigan. *Michigan State University Extension Bulletin E2904*, retrieved from: <http://www.soils.msu.edu/wp-content/uploads/2014/06/MSU-Nutrient-recomdns-field-crops-E-2904.pdf>, and personal communication with Dr. Lee Jacobs, May 27, 2020.

²² Warncke, D., Dahl, J. and Jacobs, L. 2009. Nutrient Recommendations for Field Crops in Michigan. *Michigan State University Extension Bulletin E2904*, retrieved from: <http://www.soils.msu.edu/wp-content/uploads/2014/06/MSU-Nutrient-recomdns-field-crops-E-2904.pdf>, and personal communication with Dr. Lee Jacobs, May 27, 2020.

²³ Michigan Department of Agriculture and Rural Development. 2020. Generally Accepted Agricultural and Management Practices for Manure Management and Utilization. Retrieved from: https://www.michigan.gov/documents/mdard/Manure_Management_and_Utilization_2020_GA_AMPs_682465_7.pdf.

324. But in EGLE’s 2020 CAFO General Permit, the agency has nonetheless lowered the amount of phosphorus that is allowed in soil to which manure is land applied from 150 ppm to 135 ppm (and from 135 ppm to 120 ppm for fields within a TMDL watershed). (General Permit, Part I.B.3.c.1.a.)

325. This reduction is not supported by science. Rather, it was a wholly arbitrary reduction of the allowable amount of phosphorus by 10% without regards to either the nutrient needs of the crops receiving manure or an evaluation of the likely effect of such reduction on the contaminant fate and transport of phosphorus.

326. EGLE’s insertion of this arbitrary standard once again usurps the law-making authority of the Legislature as well as the APA rulemaking process, both of which would have subjected the reduction to more significant public scrutiny, an explicit cost-benefit analyses, and additional oversight of the agency’s decision.

EGLE’s Mandate to Install Permanent 35-Foot Vegetated Buffer Strips

327. Next, in what is perhaps the broadest reach of the agency’s asserted authority, EGLE has mandated that farms who use the currently standard soil test method (the “Bray P1” test) to establish application limits based on soil phosphorus concentration must both install permanent, 35-foot vegetated buffer strips and apply manure no closer than 100 feet between farmland receiving manure and every surface water, tile-line intake, or roadside ditch that is adjacent to such land. (General Permit, Part I.B.3.h.1.b.)

328. This means that EGLE is requiring the “permanent” installation of non-crop yielding vegetation throughout a vast and unquantifiable amount of farmland—often on more than one side of a parcel of farmland or directly through the middle of the parcel.

329. For example, if a field is adjacent to a road on two sides, a farm must install perennial shrubbery and other vegetation the width of many homes—not just on one border but on both.

330. Moreover, in some instances, a county drain or drainage tile outlet bisects a farm field. In that case, a farm must install a “permanent strip of dense perennial vegetation” 35-feet wide *on each side* of the drain or tile outlet (a total of a 70-foot wide strip straight through a farm for the length of the drain or outlet).

331. The result of the State’s demand is to convert significant amounts of crop-yielding acreage into economically unusable wilderness.

332. Many CAFOs provide non-livestock farmers manure for agronomically beneficial purposes (i.e., to serve as crop fertilizer). Many CAFO owners further rent land to grow crops for their livestock, and land apply the manure on that rented land to supply it with nutrients.

333. Those crop farmers who receive manure do so as a means of obtaining lower costs for crop nutrients, and the practice can additionally save the CAFO owner from having to spend additional time and money hauling manure further to other fields they own or rent to utilize those manure nutrients.

334. But, if the State conditions their receipt of such fertilizer on the destruction of the beneficial use of a large fraction of their land, it will not make economic sense for crop farmers to receive manure or for landowners to rent land to CAFO owners, and many will refuse to accept such conditions and simply decline renting the land or receiving the manure as fertilizer.

335. Practically, this means that CAFOs will have fewer places to use their manure nutrients in an environmentally, agriculturally, and economically beneficial manner, making it costlier for livestock farms to operate.

336. The requirement is also unnecessary and duplicative: under the General Permit, farms are also barred from applying manure within 100 feet of such borders. The reasoning is that each practice—establishing a vegetated buffer or keeping manure application away from surface waters—reduces the likelihood that manure will discharge to those waterways. Adding a mandate to require *both* setbacks and the conversion of productive farmland into unusable wilderness is a belt-and-suspenders approach with little (if any) additional value.

337. The requirement is also not only much more restrictive than federal standards but also contrary to them.

338. Federal regulations offer farmers a choice, denominated as “a compliance alternative.” Farms may either comply with 100-foot setbacks and simply not apply manure within 100 feet of their borders to surface waters, tile intakes, and other structures that might transport it (as described above) or they can install permanent vegetated buffer strips. 40 CFR 412.4(c)(5)(i).

339. EGLE’s illegal mandate has effectively removed and negated that federal “compliance alternative”—instead demanding that farms do both.

340. EGLE’s mandate to convert productive farmland into unproductive wilderness is not a merely administrative act. It is a legislative (or at least quasi-legislative) act that requires either the passage of a law by the Legislature or, at the very minimum, promulgating a rule through the APA’s rulemaking process.

341. As such, it is an illegal usurpation of legislative authority and a violation of the APA as an unpromulgated rule.

EGLE Has Superseded the Legislatively Adopted MAEAP Program

342. Additionally, EGLE’s increased standards for farms within TMDL watersheds—without an exception for MAEAP-verified farms—has superseded the legislatively adopted

MAEAP program by denying environmentally conscious and compliant farms the promised benefit of the MAEAP program.

343. Under MCL 324.3109d and MCL 324.8710, the Legislature established the MAEAP-verification program as a means of encouraging good environmental stewardship by members of the agricultural community.

344. To obtain MAEAP verification, farms voluntarily undertake additional steps to demonstrate their commitment to environmental protection and stewardship, such as completing educational requirements, developing and implementing conservation plans, and having the Michigan Department of Agriculture and Rural Development (MDARD) conduct an on-site evaluation of the farm. MCL 324.8710(2).

345. As part of the MAEAP-verification bargain, “[i]f a MAEAP-verified farm is in compliance with all MAEAP standards applicable to the farming operation, the farm is considered to be implementing conservation and management practices needed to meet total maximum daily load [TMDL] implementation for impaired waters pursuant to 33 USC 1313.” MCL 324.3109d(1)(c).

346. In other words, the farm should not be subjected to additional measures to address TMDL concerns.

347. Nonetheless, EGLE’s 2020 CAFO General Permit does exactly that and imposes additional measures on even MAEAP-verified farms within TMDLs. (General Permit, Part I.B.3.c.1.a, I.B.3.c.2.a, I.B.3.c.2.b, & I.C.9.)

348. Thus, EGLE has, through its general permit process, attempted to override the policy prerogatives of the Legislature by contradicting the purpose of MAEAP verification and the benefits promised to MAEAP-verified farms.

EGLE's Delegation of Authority to Itself to Write Further Conditions for Farms in TMDL Watersheds Contradicts the Purpose of the General Permit

349. EGLE's unpromulgated new standards in the General Permit also includes writing itself a blank check to require *additional*, unspecified conditions for farms in TMDL watersheds at some point in the future—thus undermining the premise and administrative purpose of the general permit and transforming the general permit for such farms into individual permits.

350. Under Paragraph I.C.9.b. of the General Permit, EGLE has required farms within E coli, biota, or dissolved oxygen TMDL watersheds to evaluate the need for “additional pollutant control measures” that must be “implemented to meet the permittee’s pollutant loading” or “concentration” capacities in the approved TMDL. (General Permit, Para. I.C.9.b.3.)

351. EGLE then refers farmers with identified needs for additional pollutant control measures to a “guidance” document for a list of onerous required practices that may meet EGLE’s requirements or which may require “other best management practices approved by the Department.”²⁴

352. Effectively, EGLE has written itself a blank check to require these farms to make further operational changes without any real parameters for when they must be employed, what those may entail and without any standards for how EGLE will determine when a farm has satisfied its requirements.

353. These additional conditions undermine the purpose of the General Permit, which is intended to “cover a category of discharge” based on a determination that “certain discharges are appropriately and adequately controlled” by a general permit. Mich Admin Code, R 323.2191(1).

²⁴ EGLE. 2020. Total Maximum Daily Load (TMDL) Guidance for Concentrated Animal Feeding Operations (CAFO). Retrieved from: https://www.michigan.gov/documents/egle/wrd-cafo-tmdlguidance_670009_7.pdf

354. Instead, EGLE's proposal to require each individual farm to propose and adopt further unspecified control measures transforms each such farms' certificate of coverage under the General Permit into an individual permit without the due-process protections afforded to the process of setting conditions of an individual permit.

355. EGLE's self-delegation of this authority to require any further conditions of farms that it may later deem necessary exceeds its legal authority under Part 31 of NREPA.

The Challenged General Permit Conditions Are APA Rules

356. Each of the newly added conditions of the CAFO General Permit detailed above constitute "rules" under MCL 24.207.

357. By adopting conditions in the General Permit that are not already mandated by law, EGLE has set an agency policy and established an agency standard that CAFOs must meet as a condition of obtaining coverage under the General Permit.

358. EGLE's decisions do not represent an agency exercise of quasi-adjudicative power—such as determining facts or the application of law to facts (as is often the case in setting the conditions of an individual permit).

359. Nor is the addition of legal requirements developed by EGLE a purely administrative function of determining what acts must be performed to meet existing legal standards.

360. Rather, EGLE's adoption of wholly new legal mandates through its general permit process represents the exercise of legislative power properly belonging to the Legislature or, at a minimum, the kind of quasi-legislative power that is governed by the APA's rulemaking procedures.

361. Nearly all farms that are regulated as CAFOs are covered under and are governed by the terms of the General Permit.

362. Thus, EGLE's policy determinations in establishing these new conditions of the General Permit are ones of "general applicability" in that EGLE has set requirements for a class of cases.

363. EGLE mandates that large livestock farms become permitted as CAFOs or else they face severe penalties in the event of a discharge.

364. Those penalties can reach up to "\$25,000 per day of violation." MCL 324.3115(1)(a).

365. And the way in which EGLE reads and administers this statute, the agency often seeks to impose multiple violations per day.

366. Consequently, an unpermitted CAFO risks severe financial consequences and effectively cannot operate without an NPDES permit.

367. Further, EGLE exercises unbridled control over which farms are issued a General Permit. Mich Admin Code, R 323.2191(5); and Mich Admin Code, R 323.2192(d).

368. A CAFO that wishes to opt out of the General Permit and obtain a permit under an individual permit may not do so without EGLE's permission. *Id.*

369. And, as a practical matter, EGLE does not permit CAFOs under individual permits unless the CAFOs operations require *more* burdensome restrictions on operations. There is not a less-burdensome alternative to obtaining coverage under the General Permit.

370. Moreover, EGLE has likewise applied the policies reflected in the General Permit to even those CAFOs who have applied for and obtained individual permits, such as "Super

CAFOs,” *i.e.*, those with more than 5,000 animal units on the farm, and to several farms that have applied for and received individual permits during the pendency of this litigation.

371. Though the conditions of the General Permit qualify as “rules” under MCL 24.207 regardless of this fact, EGLE’s actions on individual permits nonetheless further demonstrate that these conditions reflect generally applicable standards, and policies.

372. Those individual permit determinations indicate that the General Permit conditions establish a floor and set minimum requirements for CAFOs.

373. While EGLE has been willing to impose *more restrictive* conditions within individual permits, those conditions noted above are incorporated into such permits as baseline requirements.

374. The Court of Appeals has agreed that these conditions are “rules” under MCL 24.207. In particular, it determined that “close analysis of the new conditions indicates that they go beyond the scope of the promulgated rule, Mich Admin Code R 323.2196.” *Id.* at 13. Specifically, “the new conditions expand the regulatory restrictions generally applicable to CAFOs . . . [and] set rigid standards with which CAFOs and CAFO waste recipients must comply.” *Id.* Accordingly, the Court concluded that these “new conditions are not merely guidelines but have the force and effect of ‘rules’ not formally promulgated,” and “[t]he record indicates that EGLE chose not to follow the applicable APA procedures to adopt a new rule or amend the existing rule pertaining to CAFO permits.” *Id.* Rather, it “essentially created an agency regulation, standards, and instructions of general applicability that implements or applies law enforced or administered by the agency.” *Id.*

375. In denying Plaintiffs’ motion for reconsideration, the Court of Appeals further explained:

[t]he case at bar presents as a procedural challenge to the validity of a new set of ‘conditions’ that were attached to a preexisting general permit. Those conditions were not promulgated as rules, but should have been. The agency sidestepped its statutory obligation to promulgate them as required under the APA.”

Michigan Farm Bureau, unpublished order on motion for reconsideration, entered November 17, 2022 (Docket No. 356088).

376. All of these changes, individually and collectively, will impose cost burdens on the industry that are difficult, if not impossible, to compute, that impair the viability of some CAFOs, and that will cause some CAFOs a loss of going concern.

377. Accordingly, Plaintiffs request that this Court enter a judgment declaring the conditions of the general permit to be procedurally and substantively invalid rules, to have been adopted contrary to the constitutional requirements of due process, separation-of-powers, and the Takings Clauses of the Michigan and United States’ constitutions, and enjoining their enforcement.

COUNT I – PROCEDURAL VIOLATIONS OF THE MICHIGAN ADMINISTRATIVE PROCEDURES ACT

378. Plaintiffs incorporate by reference all preceding allegations set forth above as if fully stated herein.

379. MCL 24.264 provides that “*the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff.*” (Emphasis added).

380. MCL 24.243(1) further states that “a rule is not valid unless it is processed in compliance with section 66, if applicable, section 42, and in substantial compliance with section 41(2), (3), (4), and (5).”

381. And MCL 24.243(2) recognizes that an affected party may challenge the procedural validity of a rule within 2 years of when the rule becomes effective.

382. MCR 2.605(A)(1) additionally allows that, “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

383. On March 27, 2020, EGLE issued its 2020 CAFO General Permit setting forth the conditions with which CAFOs must comply to obtain a Certificate of Coverage under the General Permit.

384. EGLE has, by the terms of its General Permit, established regulations, standards, and policies of general applicability that implement or apply Part 31 by setting the minimum conditions that EGLE has required or will require for CAFOs to obtain an NPDES permit.

385. Those regulations, standards, and policies have general applicability as they will govern *all* of the CAFOs who are regulated by EGLE under the General Permit—which currently represents the vast majority of CAFOs (and represents at least a substantial subset of CAFOs in any conceivable circumstance).

386. Those regulations, standards, and policies of general applicability are not mandated by statutory or other law and are thus reflective of the agency’s exercise of quasi-legislative power that is procedurally limited by the APA.

387. Without an NPDES permit, a large livestock farm that has been defined or designated as a CAFO may not operate without facing significant financial penalties under Part 31 and the Clean Water Act for discharging without a permit.

388. Per MCL 24.207, a “regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency” is a “rule.”

389. An agency must promulgate its “rules” through the prescribed rulemaking process, and the agency may not circumvent the Legislature’s prescribed process for doing so.

390. Where an agency has failed to follow the procedures mandated by the APA in establishing a “rule,” the rule is invalid and may not be enforced against regulated entities.

391. EGLE has wholly failed to follow the APA’s mandated process for rulemaking in this instance as it did not request to engage in rulemaking prior to incorporating these policies into the General Permit nor otherwise follow rulemaking procedures.

392. Because EGLE did not even purport to follow rulemaking procedures, the agency has avoided such APA procedural strictures as: (1) making findings “that there is a clear and convincing need to exceed the applicable federal standard” for each exceedance of the federal standard, MCL 24.232(8); (2) evaluating how to minimize the impact of its policies on small business, MCL 24.240; (3) engaging in a regulatory impact statement and cost-benefit analysis that estimates the industry, governmental, and fiscal impact of its policies, MCL 24.245(3); (4) submitting its policies to the Joint Committee on Administrative Rules at the Legislature for legislative input and review, MCL 24.245a; and (5) providing its proposed rules to an Environmental Rules Committee composed of scientific, governmental, and industry experts for their input, MCL 24.266.

393. The failure to follow these procedures in adopting generally applicable regulations, standards, and policies violates the APA.

394. These significant procedural violations of the APA, individually and on the aggregate, render EGLE's adoption of such rules and incorporation of its newly established rules into the General Permit invalid and unenforceable. MCL 24.243(1) and MCL 24.264.

**COUNT II – SUBSTANTIVE VIOLATIONS OF THE
MICHIGAN ADMINISTRATIVE PROCEDURES ACT**

395. Plaintiffs incorporate by reference all preceding allegations set forth above as if fully stated herein.

396. MCL 24.264 provides that “*the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff.*” (Emphasis added).

397. MCR 2.605(A)(1) additionally allows that “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

398. Under Michigan law, a rule is substantively invalid if it is: (a) outside of the scope of the enabling statute; (b) contrary to the underlying legislative intent; or (c) arbitrary and capricious. *Luttrell v Dep’t of Corrections*, 421 Mich 93, 100; 365 NW2d 74 (1984).

399. For the reasons alleged above, the new requirements EGLE has added to the General Permit are arbitrary and capricious.

400. Additionally, those requirements are beyond EGLE's delegated authority to regulate discharges of waste to waters of the state under Part 31 and the Clean Water Act.

401. Moreover, the requirements are contrary to the intent and purpose of Part 31 and the Clean Water Act.

402. Accordingly, such requirements should be declared to be substantively invalid rules and this Court should enjoin their enforcement.

**COUNT III – DEPRIVATION OF DUE PROCESS UNDER THE
U.S. CONSTITUTION AND MICHIGAN CONSTITUTION**

403. Plaintiffs incorporate by reference all preceding allegations set forth above as if fully stated herein.

404. EGLE's adoption of standards, regulations, and policies of general applicability as described above qualify as "rules" per MCL 24.207.

405. Though EGLE is required to process administrative rules through the rule-promulgation process, it has not done so.

406. EGLE's circumvention of the rule-making process has deprived stakeholders, including but not limited to those industry organizations and permit applicants serving as plaintiffs in this matter, of the procedures the Legislature has prescribed under the APA. MCL 24.101 *et seq.*

407. That deprivation of statutorily mandated process is a violation of procedural due-process contrary to the guarantees of the United States Constitution, US Const, Amend XIV, and the separate guarantees of Michigan's Constitution of 1963. Mich Const 1963, Article 1, Section 17.

408. The Due Process Clause of the United States Constitution and the separate due-process guarantee of the Michigan Constitution each additionally prohibit the executive branch of

government from acting arbitrarily in a manner that deprives its citizens of liberty or property interests.

409. The policies adopted by EGLE are constitutionally arbitrary as detailed in the preceding allegations.

410. The policies adopted by EGLE have affected the property interests of the permit applicants as detailed in the preceding allegations.

411. Accordingly, those policies are contrary to the substantive due process guarantees of the United States Constitution and the Michigan Constitution.

COUNT IV – VIOLATION OF THE SEPARATION OF POWERS AND NON-DELEGATION DOCTRINE UNDER THE MICHIGAN CONSTITUTION

412. Plaintiffs incorporate by reference all preceding allegations set forth above as if fully stated herein.

413. Michigan's constitution explicitly imposes a separation of powers among the branches of government by declaring that "[t]he powers of government are divided into three branches: legislative, executive, and judicial" and forbidding any "person exercising powers of one branch" from "exerc[ising] powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art III, § 2.

414. Bolstering this neat division of authority, the Constitution elsewhere declares that "[e]xcept to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and house of representatives." Const 1963, art IV, § 1.

415. Accordingly, aside from those few and limited provisions where legislative power is expressly delegated by constitution, the executive branch of Michigan's government may not wield legislative (law-making) authority.

416. To guard against the exercise of legislative authority by the executive branch of Michigan's government, Courts have recognized that any delegation of power to the executive branch from the Legislature must contain "reasonably precise" standards for the exercise of such authority. *State Conservation Dep't v Seaman*, 396 Mich 299, 309; 240 NW2d 206 (1976).

417. By promulgating purportedly binding mandates against CAFOs through its 2020 CAFO General Permit that are not otherwise required by any law, EGLE has usurped legislative authority and violated the separation-of-power doctrine.

418. To the extent that EGLE purports to do so based on authority delegated by the Legislature under Part 31 of NREPA, any such delegation violates the non-delegation doctrine as nothing in Part 31 sets sufficiently precise standards to govern EGLE's issuance of binding mandates through its CAFO General Permit process.

COUNT V – INVALIDITY OF CO-PERMITTING REQUIREMENTS AND VOID FOR VAGUENESS VIOLATION

419. Plaintiffs incorporate by reference all preceding allegations set forth above as if fully stated herein.

420. Within the CAFO General Permit, EGLE allows for CAFOs to transfer waste to a person other than the CAFO owner for land application if "the land application of the CAFO waste is no longer under the operational control of the CAFO owner or operator that generates the CAFO waste" (CAFO General Permit, Part I.C.8.)

421. Conversely, in enforcing the CAFO General Permit, EGLE has adopted an unwritten policy that requires CAFOs to include within their CNMP and as part of their permit all land-application activities under their "operational control," including land-application that occurs by legally separate third parties who themselves do not meet the regulatory definition of "CAFOs" or on land owned by non-CAFOs.

422. Nowhere in the permit has EGLE specified what constitutes “operational control” over the land-application of manure nor identified what factors EGLE considers in determining when a wholly separate legal entity that does not qualify as “CAFOs” must be subjected to a CAFO permit.

423. Nowhere in the law governing Part 31 or NREPA is there an “operational control” standard that EGLE relies on by incorporation.

424. Due to a lack of legal authority supporting its policy and a failure to specify the standards for its own conduct, EGLE has engaged in arbitrary enforcement attempts against CAFOs—seizing on its self-created ambiguity to require CAFOs to include within their CNMPs and permits the activities of non-CAFOs based on tenuous claims of connection to the permitted CAFOs.

425. This includes both companies that are wholly separate legal entities from the CAFOs and non-CAFO farms that receive CAFO waste.

426. EGLE’s policy thus has attempted to vastly expand its regulatory authority by requiring the activities of non-CAFOs to be pulled under the permit of an unrelated CAFO without any clearly defined justification for such a significant expansion of its authority and without any clearly defined standard for its exercise.

427. EGLE’s policy is without legal support, and it is both outside of and contrary to their statutory jurisdiction under Part 31 of NREPA.

428. The Due Process Clauses of the United States Constitution, Amendment XI and of the Michigan Constitution, Art I, Section 17, prohibit the government from relying on laws or policies that do not provide fair notice of the conduct that they regulate or allow for arbitrary and discriminatory enforcement.

429. To the extent that EGLE relies on language in its CAFO General Permit referencing a CAFO's "operational control" as the basis for asserting jurisdiction over non-CAFOs, see General Permit I.C.8, that provision is unconstitutionally vague and is therefore void.

**COUNT VI – VIOLATION OF TAKINGS CLAUSE OF THE MICHIGAN
CONSTITUTION AND UNITED STATES CONSTITUTION**

430. Plaintiffs incorporate by reference all preceding allegations set forth above as if fully stated herein.

431. Both the United States Constitution, Amendment V and the Michigan Constitution, Article X, Section 2 prohibit the taking of private property for public use without just compensation.

432. EGLE's 2020 CAFO General Permit requires certain CAFOs to "install and maintain a 35-foot-wide *permanent vegetated buffer* along any surface water of the state, open tile line intake structures, sinkholes, [and] agricultural well heads, including but not limited to any roadside or any ditches that are conduits to surface waters of the state" (General Permit, Para. I.B.h.1.b) (emphasis added).

433. EGLE's General Permit thus mandates the conversion of an incalculable amount of crop-farm acreage into non-farmable "permanent vegetated buffer[s]" along each side of a parcel of property that is adjacent to a surface water, an open tile intake, a sinkhole, an agricultural well head, or a roadside ditch.

434. EGLE's mandate is unnecessary and arbitrary because it additionally requires CAFOs to implement mandatory setbacks, which prohibits farms from applying manure within 100 feet of such features, (General Permit, Para. I.B.h.1.a.), a duplicative requirement of two practices that serve the same purpose.

435. EGLE's additional mandate to convert farmland into non-farmable and otherwise economically unusable strips of vegetation is also unconstitutional as a taking of private property without just compensation. US Const, Am V; Mich Const 1963, Art X, Sec. 2.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand a judgment:

(a) Declaring that the conditions of the 2020 CAFO General Permit added by Defendant EGLE are "rules" requiring promulgation under Michigan's APA;

(b) Declaring that those conditions of the General Permit are invalid because of EGLE's failure to follow the procedures required under the APA to promulgate those conditions as administrative rules;

(c) Declaring that the same conditions are substantively invalid rules because they are arbitrary and capricious, beyond EGLE's regulatory authority, and/or contrary to the intent of Part 31 of NREPA;

(d) Declaring that EGLE's incorporation of these conditions into the permit violates Plaintiffs' procedural and substantive due process rights under the U.S. Constitution and the Michigan Constitution;

(e) Declaring EGLE's adoption of such rules as violative of the Separation of Powers Clause of Michigan's Constitution, Art. III, § 2 and/or declaring any statutory authority relied on by EGLE for such adoption to be in violation of the non-delegation doctrine;

(f) Declaring EGLE's assertion of control over non-CAFOs to be *ultra vires* as beyond its statutory authority under Part 31 of NREPA and declaring its standard for determining such authority to be unconstitutionally void for vagueness;

(g) Declaring EGLE's mandate to install 35-foot permanent vegetated buffer strips to be an unconstitutional taking in violation of Article X, Section 2 of the Michigan Constitution, and Amendment V of the U.S. Constitution;

(h) Granting a preliminary injunction to stay the enforcement of the challenged conditions of the General Permit for the duration of this suit;

(i) Permanently enjoining EGLE's enforcement of the General Permit or any individual permit containing such conditions;

(j) Granting Plaintiffs their attorney fees; and

(k) Granting any other relief as this Court may deem just and proper.

Respectfully submitted,

CLARK HILL PLC

/s/ Zachary C. Larsen

Michael J. Pattwell (P72419)

Zachary C. Larsen (P72189)

215 South Washington Square, Ste. 200

Lansing, MI 48933

(517) 318-3100

MPattwell@ClarkHill.com

ZLarsen@ClarkHill.com

Dated: April 11, 2023

VERIFICATION

Per the requirements of MCL 600.6434(2), I, Laura Campbell, being first duly sworn, depose and say the following:

1. I hold the position of Manager of the Agricultural Ecology Department with the Michigan Farm Bureau, and I am duly authorized to sign this Verification for and on behalf of all of the Plaintiffs in this matter.

2. Pursuant to MCR 1.109(D)(3)(b), I declare under the penalties of perjury that this Verified Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Michigan Farm Bureau



Laura A. Campbell
Manager
Agricultural Ecology Department
Michigan Farm Bureau

Subscribed and sworn to before me
this 11th day of April 2023.



Paula K. Mertins, Notary Public
Eaton County, Michigan
My Commission expires: 11/17/2029
Acting in the County of Ingham

PAULA K. MERTINS
NOTARY PUBLIC, STATE OF MI
COUNTY OF EATON
MY COMMISSION EXPIRES Nov 17, 2029
ACTING IN COUNTY OF

EXHIBIT LIST

- A. *Michigan Farm Bureau, et al. v Department of Environment, Great Lakes, and Energy*, per curiam opinion of the Court of Appeals, issued September 15, 2022 (Docket No. 356088) (publication forthcoming)
- B. 2020 General Permit for Concentrated Animal Feeding Operations
- C. Plaintiffs' Request for a Declaratory Ruling from EGLE
- D. EGLE's Denial of Plaintiffs' Request for a Declaratory Ruling
- E. Rulemaking Process Summary

EXHIBIT A

If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN FARM BUREAU, MICHIGAN MILK PRODUCERS ASSOCIATION, MICHIGAN PORK PRODUCERS ASSOCIATION, MICHIGAN ALLIED POULTRY INDUSTRIES, DAIRY FARMERS OF AMERICA, SELECT MILK PRODUCERS, INC., MICHIGAN CATTLEMEN'S ASSOCIATION, SNIDER FARMS, LLC, doing business as AIRPORT VIEW TURKEYS, ALPINE PORK, LLC, ATE FARMS, LLC, BEBOW DAIRY FARM, INC., doing business as BEBOW DAIRY FARM, BENNETT FARMS LIVESTOCK, LLC, doing business as BENNETT FARMS LIVESTOCK, BLEICH DAIRY, BROOK VIEW DAIRY, LLC, doing business as BROOK VIEW DAIRY, BURNS POULTRY FARMS, INC., CAR-MIN-VU FARMS, LLC, doing business as CAR-MIN-VU DAIRY, CARY DAIRY FARM, INC., CARY'S PIONEER FARM, INC., CENTERWOOD FARMS, LLC, CENTRAL MICHIGAN MILK PRODUCERS, LLC, doing business as CENTRAL MILK PRODUCTION, CLOVER FARMS, doing business as CLOVER FAMILY FARMS, CONTRACT FINISHERS, INC., COURTER FARMS EAST FEEDLOT, LLC, doing business as COURTER FARMS EAST, COURTER FARMS WEST FEEDLOT, LLC, doing business as COURTER FARMS WEST, CROSSROADS DAIRY, LLC, D & K FARMS, DEN DULK DAIRY FARM, LLC, DEYOUNG PORK, INC., doing business as DEYOUNG PORK, INC., PLAINWELL, DOUBLE QUAD FARMS, LLC, doing business as DOUBLE QUAD FARMS, DUTCH MEADOWS DAIRY, LLC, doing business as DUTCH MEADOWS DAIRY, DYKHUIS FARMS, INC., doing business as BASELINE FARM, EHINGER FARM, RIVERBEND FARM, SHAMROCK FARM, and VILLAGE CENTRAL SANDY RIDGE, EDGE

FOR PUBLICATION
September 15, 2022
9:10 a.m.

WOOD DAIRY, LLC, doing business as EDGE WOOD DAIRY, FAIRGROVE FARMS, INC., doing business as FAIRGROVE FARMS, GERNAAT FAMILY FARMS, GW DAIRY, LLC, HALBERT DAIRY, LLC, doing business as HALBERT DAIRY, DJN CATTLE FARMS, INC., doing business as HALLIWILL FARMS, HICKORY GABLES, INC., doing business as HICKORY GABLES, HIGH LEAN PORK, INC., doing business as HIGH LEAN PORK 3, HIGHLAND DAIRY, LLC, doing business as HIGHLAND DAIRY, GEERLINGS HILLSIDE FARMS, LLC, doing business as HILLSIDE FARMS-FENNVILLE, HILLSIDE FARMS-OVERISEL, and HILLSIDE FARMS-OVERISEL HOG BARNS, HARVEST HILL FARM, HASS FEEDLOT, LLC, doing business as HASS FEEDLOT HOME FARM and HASS FEEDLOT 2, HOLLOO FARMS, LLC, doing business as HOLLOO FARMS, HURON PORK, LLC, INGLESIDE FARMS, J&J RUSSCHER PROPERTIES, LLC, J AND A PORK, LLC, doing business as J AND A PORK, JMAX, LLC, doing business as JMAX DAIRY, KARNEMAATS, LLC, KOBER FARMS, LLC, KY-10 FARMS, LLC, doing business as KY-10 FARMS, LAIER FARMS, INC., doing business as LAIER FARMS, LUCKY 7 DAIRY, LLC, LUCKY 7 FARMS, LLC, MYERS FARMS, LLC, doing business as MYERS FARMS, NEW FLEVO DAIRY, INC., doing business as NEW FLEVO DAIRY, NOBIS FARMS, LLC, doing business as NOBIS DAIRY FARMS, NVF, INC., OOMEN BROTHERS, INC., doing business as OOMEN BROTHERS HOGS, PACKARD FARMS, LLC, doing business as PACKARD FARMS, PAYLA MEADOWS, LLC, PEACEFUL ROAD FARM, LLC, doing business as PEACEFUL ROAD FARMS, PERFORMANCE FARMS, LLC, PETRO FARMS, LLC, POLL FARMS, INC., PRAIRIE VIEW DAIRY, LLC, PRECISION PORK FARM, INC., doing business as PRECISION PORK FARM, PREFERRED HOG FARMS, INC., doing business as PREFERRED HOG 146th, THE PRESTON FARMS, LLC, doing business as PRESTON HOG FARMS, PRIDGEON FARMS, LLC, doing business as PRIDGEON FARMS, PSY FARMS, R & R PORK, LLC, doing business as R & R PORK,

RAPID RIDGE FARMS, LLC, doing business as
 RAPID RIDGE, RED ARROW DAIRY, LLC, doing
 business as RED ARROW DAIRY, RUGGLES
 BEEF FARMS, LLC, doing business as RUGGLES
 BEEF FARMS, S & T BARNS, LLC, doing business
 as S & T BARNS-BOOTH, S & T BARNS-FAWN
 RIVER, S & T BARNS-TSC, and S & T BARNS-
 HAENNI, SAND CREEK DAIRY, LLC, SCENIC
 VIEW DAIRY, LLC, doing business as SCENIC
 VIEW DAIRY, SCHURING SWINE, LLC, doing
 business as SCHURING FARMS, SCOTT
 MCKENZIE FARMS, SELDOM REST HOG
 FARM, LLC, doing business as SELDOM REST
 HOG FARM, SIDE STREET PORK, LLC, doing
 business as SIDE STREET PORK, SKINNER
 FARMS, LLC, doing business as SKINNER
 FARMS, STEENBLIK DAIRY, INC., STEWART
 FARMS, LLC, doing business as STEWART
 FARMS, STOREY FARMS, LLC, STOUGHTON
 CREEK FARMS, LLC, doing business as
 STOUGHTON CREEK FARMS, SWISSLANE
 DAIRY FARMS, INC., doing business as
 SWISSLANE FARMS, TERREHAVEN FARMS,
 INC., doing business as TERREHAVEN FARMS,
 VALLEY VIEW PORK, LLC, doing business as
 VALLEY VIEW PORK, VAN OEFFELEN FARM
 SERVICES, VANDERPLOEG HOLSTEINS, LLC,
 doing business as VANDERPLOEG HOLSTEINS,
 VDS FARMS, LLC, doing business as VDS
 FARMS-FULTON and VDS FARMS-S AVENUE,
 VELD FARMS, LLC, doing business as VELD
 FARMS, WALNUTDALE FARMS, INC., doing
 business as WALNUTDALE FARMS DORR TWP,
 WIL-LE-FARMS, INC., doing business as WIL-LE
 FARMS, WILLOW CREEK FARMS, WILLOW
 POINT DAIRY, LLC, doing business as WILLOW
 POINT DAIRY, WILSON CENTENNIAL FARM,
 LLC, BAKERLADS FARM, DEER CREEK
 POULTRY FARM, HARTLAND FARMS, INC.,
 doing business as HARTLAND FARMS, HUDSON
 DAIRY, LLC, doing business as HUDSON DAIRY,
 MAYFLOWER DAIRY, LLC, MEADOW ROCK,
 LLC, doing business as MEADOW ROCK DAIRY,
 MEDINA DAIRY, LLC, doing business as
 MEDINA DAIRY, NOBEL FAMILY DAIRY, LLC,
 OTTAWA TURKEY FARM, doing business as

OTTAWA TURKEY FARM 112TH, and
CROCKERY CREEK TURKEY FARMS, LLC,
doing business as CROCKERY CREEK - 80TH,

Plaintiffs-Appellants,

v

DEPARTMENT OF ENVIRONMENT, GREAT
LAKES, AND ENERGY,

Defendant-Appellee.

No. 356088
Court of Claims
LC No. 20-000148-MZ

Before: GADOLA, P.J., and SERVITTO and REDFORD, JJ.

REDFORD, J.

Plaintiffs appeal as of right the Court of Claims opinion and order granting defendant, Michigan Department of Environment, Great Lakes, and Energy's (EGLE), motion for summary disposition and dismissal of plaintiffs' case for lack of jurisdiction because plaintiffs failed to follow the available administrative process to its completion. For the reasons stated in this opinion, we conclude the trial court achieved the correct result, albeit for different reasons, and we therefore affirm the order which granted EGLE's motion for summary disposition and dismissal.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are several farmers associations and numerous livestock farms. The farms are regulated as concentrated animal feeding operations (CAFOs) under the federal Clean Water Act, 33 USC 1251 *et seq.* and state law pursuant to Part 31 (Water Resources Protection), MCL 324.3101 *et seq.*, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.* CAFOs are lots or facilities where animals are confined and fed or maintained for 45 days or more in any 12-month period, 40 CFR 122.23(b)(1), which are regulated as point sources from which pollutants are or may be discharged. 33 USC 1362(14). Discharges from point sources are permissible pursuant to permits under the National Pollutant Discharge Elimination System (NPDES). 33 USC 1311(a); 33 USC 1342(a)(1). Michigan administers the NPDES within this state pursuant to the Clean Water Act and NREPA. With few exceptions, persons who discharge waste into the surface or groundwaters, or on the ground of this state, as a point source discharge, must apply for and obtain from EGLE a valid permit. Mich Admin Code R 323.2106; R 323.2109.¹

¹ “ ‘Discharge’ means any direct or indirect discharge of any waste, waste effluent, wastewater, pollutant, or any combination thereof into any of the waters of the state or upon the ground.” Mich Admin Code, R 323.2102(n).

Mich Admin Code, R 323.2191(1), authorizes EGLE to issue a general permit if it determines that “certain discharges are appropriately and adequately controlled by a general permit.” EGLE’s issuance of general permits is subject to conditions set forth in the Administrative Code. Mich Admin Code, R 323.2192(2). Such permits have a fixed term of not more than five years but reissuance is permitted. Mich Admin Code, R 323.2150. CAFOs are point sources that require permits for discharges related to “all animals in confinement at the operation and all production area waste and CAFO process wastewater generated by those animals or the production of those animals, regardless of the type of animal.” Mich Admin Code, R 323.2196(1)(a). CAFOs must apply for coverage under a general permit. Mich Admin Code R 323.2192(a). After receipt of an application, EGLE must determine whether the applicant meets the criteria for coverage under the general permit, and if so it issues a “notice of coverage.” Mich Admin Code R 323.2192(b). Anyone “aggrieved by the coverage may file a sworn petition for a contested case hearing on the matter” with EGLE pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* MCL 324.3113(3); Mich Admin Code R 323.2192(c). A party may also challenge the validity or applicability of a rule by seeking a declaratory ruling under MCL 24.264.

The NPDES Wastewater Discharge General Permit issued by EGLE on March 27, 2020 (the 2020 general permit), gave rise to plaintiffs’ dispute. Plaintiffs first petitioned for a contested case hearing under Mich Admin Code R 323.2192(c)² to appeal the 2020 general permit and the legality of certain new conditions imposed by the permit. Plaintiffs objected to EGLE’s reduction of the limit on the amount of phosphorus that may be applied to land and the reduction of such limits for farms located within a Total Maximum Daily Load (TMDL) watershed. Plaintiffs also objected to the requirement that farms avoid applying waste within 100 feet of any surface water, open tile line intake structures, sinkholes, agriculture wellheads, or roadside ditches that are conduits to surface waters of the state. Plaintiffs further objected to EGLE’s presumptive three-month ban on applying waste on land during winter months January through March and its ban on transferring waste to other entities that apply waste to land during those months.

Plaintiffs alleged that the added conditions banned the application of beneficial manure to fields and arbitrarily limited the amount of phosphorous in soil on which CAFO waste may be applied. Plaintiffs also took exception to EGLE’s mandate that CAFOs and any farms that receive manure from CAFOs install permanent 35-foot vegetated buffer strips and prevent application of manure within 100 feet of every surface water, tile line intake, drain, and roadside ditch located on any land to which their manure is applied because doing so would severely limit land use for crop farming. Plaintiffs alleged that the added conditions exceeded EGLE’s statutory authority and were contrary to state and federal law regulating CAFOs, lacked factual justification under the standard for setting conditions under Part 31 of NREPA, were arbitrary and capricious, and unconstitutional. Plaintiffs sought to have each of the challenged conditions struck from the 2020 general permit.

² As a result, EGLE did not issue any certificates of coverage under the 2020 general permit, and CAFOs that applied for such coverage had to comply with previous general permit certificates of coverage or individual permits.

Before a contested case hearing could be held, however, plaintiffs filed the present complaint for declaratory and injunctive relief in the Court of Claims, with the 2020 general permit the focus of the complaint. Plaintiffs made allegations similar to their contested case petition but asked the court to declare: (1) the conditions invalid because of EGLE's failure to follow the procedures required under the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, to promulgate the conditions as rules; (2) the conditions are substantively invalid rules because they were arbitrary and capricious, beyond EGLE's regulatory authority, and/or contrary to the intent of Part 31 of NREPA; (3) EGLE's incorporation of the conditions into the 2020 general permit a violation of plaintiffs' constitutionally guaranteed procedural and substantive due-process rights; (4) EGLE's adoption of such rules constituted a violation of the constitution's Separation of Powers Clause, and/or that any statutory authority relied on by EGLE for such adoption violated the constitutional nondelegation doctrine; (5) EGLE's assertion of control over non-CAFOs went beyond its statutory authority and that its standard for determining such authority was unconstitutionally void for vagueness; and (6) that the mandate to install 35-foot permanent vegetated buffer strips and requirement to have 100-foot setbacks converted cropland acreage to nonfarmable land, an unconstitutional taking without just compensation in violation of US Const, Am V, and Mich Const 1963, Art X, § 2.

EGLE moved for summary disposition under MCR 2.116(C)(4) (lack of subject-matter jurisdiction) and (C)(8) (failure to state a claim) on the ground that plaintiffs failed to exhaust available administrative remedies such that the Court of Claims lacked jurisdiction. EGLE asserted that the court would not have jurisdiction until EGLE made a final decision at the conclusion of the contested case proceeding, and only then would plaintiffs have exhausted all administrative remedies available to them rendering EGLE's final decision subject to judicial review pursuant to Const 1963, art 6, § 28 and MCL 24.301-MCL 24.306. Plaintiffs opposed EGLE's motion on the grounds that their complaint challenged "rules" that were not promulgated under the APA, and sought a declaratory judgment to determine the procedural validity of the "rules" under MCL 24.264 and MCR 2.605, which gave the Court of Claims jurisdiction. Plaintiffs maintained that exhaustion was unnecessary because plaintiffs challenged EGLE's authority to include the new conditions in the general permit, involving legal issues that did not require factual development and exempted the issues from the exhaustion requirement. Plaintiffs also argued that, if Part 31 is construed to grant EGLE authority to control farming practices, it would violate the Separation of Powers Clause. Plaintiffs argued that neither MCL 324.3103(1) nor MCL 324.3106 allowed EGLE to make general policy determinations that go "beyond existing state or federal regulations." EGLE replied that plaintiffs had to exhaust their administrative remedies before bringing this action and that they brought this case under MCL 24.264 and MCR 2.605, which apply to challenges to "rules." EGLE also argued that MCL 24.264 expressly required the exhaustion of administrative remedies before judicial review, and that the requirement in MCR 2.605 for an "actual controversy" could not be met because EGLE had not yet issued a ruling after a contested case hearing. EGLE conceded that no law specifically directed it to include specific conditions in CAFO permits but asserted that defending plaintiffs' separation of powers and nondelegation doctrine claim required fact-driven analysis and explanation of the standards and permit conditions it developed to fulfill its obligations under MCL 324.3101 *et seq.*, which requires it to develop permit conditions to assure compliance with state and federal standards, all of which were better suited to an administrative proceeding.

The Court of Claims concluded that it lacked subject-matter jurisdiction “[b]ecause plaintiffs did not follow the available administrative process to its completion.” The court observed that plaintiffs had not exhausted their administrative remedies and their contested case remained pending, and consequently the court lacked jurisdiction requiring dismissal. The court disagreed with plaintiffs’ contention that MCL 24.264 gave the court jurisdiction to determine the validity of the conditions by issuing a declaratory judgment because the 2020 general permit’s conditions were not formally promulgated rules under the APA’s procedures and “plaintiffs may not simply characterize the 2020 CAFO General Permit’s requirements as ‘rules’ and thereby invoke MCL 24.264.”

The court noted that MCR 2.605(A)(1) applies in a “case of actual controversy.” The court held that no actual controversy existed for purposes of the court rule because the available administrative process had not yet run its course. Respecting plaintiffs’ contention that their challenge to EGLE’s authority to act made exhaustion unnecessary, the court found that the dispute did not implicate defendant’s authority to regulate plaintiffs and did not excuse plaintiffs’ failure to exhaust available administrative remedies. The court explained that plaintiffs’ complaint raised factual issues that necessitated examination during the administrative process of the necessity and efficacy of certain matters within the permit which constituted fact intensive issues requiring development of a record that would enable comparing the statutory goals to the permitting conditions to determine whether the permitting conditions further those goals. The court concluded that development of a factual record is best suited for the administrative process. The court acknowledged that the assertion of constitutional questions can excuse a failure to exhaust available administrative remedies, but noted that “merely characterizing an issue by using constitutional terms does not excuse the exhaustion requirement, particularly where there remain factual issues for the agency to resolve.” The court held that

the presence of the factual issues noted above convinces the Court that the presence of plaintiffs’ constitutional claims does not excuse exhaustion. In addition, it must be remembered that plaintiffs are alleging that they suffered constitutional violations as part of the permitting process. This permitting process has not yet run its course, meaning that the errors that have allegedly occurred have not been submitted to defendant for correction. Again, “[i]t is presumed that an administrative agency will correct its errors”—if any—“if given a chance to do so.”

The court concluded that plaintiffs failed to exhaust administrative remedies and their contested case remained pending such that the court lacked jurisdiction requiring dismissal. This appeal followed.

II. STANDARDS OF REVIEW

A motion for summary disposition under MCR 2.116(C)(4) tests the trial court’s subject-matter jurisdiction. We review de novo a trial court’s decision on a motion for summary disposition under MCR 2.116(C)(4). *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). To the extent that resolution of this issue involves statutory interpretation, we review de novo whether the trial court properly interpreted and applied the relevant statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016). The primary goal of judicial interpretation is to ascertain and give effect to the Legislature’s intent. *Mich Ed Ass’n v*

Secretary of State (On Rehearing), 489 Mich 194, 217; 801 NW2d 35 (2011). We review de novo a court's interpretation of court rules under the same principles that govern the construction of statutes. *Dawley v Hall*, 501 Mich 166, 169; 905 NW2d 863 (2018). Questions of law are reviewed de novo. *Christenson v Secretary of State*, 336 Mich App 411, 417; 970 NW2d 417 (2021).

III. ANALYSIS

A. WATER RESOURCES PROTECTION

EGLE's authority to issue permits derives from state law, but exists in relation to the federal Clean Water Act (CWA), 33 USC 1251 *et seq.* Relevant to this case, the CWA requires that all point source discharges to regulated waters must have an NPDES permit. The CWA includes CAFOs in its definition of the term "point source" "from which pollutants are or may be discharged." 33 US 1362(14.) "Michigan promulgated its own administrative rules specific to the NPDES for CAFOs[.]" *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 536; 747 NW2d 321 (2008). Mich Admin R 323.2196(1)(b) provides that "[a]ll CAFO owners or operators shall apply either for an individual NPDES permit, or a certificate of coverage under an NPDES general permit unless the owner or operator has received a determination from the department made after providing notice and opportunity for public comment, that the CAFO has 'no potential to discharge'" See also *Sierra Club*, 277 Mich App at 536-537.

B. THE 2020 GENERAL PERMIT

Mich Admin Code, R 323.2191(1), authorizes EGLE to issue a general permit if it determines that "certain discharges are appropriately and adequately controlled by a general permit[.]" Under Mich Admin Code, R 323.2137, a permit issued by EGLE "shall contain terms and conditions deemed necessary by the department to ensure compliance with effluent standards and limitations" and may feature stringent limitations it deems necessary to meet applicable water quality standards.³ A person who seeks to be covered by a general permit must apply for coverage under the permit. Mich Admin Code, R 323.2192(a). After EGLE receives an application for coverage under an existing general permit, it shall determine if the discharge meets the criteria for coverage under the general permit. Mich Admin Code, R 323.2192(b). A person is not covered under a general permit until after EGLE issues a notice of coverage stating that the discharge meets the criteria for coverage. *Id.*

C. RESOLUTION OF DISPUTES REGARDING PERMITS

Plaintiffs argue that the court erred by ruling that it lacked jurisdiction because they contend that MCL 24.264 grants the court jurisdiction over declaratory judgment actions. We

³ Other Part 21 rules permit EGLE to impose requirements under the terms and conditions of a state or national permit to achieve water quality compliance. See generally Mich Admin Code, Rules 323.2138; 323.2139; 323.2142; 323.2145; 323.2146; and 323.2149.

agree with this, however, plaintiffs in this matter failed to fulfill MCL 24.264's presuit requirement to first seek a declaratory ruling before commencing an action for declaratory judgment, which deprived the court of jurisdiction and required dismissal.

A person who is aggrieved by the coverage under a general permit may file a sworn petition for a contested case hearing on the matter with EGLE as provided under MCL 324.3113(3) and MCL 24.201 to MCL 24.328.⁴ An interested person may also seek a declaratory ruling as to the applicability of a rule to an actual state of facts under MCL 24.263. The validity or applicability of a rule may be challenged by seeking a court's declaratory judgment under MCL 24.264 which provides:

Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

MCL 24.264 reveals a general legislative intent to provide an avenue for a party to challenge an agency rule. *Slis v State*, 332 Mich App 312, 342; 956 NW2d 569 (2020).

In this case, plaintiffs filed a declaratory judgment action under MCL 24.264 regarding the validity of the new conditions imposed in the 2020 general permit on the ground that EGLE failed to follow the procedures to promulgate rules as required under the APA. Plaintiffs essentially contend that EGLE circumvented the rulemaking procedures by incorporating the new conditions in the 2020 general permit. EGLE moved for summary disposition on the ground that the Court of Claims lacked subject-matter jurisdiction because plaintiffs failed to exhaust their administrative remedies.

⁴ See also Mich Admin Code, R 323.2192(c) which provides in relevant part that a "person who is aggrieved by the coverage may file a sworn petition for a contested case hearing on the matter with" EGLE in accordance with MCL 324.3113.

The Court of Claims relied on *Jones v Dep't of Corrections*, 185 Mich App 134, 460 NW2d 575 (1990)⁵ for the proposition that only rules that have been formally promulgated as “rules” under the APA may be subject to a challenge under MCL 24.264. The court held that MCL 24.264 did not apply in this case because the conditions in the 2020 general permit were not formally promulgated as rules under the APA. We conclude that MCL 24.264 applied in this case.

In *Jones*, a case involving policy directives, institutional procedures, and employee guidelines of the Michigan Department of Corrections and the Michigan Civil Service Commission, the plaintiff requested a declaratory ruling from the defendants as to whether the directives, procedures, and guidelines were promulgated as rules pursuant to § 33 of the APA, MCL 24.233, and, if not, whether his discharge pursuant to unpromulgated rules deprived him of due process of law. *Id.* at 135-136. The defendants failed to respond to the plaintiff's request for a declaratory ruling and the plaintiff commenced the action for declaratory judgment under MCL 24.264. *Id.* at 136. The defendants moved for summary disposition and admitted that the directives, procedures, and guidelines were not promulgated as rules pursuant to § 33 of the APA. The defendants, however, contended that the circuit court lacked subject-matter jurisdiction because the plaintiff failed to exhaust his administrative remedies. The defendants also contended that the plaintiff was foreclosed from pursuing relief in the form of a declaratory judgment pursuant to MCL 24.264 because the plaintiff did not challenge the applicability of the directives, procedures, and guidelines. *Id.* The circuit court agreed with the defendants' rationale and granted the defendants' motion for summary disposition under MCR 2.116(C)(4) and (8). *Id.*

In addressing the plaintiff's contention that he was denied due process of law when discharged for violating directives, procedures, and guidelines, that were not promulgated as rules, the *Jones* court concluded that they could not be challenged under MCL 24.264 because they were not rules. The court further held that plaintiff failed to exhaust all available administrative remedies, precluding judicial review because he had available two additional levels of administrative relief. *Id.* at 137-138. We do not find the reasoning in *Jones* persuasive or applicable in this case.

Under the APA, the term “rule” is defined as follows:

“Rule” means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. [MCL 24.207.]

Among other things, the term “rule” does not include a “decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.” MCL 24.207(j). The APA contains standards for rulemaking. See MCL 24.231 through MCL 24.266.

⁵ Cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), but they may be considered as persuasive authority. *Aroma Wines & Equip, Inc v Columbian Dist Servs, Inc*, 303 Mich App 441, 453 n 4; 844 NW2d 727 (2013). This Court decided *Jones* during May 1990. Therefore, it is not binding precedent.

To adopt a rule, an agency must fulfill among other things the APA's procedural requirements set forth in MCL 24.241, MCL 24.242, MCL 24.245, MCL 24.246, subject to the environmental rules review committee's oversight of all of EGLE's rulemaking under MCL 24.265 and MCL 24.266. " 'Processing of a rule' means the action required or authorized by this act regarding a rule that is to be promulgated, including the rule's adoption, and ending with the rule's promulgation." MCL 24.205(j). " 'Promulgation of a rule' means that step in the processing of a rule consisting of the filing of the rule with the secretary of state." MCL 24.205(k). A " guideline" by contrast "means an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person." MCL 24.203(7). Under MCL 24.226, an agency may not adopt a guideline in lieu of a rule.

Numerous administrative rules have been promulgated respecting water resource protection and water discharge permits pursuant to NREPA, MCL 324.3103, and MCL 324.3106. Relevant to this case, Mich Admin Code R 323.2196 governs CAFO permits and defines the scope of regulation specifying how and to what extent CAFOs and recipients handle, use, apply, dispose, and transport CAFO production area waste and CAFO process wastewater. Mich Admin Code R 323.2196(5) provides in relevant part:

CAFO NPDES permits shall include all of the following:

(a) A requirement to develop and implement a comprehensive nutrient management plan (CNMP). The CNMP shall be approved by a certified CNMP provider. At a minimum, a CNMP shall include best management practices and procedures necessary to implement applicable effluent limitations and technical standards established by the department including all of the following:

* * *

(viii) Conduct a field-by-field assessment of land application areas and address the form, source, amount, timing, rate, and method of application of nutrients to demonstrate that land application of production area waste or CAFO process wastewater is in accordance with field-specific nutrient management practices that ensures proper agricultural utilization of the nutrients in the production area waste or CAFO process wastewater. The assessment shall take into account field-specific conditions including locations of tile outlets, tile risers, and tile depth before land application to determine suitability of land application and to prevent discharge of any potential polluting material.

(ix) Ensure proper land application by complying with all of the following conditions:

(A) Production area waste and CAFO process wastewater shall not be land-applied on ground that is flooded, saturated with water, frozen, or snow-covered where the production area waste and CAFO process wastewater may enter waters of the state.

(B) Production area waste and CAFO process wastewater shall not be applied to frozen or snow-covered ground unless it is subsurface injected and there

is substantial soil coverage of the applied production area waste and CAFO process wastewater, or it is surface-applied and incorporated within 24 hours.

(C) Production area waste and CAFO process wastewater may be surface-applied to frozen or snow-covered ground and not incorporated within 24 hours only if there is a field-by-field demonstration in the CNMP showing that such land application will not result in a situation where production area waste and CAFO process wastewater may enter waters of the state.

(D) Production area waste and CAFO process wastewater shall not be applied when precipitation exceeding ½ inch is forecast within 24 hours or if precipitation is forecast that may cause the production area waste and CAFO process wastewater to enter waters of the state.

(E) On ground that is not frozen or snow-covered, production area waste and CAFO process wastewater, if not subsurface-injected, shall be incorporated into the soil within 24 hours of application except on no-till fields.

* * *

(x)(c) A prohibition on dry weather discharges from the CAFO except in accordance with 40 C.F.R. §412.31(a)(2) (2003) or 40 C.F.R. §412.46(d) (2003).

(d) Storm water discharges from land areas under the control of a CAFO where production area waste or CAFO process wastewater has been applied in compliance with field-specific nutrient management practices developed in accordance with R 323.2196(5)(a), and such discharges do not cause or contribute to a violation of water quality standards, are in compliance with this rule, provided such discharges are authorized by an NPDES permit.

(e) Unless the department determines otherwise, in cases where production area waste or CAFO process wastewater is sold, given away, or otherwise transferred to other persons (recipient) and the land application of that production area waste or CAFO process wastewater is not under the operational control of the CAFO owner or operator that generates the production area waste or CAFO process wastewater (generator), a manifest shall be used to track the transfer and use of the production area waste or CAFO process wastewater.

The rule also specifies in detail that the permit must set forth all of the things the CAFO owner or operator shall do respecting preparation of a manifest for tracking CAFO production area waste and CAFO process wastewater, and its transport to recipients including its final destination, and restricts the sale or transfer of such if recipients have improperly applied, used, or disposed of such. Mich Admin Code R 323.2196(5)(a)(x)(e) and (f).

The 2010 general permit and the 2015 general permit governing CAFOs set forth conditions as specified in Mich Admin Code R 323.2196(5)(a)(ix)(A)-(E) and permitted what the

rule permits.⁶ In the 2020 general permit, however, EGLE incorporated additional conditions, including in its prohibitions section, Part I, Section B(3)(f)(3), prohibiting application of CAFO waste during January through March unless certain conditions are met; Part I, Section B(3)(f)(4) prohibiting transfer of CAFO waste to a recipient for land application during January through March, and incorporated conditions regarding methods of application during January through March, Part I, Section B(3)(g). The previous permits specified setback conditions prohibiting application within 100 feet of ditches that are conduits to surface waters, but permitted substitution of 35-foot vegetated buffers for such 100-foot setback areas.⁷ In the 2020 general permit, EGLE changed those provisions to prohibit application of CAFO waste within 100 feet of surface water, open tile line intake structures, sinkholes, agricultural wellheads, and roadside ditches that are conduits to surface waters. Part I, Section B(3)(h)(1)(a). The new conditions do not permit substitution of vegetated buffers, but mandate installation of 35-foot-wide permanent vegetated buffers along any surface water, open tile line intake structures, sinkholes, agricultural wellheads, and roadside ditches that are conduits to surface waters. Part I, Section B(3)(h)(1)(b).

Close analysis of the new conditions indicates that they go beyond the scope of the promulgated rule, Mich Admin Code R 323.2196. That which formerly was authorized by the promulgated rule and permitted under the 2010 and 2015 general permits is now barred by unpromulgated general permit conditions. As such the new conditions expand the regulatory restrictions generally applicable to CAFOs that implement and apply the CWA and NREPA. The new conditions set rigid standards with which CAFOs and CAFO waste recipients must comply. The new conditions are not merely guidelines but have the force and effect of “rules” not formally promulgated. The record indicates that EGLE chose not to follow the applicable APA procedures to adopt a new rule or amend the existing rule pertaining to CAFO permits. Instead, it essentially created an agency regulation, standards, and instructions of general applicability that implements or applies law enforced or administered by the agency.

The issue in this case is not whether EGLE has authority to create or amend rules with provisions like the new conditions, but whether it has and may circumvent the rule promulgation procedure and expand the scope of generally applicable regulatory standards and restrictions by requiring compliance with conditions without promulgation of them as rules. We conclude that an affected party may challenge the validity and applicability of conditions imposed by EGLE as permit conditions as in this case when such conditions prohibit what the existing rule permits. An interested person seeking to challenge the validity or applicability of such conditions may do so under MCL 24.264.

Under MCL 24.264, however, an “action for declaratory judgment *may not* be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously.” (Emphasis added.) The plain language of MCL 24.264 does not impose further administrative remedy exhaustion requirements. To be clear, the statute does not require persons seeking to challenge the validity or applicability

⁶ See 2010 general permit Part I, Section A(7)(e), (f) and 2015 general permit Part I, Section B(3)(e), (f).

⁷ See 2010 general permit Part I, Section A(7)(g) and 2015 general permit Part I, Section B(3)(g).

of a rule to challenge EGLE action in a contested case under MCL 24.271, by petitioning for a contested case hearing, or under MCL 24.263 by seeking a declaratory ruling as to the applicability to an actual state of facts. But the Legislature made clear that the prerequisite to commencing an action for a declaratory judgment under MCL 24.264 is a request for a declaratory ruling from the agency. The statute makes clear this must first be done or the court lacks jurisdiction to hear the case.

In this case, the record indicates that plaintiffs never first requested a declaratory ruling from EGLE. Accordingly, plaintiffs failed to meet the statutory prerequisite for filing and commencing a declaratory judgment action. Consequently, plaintiffs' action for declaratory judgment could not be commenced and the Court of Claims lacked jurisdiction, which required dismissal. The trial court concluded that it lacked jurisdiction and dismissed the case because plaintiffs had not exhausted all administrative remedies available related to their contested case. While this was factually correct and the trial court reached the correct result, the trial court's legal reasoning was erroneous. Accordingly, we affirm the trial court's dismissal of the case because it reached the right result, albeit for the wrong reason. See *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Plaintiffs argue that a footnote in *Mich Farm Bureau*, 292 Mich App 106, makes compliance with MCL 24.264's presuit requirement unnecessary. We disagree.

In *Mich Farm Bureau*, the plaintiffs had formally requested from the DEQ⁸ a declaratory ruling under MCL 24.263,⁹ that an administrative rule requiring CAFOs to apply for and obtain NPDES permits did not apply to CAFOs that had not had, and did not propose to have, an actual discharge of pollutants. *Id.* at 117-118. The DEQ granted the plaintiffs' request and issued a ruling. *Id.* at 118. Later, the plaintiffs commenced an action by filing a complaint for declaratory relief in the circuit court. *Id.* at 116. In its motion for summary disposition, the DEQ contended that, rather than commencing the declaratory judgment action in circuit court, the APA required the plaintiffs to seek judicial review of the DEQ's declaratory ruling pursuant to MCL 24.263. *Id.* at 118. The circuit court determined that the plaintiffs' request to the DEQ had, in reality, been a challenge to the *validity* of the rule rather than a request for a ruling on the *applicability* of the rule

⁸ EGLE was formerly known as the Department of Environmental Quality (DEQ).

⁹ MCL 24.263 provides:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

to “an actual state of facts” within the meaning of MCL 24.263. *Id.* The circuit court observed that the plaintiffs’ request for a declaratory ruling had raised only a question of law with no need for factual development, and that no statutory authority permitted the DEQ to make rulings or pronouncements concerning the “substantive validity” of its own rule. The circuit court concluded that the proper mechanism for challenging the substantive validity of the rule was an action for declaratory relief in the circuit court under MCL 24.264, and denied the DEQ’s motion for summary disposition. *Id.* at 119.¹⁰

Plaintiffs in this appeal rely on the following footnote in *Mich Farm Bureau*:

We perceive no error in the circuit court’s ruling on this matter. As the circuit court properly concluded, plaintiffs did not truly request “a declaratory ruling as to the applicability to an actual state of facts of a . . . rule . . . of the agency” within the meaning of MCL 24.263. Instead, and more accurately, what plaintiffs actually requested was a simple declaration that Rule 2196 was invalid. As Dean LeDuc has explained in his treatise on Michigan administrative law, MCL § 24.263 “empowers an agency to issue a declaratory ruling only as to the applicability of a rule, not as to its validity.” LeDuc, *Michigan Administrative Law* (2001), § 8:13, p 576 (emphasis added). “The reason for this is obvious, an agency is unlikely to find its own rules invalid and those rules are presumed to be valid anyway. Courts will ultimately determine the validity of a rule.” *Id.* Because plaintiffs sought to challenge the validity of Rule 2196 rather than its applicability to a particular state of facts, they were not required to ask the DEQ for a declaratory ruling under MCL § 24.263 in the first instance, and were instead entitled to directly commence this declaratory judgment action in the circuit court pursuant to MCL 24.264. Nor did the exhaustion requirement of MCL 24.264 apply to plaintiffs given that they sought to challenge the validity of Rule 2196 rather than its applicability. See LeDuc, § 8:13, p 577. “The exhaustion requirement of [MCL 24.264] (requiring resort first to the submission of a [request for a] declaratory ruling) applies only when a plaintiff wishes to challenge the applicability of a rule to an actual state of facts.” *Id.* [*Id.* at 119 n 7.]

The footnote cites statements from a treatise that neither has precedential value nor reflects the primacy of Michigan law regarding statutory interpretation, which requires courts to enforce the unambiguous legislative intent as expressed in the plain language of a statute. MCL 24.264’s prerequisite to commencing a declaratory judgment action cannot be ignored even if an agency is unlikely to find its own rules invalid. The footnote is dicta, and therefore, not binding precedent, because it was “unnecessary to determine the case at hand . . .” *People v Peltola*, 489 Mich 174, 190 n 32; 803 NW2d 140 (2011). Moreover, *Mich Farm Bureau* is distinguishable from the case

¹⁰ The plaintiffs thereafter moved for summary disposition, arguing in part that the administrative rule at issue, Mich Admin Code, R 323.2196, was an invalid regulation and that the promulgation of the rule exceeded the scope of the DEQ’s statutory rulemaking authority under Part 31 of the NREPA and that the rule was arbitrary, capricious, and inconsistent with the intent of the Legislature. *Id.* at 120.

at bar because in that case, the plaintiff had sought a declaratory ruling under MCL 24.263, and received such a ruling from the agency before filing suit. Further, in *Mich Farm Bureau* this Court considered the *substantive* validity of a *rule* actually promulgated by the agency. *Mich Farm Bureau* and its footnote in particular is not dispositive in this case.

We hold that the Court of Claims achieved the right result albeit for the wrong reason. This case could not be commenced in the trial court because plaintiffs failed to first seek a declaratory ruling from EGLE before filing their declaratory judgment action, as required by MCL 24.264. Because this ruling is dispositive, we decline to address the other issues raised by plaintiffs on appeal. This ruling is without prejudice to plaintiffs' ability to seek a declaratory ruling from the agency under MCL 24.264.

Affirmed.

/s/ James Robert Redford

/s/ Michael F. Gadola

/s/ Deborah A. Servitto

EXHIBIT B

PERMIT NO. MIG010000



STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
 WASTEWATER DISCHARGE GENERAL PERMIT**

CONCENTRATED ANIMAL FEEDING OPERATIONS

In compliance with the provisions of the federal Clean Water Act (federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, as amended); 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 2019-06, 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 (permit).

The applicability of this permit shall be limited to CAFOs that have not been determined by the Michigan Department of Environment, Great Lakes, and Energy (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. Egg processing, egg washing, and duck facilities are not eligible for this permit. 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.)
- Data for the application rate table for crops not listed in the permit (Part I.B.3.c.2.)
- Notification of a Total Maximum Daily Load () if the permittee's production or land application areas are located within a watershed(s) covered by an approved *Escherichia coli* (*E. coli*), and/or biota, and/or dissolved oxygen, and/or nutrient (nitrogen or phosphorus) TMDL (Part I.C.9.)
- The date by which the permittee must provide documentation of Natural Resources Conservation Standard (NRCS) 313 environmental equivalency for waste storage structures not meeting NRCS 313 and procured after the effective date of the COC
- Percent of outside materials allowed in the anaerobic digester associated with the CAFO permitted under the COC, if that percentage is greater than five (Part I.C.10.)

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

This permit takes effect on April 1, 2020. 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, 2025.**

Issued: March 27, 2020.

Original signed by Christine Alexander
 Christine Alexander, Manager
 Permits Section
 Water Resources Division

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. Payment may be made electronically via the Department's MiWaters system. The MiWaters website is located at <https://miwaters.deq.state.mi.us>. Payment shall be submitted or postmarked by January 15 for notices mailed by December 1. Payment shall be submitted or postmarked no later than 45 days after receiving the notice for notices mailed after December 1.

CONTESTED CASE INFORMATION

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 Environment, Great Lakes, and Energy, 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, overflows and discharges are authorized per the following:

a. **Overflows from CAFO Waste Storage Structures**

Overflows from CAFO waste storage structures for cattle, horses, sheep, and existing swine, poultry, and veal facilities identified in Part I.B.1. are properly designed, constructed, and are operated and maintained in accordance with the requirements of this permit, the overflow is caused by precipitation events, and do not cause or contribute to an exceedance of Michigan's water quality standards.

b. **Discharges from Land Application Areas**

Discharges of CAFO waste to surface waters of the state that do not cause or contribute to an exceedance of Michigan's water quality standards are authorized from the land application areas managed in accordance with the Nutrient Management Plan (NMP) requirements set forth in Part I.B.3.

2. Monitoring Requirements

The discharge authorized in Part I.A.1. above, shall be monitored by the permittee as specified below.

<u>Parameter</u>	<u>Units</u>	<u>Daily Maximum</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Storage Structure Overflow				
Volume	Gal	(report)	Report Total Daily Volume	See Part I.A.2.b.
Discharge to Surface Waters of the State				
Volume	Gal	(report)	Report Total Daily Volume	See Part I.A.2.b.
5-Day Carbonaceous Biochemical Oxygen Demand (CBOD5)	mg/l	(report)	Grab	See Part I.A.2.b.
<i>Escherichia coli</i> (<i>E.coli</i>)	counts/100ml	(report)	Grab	See Part I.A.2.b.
Total Phosphorus (as P)	mg/l	(report)	Grab	See Part I.A.2.b.
Ammonia Nitrogen (as N)	mg/l	(report)	Grab	See Part I.A.2.b.
Total Suspended Solids (TSS)	mg/l	(report)	Grab	See Part I.A.2.b.

a. **Narrative Standard**

The receiving water shall contain no turbidity, color, oil films, floating solids, foams, settleable solids, or deposits as a result of a discharge which are or may become injurious to any designated use.

b. **Monitoring Frequency**

Discharges and overflows shall be monitored once daily by the permittee as specified above on any day on which a discharge occurs. The first sample shall occur within the first six hours of discharge, and then daily thereafter, until the end of the discharge event. All monitoring shall be in accordance with Part II.B.2. of this permit.

c. **Monitoring Location and Reporting Requirements**

Samples, measurements, and observations of all discharges and overflows shall be taken in compliance with the monitoring requirements in Part I.A.2., be representative of the discharge and are taken prior to the discharge entering surface waters. The permittee shall notify the Department in accordance with the reporting requirements set forth in Part II.C.6. of this permit and shall submit the monitoring requirements set forth in Part I.C.1. of this permit.

PART I**Section A. Effluent Limits and Monitoring Requirements****3. Prohibited Discharges**

- a. This permit does not authorize any discharge to the groundwaters of the state. Such discharge may be authorized by a groundwater discharge permit issued pursuant to Part 22, Groundwater Quality, of the NREPA.
- b. This permit does not authorize dry weather discharge or a discharge of CAFO waste and/or runoff that fails to meet the requirements of Part I.A.1. of this permit. 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. of this permit or that cause an exceedance of Michigan's Water Quality Standards are prohibited. Any unauthorized discharges shall be monitored in accordance with Part I.A.2.
- c. This permit does not authorize a discharge from new sand bedding.

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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 distinct CAFO waste storage structures designed for each waste type (liquid, as defined in NRCS Standard 313 (2017), or solid, stackable manure) in place and operational at all times that are adequately designed, constructed, maintained, and operated as per Part I.B.1. 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 residual solids in waste storage structures designed for liquids, normal precipitation and runoff, and drifted snow accumulation in the production area during the same time period. For under-barn storages, inaccessible concrete lined storages, soil lined storages (either earthen or natural clay base), or synthetic lined storages that receive manure, the residual solids shall be at least six inches, unless the permittee demonstrates annually a lesser amount is achievable. 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 and all runoff and direct precipitation 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.
- 3) 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.
- 4) 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.
- 5) Records documenting the current design volume of every CAFO waste storage structure, including volume for residual solids, design treatment volume, total design volume, volumes of the operational, emergency, and freeboard volumes, and approximate number of days of storage capacity shall be kept in the permittee's (CNMP) for a minimum of five years from the date of creation.

b. Physical Design and 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 (if applicable), and freeboard volumes as specified above in Part I.B.1.a. 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 (e.g. 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 dipstick 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

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

in use, shall be kept with the permittee's CNMP for a minimum five years from the date of creation. 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 a professional engineer's evaluation has been completed or not, and a brief description of the results of the evaluation (meets Natural Resources Conservation Service (NRCS) 313 2017 or provides environmental performance equivalent to NRCS 313 2005, 2014, or 2017).

- 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 2017.
- b) Existing Storage Structures at Newly Permitted CAFOs (facilities without prior NPDES permit coverage)

In a permit application for coverage under this permit, the applicant shall either:

- (a) For each existing storage structure document through an evaluation by a professional engineer that each structure is constructed in accordance with NRCS 313 2014 or 2017. Submit to the Department documentation signed by a professional engineer verifying that each structure is constructed in accordance with NRCS 313 2014 or 2017. Complete as-built plans, specifications, drawings, etc. shall be kept at the facility with the CNMP and do not need to be submitted unless requested by the Department, or
- (b) 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.
 - i. The applicant for a Newly Permitted CAFO must provide the documentation or demonstration required by (a) or (b) above prior to populating livestock to the numbers which would require an NPDES permit (per the definition of Part II.A. Large CAFO).
 - ii. 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, 2005, or 2014.
- c) For Previously Permitted CAFOs acquiring previously constructed waste storage structures from an unpermitted facility, the COC shall specify the date by which the permittee shall meet the requirements of i) or ii) below, but that date shall be no more than two years from the acquisition of the structures.
 - i) For each existing storage structure, document through an evaluation by a professional engineer that each structure is constructed in accordance with NRCS 313 2014 or 2017. Submit to the Department documentation signed by a professional engineer verifying that each structure is constructed in accordance with NRCS 313 2014 or 2017. Complete as-built plans, specifications, drawings, etc. shall be kept at the facility with the CNMP and do not need to be submitted unless requested by the Department, 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.

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

- d) **Waste Storage Structures for Solid Stackable Manure Not Subject to Precipitation**
Waste storage structures that will hold solid stackable manure that is totally enclosed and not subject to precipitation, will also be designed and constructed so that storage shall, at a minimum, include the following:
- i) All CAFO waste generated from the operation of the CAFO in a six-month or greater time period;
 - ii) CAFO waste shall be covered or stored inside a structure such that it is protected from wind and will not be contacted by precipitation;
 - iii) All wood in contact with litter should be pressure treated;
 - iv) The permittee shall include the basis and method for documenting six months storage capacity in accordance with Part I.B.1.d.2.
 - 1) To determine storage capacity, the permittee may use any of the following methods, or in combination, to verify six months of poultry litter storage capacity:
 - A) Completed as-build drawings; or
 - B) Certified CNMP provider calculations which include information from the animal waste management report or CAFO facility calculations. The information at a minimum shall include stack characteristics, such as maximum stack height, maximum stack angle, and wall height.
 - 2) To determine litter production, the permittee may use any of the following methods, or in combination, to verify six months of poultry litter storage capacity:
 - A) A three-year average of reported production (i.e., CAFO waste in cubic feet) in the CAFO facility's annual report. The three-year average shall consist of data from the highest three years during the last five years; or
 - B) If reported production is not available, data from the Midwest Plan Service (MWPS-18, Section 1 (2004)) shall be used in combination with any previous year's data.
 - v) All documentation and certification of six months of storage capacity shall be submitted to the department as part of the CNMP, and submitted to the department via MiWaters (<https://miwaters.deq.state.mi.us>), with the exception of the completed as-built drawings that shall be kept on site at the CAFO facility.
 - vi) storm water shall not run onto or under the stored CAFO waste; and
 - vii) a minimum of two feet separation distance to the seasonal high-water table or a minimum of one-foot separation if an impermeable barrier is used under the stored CAFO waste. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of concrete, or another material of similar structural integrity.
- e) **Existing Storage Structures Not Meeting Standards**
Existing storage structures that do not meet the requirements above in Part I.B.1. and will not be upgraded to meet NRCS 313 Standards shall be maintained or permanently closed in accordance with Part I.C.3. Records of usage, maintenance, or closure shall be kept in the CNMP. A notification of discontinued use shall be made via MiWaters (<https://miwaters.deq.state.mi.us>). If a waste storage structure is to be closed, this shall be completed within six months from the notification.

PART I**Section B. Nutrient Management Plan****c. Inspection Requirements**

The permittee shall develop a Storage Structure Inspection Plan to be kept in the CNMP. CAFO waste storage structures shall be inspected weekly. The results of the inspection shall be recorded on the "CAFO Inspection Record" form provided by the Department and kept in the CNMP for a minimum of 5 years from the date of creation. The plan shall include all of the following weekly 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 or stacking pad.
- 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 ensure that valves, gates, and alarms are correctly set and all are properly functioning.
- 4) Any deficiencies found as a result of these inspections shall be corrected as soon as possible. Deficiencies and corrective actions taken shall be documented on the CAFO Inspection Record and kept in the CNMP for a minimum of 5 years from the date of creation.

d. Operation and Maintenance Requirements

The permittee shall implement a Storage Structure Operation and Maintenance Program that incorporates all 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 for a minimum of 5 years from the date of creation, unless specified otherwise below.

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

- 1) In the event 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 and the emergency volume restored 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. Descriptions of such events shall be recorded and kept in the CNMP for a minimum of 5 years from the date of creation.
- 2) 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 determination shall be kept in the CNMP for a minimum of 5 years from the date of creation and shall be certified via MiWaters (<https://miwaters.deq.state.mi.us>) to the Department by January 14 of the next calendar year, in accordance with Part II.C.5.
- 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 from the date of creation. 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 in Part I.B.1.a., b., and d.
- 8) CAFO waste storage structures shall not contain human sanitary waste.

2. Best Management Practices Requirements

The following are designed to achieve the objective of preventing unauthorized discharges to surface 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. Records documenting the inspection of the conservation practices (with the exception of those utilized on land application areas) shall be kept in the CNMP for a minimum of 5 years from the date of creation. Conservation practices on land application areas receiving CAFO waste shall be inspected and reported on the "Daily Manure Application Record."

PART I**Section B. Nutrient Management Plan****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. The permittee shall 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 Surface 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 surface waters of the state and shall describe such controls in the CNMP. Records documenting the proper implementation of controls preventing access of animals to surface waters of the state shall be recorded on the "CAFO Inspection Report" form and kept in the CNMP for a minimum of 5 years from the date of creation.

d. Animal Mortality

The permittee shall handle, store, or dispose of dead animals in a manner that prevents contamination of surface waters of the state. Mortalities, including but not limited to any animal refuse (including but not limited to entrails and viscera or parts other than excrement), must not be disposed of in any liquid CAFO waste storage structure or storm water storage structure that is not specifically designed to treat animal mortalities, with the exception of leachate from properly designed and operated composting structures. Records documenting the proper management of animal mortalities shall be reported on the "CAFO Inspection Report" form and kept in the CNMP for a minimum of 5 years from the date of creation.

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 that are not part of the normal agricultural practice at the production site and other contaminants handled at the CAFO are not disposed of in any CAFO waste or storm water storage or treatment system. Records documenting the proper management of chemicals to prevent their introduction into the CAFO waste storage structures, storm water storage, or treatment system, shall be reported on the "CAFO Inspection Report" and kept in the CNMP for a minimum of 5 years from the date of creation.

f. Inspection, Proper Operation, Maintenance, and Reporting

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 waters and groundwaters of the state. A copy of the program shall be included in the CNMP. Specific inspection requirements include, but are not limited to, all of the following:

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

- 1) Weekly visual inspections of all clean storm water diversion devices and runoff diversion structures and practices as described in Part I.B.2.b.
- 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) Weekly inspections of all CAFO waste-handling equipment including piping and transfer lines, all runoff management devices, and devices channeling contaminated stormwater to storage and containment structures 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 the "CAFO Inspection Record" form provided by the Department and shall be kept in the CNMP for a minimum of five years from the date of creation. 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 (section, township, county, and crossroads, latitude and longitude of field center), 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 of the state. 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 or injection to frozen or snow-covered ground in accordance with Part III, Department 2005 Technical Standard for the Surface Application of CAFO Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection. 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 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. of this permit; and the basis (technology, or sampling methods and results) of any planned use of additional nitrogen above that rate shall be provided with the field by field assessment, and submitted and kept in the CNMP.
- 4) will not result in unauthorized discharges.

All assessments shall be kept in the CNMP for a minimum of 5 years from the date of creation. A particular field may be deleted from the CNMP once the field is no longer used for land application of CAFO waste; however, the field assessments must be kept in the CNMP for 5 years from the date created.

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 via

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MiWaters (<https://miwaters.deq.state.mi.us>) that includes the field-by-field assessment required above, current (within the last three years) soil tests, planned crops, and realistic crop yield goals. The request will be public noticed for 15 calendar days via MiWaters (<https://miwaters.deq.state.mi.us>). The permittee may use the field 18 calendar days after submittal of the request unless notified otherwise by the Department.

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 the North Central Regional Extension Publication 567 (1995) 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 Part I.B.3.c. below. Records of the nutrient levels and analysis methods shall be kept in the Land Application Log and in the CNMP for a minimum of 5 years from the date of creation.
- 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 I.B.3.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.

Grid or zone sampling are also acceptable methods for sampling soils at land application sites. If grid or zone sampling methods are used, methods shall follow Michigan State University Extension Bulletin E498S (2006). The permittee shall include individual soil sample results and information documenting how soil sample zones are determined, and manure application rates are calculated.

Records of the phosphorus levels shall be kept in the Land Application Log and in the CNMP for a minimum of 5 years from the date of creation.

- 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 Daily Manure Application Record.
- 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 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 Daily Manure Application Record 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 recorded in the Daily Manure Application Record. If an inspection reveals a discharge with color, odor, or other characteristics

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indicative of an unauthorized discharge of CAFO waste, the permittee shall immediately notify the Department in accordance with the reporting procedures set forth in Part I.C.1. and monitor the discharge in accordance with Part I.A.2. of the permit. A copy of the Daily Manure Application Record shall be kept with 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, date of inspections, and calibrations according to the manufacturer's specifications shall be retained in the Daily Manure Application Record.

c. **Maximum Annual Land Application Rates**

The permittee may use either the Bray P1 numerical limits or the Michigan Phosphorus Risk Assessment (MPRA) tool (Version 2.0, Nov. 2012) and the EGLE MPRA Guidance Document to determine maximum annual land application rates. The permittee must use one system for all land application areas. 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 Part I.B.3.h. below. The permittee shall comply with all of the following land application rates:

- 1) **Land Application Rate Prohibitions and Restrictions**
All of the following land application rate prohibitions apply.
 - a) If the Bray P1 soil test result is 135 parts per million (ppm) phosphorus (P) or more, and the fields are not located within a watershed(s) covered by an approved phosphorus or nitrogen Total Maximum Daily Load (TMDL), CAFO waste applications shall be discontinued until nutrient use by crops reduces the Bray P1 soil test result to less than 135 ppm P including when MPRA is used. If the Bray P1 soil test result is 120 ppm P or more, and the fields are located in a watershed(s) covered by an approved phosphorus or nitrogen TMDL, CAFO waste applications shall be discontinued, until nutrient use by crops reduces the soil test result to less than 120 ppm 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 Part I.B.3.c.2) 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 in Part I.B.3.c.2) 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. 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 in the CNMP for a minimum of 5 years from the date of creation.
- 2) **Phosphorus Levels**
 - a) If the Bray P1 soil test result is 68 ppm P or more, but less than 135 ppm P and the fields are not located within a watershed(s) covered by an approved phosphorus or nitrogen TMDL, 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 method described below. If the Bray P1 soil test result is 60 ppm P or more, but less than 120 ppm P and the fields are located in a watershed(s) covered by an approved phosphorus or nitrogen TMDL, or a MPRA risk of LOW, application rates shall be based on the maximum rate of P in annual pounds per acre as calculated using the method described below.

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The realistic yield goal per acre, using the units specified in Table 1 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 in Part 1.B.3.c.3)a)(3) below 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 68 ppm P and the fields are not located within a watershed(s) covered by an approved phosphorus or nitrogen TMDL, or 60 ppm P and the fields are located in a watershed(s) covered by an approved phosphorus or nitrogen TMDL, 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. The University of Minnesota Extension Bulletin "Guidance for Manure Application Rate" (2019) and University of Wisconsin Bulletin A2809 (2012) may be used for N fertilizer recommendations or removal rates for legumes. In no case may the application rate exceed four years of P calculated using the method described in Part 1.B.3.c.2)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.

- 3) Additionally, only one year of N can be applied as stated in Part 1.B.3.c.1) c) above, unless samples or other relevant data demonstrate additional N is needed for, or will be beneficial to, the crop. Prior to application, the demonstration justifying additional N must be submitted to the Department via MiWaters (<https://miwaters.deq.state.mi.us>) for review. The demonstration will be public noticed for a period of 15 calendar days. The demonstration shall be kept in the CNMP for a minimum of 5 years from the date of creation. The permittee may apply the additional N following 18 calendar days after submittal of the request, unless notified otherwise by the Department.

- a) Risk Assessment

- (1) If using MPRA, CAFO waste may only be applied on fields that achieve a MPRA score of LOW or MEDIUM.
- (2) In accordance with Part 1.C.9., if the field is located in a watershed(s) covered by an approved phosphorus and nitrogen TMDL, CAFO waste may not be applied unless the MPRA risk is LOW.
- (3) Allowable application rates of P shall be based on the rates of P in annual pounds (lbs.) per acre (ac) as calculated using the following formula:

Phosphorus Amount (lbs. P/ac) = Realistic Crop Yield Goal/ac x P (lb./unit yield for planned crop)

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The annual application rates allowable as calculated above shall be achieved by using the CAFO waste test results (required per Part I.B.3.b.1) for P to determine the amount of CAFO waste that may be land applied per acre per year as calculated using MPRA.

Three and four years of P may only be applied on fields with an MPRA score of LOW. A multi-year P application rate shall be the results calculated using the formula above for each of the crops planned for the specified years and those annual results shall be added together to determine the maximum P application.

Table 1. Phosphate (P_2O_5) values are included for reference purposes.

Planned Crop	Harvest Form	Unit of Realistic Yield Goal per Acre	P	P_2O_5
			-- lb./unit of yield --	
Alfalfa	Hay	ton	5.72	13.1
Alfalfa	Haylage	ton	2.38	5.45
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
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
Onions	Bulb	ton	1.14	2.6
Orchard grass	Hay	ton	7.48	17
Peaches	Fruit	ton	0.24	0.55
Pears	Fruit	ton	0.23	0.53
Peas	Fruit	ton	2.01	4.6
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

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Table 1. Phosphate (P_2O_5) values are included for reference purposes.				
Planned Crop	Harvest Form	Unit of Realistic Yield Goal per Acre	P	P_2O_5
			- - lb./unit of yield - -	
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
Triticale	Silage	Ton	3.08	7.0
Wheat	Grain	bushel	0.28	0.63
Wheat	Straw	ton	1.45	3.3

For crops not listed in Table 1, the permittee shall provide in the permit application, the harvest form, unit of realistic yield goal per acre, P lb./unit of yield (in a format similar to that of Table 1) and supporting data. The Department will review the proposal, and upon approval, will list the approved numbers 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, and upon approval, will public notice the proposal via MiWaters (<https://miwaters.deq.state.mi.us>) for a 15 day period. The alternate land application rates and methodologies will be included in the COC issued under this permit.

Methodology and calculations consistent with this Part I.B.3.c. and their results, shall be recorded in the Land Application Log.

d. Land Application Log

The results of land application inspections, monitoring, testing, and recordkeeping shall be recorded in the Department provided forms, "Daily Manure Application Record" and the "Land Application Summary for Previous Crop Year" which shall be kept up-to-date and kept in the CNMP for a minimum of 5 years from the date of creation. 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 documents:

1) Daily Manure Application Record

- The time, date, quantity, method, location (Section, Township, County, latitude and longitude of field center), crop grown, and application rate for each location at which CAFO wastes are land applied.
- The description of the forecast and of the weather conditions at the time of application and for 24 hours prior to and following application based on visual observation.
- A review of the condition of conservation practices.
- A statement whether the land was frozen or snow-covered at the time of application.

2) Land Application Summary for Previous Crop Year

- The crop, the realistic yield goal, and actual yield for each location at which CAFO wastes are land applied, and the second-year crop (if applicable).
- Methodology and calculations showing the total nitrogen and phosphorus actually applied to each field receiving CAFO waste, identifying each source of manure used to calculate the application rate, identify all sources of nutrients, including sources other than CAFO waste.
- 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.

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- d) The reporting of additional N applied under the demonstration per Part I.B.3.c.3)a).
- 3) Forecast Records
Printouts or electronically maintained records 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 and shall be made available upon Department request.
- e. Land Application Summary
The permittee shall submit the required "Land Application Summary" form via MiWaters (<https://miwaters.deq.state.mi.us>) within 30 days from each quarter ending March 31, June 30, September 30, and December 31 of each year and will include the following for each field on which CAFO waste was applied:
- 1) Dates of Application;
 - 2) Field name and Location (latitude and longitude coordinates of center of field);
 - 3) Acres applied;
 - 4) Amount and units of manure applied per acre.
- f. 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 applied during the months of January, February, or March unless the permittee submits a notification and meets the following conditions:
 - (a) CAFO waste shall only be applied when waste can be incorporated immediately following application, or injected;
 - (b) CAFO waste shall not be applied when two or more inches of frost and/or four or more inches of snow are present at the land application site at the time of application;
 - (c) CAFO waste shall not be applied within 100 feet of any surface water of the state, open tile line intake structures, sinkholes, agricultural well heads, included but not limited to roadside ditches that are conduits to surface waters of the state (with the exception of surface waters of the state that are up-gradient of the land application).
 - (d) Manure application on fields receiving CAFO waste must have a soil sample Bray P1 of no greater than 68 ppm P, or 60 ppm P if fields are located in watershed(s) covered by an approved phosphorus or nitrogen TMDL.
 - (e) Twenty-four (24) hours prior to the land application of CAFO waste, the Department shall be notified, through a Department form via MiWaters (<https://miwaters.deq.state.mi.us>). The notification must include all of the following:
 - i) a topographic map of the specific land application location showing the directional flow to surface waters;
 - ii) the planned application rate, with no more than 1 crop year of P that can be applied;

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iii) the current total storage structure capacity in days at the CAFO facility.

(f) All land application practices shall follow the requirements per Part I.B.3.

- 4) CAFO waste shall not be transferred to a recipient for land application of the CAFO waste during the months of January, February, or March. Land application does not mean CAFO waste that is transferred out of state, to a treatment facility, or composting facility.
- 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 the following:

GFS MOS (MEX) Text Message by Station Forecast: If the Q24 is 4 and the P24 is 70 or more for the applicable 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 5, or both the Q24 is less than 4 and the P24 is less than 70 for the applicable time period. If the first two Q12 values are 4 and the corresponding P12 values are 70 or more for the applicable time period, or the Q12 values are 5 or greater (with any P12 numbers), then CAFO waste land application shall be delayed until the first two Q12 values are less than 5 or both the Q12 values are less than 4 and the corresponding P12 values are less than 70 for the applicable time period. For further details and instructions, utilize the "Instructions for Determining Precipitation Forecasts for CAFO Permits" located at https://www.michigan.gov/documents/deq/wrd-npdes-CAFO-PrecipitationInstructions_513072_7.pdf. 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 website 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 website are available from the Department. Other forecast services may be used upon approval of the Department.

g. 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. During January, February, March all CAFO waste shall be incorporated immediately following application, or injected. The following exceptions apply during the period April 1 through December 31:

- 1) Injection or incorporation may not be feasible where CAFO wastes are applied to pastures, perennial crops such as alfalfa, cover crops, or where no-till practices are used. CAFO waste may be applied to pastures or perennial crops such as alfalfa, cover crops, or where no-till practices are used, only if the CAFO waste will not enter surface waters of the state. CAFO waste shall not be applied if the waste may enter surface waters of the state.
- 2) CAFO waste may be surface applied and not incorporated within 24 hours on ground that is frozen or snow-covered only if there is a field-by-field demonstration conducted within 48 hours prior to application. The demonstration shall be conducted in accordance with Part III. Department 2005 Technical Standard for the Surface Application of CAFO Waste on Frozen or Snow-Covered Ground Without Incorporation or Injection, showing that such land application will not result in a situation where CAFO waste may enter surface waters of the state. The demonstration shall be submitted to

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the Department 24 hours prior to application on frozen or snow-covered ground. Demonstrations shall be kept with the Land Application Log. 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, cover crops, or where no-till practices are used.

h. Setbacks

- 1) If using the numerical Bray P1 method, the permittee shall comply with the setback requirements in a) and b) below.
 - a) CAFO waste shall not be applied within 100 feet of any surface water of the state, open tile line intake structures, sinkholes, agricultural well heads, including but not limited to roadside ditches that are conduits to surface waters of the state (with the exception of surface waters of the state that are up-gradient of the land application),
 - b) The permittee shall install and maintain a 35-foot wide permanent vegetated buffer along any surface water of the state, open tile line intake structures, sinkholes, agricultural well heads, including but not limited to roadside or any ditches that are conduits to surface waters of the state (with the exception of surface waters of the state that are up-gradient of the land application). CAFO waste shall not be applied within the 35-foot buffer.
- 2) The permittee may demonstrate an alternative practices compliance alternative consistent with 40 CFR 412.4(c)(5)(i) and (c)(5)(ii) that minimize risk of transport of nutrients to surface waters. The demonstration shall be submitted via MiWaters (<https://miwaters.deq.state.mi.us>) and be approved by the department and implemented per Department approval. This approved demonstration becomes a part of the CNMP.
- 3) If using MPRA, setbacks and/or permanent vegetative buffers shall be identified in the MPRA scoring worksheet, field-by-field assessment, and field maps. The permittee may choose from a) or b) below.
 - a) CAFO waste shall not be applied within 100 feet of any surface water of the state, open tile line intake structures, sinkholes, agricultural well heads, including but not limited to roadside ditches that are conduits to surface waters of the state (with the exception of surface waters of the state that are up-gradient of the land application), or
 - b) The permittee may choose to install and maintain a 35-foot wide permanent vegetated buffer as a substitute for 1) b) above. CAFO waste shall not be applied within the 35-foot permanent vegetated buffer.
- 4) CAFO waste shall not be applied within grassed waterways and swales that are conduits to surface waters of the state.
- 5) Setbacks and vegetated buffer widths 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 and vegetated buffers for each field shall be shown on the CNMP field maps.

i. 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:

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- 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.
- 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 for a minimum of 5 years from the date of creation.

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 (NMP) per Part I.B.

- a. Approval
The CNMP shall be certified by a Certified CNMP Provider.
- b. Submittal
The CNMP shall be submitted to the Department with the application for coverage under this permit. All or parts of the CNMP shall be submitted via MiWaters (<https://miwaters.deq.state.mi.us>) on the template provided by the Department.
- c. Contents
The CNMP submitted to the Department shall include all of the information and requirements specified in the NMP Section per Part I.B., an Executive Summary (a general description of the operation), and a map of the production area that includes all of the items specified in the permit application, the animal confinement area, the manure storage area, the raw materials storage area, treatment systems, and the waste containment areas, and that shows all clean water and production area waste flow paths, contaminated collection areas, pipes, control structures, valves, etc. The location of any areas used for storage of raw materials, including new sand bedding, shall be located in such a manner as to prohibit runoff to surface waters of the state.
- 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 via MiWaters (<https://miwaters.deq.state.mi.us>) on the "Annual Report Form for Concentrated Animal Feeding Operations (CAFO)" provided by the Department. The annual report shall include, but is not limited to, all of the following:

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- 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, 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 Land Application Summary for Previous Crop Year per Part I.B.3.d.2.;
 - 8) a statement indicating whether the current version of the CAFO's CNMP was approved by a certified CNMP provider; and
 - 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.
- e. CNMP Revisions
- Prior to revisions to the CNMP, the CAFO owner or operator must provide the most current version of the CNMP and identify changes from the previous version to the Department for review. If the Department determines the revisions are significant, the Department must notify the public and make the changes available for review and comment. Significant revisions of the CNMP shall be public noticed for a period of 15 calendar days and may result in a permit modification. The CNMP shall be submitted via MiWaters (<https://miwaters.deq.state.mi.us>). Significant change includes the following:
- 1) Addition of new land application areas not previously included in the CAFO's CNMP per Part I.B.3.a.
 - 2) Any changes to the maximum field-specific annual rates of application or to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as expressed in accordance with the narrative rate approach per Part I.B.3.c.
 - 3) Addition of any crop or other uses not included in the terms of the CAFO's CNMP and corresponding field-specific rates of application per Part I.B.3.c.3).
 - 4) Changes to site-specific components of the CAFO's CNMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport from the site to surface waters of the state per Part I.B.3.c.

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

- 5) An increase in the number of animals that results in a 10 percent or greater 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 or the most recently submitted Significant Change due to this Part I.B.4.e.5).
- 6) An increase in the number of animals that results in a 10 percent or greater decrease in the waste storage capacity time, as identified in the application or the most recently submitted Significant Change due to this Part I.B.4.e.6) or results in a waste storage capacity of less than 6 months.
- 7) The construction or procurement of a new animal housing facility or waste storage facility.

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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 requirements set forth 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 within 24 hours after the discharge begins. The permittee shall also submit the completed "CAFO Discharge Monitoring Report" form to the Department via MiWaters (<https://miwaters.deq.state.mi.us>). In addition, the permittee shall keep a copy of the report in the CNMP for a minimum of 5 years from the date of creation. 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; and
- e. if the permittee believes that the discharge is an authorized discharge, 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 or Procurement of New Waste Storage Structures or Facilities

Before the construction, alteration, or within 30 days of procurement of a waste storage structure, facility, or portions thereof, notification shall be submitted to the Department via MiWaters (<https://miwaters.deq.state.mi.us>). New waste storage and transfer structures shall be built to NRCS 313 2017 Standard. Complete as-built plans, specifications, drawings, etc. shall be kept in 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 2017 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 I.C.3.

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 ensure 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 via MiWaters (<https://miwaters.deq.state.mi.us>) 30 days prior

PART I

Section C. Other Requirements

to closing structures, or upon deciding that the structures will be maintained as specified in (a) or (b) above. Thirty days prior to restoration of the use of the structure, the permittee shall notify the Department via MiWaters (<https://miwaters.deq.state.mi.us>) 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.

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 via MiWaters (<https://miwaters.deq.state.mi.us>) 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.

PART I**Section C. Other Requirements****6. Expiration and Reissuance**

On or before October 1, 2024 a permittee seeking continued authorization to discharge under this permit beyond the permit's expiration date shall submit to the Department an application for reissuance via MiWaters (<https://miwaters.deq.state.mi.us>). Without a timely application for reissuance, the permittee's authorization to discharge will expire on April 1, 2025. With a timely application for reissuance, the 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. Upon determination by the Department to grant or deny coverage under this permit, the proposed decision will be public noticed for a period of 15 calendar days via MiWaters (<https://miwaters.deq.state.mi.us>)

If this permit is terminated or revoked, the Department will notify the permittee in writing and 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 in writing of any required action. Upon the effective date of the modified permit, the permittee shall be subject to the terms and conditions of the modified permit, unless the Department notifies the permittee otherwise.

If the discharge authorized under this permit is terminated, the permittee shall submit to the Department an NPDES Permit Notice of Termination request via MiWaters (<https://miwaters.deq.state.mi.us>). However, the permittee may submit a request for termination via MiWaters (<https://miwaters.deq.state.mi.us>) if all the following are met:

- a. the facility has ceased operation; and/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.

7. 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).

8. 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), the "Manifest for CAFO Waste" form shall be completed and used to track the transfer and use of the CAFO waste. The "Manifest for CAFO Waste" form shall be kept with the CNMP for 5 years from the date of creation. CAFO waste shall not be transferred to a recipient for land application of that waste during the months of January, February, or March.

PART I**Section C. Other Requirements**

- a. Prior to transfer of the CAFO waste, the CAFO owner or operator shall utilize the "Manifest for CAFO Waste" form provided by the Department to record all of the following:
 - 1) a manifest document number;
 - 2) the generator's name, mailing address, and telephone number;
 - 3) the name, address, and contact information of the recipient of the CAFO waste;
 - 4) the generator shall provide to the recipient, the nutrient content of the CAFO waste to be transferred, in sufficient detail to be used in determining the agronomic 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 ensure there is no illegal discharge of pollutants to surface 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 latitude and longitude center of the site or sites used by the recipient for land application or other disposal or use of the CAFO waste; and
 - 10) signatures of the generator and recipient with dates of signature.
- b. Prior to manifesting CAFO waste, the generator shall receive from the recipient, the soil phosphorus levels using the Bray P1 test method, no older than three years, that the recipient will use to determine the agronomic rates of land application of the CAFO waste.
- 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;
 - 3) obtain a copy of the completed signed "Manifest for CAFO Waste" form;
 - 4) obtain the completed "Daily Manure Application Summary" from the recipient for each field on which the generator's CAFO waste was applied;
 - 5) provide a signed copy to the recipient; and
 - 6) advise the recipient of his or her responsibilities to complete the "Manifest for CAFO Waste" form; if not completed at time of delivery, obtain a copy of the "Manifest for CAFO Waste" form from the recipient within 30 days of the transfer of the CAFO waste.
- d. One "Manifest for CAFO Waste" form may be used for multiple loads or containers of the same CAFO waste transferred to the same recipient. The "Manifest for CAFO Waste" form shall list separately each address or location (latitude and longitude of field center) used by the recipient for land application or other disposal or use of the CAFO waste. Each separate address or location listing shall include the quantities of CAFO waste transferred to that location and dates of transfer.

PART I**Section C. Other Requirements**

- 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 and complete information on the manifest in a timely manner;
 - 2) the "Manifest for CAFO Waste" form indicates improper land application, use, or otherwise transferred;
 - 3) the generator learns that there has been improper land application, use, or otherwise transferred of the manifested CAFO waste; and/or
 - 4) appropriate jurisdiction has determined that the recipient has improperly land applied, used, or otherwise transferred 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.8.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 for CAFO Waste" form, 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 submit a demonstration, to the Department via MiWaters (<https://miwaters.deq.state.mi.us>), that the improper land application, use, or disposal has been corrected, and the Department has responded to the demonstration with its approval of the demonstration.
- g. The CAFO generator shall submit the required "Land Application Summary" form for fields on which the recipient applied the generator's CAFO waste via MiWaters (<https://miwaters.deq.state.mi.us>) within 30 days from each quarter ending March 31, June 30, September 30, and December 31 of each year and will include the following:
- 1) recipient name and phone or e-mail contact information;
 - 2) date of transfer; and
 - 3) If CAFO waste is used for land application of manure:
 - a) dates of land application;
 - b) field location (latitude and longitude of center of field);
 - c) soil test results (and year of test) of fields;
 - d) amount (and units) of manure applied; and
 - e) manure source; or
 - f) and number of acres applied.
 - 4) If CAFO waste is not used for land application of manure:
 - a) other use (digester, composting, broker, etc.);

PART I**Section C. Other Requirements**

- b) volume or tons of CAFO waste transferred.
- h. The requirements of Part I.C.8. do not apply to quantities of CAFO waste less than one (1) pickup truck load, one (1) cubic yard, or one (1) ton per recipient per day.

9. Total Maximum Daily Load (TMDL) Waters

- a. Nitrogen or Phosphorus TMDL
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). 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 nitrogen or phosphorus TMDL.
- b. *E. coli*, Biota, Dissolved Oxygen TMDL
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 has developed and published the "Total Maximum Daily Load (TMDL) Guidance for Concentrated Animal Feeding Operations (CAFO)" regarding how to evaluate operations and determine additional pollutant control measures. The permittee shall complete the following actions within 24 months of receiving notification from the Department:
 - 1) Conduct a comprehensive evaluation of its operations. A comprehensive evaluation shall identify sources of pollutants that have the potential to reach surface waters from production areas and/or land application areas.
 - 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. Pollutant control measures, shall at a minimum, include those that prevent surface runoff and subsurface drainage of CAFO waste from land application areas.
 - 3) Submit a written TMDL Evaluation Report via MiWaters (<https://miwaters.deq.state.mi.us>) to the Department based on one of the following:
 - a) If the permittee, based on the comprehensive evaluation, determines that the pollutant loading or concentration allocation(s) established in the approved TMDL are being met, then the written TMDL Evaluation Report justifying that determination shall be submitted to the Department for approval, or
 - b) If the permittee determines that the pollutant loading or concentration allocation(s) established in the approved TMDL is being exceeded, then the written TMDL Evaluation 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 or concentration allocation(s) established in the approved TMDL. The permittee's written TMDL Evaluation 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 implementation schedule. The approved written TMDL Evaluation Report detailing the additional pollutant control measures and the associated implementation schedule shall be kept in the CNMP for a period of 5 years from the date of creation, and shall be an enforceable part of this permit.

PART I**Section C. Other Requirements****10. 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 bypassed for any reason, including handling and storage of partially digested contents, and notifications per Part II.C.9.c. and d. of this permit.

Outside materials up to 20 percent the total digester volume may be added to the digester to enhance operation. Quantities of outside materials more than 5 percent of the total digester volume will be listed in the COC issued under this permit. The Department may prohibit the use of certain outside materials. The permittee shall keep in the CNMP for a minimum of 5 years from the date of creation, the reports of 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.

11. Document Availability

Copies of all documents required by this permit, including the CNMP, Land Application Log, inspection records, soil tests received by the recipient of manifested CAFO waste, etc., shall be kept at the permitted facility for a minimum of 5 years from the date of creation and made available to the Department upon request.

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PART II

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 Environment, Great Lakes, and Energy (Formerly 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
12. 30,000 ducks, if the AFO uses other than a liquid manure handling system
13. 5,000 ducks, if the AFO uses 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.

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.3).

NMP means Nutrient Management Plan and is the section in the permit that sets forth requirements and conditions to ensure 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 means the NRCS Michigan Statewide Technical Guide, Section IV, Conservation Practice No. 313, Waste Storage Facility, dated either June 2003, November 2005, August 2014, or November 2017.

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.

Pastureland is land that is primarily used for the production of forage upon which animals graze. Pastureland is characterized by a predominance of vegetation consisting of desirable forage species. Sites such as loafing areas, confinement areas, or feedlots which have animal densities that preclude a predominance of desirable forage species are not considered pastureland. 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 animal 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, treatment systems, 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 (including new sand used for bedding). 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 treatment system feedstock and runoff from 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 of the state.

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 determined by the "NOAA ATLAS-14 Precipitation Frequency Data Server (PFDS)" <https://hdsc.nws.noaa.gov/hdsc/pfds/>.

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 Manager of the Permits Section, Water Resources Division, Michigan Department of Environment, Great Lakes, and Energy, 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. Records shall be kept in the CNMP for a minimum of five years from the date of creation.

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 five (5) years from the date of creation, 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 populate with animals during the first 60 days following the effective date of the certificate of coverage issued under this permit then the permittee shall notify the Department within 14 days following the effective date of the certificate of coverage issued under this permit. Subsequently, the Department shall be notified 60 days prior to population with animals.

2. Submittal Requirements for Self-Monitoring Data

Part 31, of the NREPA, (specifically Section 324.3110(7)), and R 323.2155(2) of Part 21, Wastewater Discharge Permits, promulgated under Part 31, of the NREPA, 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 MiWaters system.

The permittee shall utilize the information provided on the MiWaters website at <https://miwaters.deq.state.mi.us>, to access and submit the electronic forms. Both monthly summary and daily data shall be submitted to the Department no later than the 20th 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, Sewerage Systems, of the NREPA, or Rule 35 of the Mobile Home Park Commission Act (Public Act 96 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 notification to the Department via MiWaters (<https://miwaters.deq.state.mi.us>) 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 report is required to be submitted by a specified date and the permittee accomplishes this, a separate 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 submission via MiWaters (<https://miwaters.deq.state.mi.us>) shall also be provided within five (5) days.
- b. Other Reporting
The permittee shall report, via MiWaters (<https://miwaters.deq.state.mi.us>), 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.

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 via MiWaters (<https://miwaters.deq.state.mi.us>) 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.

Within ten (10) days of the release, the permittee shall submit to the Department via MiWaters (<https://miwaters.deq.state.mi.us>), 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.

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,

PART II**Section C. Reporting Requirements**

improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation); and

- c. that the permittee has specified and acted 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.
- 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.

PART II

Section C. Reporting Requirements

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, via MiWaters (<https://miwaters.deq.state.mi.us>), 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.

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 via MiWaters (<https://miwaters.deq.state.mi.us>) within 30 days of 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.

PART II

Section C. Reporting Requirements

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.

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 via MiWaters (<https://miwaters.deq.state.mi.us>) all such reports or notifications as required by this permit, on forms provided by the Department.

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 include 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.

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.

PART II**Section D. Management Responsibilities****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, Part 31, Water Resources Protection; Part 55, Air Pollution Control; Part 111, Hazardous Waste Management; Part 115, Solid Waste Management; Part 121, Liquid Industrial By-Products; Part 301 Inland Lakes and Streams; and Part 303 Wetlands Protection, of the NREPA. 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, and the Regional Administrator or their designee, 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), reports prepared in accordance with the terms of this permit and required to be submitted to the Department, shall be available for public inspection via MiWaters (<https://miwaters.deq.state.mi.us>). 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 via MiWaters (<https://miwaters.deq.state.mi.us>), 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 Environment, Great Lakes, and Energy 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, (DEQ), 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 ensure 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 EGLE NPDES website)

ORIGINAL SIGNED

Richard A. Powers, Chief
Water Bureau

April 19, 2005

Date

EXHIBIT C



MICHIGAN DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY

REQUEST FOR DECLARATORY RULING*

The procedural authority for a declaratory ruling is the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* Information requested on this form may be provided in an alternative, written format or additional pages may be attached.

Name

Michigan Farm Bureau, et al. (see attached)

Street Address

215 S. Washington St., Ste. 200

City

Lansing

State

MI

ZIP Code

48933

Telephone Number

C/O Legal Counsel. (517) 318-3043

E-mail Address

C/O Legal Counsel: mpattwell@clarkhill.com

I (the above) request a declaratory ruling pursuant to 2003 MR 2, R 324.81, in regard to: the legal characterization and validity of certain new conditions (delineated and described more fully in the attached Exhibit B) that may be imposed upon Concentrated Animal Feeding Operations ("CAFOs") by EGLE via the 2020 CAFO General Permit - MIG010000. The 2020 CAFO General Permit was issued on March 27, 2020 but is not yet in effect as it is subject to Contested Case No. 20-009773, which remains pending.

The precise questions are stated in the attached document.

Indicate below whether the request relates to a Statute, Administrative Rule, or an Order administered by EGLE.

☒ Part 31 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*

☐ Part of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*

☒ Other statute: Administrative Procedures Act, MCL 24.2

☒ Administrative Rule, R 323.2196; Title: CAFO Perm

☐ Order No. ; Title:

Please state the specific question or request to be addressed:
See attached.

Please state the actual uncontested facts, including your status as an interested person or your standing to request a declaratory ruling:
See attached

(Additional pages, maps, drawings, etc., may be attached)

Title, If Signing for Organization
Legal Counsel

Organization Name
See attached.

Printed Name
Michael J. Pattwell

Signature



Date

12/2/22

***Requests regarding enforcement issues are not a proper subject for a Declaratory Ruling: 2003 MR 2, R 324.81(1).**

Submit this completed Request for Declaratory Ruling and attachments to:

Executive Office
Michigan Department of Environment, Great Lakes, and Energy
525 West Allegan Street
Lansing, MI 48933

If you need this information in an alternate format, contact EGLE-Accessibility@Michigan.gov or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at EGLE-NondiscriminationCC@Michigan.gov or 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

In Re Request for Declaratory Ruling by

EGLE Water Resources Division

Michigan Farm Bureau, *et al.*,

Docket No. _____

Interested Parties
_____ /

REQUEST FOR DECLARATORY RULING

Interested Parties, Michigan Farm Bureau and those other persons listed in Paragraphs 2 to 164, below, through their attorneys Clark Hill PLC hereby request a declaratory ruling under the Michigan Administrative Procedures Act, MCL 24.201 and Michigan Administrative Rule 324.81 that the new conditions of the 2020 General Permit for Concentrated Animal Feeding Operations (“CAFOs”) identified in this request are invalid administrative rules. In support of this request, Interested Parties state as follows:

PERSONS REQUESTING RULING

1. The following persons are requesting a declaratory ruling under MCL 24.263 and Michigan Administrative Code, Rule 324.81.

2. Interested Party Michigan Farm Bureau (“Farm Bureau”) is a grassroots organization located at 7373 W. Saginaw Highway, Lansing, Michigan 48917 that exists to promote and represent the interests of the agricultural industry across the State of Michigan. Farm Bureau represents the full spectrum of Michigan’s agricultural diversity, from crops and livestock to fruits and vegetables, greenhouses, forestry, and more. Farm Bureau’s membership includes both large and small livestock farms across the State of Michigan, including numerous farms that are regulated as CAFOs, many of which will become subject to the terms of General Permit No. MIG010000, as well as non-CAFO crop and livestock farms within Michigan. Farm Bureau’s

members include CAFOs that raise chickens for egg and meat production, dairy cows for milk, cheese, ice cream, and other dairy product production, cattle for beef, pigs for pork, and a variety of other animals for their capacity to efficiently produce food essentials that feed Michiganders at affordable prices.

3. Interested Party Michigan Milk Producers Association (“MMPA”) is a dairy farmer owned cooperative and dairy processor located at 41310 Bridge St., Novi, MI 48375. Founded in 1915, MMPA serves hundreds of dairy farmers in Michigan. MMPA’s membership includes many large dairy farms that are regulated as CAFOs, many of which will become subject to the terms of General Permit No. MIG010000.

4. Interested Party Michigan Pork Producers Association (“Pork Producers”) is a state affiliate of the National Pork Producers Council, a national organization of pork industry producers, and is located at 3515 West Rd., Ste. B, East Lansing, MI 48823. Pork Producers’ membership includes large pork farms that are regulated as CAFOs, many of which will become subject to the terms of General Permit No. MIG010000.

5. Interested Party Michigan Allied Poultry Industries (“Allied Poultry”) is a non-profit statewide trade organization located at 235 N. Pine Ste., Lansing, MI 48933 and whose purpose is to represent Michigan’s egg, chicken, and turkey farmers, and their young stock network of breeders, hatcheries, and pullet growers. Allied Poultry’s membership includes large poultry farms that are regulated as CAFOs, many of which are subject to the terms of General Permit No. MIG010000.

6. Interested Party Foremost Farms USA (“Foremost Farms”) is a dairy business with cooperative ownership owned by the dairy farm families who supply milk consumed by Michiganders and is located at 501 S. Pine. St., Reedsburg, WI 53959. Foremost Farms’

cooperative members includes many of Michigan's large dairy farms that are regulated as CAFOs, many of which of which will become subject to the terms of General Permit No. MIG010000.

7. Interested Party Dairy Farmers of America ("Dairy Farmers") is a global dairy cooperative owned by dairy farmers who supply milk consumed by Michiganders and located at 104 Main St., Pollock, SD 57648. Dairy Farmers cooperative members includes many of Michigan's large dairy farms that are regulated as CAFOs, many of which of which are subject to the terms of General Permit No. MIG010000.

8. Interested Party Select Milk Producers, Inc. ("Select"), is a dairy farmer owned cooperative with dairy farm members located in Michigan, among other states, and with an address of 320 W. Hermosa Dr., Artesia, NM 88210. Select also owns dairy processing facilities located in Michigan and supplies milk from its member farms to other Michigan dairy processors. Select's cooperative members include Michigan dairy farms that are regulated as CAFOs, many of which of which will become subject to the terms of General Permit No. MIG010000.

9. Interested Party Michigan Cattlemen's Association ("MCA") is a nonprofit organization representing over 15,000 cattle producers in Michigan located at 4200 Forest Rd., Lansing, MI 48910. MCA exists to foster, promote, and protect and an environment conducive to profitable beef production. MCA's members include Michigan cattle farms that are regulated as CAFOs, many of which of which will become subject to the terms of General Permit No. MIG010000.

10. Interested Party Adam Pork Powerhouses, LLC is a swine farm located at 3920 Gettel Rd., Sebawaing, MI 48759. Adam Pork Powerhouses, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010177, and has applied for coverage under the 2020 General Permit.

11. Interested Party Snider Farms, LLC, d/b/a (and permitted as) Airport View Turkeys is a turkey farm located at 1716 W Baseline Rd., Hart, Michigan. Airport View Turkeys is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010269, and has applied for coverage under the 2020 General Permit.

12. Interested Party Alpine Pork, LLC, is a swine farm located at 15713 Pierce, West Olive, Michigan. Alpine Pork, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010217, and has applied for coverage under the 2020 General Permit.

13. Interested Party ATE Farms, LLC, is a swine farm located at 10890 West Weidman Rd., Weidman, Michigan. ATE Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010203, and has applied for coverage under the 2020 General Permit.

14. Interested Party Bebow Dairy Farm, Inc. d/b/a (and permitted as) Bebow Dairy Farm is a dairy farm located at 9119 North Baldwin Rd., St. Louis, Michigan. Bebow Dairy Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010141, and has applied for coverage under the 2020 General Permit.

15. Interested Party Bennett Farms Livestock, LLC d/b/a (and permitted as) Bennet Farms Livestock, is a swine farm located at 8170 S. Brucker Ave., Fremont, Michigan. Bennett Farms Livestock is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010166, and has applied for coverage under the 2020 General Permit.

16. Interested Party Benthem Brothers, Inc. is a dairy farm located at 7927 W. Stoney Corners Rd., McBain, MI 49657. Benthem Brothers, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010191, and has applied for coverage under the 2020 General Permit.

17. Interested Party Berlyn Acres, LLC is a dairy farm located at 10839 E 5th St., Fowler, MI 48835-9619. Berlyn Acres, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010078, and has applied for coverage under the 2020 General Permit.

18. Interested Party Bleich Dairy is a dairy farm located at 14501 Steward Rd., Hudson, Michigan. Bleich Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010060, and has applied for coverage under the 2020 General Permit.

19. Interested Party Burns Family Farm is a poultry farm located at 5380 Arbela Rd., Millington, MI 48746. Burns Family Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010151, and has applied for coverage under the 2020 General Permit.

20. Interested Party Bradford Dairy (permitted as Jason Bradford) is a dairy farm located at 11435 Sparta Ave., P.O. Box 378, Sparta, MI 49345. Bradford Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010120, and has applied for coverage under the 2020 General Permit.

21. Interested Party Brook View Dairy, LLC d/b/a (and permitted as) Brook View Dairy is a dairy farm located at 10560 Freeport Ave., Freeport, Michigan. Brook View Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit

under Certificate of Coverage Number MIG010089, and has applied for coverage under the 2020 General Permit.

22. Interested Party Burns Poultry Farms, Inc. is a poultry farm located at 9922 Irish Rd., Millington, Michigan. Burns Poultry Farms, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010031, and has applied for coverage under the 2020 General Permit.

23. Interested Party Car-Min-Vu Farms, LLC d/b/a (and permitted as) Car-Min-Vu Dairy, is a dairy farm located at 2965 Howell Rd., Webberville, Michigan. Car-Min-Vu Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010205, and has applied for coverage under the 2020 General Permit.

24. Interested Party Car Min Vu Dairy (permitted as Chad Minus) is a dairy farm located at 2965 Howell Rd., Webberville, MI 48892. Car Min Vu Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010205, and has applied for coverage under the 2020 General Permit.

25. Interested Party Cary Dairy Farm, Inc. is a dairy farm located at 6625 Poorman Rd., Battle Creek, Michigan. Cary Dairy Farm, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010087, and has applied for coverage under the 2020 General Permit.

26. Interested Party Cary's Pioneer Farm, Inc. is a cattle farm located at 3977 North Bliss Rd., Alma, Michigan. Cary's Pioneer Farm, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010053, and has applied for coverage under the 2020 General Permit.

27. Interested Party Centerwood Farms, LLC is a swine farm located at 3623 Pierce Road, Remus, Michigan. Centerwood Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010255, and has applied for coverage under the 2020 General Permit.

28. Interested Party Central Michigan Milk Producers, LLC d/b/a (and permitted as) Central Michigan Milk Production is a dairy farm located at 9119 North Baldwin Rd., St. Louis, Michigan. Central Michigan Milk Production is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010230, and has applied for coverage under the 2020 General Permit.

29. Interested Party Clover Farms, LLC d/b/a (and permitted as) Clover Family Farms, is a swine farm located at 2412 Stage Rd., Ionia, Michigan. Clover Family Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010094, and has applied for coverage under the 2020 General Permit.

30. Interested Party Contract Finishers, Inc. is a swine farm located at 5792 136th Ave., Hamilton, Michigan. Contract Finishers, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010068, and has applied for coverage under the 2020 General Permit.

31. Interested Party Courter Farms East Feedlot, LLC d/b/a (and permitted as) Courter Farms East is a cattle farm located at 10068 Luce Rd., Alma, Michigan. Courter Farms East is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010025, and has applied for coverage under the 2020 General Permit.

32. Interested Party Courter Farms West Feedlot, LLC d/b/a (permitted as Courter Farms West) is a cattle farm located at 8495 Monroe Rd., Elwell, Michigan. Courter Farms West is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010184, and has applied for coverage under the 2020 General Permit.

33. Interested Party Crossroads Dairy, LLC is a dairy farm located at 588 3 Mile Rd. NW, Suite 203, Grand Rapids, Michigan. Crossroads Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010071, and has applied for coverage under the 2020 General Permit.

34. Interested Party Davis Farms is a swine farm located at 67715 M 40, White Pidgeon, MI 49099-9075. Davis Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010073, and has applied for coverage under the 2020 General Permit.

35. Interested Party Davis Pork is a swine farm located at 16693 Brownsville Rd., Vandalia, MI 49095. Davis Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010223, and has applied for coverage under the 2020 General Permit.

36. Interested Party D & K Farms is a swine farm located at 7751 West Allan Rd., Elsie, Michigan. D & K Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010294, and has applied for coverage under the 2020 General Permit.

37. Interested Party den Dulk Dairy Farm, LLC is a dairy farm located at 588 3 Mile Rd. NW, Suite 203, Grand Rapids, Michigan. den Dulk Dairy Farm, LLC is regulated by

Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010112, and has applied for coverage under the 2020 General Permit.

38. Interested Party DeYoung Pork, Inc. d/b/a (and permitted as) DeYoung Pork Inc.- Plainwell is a swine farm located at 381 114th Ave., Plainwell, Michigan. DeYoung Pork, Inc.- Plainwell is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010082, and has applied for coverage under the 2020 General Permit.

39. Interested Party Double Quad Farms, LLC d/b/a (and permitted as) Double Quad Farms is a swine farm located at 9755 East Polk Rd., Wheeler, Michigan. Double Quad Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010017, and has applied for coverage under the 2020 General Permit.

40. Interested Party Dutch Meadows Dairy, LLC d/b/a (and permitted as) Dutch Meadows Dairy is a dairy farm located at 11481 Blue Spruce Dr., Fowler, Michigan. Dutch Meadows Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010096, and has applied for coverage under the 2020 General Permit.

41. Interested Party Dykhuis Farms, Inc. is the parent company of five farms headquartered at 3759 46th St., Hamilton, Michigan, 49419, and is doing business and is permitted through wholly owned subsidiaries as Baseline Farm, Ehinger Farm, Riverbend Farm, Shamrock Farm, and Village Central Sandy Ridge. Each farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010075,

MIG010186, MIG010132, MIG010074, and MIG010122; and each farm has applied for coverage under the 2020 General Permit.

42. Interested Party Dynasty Dairy is a dairy farm located at 9175 Toppin Rd., Harbor Beach, MI 48441. Dynasty Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010039, and has applied for coverage under the 2020 General Permit.

43. Interested Party Edge Wood Dairy, LLC d/b/a (and permitted as) Edge Wood Dairy is a dairy farm located at 588 3 Mile Rd., NW Ste. 203, Grand Rapids, Michigan. Edge Wood Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010212, and has applied for coverage under the 2020 General Permit.

44. Interested Party Fairgrove Farms, Inc. d/b/a (and permitted as) Fairgrove Farms is a swine farm located at 69676 Balk Rd., Sturgis, Michigan. Fairgrove Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010242, and has applied for coverage under the 2020 General Permit.

45. Interested Party Flower Creek Swine, LLC is a swine farm located at 2922 Holton Rd., Twin Lake, MI 49437. Flower Creek Swine LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MI0060245, and has applied for coverage under the 2020 General Permit.

46. Interested Party Finish Line Farms is a swine farm located at 3103 Mason Rd., Merrill, MI 48637-9608. Finish Line Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010014, and has applied for coverage under the 2020 General Permit.

47. Interested Party Gallagher Dairy Farm, Inc. (permitted as Gallagher Dairy) is a dairy farm located at 667 West Gallagher Rd., West Branch, MI 48861. Gallagher Dairy Farm, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010287, and has applied for coverage under the 2020 General Permit.

48. Interested Party Gernaat Family Farms is a dairy farm located at 11800 S. Hoekwater Rd., Marion, Michigan. Gernaat Family Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010102, and has applied for coverage under the 2020 General Permit.

49. Interested Party GW Dairy, LLC is a dairy farm located at 1910 E. Meyering Rd., Marion, Michigan. GW Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010145, and has applied for coverage under the 2020 General Permit.

50. Interested Party Gagnon Hog Farm, LLC (Permittee: Tom Gagnon) is a swine farm located at 3025 West 80th Ave., Newaygo, MI 49337. Gagnon Hog Farm, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010251, and has applied for coverage under the 2020 General Permit.

51. Interested Party Halbert Dairy, LLC d/b/a (and permitted as) Halbert Dairy is a dairy farm located at 23675 Banfield Rd., Battle Creek, Michigan. Halbert Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010051, and has applied for coverage under the 2020 General Permit.

52. Interested Party DJN Cattle Farms, Inc. d/b/a (and permitted as) Halliwill Farms is a cattle and dairy farm located at 2450 Wilkinson Rd., Adrian, Michigan. Halliwill Farms is

regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010192, and has applied for coverage under the 2020 General Permit.

53. Interested Party Heasley Farm is a swine farm located at P.O. Box 32, Hamilton, MI 49419. Heasley Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010134, and has applied for coverage under the 2020 General Permit.

54. Interested Party Hickory Gables, Inc. d/b/a (and permitted as) Hickory Gables is a dairy farm located at 15565 Lockshore Road, Hickory Corners, Michigan. Hickory Gables is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010200, and has applied for coverage under the 2020 General Permit.

55. Interested Party High Lean Pork, Inc. d/b/a (and permitted as) High-Lean Pork 3 – Hoover is a swine farm located at 11304 Edgewater Dr., Allendale, Michigan. High Lean Pork, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010229, and has applied for coverage under the 2020 General Permit.

56. Interested Party Highland Dairy, LLC d/b/a (and permitted as) Highland Dairy is a dairy farm located at 8549 Stein Rd., Sebewaing, Michigan. Highland Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010018, and has applied for coverage under the 2020 General Permit.

57. Interested Party Geerlings Hillside Farms, LLC d/b/a (and permitted as) Hillside Farms – Fennville is a swine farm located at 186 W 35th St., Holland, Michigan. Hillside Farms –

Overisel is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010207, and has applied for coverage under the 2020 General Permit.

58. Interested Party Geerlings Hillside Farms, LLC d/b/a (and permitted as) Hillside Farms-Overisel Hog Barns is a swine farm located at 5834 Natilyn Dr., Hamilton, Michigan. Hillside Farms-Overisel Hog Barns is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010130, and has applied for coverage under the 2020 General Permit.

59. Interested Party Grand River Grain, LLC is a grain farm located at 9997 Leonard St., Coopersville, MI 49404. Grand River Grain, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010008.

60. Interested Party Grand River Grain North, LLC is a grain farm located at 15585 68th Ave., Coopersville, MI 49404. Grand River Grain North, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010292.

61. Interested Party Harvest Hill Farm, by its permittee Ron Klein, is a swine farm located at A-4438 140th Ave., Holland, Michigan. Harvest Hill Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010069, and has applied for coverage under the 2020 General Permit.

62. Interested Party Hass Feedlot, LLC d/b/a (and permitted as) Hass Feedlot Home Farm and Hass Feedlot 2 operates cattle farms located at 775 Carpenter Rd., Bad Axe, Michigan and 2258 Thomas Rd., Bad Axe, MI 48413. Hass Feedlot Home Farm and Hass Feedlot 2 are

regulated by Defendant MEGLE as CAFOs, were permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010040 & MIG010042, and have applied for coverage under the 2020 General Permit.

63. Interested Party Heinze Pork is a swine farm located at 8568 Holland Rd., Six Lakes, MI 48886. Heinze Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010108, and has applied for coverage under the 2020 General Permit.

64. Interested Party Hoeve Farms is a farm located at A-4253 40th St., Holland, MI 49423. Hoeve Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MI010275, and has applied for coverage under the 2020 General Permit.

65. Interested Party Hogquest Farms, LLC is a swine farm located at 5221 136th Ave., Hamilton, MI 49419. Hogquest Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010119, and has applied for coverage under the 2020 General Permit.

66. Interested Party Holloo Farms, LLC d/b/a (and permitted as) Holloo Farms is a dairy farm located at 20849 F. Drive South, Marshall, Michigan. Holloo Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010167, and has applied for coverage under the 2020 General Permit.

67. Interested Party Huron Pork, LLC is a swine farm located at 11304 Edgewater Dr., Suite A, Allendale, Michigan. Huron Pork, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010013, and has applied for coverage under the 2020 General Permit.

68. Interested Party Ingleside Farms is a cattle farm located at 8891 36-Mile Rd., Romeo, Michigan. Ingleside Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG10157 and has applied for coverage under the 2020 General Permit.

69. Interested Party J&J Russcher Properties, LLC is a swine farm located at A-4721 40th St., Zeeland, Michigan. J&J Russcher Properties, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010180, and has applied for coverage under the 2020 General Permit.

70. Interested Party Jahn Farms is a swine farm located at 5139 N. Lakeshore Rd., Port Hope, MI 48468-9702. Jahn Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010241, and has applied for coverage under the 2020 General Permit.

71. Interested Party J and A Pork, LLC d/b/a (and permitted as) J and A Pork is a swine farm located at 5774 Fenwick Rd., Greenville, Michigan. J and A Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010020, and has applied for coverage under the 2020 General Permit.

72. Interested Party JMax LLC d/b/a (and permitted as) JMax Dairy is a dairy farm located at 7084 West 72nd St., Fremont, Michigan 49412. JMax Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010227, and has applied for coverage under the 2020 General Permit.

73. Interested Party JBC Dairy Recycling is a dairy farm located at 4922 147th, Zeeland, MI 49464. JBC Dairy Recycling is regulated by Defendant MEGLE as a CAFO, was permitted

under the 2015 General Permit under Certificate of Coverage Number MIG010281, and has applied for coverage under the 2020 General Permit.

74. Interested Party John Schaendorf Dairy is a dairy farm located at 3083 30th St., Hopkins, MI 49328. John Schaendorf Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010103, and has applied for coverage under the 2020 General Permit.

75. Interested Party Karnemaats, LLC is a swine farm located at 5118 West 72nd St., Fremont, Michigan. Karnemaats, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010077, and has applied for coverage under the 2020 General Permit.

76. Interested Party Kleinheksel Farms, LLC is a farm located at 5124 138th Ave., Holland, MI 49423. Kleinheksel Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010104, and has applied for coverage under the 2020 General Permit.

77. Interested Party Kober Farms, LLC is a swine farm located at 8990 Peach Ridge Ave. NW, Sparta, Michigan. Kober Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010055, and has applied for coverage under the 2020 General Permit.

78. Interested Party Konos, Inc. is a farm located at 1240 8th St., Martin, MI 49070. Konos, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0058561, and has applied for coverage under the 2020 General Permit.

79. Interested Party Konos, Inc., Martins Organics (Permittee: Konos, Inc.), is a farm located at 1240 8th St., Martin, MI 49070. Konos, Inc., Martins Organics is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0059676, and has applied for coverage under the 2020 General Permit.

80. Interested Party KY-10 Farms, LLC d/b/a (and permitted as) KY-10 Farms is a swine farm located at 14093 Portage Rd., Vicksburg, Michigan. KY-10 Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010221, and has applied for coverage under the 2020 General Permit.

81. Interested Party Laier Farms, Inc. d/b/a (and permitted as) Laier Farms is a dairy farm located at 7416 Argentine Rd., Howell, Michigan. Laier Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010064, and has applied for coverage under the 2020 General Permit.

82. Interested Party Les Schaper Farm is a swine farm located at 2056 Brown Rd., Sebawaing, MI 48759-9728. Les Schaper Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010036, and has applied for coverage under the 2020 General Permit.

83. Interested Party Liberty Beef Farms is a cattle farm located at 3407 58th St., Hamilton, MI 49419-9616. Liberty Beef Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010139, and has applied for coverage under the 2020 General Permit.

84. Interested Party Little Bend Piggery is a swine farm located at 3390 N. Concord Rd., Concord, MI 49237-9739. Little Bend Piggery is regulated by Defendant MEGLE as a CAFO,

was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010282, and has applied for coverage under the 2020 General Permit.

85. Interested Party Lorenz Family Farms is a farm located at 3534 Smithfield Way, Kalamazoo, MI 49009, is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010140, and has applied for coverage under the 2020 General Permit.

86. Interested Party Lucky 7 Dairy, LLC is a dairy farm located at 10550 Strief Rd., McBain, Michigan. Lucky 7 Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010261, and has applied for coverage under the 2020 General Permit.

87. Interested Party Lucky 7 Farms, LLC is a swine farm located at 14093 Portage Rd., Vicksburg, Michigan. Lucky 7 Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010225, and has applied for coverage under the 2020 General Permit.

88. Interested Party Meadowbrook Farms, LLC is a swine farm located at P.O. Box 32, Hamilton, MI 49419. Meadowbrook Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010137, and has applied for coverage under the 2020 General Permit.

89. Interested Party Meadow Brook Dairy is a dairy farm located at 11481 Blue Spruce Dr., Fowler, MI 48835-9131. Meadow Brook Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010257, and has applied for coverage under the 2020 General Permit.

90. Interested Party Myers Farms, LLC d/b/a (and permitted as) Myers Farms is a dairy farm located at 7565 40th St. S, Scotts, Michigan. Myers Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010276, and has applied for coverage under the 2020 General Permit.

91. Interested Party New Flevo Dairy, Inc. d/b/a (and permitted as) New Flevo Dairy, is a dairy farm located at 9650 Plank Road, Clayton, Michigan. New Flevo Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010258, and has applied for coverage under the 2020 General Permit.

92. Interested Party Nobis Farms, LLC d/b/a (and permitted as) Nobis Dairy Farms, is a dairy farm located at 5813 W. Walker Rd., Saint Johns, Michigan. Nobis Dairy Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010058, and has applied for coverage under the 2020 General Permit.

93. Interested Party NVF, Inc. is a dairy farm located at 11691 East Walton Rd., Shepherd, Michigan. NVF, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010041, and has applied for coverage under the 2020 General Permit.

94. Interested Party Oomen Brothers, Inc., d/b/a (and permitted as) Oomen Brothers Hogs, is a swine farm located at 2157 East Jackson Rd., Hart, Michigan. Oomen Brothers, Inc., d/b/a Oomen Brothers Hogs is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010001, and has applied for coverage under the 2020 General Permit.

95. Interested Party Packard Farms, LLC d/b/a (and permitted as) Packard Farms, is a dairy farm located at 6584 S. Brand Ave., Clare, Michigan. Packard Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010034, and has applied for coverage under the 2020 General Permit.

96. Interested Party Payla Meadows, LLC is a swine farm located at 14093 Portage Rd., Vicksburg, Michigan. Payla Meadows, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010211, and has applied for coverage under the 2020 General Permit.

97. Interested Party Peaceful Road Farm, LLC d/b/a (and permitted as) Peaceful Road Farms, is a dairy farm located at 1125 122nd Ave., Martin, Michigan. Peaceful Road Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010209 and has applied for coverage under the 2020 General Permit.

98. Interested Party Performance Farms, LLC is a swine farm located at 1944 17 Mile Rd., Remus, Michigan. Performance Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010226, and has applied for coverage under the 2020 General Permit.

99. Interested Party Petro Farms is a dairy farm located at 3387 102nd Ave., Gobles, Michigan. Petro Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010062, and has applied for coverage under the 2020 General Permit.

100. Interested Party Poll Farms, Inc. is a swine farm located at 4406 134th Ave., Hamilton, Michigan. Poll Farms, Inc. is regulated by Defendant MEGLE as a CAFO, was

permitted under the 2015 General Permit under Certificate of Coverage Number MIG010148, and has applied for coverage under the 2020 General Permit.

101. Interested Party Prairie View Dairy, LLC is a dairy farm located at 12850 Parker Rd., Delton, Michigan. Prairie View Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010123, and has applied for coverage under the 2020 General Permit.

102. Interested Party Precision Pork Farm, Inc. d/b/a (and permitted as) Precision Pork Farm, is a swine farm located at 5014 Perry St., Zeeland, Michigan. Precision Pork Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010086, and has applied for coverage under the 2020 General Permit.

103. Interested Party Preferred Hog Farms, Inc. d/b/a (and permitted as) Preferred Hog 146th, is a swine farm located at A-5136 146th Ave., Holland, Michigan. Preferred Hog 146th is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010208, and has applied for coverage under the 2020 General Permit.

104. Interested Party The Preston Farms, LLC d/b/a (and permitted as) Preston Hog Farms, is a swine farm located at 1097 Central Rd., Quincy, Michigan. Preston Hog Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010099, and has applied for coverage under the 2020 General Permit.

105. Interested Party Pridgeon Farms, LLC d/b/a (and permitted as) Pridgeon Farms, is a swine farm located at 1115 Pridgeon Rd., Montgomery, Michigan. Pridgeon Farms is regulated

by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010105, and has applied for coverage under the 2020 General Permit.

106. Interested Party PSY Farms is a swine farm located at 2501 East Galien-Buchanan Rd., Buchanan, Michigan. PSY Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010124, and has applied for coverage under the 2020 General Permit.

107. Interested Party R&R Pork, LLC d/b/a (and permitted as) R&R Pork, is a swine farm located at 25430 Featherstone Rd., Sturgis, Michigan. R&R Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010263, and has applied for coverage under the 2020 General Permit.

108. Interested Party Rapid Ridge, LLC d/b/a (and permitted as) Rapid Ridge, is a dairy farm located at 4903 Toles Rd., Mason, Michigan. Rapid Ridge is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010274, and has applied for coverage under the 2020 General Permit.

109. Interested Party Red Arrow Dairy, LLC d/b/a (and permitted as) Red Arrow Dairy, is a dairy farm located at 50 South 64th Ave., Coopersville, Michigan. Red Arrow Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010210, and has applied for coverage under the 2020 General Permit.

110. Interested Party Rich Ro Dairy-North is a dairy farm located at 3565 N. Forest Hill Rd., Saint Johns, MI 48879-9724. Rich Ro Dairy-North is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010118, and has applied for coverage under the 2020 General Permit.

111. Interested Party Rich Ro Dairy-South is a dairy farm located at 3565 N. Forest Hill Rd., Saint Johns, MI 48879-9724. Rich Ro Dairy-South is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010033, and has applied for coverage under the 2020 General Permit.

112. Interested Party River Ridge Farms, Inc. is a livestock and crop farm located at 15585 68th Ave., Coopersville, MI 49404. River Ridge Farms, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010127, and has applied for coverage under the 2020 General Permit.

113. Interested Party Ruggles Beef Farms, LLC d/b/a (and permitted as) Ruggles Beef Farms, is a cattle farm located at 6327 Sanilac Rd., Kingston, Michigan. Ruggles Beef Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010253, and has applied for coverage under the 2020 General Permit.

114. Interested Party S&T Barns, LLC d/b/a (and permitted as) S&T Barns – Booth, is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S&T Barns - Booth is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010272, and has applied for coverage under the 2020 General Permit.

115. Interested Party S&T Barns, LLC d/b/a (and permitted as) S&T Barns - Fawn River, is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S&T Barns - Fawn River is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010283, and has applied for coverage under the 2020 General Permit.

116. Interested Party S&T Barns, LLC d/b/a (and permitted as) S&T Barns – TSC, is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S&T Barns – TSC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010273, and has applied for coverage under the 2020 General Permit.

117. Interested Party S&T Barns, LLC d/b/a (and permitted as) S&T Barns-Haenni, is a swine farm located at 822 Snow Prairie Rd., Bronson, Michigan. S&T Barns-Haenni is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010271, and has applied for coverage under the 2020 General Permit.

118. Interested Party Sand Creek Dairy, LLC is a dairy farm located at 1045 Solomon Rd., Hastings, Michigan. Sand Creek Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010138, and has applied for coverage under the 2020 General Permit.

119. Interested Party Sandy Ridge Dairy, LLC is a dairy farm located at 3024 North Wright Rd., Fowler, MI 48835. Sandy Ridge Dairy, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010169, and has applied for coverage under the 2020 General Permit.

120. Interested Party Scenic View Dairy, LLC d/b/a (and permitted as) Scenic View Dairy, is a dairy farm located at 186 West 35th St., Holland, Michigan. Scenic View Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010106, and has applied for coverage under the 2020 General Permit.

121. Interested Party Schuring Farms, LLC d/b/a (and permitted as) Schuring Farms, is a swine farm located at 3971 Hayes Rd., Muir, Michigan. Schuring Farms, LLC is regulated by

Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010049, and has applied for coverage under the 2020 General Permit.

122. Interested Party Schuring Swine, LLC is a swine farm located at 2659 Struble Rd., Michigan. Schuring Swine, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010095, and has applied for coverage under the 2020 General Permit.

123. Interested Party Scott McKenzie Farms is a swine farm located at 53721 Hemlock Lake Rd., Marcellus, Michigan. Scott McKenzie Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010098, and has applied for coverage under the 2020 General Permit.

124. Interested Party Seldom Rest Hog Farm, LLC d/b/a (and permitted as) Seldom Rest Hog Farm, is a swine farm located at A4098 146th Ave., Holland, Michigan. Seldom Rest Hog Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010117, and has applied for coverage under the 2020 General Permit.

125. Interested Party Shupe Dairy Inc. is a dairy farm located at 1891 North Pinnebog Rd., Elkton, MI 48731. Shupe Dairy Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010224, and has applied for coverage under the 2020 General Permit.

126. Interested Party Slater Farm is a dairy farm located at 9061 W. 88th St., Fremont, MI 49412. Slater Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010204, and has applied for coverage under the 2020 General Permit.

127. Interested Party Side Street Pork, LLC d/b/a (and permitted as) Side Street Pork, is a swine farm located at 4843 North Johnson Rd., Weidman, Michigan. Side Street Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010228, and has applied for coverage under the 2020 General Permit.

128. Interested Party Simon Dairy Farm is a dairy farm located at 11951 East Maple Rd., Westphalia, MI 48894. Simon Dairy Farm is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010178, and has applied for coverage under the 2020 General Permit.

129. Interested Party Skinner Farms, LLC d/b/a (and permitted as) Skinner Farms, is a swine farm located at 377 S. Alger Rd., Ithaca, Michigan. Skinner Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010003, and has applied for coverage under the 2020 General Permit.

130. Interested Party, Sol Vista (Permittee: Nate Karnemaat, Sol Vista) is a farm located at 5118 W. 72nd St., Fremont, MI 49412. Sol Vista is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010249, and has applied for coverage under the 2020 General Permit.

131. Interested Party Steenblik Dairy Inc. is a dairy farm located at 3844 N. Hubbardston Rd., Pewamo, Michigan. Steenblik Dairy Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010080, and has applied for coverage under the 2020 General Permit.

132. Interested Party Stewart Farms, LLC d/b/a (and permitted as) Stewart Farms, is a swine farm located at 7596 Wilson Rd., Bannister, Michigan. Stewart Farms is regulated by

Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010021, and has applied for coverage under the 2020 General Permit.

133. Interested Party Storey Farms, LLC is a swine farm located at 1328 6 Mile Rd., Remus, Michigan. Storey Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010032, and has applied for coverage under the 2020 General Permit.

134. Interested Party Stoughton Creek Farms, LLC d/b/a (and permitted as) Stoughton Creek Farms, is a swine farm located at 10580 Blackmer Rd., Carson City, Michigan. Stoughton Creek Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010183, and has applied for coverage under the 2020 General Permit.

135. Interested Party Stutzman Poultry Farms, LLC is a poultry farm located at 70103 Scott Rd., White Pigeon, MI 49099. Stutzman Poultry Farms, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MI0059636, and has applied for coverage under the 2020 General Permit.

136. Interested Party Swisslane Farms, Inc. d/b/a (and permitted as) Swisslane Farms, is a dairy farm located at 12877 84th St., Alto, Michigan. Swisslane Farms, Inc. is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010052, and has applied for coverage under the 2020 General Permit.

137. Interested Party Terrell Pork is a swine farm located at 9588 Meridian Rd., Bannister, MI 48807-9337. Terrell Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010264, and has applied for coverage under the 2020 General Permit.

138. Interested Party T & H Dairy is a dairy farm located at 3024 North Wright Rd., Fowler, MI 48835. T & H Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010126, and has applied for coverage under the 2020 General Permit.

139. Interested Party Terrehaven Farms, Inc. d/b/a (and permitted as) Terrehaven Farms, is a cattle farm located at 3007 Wolf Creek Hwy., Adrian, Michigan. Terrehaven Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010061, and has applied for coverage under the 2020 General Permit.

140. Interested Party Timmerman Farm, LLC is a farm located at 5134 138th Ave., Holland, MI 49423. Timmerman Farm, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010190.

141. Interested Party Trestle Town Turkeys is a turkey farm located at 5124 138th Ave., Holland, MI 49423. Trestle Town Turkeys is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number COC # MIG010267.

142. Interested Party Valley View Pork, LLC d/b/a (and permitted as) Valley View Pork, is a swine farm located at P.O. Box 158, Allendale, Michigan. Valley View Pork is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010081, and has applied for coverage under the 2020 General Permit.

143. Interested Party Van Oeffelen Farm Services is a dairy farm located at 305 Hoover St., Conklin, Michigan. Van Oeffelen Farm Services is regulated by Defendant MEGLE as a

CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010270, and has applied for coverage under the 2020 General Permit.

144. Interested Party Vanderploeg Holsteins, LLC d/b/a (and permitted as) Vanderploeg Holsteins, is a dairy farm located at 1223 South Begole Rd., Ithaca, Michigan. Vanderploeg Holsteins is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010092, and has applied for coverage under the 2020 General Permit.

145. Interested Party VDS Farms, LLC d/b/a (and permitted as) VDS Farms-Fulton and VDS Farms-S Avenue, operates dairy farms located at 14461 S. 44th St., Fulton, Michigan and 8426 East S. Ave., Fulton, Michigan. VDS Farms-Fulton and VDS Farms-S Avenue are regulated by Defendant MEGLE as CAFOs, were permitted under the 2015 General Permit under Certificate of Coverage Numbers MIG010278 and MIG010279, and have applied for coverage under the 2020 General Permit.

146. Interested Party Veld Farms, LLC d/b/a (and permitted as) Veld Farms, is a swine farm located at 1261 136th Ave., Wayland, Michigan. Veld Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010121, and has applied for coverage under the 2020 General Permit.

147. Interested Party Walnutedale Farms, LLC d/b/a (and permitted as) Walnutedale Farms Dorr Twp, is a dairy farm located at 4309 14th St., Wayland, Michigan. Walnutedale Farms Dorr Twp is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010063, and has applied for coverage under the 2020 General Permit.

148. Interested Party White Acres Turkey Farm, LLC is a turkey farm located at 15585 68th Ave., Coopersville, MI 49404. White Acres Turkey Farm, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010147, and has applied for coverage under the 2020 General Permit.

149. Interested Party White Farms is a swine farm located at 13160 Lime Lake Rd., Hudson, MI 49247-9245. White Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010168, and has applied for coverage under the 2020 General Permit.

150. Interested Party Wil-Le Farms, Inc. d/b/a (and permitted as) Wil-Le Farms, is a dairy farm located at 2445 North Van Dyke Rd., Bad Axe, Michigan. Wil-Le Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG440027, and has applied for coverage under the 2020 General Permit.

151. Interested Party Willow Creek Farms is a swine farm located at 305 East Roosevelt Rd., Ashley, Michigan. Willow Creek Farms is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010114, and has applied for coverage under the 2020 General Permit.

152. Interested Party Willow Point Dairy, LLC d/b/a (and permitted as) Willow Point Dairy, is a dairy farm located at 588 3 Mile Rd. NW, Ste. 203, Grand Rapids, Michigan. Willow Point Dairy is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010259, and has applied for coverage under the 2020 General Permit.

153. Interested Party Wilson Centennial Farm, LLC is a dairy farm located at 11624 West Wilson Rd., Carson City, Michigan. Wilson Centennial Farm, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010286, and has applied for coverage under the 2020 General Permit.

154. Interested Party Y B Farmin, LLC is a swine farm located at 1165 Mendon Rd., Sherwood, MI 49089. Y B Farmin, LLC is regulated by Defendant MEGLE as a CAFO, was permitted under the 2015 General Permit under Certificate of Coverage Number MIG010237, and has applied for coverage under the 2020 General Permit.

155. Interested Party Bakerlads Farm is a dairy farm located at 10960 Cadmus Rd., Clayton, Michigan. Bakerlads Farm is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual National Pollutant Discharge Elimination System (NPDES) CAFO permit under Permit No. MI0059009.

156. Interested Party Deer Creek Poultry Farm is a poultry farm located at 24868 US-12 Sturgis, Michigan. Deer Creek Poultry Farm is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0059948.

157. Interested Party Hartland Farms, Inc. d/b/a (and permitted as) Hartland Farms is a dairy farm located at 1580 Hughes Hwy., Clayton, Michigan. Hartland Farms is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0057536.

158. Interested Party Makin Bacon Farm is a swine farm located at P.O. Box 116, Vicksburg, MI 49097. Makin Bacon Farm is regulated by Defendant MEGLE as a CAFO, and has been permitted under an individual NPDES CAFO permit under Permit No. MINPTD014.

159. Interested Party Mayflower Dairy, LLC is a dairy farm located at 588 3-Mile Rd., Suite 203, Grand Rapids, Michigan. Mayflower Dairy, LLC is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0059294.

160. Interested Party Meadow Rock, LLC d/b/a (and permitted as) Meadow Rock Dairy, is a dairy farm located at 588 3-Mile Rd., Suite 203, Grand Rapids, Michigan. Meadow Rock Dairy is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MIG010136.

161. Interested Party Nobel Family Dairy, LLC is a dairy farm located at 25360 12th Ave., Gobles, Michigan. Nobel Family Dairy, LLC is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0059149.

162. Interested Party Ottawa Turkey Farm permitted as Ottawa Turkey Farm 112th is a turkey farm located at 11306 Polk St., Holland, Michigan. Ottawa Turkey Farm is regulated by Defendant MEGLE as a CAFO and has been permitted under an individual NPDES CAFO permit under Permit No. MI0058448.

163. Interested Party Crockery Creek Turkey Farms, LLC d/b/a (and permitted as) Crockery Creek – 80th, is a turkey farm located at 11170 Radcliff Dr., Allendale, Michigan. Crockery Creek – 80th is regulated by Defendant MEGLE as a CAFO. Crockery Creek – 80th has been provided a “No Potential to Discharge” determination under MINPTD004 that currently exempts the farm from the requirements of either the CAFO General Permit or a similarly modeled individual permit, but as a CAFO, the farm remains subject to Part 31 and Defendant MEGLE may later require the farm to apply for either an individual permit of a COC under the General Permit based on circumstances described under Michigan Administrative Code, Rule 323.2196(4)(f).

164. Interested Party GDW Turkey Farm-Fillmore is a turkey farm located at 16304 Fillmore St., West Olive, MI 49460. GDW Turkey Farm-Fillmore has been provided a “No Potential to Discharge” determination under MINPTD008 that currently exempts the farm from the requirements of either the CAFO General Permit or a similarly modeled individual permit, but as a CAFO, the farm remains subject to Part 31 and Defendant MEGLE may later require the farm to apply for either an individual permit or a COC under the General Permit based on circumstances described under Michigan Administrative Code, Rule 323.2196(4)(f).

STATEMENT OF UNCONTESTED FACTS

165. EGLE regulates CAFOs under Part 31 of NREPA, MCL 324.3101 *et seq.*, via administrative rules, and the agency has historically permitted CAFOs largely under a general permit.

166. In 2003, EPA promulgated a federal CAFO Rule, 40 CFR that created a framework for states to develop CAFO permitting programs. See 40 CFR 122.23, 40 CFR 122.42(e), & 40 CFR 412.1, *et seq.*

167. In 2005, EGLE set generally applicable standards for CAFOs and CAFO permits via a detailed administrative rule under Michigan Administrative Code, Rule 323.2196 (“Rule 2196”).

168. Over the next three general permitting cycles, EGLE implemented the standards from Rule 2196 via the agency’s 2005, 2010, and 2015 CAFO General Permits.

169. But in its 2020 General CAFO Permit, EGLE substantively departed from standards and policies set forth in Rule 2196 and implemented in the agency’s three previous CAFO General Permits. It did so under the public notice and comment requirements for NPDES permitting but without complying with the APA’s numerous rulemaking procedures and safeguards.

170. As recognized by the Michigan Court of Appeals in Docket No. 356088, the new permit conditions described in Paragraphs 174.a to 174.k, below, and incorporated into the 2020 CAFO General Permit by EGLE cover many of the same topics as Rule 2196, but EGLE has done so in ways that differ from, are inconsistent with, and are often in addition to the Rule.

171. For that reason, the Court of Appeals recently held that those new permit conditions constitute “rules” under the APA that are invalid due to EGLE’s lack of compliance with the APA’s rulemaking procedures.

172. Copies of the Court of Appeals’ opinions are attached as Exhibits A and B.

173. The Interested Parties are comprised of actual livestock farms who are regulated as CAFOs and who have applied for coverage under the 2020 CAFO General Permit as well as associations representing Michigan's agricultural industry, including numerous applicants to the 2020 CAFO General Permit. Accordingly, the Interested Parties have both direct and associational standing to seek a declaratory ruling from EGLE on this important issue.

CONDITIONS AT ISSUE

174. The Interested Parties allege that the following conditions EGLE incorporated into the 2020 General CAFO Permit constitute “rules” under the APA and that those rules are invalid for reason that they were not promulgated pursuant to the APA’s mandatory rulemaking requirements:

- a. Parts I.B.3.c.1.a., I.B.3.C.2.a., and I.B.3.C.2.b. reducing the limits on the amount of phosphorus allowed in fields to which manure is applied and further reducing those limits for fields located within a TMDL watershed.
- b. Parts I.B.3.c.1.a, I.B.3.c.2.a, I.B.3.c.2.b, and I.C.9. supersede the Michigan Agriculture Environmental Assurance Program (“MAEAP”) by denying

environmentally conscious and legally compliant farms the promised benefit of the MAEAP program and imposing additional restrictions based on such farms' location within a Total Maximum Daily Load ("TMDL") watershed.

- c. Part I.B.3.c.3 requiring a 15-calendar-day public notice process for any application of nitrogen to crop fields beyond that previously identified in the CAFO's Comprehensive Nutrient Management Plan.
- d. Part I.B.3.e requiring monthly submission of land application summaries for each field on which manure is applied.
- e. Part I.B.3.f.3 prohibiting CAFOs from land applying CAFO waste to crop fields during a three-month period (i.e., January, February, and March) each year unless a litany of exceedingly onerous application standards are met.
- f. Part I.B.3.f.4 banning CAFOs from transferring manure to persons other than CAFOs for land application during those same months.
- g. Part I.B.3.g. requiring "immediate," as opposed to 24-hour, incorporation of manure during those same months.
- h. Part I.B.3.g.1. limiting where manure may not be able to be incorporated to perennial crops, cover crops, and where no-till practices are used, rather than allowing surface application to wheat stubble and other fields where manure will not enter surface waters of the state.
- i. Part I.B.3.h. prohibiting CAFOs from applying manure within 100 feet of certain defined water features and requiring CAFOs install permanent a 35-foot-wide vegetated buffer along those same features.

- j. Part I.C.8 expanding the information that must be collected from recipients of CAFO waste and described in the CAFO's manifest, adding reporting requirements for land application summaries from annually to quarterly, and requiring reporting confidential business information from non-CAFO recipients which are not subject to permit.
- k. Part I.C.9.b.3.a. requiring CAFOs applying manure to fields within a TMDL watershed to implement "additional pollutant control measures" based on a "comprehensive evaluation" and report submitted to EGLE which measures include either: (1) that farms must "install and operate a treatment system"; or (2) that they are mandated to implement "at a minimum" certain other identified "best management practices" including: (a) installing 50-foot vegetated buffers "along the perimeter of the field" and utilizing 150-foot setbacks; (b) limiting land application rates to "1/4 inch of liquid manure equivalent" (or 1/8 inch for some tiled fields); (c) waiting 48 hours between applications; and/or (d) other measures approved by EGLE.

QUESTIONS TO BE ADDRESSED

175. This declaratory ruling request asks EGLE to answer to questions relative to the validity of EGLE's new conditions.

176. *First*, Interested Parties ask EGLE to decide whether the new conditions of the 2020 CAFO General Permit and described in Paragraphs 174.a to 174.k, above, constitute "rules" as defined in Section 7 of the Administrative Procedures Act ("APA"), MCL 24.207, where those conditions establish new regulations, standards, and policies of general applicability that implement or apply Part 31 of Michigan's Natural Resources and Environmental Protection Act

("NREPA") by setting the minimum requirements EGLE demands for CAFOs to obtain an NPDES Permit?

177. Second, Interested Parties ask EGLE to decide whether those same new conditions of the 2020 CAFO General Permit are invalid when they were not promulgated pursuant to the APA's rulemaking procedures, including but not limited to: (a) the APA's requirement that EGLE make findings that there is a clear and convincing need to exceed the applicable federal standard for each exceedance of the federal standard, MCL 24.232(8); (b) the APA's requirement that EGLE evaluate how to minimize the impact of its policies on small business, MCL 24.240; (c) the APA's requirement that EGLE engage in a regulatory impact statement and cost-benefit analysis that estimates the industry, governmental, and fiscal impact of its policies, MCL 24.245(3); (d) the APA's requirement that EGLE submit its proposed rules to the Joint Committee on Administrative Rules ("JCAR") at the Legislature for legislative input and review, MCL 24.245a; and (e) the APA's requirement that EGLE provide its proposed rules to an Environmental Rules Committee composed of scientific, governmental, and industry experts for their input, MCL 24.266?

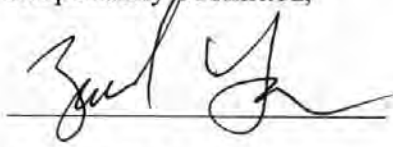
CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Interested Parties request a declaratory ruling that the new conditions of EGLE's 2020 CAFO General Permit are "rules" under MCL 24.207 and are invalid due to EGLE's failure to follow the APA. In support, the undersigned swears or affirms under penalty of perjury that the foregoing statements are true the best of Interested Parties' knowledge and belief.

Dated: December 2, 2022

Respectfully Submitted,

By:



CLARK HILL PLC
Attorneys for Interested Parties

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EXHIBIT A

Court of Appeals, State of Michigan

ORDER

Michigan Farm Bureau v Dept of Environment Great Lakes and
Energy

Docket No. 356088

LC No. 20-000148-MZ

Michael F. Gadola
Presiding Judge

Deborah A. Servitto

James Robert Redford
Judges

Appellants' motion to file a reply brief in support of their motion for reconsideration is GRANTED and the reply brief filed with the motion is accepted.

Appellants' motion for reconsideration is DENIED. We remain unpersuaded that appellants could circumvent MCL 24.264's requirement that they must first seek a declaratory ruling before commencing an action for declaratory relief. As we previously found, this requirement does not impose further administrative remedy exhaustion requirements. Rather, the requirement is a legislatively imposed prerequisite to suit, i.e., a condition precedent to a court's exercise of subject-matter jurisdiction over a claim of the invalidity of a rule. To accept appellants' position and conclude otherwise would allow appellants to avoid the Administrative Procedures Act's (APA) expressly and clearly stated rule promulgation requirements. We are unpersuaded that *Mich Ass'n of Home Builders v Dir of Dept of Labor and Econ Growth*, 276 Mich App 467; 741 NW2d 531 (2007), requires a different result. *Mich Ass'n of Home Builders* is distinguishable from this case in several important regards. The former case presented as a challenge to a newly promulgated set of rules at their inception. It did not present as a challenge to an unpromulgated rule. The instant case does. The case at bar presents as a procedural challenge to the validity of a new set of "conditions" that were attached to a preexisting general permit. Those conditions were not promulgated as rules, but should have been. The agency sidestepped its statutory obligation to promulgate them as required under the APA. Moreover, this Court concluded in *Mich Ass'n of Home Builders* that the plaintiffs did not need first to seek a declaratory ruling from the agency before seeking a declaratory judgment in circuit court because the plaintiffs did not have an "actual state of facts" to bring before the agency. The general permit had been in place for many years before this case arose, and there was an actual state of facts (the application of the 2020 conditions to plaintiffs) that was susceptible to being determined in a request for declaratory ruling. Because this case is substantively distinguishable from *Mich Ass'n of Home Builders*, our resolution of this appeal does not conflict with it, overturn it, require a conflict panel's resolution, or create any uncertainty.

Appellee's concurrence seeking reconsideration for reasons different than those of appellants is also DENIED because appellee has not demonstrated a palpable error requiring a different disposition of the case. See MCR 7.215(I)(1) and 2.119(F)(3).



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

November 17, 2022

Date



Chief Clerk

EXHIBIT B

If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN FARM BUREAU, MICHIGAN MILK PRODUCERS ASSOCIATION, MICHIGAN PORK PRODUCERS ASSOCIATION, MICHIGAN ALLIED POULTRY INDUSTRIES, DAIRY FARMERS OF AMERICA, SELECT MILK PRODUCERS, INC., MICHIGAN CATTLEMEN’S ASSOCIATION, SNIDER FARMS, LLC, doing business as AIRPORT VIEW TURKEYS, ALPINE PORK, LLC, ATE FARMS, LLC, BEBOW DAIRY FARM, INC., doing business as BEBOW DAIRY FARM, BENNETT FARMS LIVESTOCK, LLC, doing business as BENNETT FARMS LIVESTOCK, BLEICH DAIRY, BROOK VIEW DAIRY, LLC, doing business as BROOK VIEW DAIRY, BURNS POULTRY FARMS, INC., CAR-MIN-VU FARMS, LLC, doing business as CAR-MIN-VU DAIRY, CARY DAIRY FARM, INC., CARY’S PIONEER FARM, INC., CENTERWOOD FARMS, LLC, CENTRAL MICHIGAN MILK PRODUCERS, LLC, doing business as CENTRAL MILK PRODUCTION, CLOVER FARMS, doing business as CLOVER FAMILY FARMS, CONTRACT FINISHERS, INC., COURTER FARMS EAST FEEDLOT, LLC, doing business as COURTER FARMS EAST, COURTER FARMS WEST FEEDLOT, LLC, doing business as COURTER FARMS WEST, CROSSROADS DAIRY, LLC, D & K FARMS, DEN DULK DAIRY FARM, LLC, DEYOUNG PORK, INC., doing business as DEYOUNG PORK, INC., PLAINWELL, DOUBLE QUAD FARMS, LLC, doing business as DOUBLE QUAD FARMS, DUTCH MEADOWS DAIRY, LLC, doing business as DUTCH MEADOWS DAIRY, DYKHUIS FARMS, INC., doing business as BASELINE FARM, EHINGER FARM, RIVERBEND FARM, SHAMROCK FARM, and VILLAGE CENTRAL SANDY RIDGE, EDGE

FOR PUBLICATION
September 15, 2022
9:10 a.m.

WOOD DAIRY, LLC, doing business as EDGE WOOD DAIRY, FAIRGROVE FARMS, INC., doing business as FAIRGROVE FARMS, GERNAAT FAMILY FARMS, GW DAIRY, LLC, HALBERT DAIRY, LLC, doing business as HALBERT DAIRY, DJN CATTLE FARMS, INC., doing business as HALLIWILL FARMS, HICKORY GABLES, INC., doing business as HICKORY GABLES, HIGH LEAN PORK, INC., doing business as HIGH LEAN PORK 3, HIGHLAND DAIRY, LLC, doing business as HIGHLAND DAIRY, GEERLINGS HILLSIDE FARMS, LLC, doing business as HILLSIDE FARMS-FENNVILLE, HILLSIDE FARMS-OVERISEL, and HILLSIDE FARMS-OVERISEL HOG BARNS, HARVEST HILL FARM, HASS FEEDLOT, LLC, doing business as HASS FEEDLOT HOME FARM and HASS FEEDLOT 2, HOLLOO FARMS, LLC, doing business as HOLLOO FARMS, HURON PORK, LLC, INGLESIDE FARMS, J&J RUSSCHER PROPERTIES, LLC, J AND A PORK, LLC, doing business as J AND A PORK, JMAX, LLC, doing business as JMAX DAIRY, KARNEMAATS, LLC, KOBER FARMS, LLC, KY-10 FARMS, LLC, doing business as KY-10 FARMS, LAIER FARMS, INC., doing business as LAIER FARMS, LUCKY 7 DAIRY, LLC, LUCKY 7 FARMS, LLC, MYERS FARMS, LLC, doing business as MYERS FARMS, NEW FLEVO DAIRY, INC., doing business as NEW FLEVO DAIRY, NOBIS FARMS, LLC, doing business as NOBIS DAIRY FARMS, NVF, INC., OOMEN BROTHERS, INC., doing business as OOMEN BROTHERS HOGS, PACKARD FARMS, LLC, doing business as PACKARD FARMS, PAYLA MEADOWS, LLC, PEACEFUL ROAD FARM, LLC, doing business as PEACEFUL ROAD FARMS, PERFORMANCE FARMS, LLC, PETRO FARMS, LLC, POLL FARMS, INC., PRAIRIE VIEW DAIRY, LLC, PRECISION PORK FARM, INC., doing business as PRECISION PORK FARM, PREFERRED HOG FARMS, INC., doing business as PREFERRED HOG 146th, THE PRESTON FARMS, LLC, doing business as PRESTON HOG FARMS, PRIDGEON FARMS, LLC, doing business as PRIDGEON FARMS, PSY FARMS, R & R PORK, LLC, doing business as R & R PORK,

RAPID RIDGE FARMS, LLC, doing business as
 RAPID RIDGE, RED ARROW DAIRY, LLC, doing
 business as RED ARROW DAIRY, RUGGLES
 BEEF FARMS, LLC, doing business as RUGGLES
 BEEF FARMS, S & T BARNS, LLC, doing business
 as S & T BARNS-BOOTH, S & T BARNS-FAWN
 RIVER, S & T BARNS-TSC, and S & T BARNS-
 HAENNI, SAND CREEK DAIRY, LLC, SCENIC
 VIEW DAIRY, LLC, doing business as SCENIC
 VIEW DAIRY, SCHURING SWINE, LLC, doing
 business as SCHURING FARMS, SCOTT
 MCKENZIE FARMS, SELDOM REST HOG
 FARM, LLC, doing business as SELDOM REST
 HOG FARM, SIDE STREET PORK, LLC, doing
 business as SIDE STREET PORK, SKINNER
 FARMS, LLC, doing business as SKINNER
 FARMS, STEENBLIK DAIRY, INC., STEWART
 FARMS, LLC, doing business as STEWART
 FARMS, STOREY FARMS, LLC, STOUGHTON
 CREEK FARMS, LLC, doing business as
 STOUGHTON CREEK FARMS, SWISSLANE
 DAIRY FARMS, INC., doing business as
 SWISSLANE FARMS, TERREHAVEN FARMS,
 INC., doing business as TERREHAVEN FARMS,
 VALLEY VIEW PORK, LLC, doing business as
 VALLEY VIEW PORK, VAN OEFFELEN FARM
 SERVICES, VANDERPLOEG HOLSTEINS, LLC,
 doing business as VANDERPLOEG HOLSTEINS,
 VDS FARMS, LLC, doing business as VDS
 FARMS-FULTON and VDS FARMS-S AVENUE,
 VELD FARMS, LLC, doing business as VELD
 FARMS, WALNUTDALE FARMS, INC., doing
 business as WALNUTDALE FARMS DORR TWP,
 WIL-LE-FARMS, INC., doing business as WIL-LE
 FARMS, WILLOW CREEK FARMS, WILLOW
 POINT DAIRY, LLC, doing business as WILLOW
 POINT DAIRY, WILSON CENTENNIAL FARM,
 LLC, BAKERLADS FARM, DEER CREEK
 POULTRY FARM, HARTLAND FARMS, INC.,
 doing business as HARTLAND FARMS, HUDSON
 DAIRY, LLC, doing business as HUDSON DAIRY,
 MAYFLOWER DAIRY, LLC, MEADOW ROCK,
 LLC, doing business as MEADOW ROCK DAIRY,
 MEDINA DAIRY, LLC, doing business as
 MEDINA DAIRY, NOBEL FAMILY DAIRY, LLC,
 OTTAWA TURKEY FARM, doing business as

OTTAWA TURKEY FARM 112TH, and
CROCKERY CREEK TURKEY FARMS, LLC,
doing business as CROCKERY CREEK - 80TH,

Plaintiffs-Appellants,

v

DEPARTMENT OF ENVIRONMENT, GREAT
LAKES, AND ENERGY,

Defendant-Appellee.

No. 356088
Court of Claims
LC No. 20-000148-MZ

Before: GADOLA, P.J., and SERVITTO and REDFORD, JJ.

REDFORD, J.

Plaintiffs appeal as of right the Court of Claims opinion and order granting defendant, Michigan Department of Environment, Great Lakes, and Energy's (EGLE), motion for summary disposition and dismissal of plaintiffs' case for lack of jurisdiction because plaintiffs failed to follow the available administrative process to its completion. For the reasons stated in this opinion, we conclude the trial court achieved the correct result, albeit for different reasons, and we therefore affirm the order which granted EGLE's motion for summary disposition and dismissal.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are several farmers associations and numerous livestock farms. The farms are regulated as concentrated animal feeding operations (CAFOs) under the federal Clean Water Act, 33 USC 1251 *et seq.* and state law pursuant to Part 31 (Water Resources Protection), MCL 324.3101 *et seq.*, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.* CAFOs are lots or facilities where animals are confined and fed or maintained for 45 days or more in any 12-month period, 40 CFR 122.23(b)(1), which are regulated as point sources from which pollutants are or may be discharged. 33 USC 1362(14). Discharges from point sources are permissible pursuant to permits under the National Pollutant Discharge Elimination System (NPDES). 33 USC 1311(a); 33 USC 1342(a)(1). Michigan administers the NPDES within this state pursuant to the Clean Water Act and NREPA. With few exceptions, persons who discharge waste into the surface or groundwaters, or on the ground of this state, as a point source discharge, must apply for and obtain from EGLE a valid permit. Mich Admin Code R 323.2106; R 323.2109.¹

¹ “ ‘Discharge’ means any direct or indirect discharge of any waste, waste effluent, wastewater, pollutant, or any combination thereof into any of the waters of the state or upon the ground.” Mich Admin Code, R 323.2102(n).

Mich Admin Code, R 323.2191(1), authorizes EGLE to issue a general permit if it determines that “certain discharges are appropriately and adequately controlled by a general permit.” EGLE’s issuance of general permits is subject to conditions set forth in the Administrative Code. Mich Admin Code, R 323.2192(2). Such permits have a fixed term of not more than five years but reissuance is permitted. Mich Admin Code, R 323.2150. CAFOs are point sources that require permits for discharges related to “all animals in confinement at the operation and all production area waste and CAFO process wastewater generated by those animals or the production of those animals, regardless of the type of animal.” Mich Admin Code, R 323.2196(1)(a). CAFOs must apply for coverage under a general permit. Mich Admin Code R 323.2192(a). After receipt of an application, EGLE must determine whether the applicant meets the criteria for coverage under the general permit, and if so it issues a “notice of coverage.” Mich Admin Code R 323.2192(b). Anyone “aggrieved by the coverage may file a sworn petition for a contested case hearing on the matter” with EGLE pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* MCL 324.3113(3); Mich Admin Code R 323.2192(c). A party may also challenge the validity or applicability of a rule by seeking a declaratory ruling under MCL 24.264.

The NPDES Wastewater Discharge General Permit issued by EGLE on March 27, 2020 (the 2020 general permit), gave rise to plaintiffs’ dispute. Plaintiffs first petitioned for a contested case hearing under Mich Admin Code R 323.2192(c)² to appeal the 2020 general permit and the legality of certain new conditions imposed by the permit. Plaintiffs objected to EGLE’s reduction of the limit on the amount of phosphorus that may be applied to land and the reduction of such limits for farms located within a Total Maximum Daily Load (TMDL) watershed. Plaintiffs also objected to the requirement that farms avoid applying waste within 100 feet of any surface water, open tile line intake structures, sinkholes, agriculture wellheads, or roadside ditches that are conduits to surface waters of the state. Plaintiffs further objected to EGLE’s presumptive three-month ban on applying waste on land during winter months January through March and its ban on transferring waste to other entities that apply waste to land during those months.

Plaintiffs alleged that the added conditions banned the application of beneficial manure to fields and arbitrarily limited the amount of phosphorous in soil on which CAFO waste may be applied. Plaintiffs also took exception to EGLE’s mandate that CAFOs and any farms that receive manure from CAFOs install permanent 35-foot vegetated buffer strips and prevent application of manure within 100 feet of every surface water, tile line intake, drain, and roadside ditch located on any land to which their manure is applied because doing so would severely limit land use for crop farming. Plaintiffs alleged that the added conditions exceeded EGLE’s statutory authority and were contrary to state and federal law regulating CAFOs, lacked factual justification under the standard for setting conditions under Part 31 of NREPA, were arbitrary and capricious, and unconstitutional. Plaintiffs sought to have each of the challenged conditions struck from the 2020 general permit.

² As a result, EGLE did not issue any certificates of coverage under the 2020 general permit, and CAFOs that applied for such coverage had to comply with previous general permit certificates of coverage or individual permits.

Before a contested case hearing could be held, however, plaintiffs filed the present complaint for declaratory and injunctive relief in the Court of Claims, with the 2020 general permit the focus of the complaint. Plaintiffs made allegations similar to their contested case petition but asked the court to declare: (1) the conditions invalid because of EGLE's failure to follow the procedures required under the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, to promulgate the conditions as rules; (2) the conditions are substantively invalid rules because they were arbitrary and capricious, beyond EGLE's regulatory authority, and/or contrary to the intent of Part 31 of NREPA; (3) EGLE's incorporation of the conditions into the 2020 general permit a violation of plaintiffs' constitutionally guaranteed procedural and substantive due-process rights; (4) EGLE's adoption of such rules constituted a violation of the constitution's Separation of Powers Clause, and/or that any statutory authority relied on by EGLE for such adoption violated the constitutional nondelegation doctrine; (5) EGLE's assertion of control over non-CAFOs went beyond its statutory authority and that its standard for determining such authority was unconstitutionally void for vagueness; and (6) that the mandate to install 35-foot permanent vegetated buffer strips and requirement to have 100-foot setbacks converted cropland acreage to nonfarmable land, an unconstitutional taking without just compensation in violation of US Const, Am V, and Mich Const 1963, Art X, § 2.

EGLE moved for summary disposition under MCR 2.116(C)(4) (lack of subject-matter jurisdiction) and (C)(8) (failure to state a claim) on the ground that plaintiffs failed to exhaust available administrative remedies such that the Court of Claims lacked jurisdiction. EGLE asserted that the court would not have jurisdiction until EGLE made a final decision at the conclusion of the contested case proceeding, and only then would plaintiffs have exhausted all administrative remedies available to them rendering EGLE's final decision subject to judicial review pursuant to Const 1963, art 6, § 28 and MCL 24.301-MCL 24.306. Plaintiffs opposed EGLE's motion on the grounds that their complaint challenged "rules" that were not promulgated under the APA, and sought a declaratory judgment to determine the procedural validity of the "rules" under MCL 24.264 and MCR 2.605, which gave the Court of Claims jurisdiction. Plaintiffs maintained that exhaustion was unnecessary because plaintiffs challenged EGLE's authority to include the new conditions in the general permit, involving legal issues that did not require factual development and exempted the issues from the exhaustion requirement. Plaintiffs also argued that, if Part 31 is construed to grant EGLE authority to control farming practices, it would violate the Separation of Powers Clause. Plaintiffs argued that neither MCL 324.3103(1) nor MCL 324.3106 allowed EGLE to make general policy determinations that go "beyond existing state or federal regulations." EGLE replied that plaintiffs had to exhaust their administrative remedies before bringing this action and that they brought this case under MCL 24.264 and MCR 2.605, which apply to challenges to "rules." EGLE also argued that MCL 24.264 expressly required the exhaustion of administrative remedies before judicial review, and that the requirement in MCR 2.605 for an "actual controversy" could not be met because EGLE had not yet issued a ruling after a contested case hearing. EGLE conceded that no law specifically directed it to include specific conditions in CAFO permits but asserted that defending plaintiffs' separation of powers and nondelegation doctrine claim required fact-driven analysis and explanation of the standards and permit conditions it developed to fulfill its obligations under MCL 324.3101 *et seq.*, which requires it to develop permit conditions to assure compliance with state and federal standards, all of which were better suited to an administrative proceeding.

The Court of Claims concluded that it lacked subject-matter jurisdiction “[b]ecause plaintiffs did not follow the available administrative process to its completion.” The court observed that plaintiffs had not exhausted their administrative remedies and their contested case remained pending, and consequently the court lacked jurisdiction requiring dismissal. The court disagreed with plaintiffs’ contention that MCL 24.264 gave the court jurisdiction to determine the validity of the conditions by issuing a declaratory judgment because the 2020 general permit’s conditions were not formally promulgated rules under the APA’s procedures and “plaintiffs may not simply characterize the 2020 CAFO General Permit’s requirements as ‘rules’ and thereby invoke MCL 24.264.”

The court noted that MCR 2.605(A)(1) applies in a “case of actual controversy.” The court held that no actual controversy existed for purposes of the court rule because the available administrative process had not yet run its course. Respecting plaintiffs’ contention that their challenge to EGLE’s authority to act made exhaustion unnecessary, the court found that the dispute did not implicate defendant’s authority to regulate plaintiffs and did not excuse plaintiffs’ failure to exhaust available administrative remedies. The court explained that plaintiffs’ complaint raised factual issues that necessitated examination during the administrative process of the necessity and efficacy of certain matters within the permit which constituted fact intensive issues requiring development of a record that would enable comparing the statutory goals to the permitting conditions to determine whether the permitting conditions further those goals. The court concluded that development of a factual record is best suited for the administrative process. The court acknowledged that the assertion of constitutional questions can excuse a failure to exhaust available administrative remedies, but noted that “merely characterizing an issue by using constitutional terms does not excuse the exhaustion requirement, particularly where there remain factual issues for the agency to resolve.” The court held that

the presence of the factual issues noted above convinces the Court that the presence of plaintiffs’ constitutional claims does not excuse exhaustion. In addition, it must be remembered that plaintiffs are alleging that they suffered constitutional violations as part of the permitting process. This permitting process has not yet run its course, meaning that the errors that have allegedly occurred have not been submitted to defendant for correction. Again, “[i]t is presumed that an administrative agency will correct its errors”—if any—“if given a chance to do so.”

The court concluded that plaintiffs failed to exhaust administrative remedies and their contested case remained pending such that the court lacked jurisdiction requiring dismissal. This appeal followed.

II. STANDARDS OF REVIEW

A motion for summary disposition under MCR 2.116(C)(4) tests the trial court’s subject-matter jurisdiction. We review de novo a trial court’s decision on a motion for summary disposition under MCR 2.116(C)(4). *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). To the extent that resolution of this issue involves statutory interpretation, we review de novo whether the trial court properly interpreted and applied the relevant statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016). The primary goal of judicial interpretation is to ascertain and give effect to the Legislature’s intent. *Mich Ed Ass’n v*

Secretary of State (On Rehearing), 489 Mich 194, 217; 801 NW2d 35 (2011). We review de novo a court's interpretation of court rules under the same principles that govern the construction of statutes. *Dawley v Hall*, 501 Mich 166, 169; 905 NW2d 863 (2018). Questions of law are reviewed de novo. *Christenson v Secretary of State*, 336 Mich App 411, 417; 970 NW2d 417 (2021).

III. ANALYSIS

A. WATER RESOURCES PROTECTION

EGLE's authority to issue permits derives from state law, but exists in relation to the federal Clean Water Act (CWA), 33 USC 1251 *et seq.* Relevant to this case, the CWA requires that all point source discharges to regulated waters must have an NPDES permit. The CWA includes CAFOs in its definition of the term "point source" "from which pollutants are or may be discharged." 33 US 1362(14.) "Michigan promulgated its own administrative rules specific to the NPDES for CAFOs[.]" *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 536; 747 NW2d 321 (2008). Mich Admin R 323.2196(1)(b) provides that "[a]ll CAFO owners or operators shall apply either for an individual NPDES permit, or a certificate of coverage under an NPDES general permit unless the owner or operator has received a determination from the department made after providing notice and opportunity for public comment, that the CAFO has 'no potential to discharge'" See also *Sierra Club*, 277 Mich App at 536-537.

B. THE 2020 GENERAL PERMIT

Mich Admin Code, R 323.2191(1), authorizes EGLE to issue a general permit if it determines that "certain discharges are appropriately and adequately controlled by a general permit[.]" Under Mich Admin Code, R 323.2137, a permit issued by EGLE "shall contain terms and conditions deemed necessary by the department to ensure compliance with effluent standards and limitations" and may feature stringent limitations it deems necessary to meet applicable water quality standards.³ A person who seeks to be covered by a general permit must apply for coverage under the permit. Mich Admin Code, R 323.2192(a). After EGLE receives an application for coverage under an existing general permit, it shall determine if the discharge meets the criteria for coverage under the general permit. Mich Admin Code, R 323.2192(b). A person is not covered under a general permit until after EGLE issues a notice of coverage stating that the discharge meets the criteria for coverage. *Id.*

C. RESOLUTION OF DISPUTES REGARDING PERMITS

Plaintiffs argue that the court erred by ruling that it lacked jurisdiction because they contend that MCL 24.264 grants the court jurisdiction over declaratory judgment actions. We

³ Other Part 21 rules permit EGLE to impose requirements under the terms and conditions of a state or national permit to achieve water quality compliance. See generally Mich Admin Code, Rules 323.2138; 323.2139; 323.2142; 323.2145; 323.2146; and 323.2149.

agree with this, however, plaintiffs in this matter failed to fulfill MCL 24.264's presuit requirement to first seek a declaratory ruling before commencing an action for declaratory judgment, which deprived the court of jurisdiction and required dismissal.

A person who is aggrieved by the coverage under a general permit may file a sworn petition for a contested case hearing on the matter with EGLE as provided under MCL 324.3113(3) and MCL 24.201 to MCL 24.328.⁴ An interested person may also seek a declaratory ruling as to the applicability of a rule to an actual state of facts under MCL 24.263. The validity or applicability of a rule may be challenged by seeking a court's declaratory judgment under MCL 24.264 which provides:

Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

MCL 24.264 reveals a general legislative intent to provide an avenue for a party to challenge an agency rule. *Slis v State*, 332 Mich App 312, 342; 956 NW2d 569 (2020).

In this case, plaintiffs filed a declaratory judgment action under MCL 24.264 regarding the validity of the new conditions imposed in the 2020 general permit on the ground that EGLE failed to follow the procedures to promulgate rules as required under the APA. Plaintiffs essentially contend that EGLE circumvented the rulemaking procedures by incorporating the new conditions in the 2020 general permit. EGLE moved for summary disposition on the ground that the Court of Claims lacked subject-matter jurisdiction because plaintiffs failed to exhaust their administrative remedies.

⁴ See also Mich Admin Code, R 323.2192(c) which provides in relevant part that a "person who is aggrieved by the coverage may file a sworn petition for a contested case hearing on the matter with" EGLE in accordance with MCL 324.3113.

The Court of Claims relied on *Jones v Dep't of Corrections*, 185 Mich App 134, 460 NW2d 575 (1990)⁵ for the proposition that only rules that have been formally promulgated as “rules” under the APA may be subject to a challenge under MCL 24.264. The court held that MCL 24.264 did not apply in this case because the conditions in the 2020 general permit were not formally promulgated as rules under the APA. We conclude that MCL 24.264 applied in this case.

In *Jones*, a case involving policy directives, institutional procedures, and employee guidelines of the Michigan Department of Corrections and the Michigan Civil Service Commission, the plaintiff requested a declaratory ruling from the defendants as to whether the directives, procedures, and guidelines were promulgated as rules pursuant to § 33 of the APA, MCL 24.233, and, if not, whether his discharge pursuant to unpromulgated rules deprived him of due process of law. *Id.* at 135-136. The defendants failed to respond to the plaintiff's request for a declaratory ruling and the plaintiff commenced the action for declaratory judgment under MCL 24.264. *Id.* at 136. The defendants moved for summary disposition and admitted that the directives, procedures, and guidelines were not promulgated as rules pursuant to § 33 of the APA. The defendants, however, contended that the circuit court lacked subject-matter jurisdiction because the plaintiff failed to exhaust his administrative remedies. The defendants also contended that the plaintiff was foreclosed from pursuing relief in the form of a declaratory judgment pursuant to MCL 24.264 because the plaintiff did not challenge the applicability of the directives, procedures, and guidelines. *Id.* The circuit court agreed with the defendants' rationale and granted the defendants' motion for summary disposition under MCR 2.116(C)(4) and (8). *Id.*

In addressing the plaintiff's contention that he was denied due process of law when discharged for violating directives, procedures, and guidelines, that were not promulgated as rules, the *Jones* court concluded that they could not be challenged under MCL 24.264 because they were not rules. The court further held that plaintiff failed to exhaust all available administrative remedies, precluding judicial review because he had available two additional levels of administrative relief. *Id.* at 137-138. We do not find the reasoning in *Jones* persuasive or applicable in this case.

Under the APA, the term “rule” is defined as follows:

“Rule” means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. [MCL 24.207.]

Among other things, the term “rule” does not include a “decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.” MCL 24.207(j). The APA contains standards for rulemaking. See MCL 24.231 through MCL 24.266.

⁵ Cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), but they may be considered as persuasive authority. *Aroma Wines & Equip, Inc v Columbian Dist Servs, Inc*, 303 Mich App 441, 453 n 4; 844 NW2d 727 (2013). This Court decided *Jones* during May 1990. Therefore, it is not binding precedent.

To adopt a rule, an agency must fulfill among other things the APA's procedural requirements set forth in MCL 24.241, MCL 24.242, MCL 24.245, MCL 24.246, subject to the environmental rules review committee's oversight of all of EGLE's rulemaking under MCL 24.265 and MCL 24.266. " 'Processing of a rule' means the action required or authorized by this act regarding a rule that is to be promulgated, including the rule's adoption, and ending with the rule's promulgation." MCL 24.205(j). " 'Promulgation of a rule' means that step in the processing of a rule consisting of the filing of the rule with the secretary of state." MCL 24.205(k). A " guideline" by contrast "means an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person." MCL 24.203(7). Under MCL 24.226, an agency may not adopt a guideline in lieu of a rule.

Numerous administrative rules have been promulgated respecting water resource protection and water discharge permits pursuant to NREPA, MCL 324.3103, and MCL 324.3106. Relevant to this case, Mich Admin Code R 323.2196 governs CAFO permits and defines the scope of regulation specifying how and to what extent CAFOs and recipients handle, use, apply, dispose, and transport CAFO production area waste and CAFO process wastewater. Mich Admin Code R 323.2196(5) provides in relevant part:

CAFO NPDES permits shall include all of the following:

(a) A requirement to develop and implement a comprehensive nutrient management plan (CNMP). The CNMP shall be approved by a certified CNMP provider. At a minimum, a CNMP shall include best management practices and procedures necessary to implement applicable effluent limitations and technical standards established by the department including all of the following:

* * *

(viii) Conduct a field-by-field assessment of land application areas and address the form, source, amount, timing, rate, and method of application of nutrients to demonstrate that land application of production area waste or CAFO process wastewater is in accordance with field-specific nutrient management practices that ensures proper agricultural utilization of the nutrients in the production area waste or CAFO process wastewater. The assessment shall take into account field-specific conditions including locations of tile outlets, tile risers, and tile depth before land application to determine suitability of land application and to prevent discharge of any potential polluting material.

(ix) Ensure proper land application by complying with all of the following conditions:

(A) Production area waste and CAFO process wastewater shall not be land-applied on ground that is flooded, saturated with water, frozen, or snow-covered where the production area waste and CAFO process wastewater may enter waters of the state.

(B) Production area waste and CAFO process wastewater shall not be applied to frozen or snow-covered ground unless it is subsurface injected and there

is substantial soil coverage of the applied production area waste and CAFO process wastewater, or it is surface-applied and incorporated within 24 hours.

(C) Production area waste and CAFO process wastewater may be surface-applied to frozen or snow-covered ground and not incorporated within 24 hours only if there is a field-by-field demonstration in the CNMP showing that such land application will not result in a situation where production area waste and CAFO process wastewater may enter waters of the state.

(D) Production area waste and CAFO process wastewater shall not be applied when precipitation exceeding ½ inch is forecast within 24 hours or if precipitation is forecast that may cause the production area waste and CAFO process wastewater to enter waters of the state.

(E) On ground that is not frozen or snow-covered, production area waste and CAFO process wastewater, if not subsurface-injected, shall be incorporated into the soil within 24 hours of application except on no-till fields.

* * *

(x)(c) A prohibition on dry weather discharges from the CAFO except in accordance with 40 C.F.R. §412.31(a)(2) (2003) or 40 C.F.R. §412.46(d) (2003).

(d) Storm water discharges from land areas under the control of a CAFO where production area waste or CAFO process wastewater has been applied in compliance with field-specific nutrient management practices developed in accordance with R 323.2196(5)(a), and such discharges do not cause or contribute to a violation of water quality standards, are in compliance with this rule, provided such discharges are authorized by an NPDES permit.

(e) Unless the department determines otherwise, in cases where production area waste or CAFO process wastewater is sold, given away, or otherwise transferred to other persons (recipient) and the land application of that production area waste or CAFO process wastewater is not under the operational control of the CAFO owner or operator that generates the production area waste or CAFO process wastewater (generator), a manifest shall be used to track the transfer and use of the production area waste or CAFO process wastewater.

The rule also specifies in detail that the permit must set forth all of the things the CAFO owner or operator shall do respecting preparation of a manifest for tracking CAFO production area waste and CAFO process wastewater, and its transport to recipients including its final destination, and restricts the sale or transfer of such if recipients have improperly applied, used, or disposed of such. Mich Admin Code R 323.2196(5)(a)(x)(e) and (f).

The 2010 general permit and the 2015 general permit governing CAFOs set forth conditions as specified in Mich Admin Code R 323.2196(5)(a)(ix)(A)-(E) and permitted what the

rule permits.⁶ In the 2020 general permit, however, EGLE incorporated additional conditions, including in its prohibitions section, Part I, Section B(3)(f)(3), prohibiting application of CAFO waste during January through March unless certain conditions are met; Part I, Section B(3)(f)(4) prohibiting transfer of CAFO waste to a recipient for land application during January through March, and incorporated conditions regarding methods of application during January through March, Part I, Section B(3)(g). The previous permits specified setback conditions prohibiting application within 100 feet of ditches that are conduits to surface waters, but permitted substitution of 35-foot vegetated buffers for such 100-foot setback areas.⁷ In the 2020 general permit, EGLE changed those provisions to prohibit application of CAFO waste within 100 feet of surface water, open tile line intake structures, sinkholes, agricultural wellheads, and roadside ditches that are conduits to surface waters. Part I, Section B(3)(h)(1)(a). The new conditions do not permit substitution of vegetated buffers, but mandate installation of 35-foot-wide permanent vegetated buffers along any surface water, open tile line intake structures, sinkholes, agricultural wellheads, and roadside ditches that are conduits to surface waters. Part I, Section B(3)(h)(1)(b).

Close analysis of the new conditions indicates that they go beyond the scope of the promulgated rule, Mich Admin Code R 323.2196. That which formerly was authorized by the promulgated rule and permitted under the 2010 and 2015 general permits is now barred by unpromulgated general permit conditions. As such the new conditions expand the regulatory restrictions generally applicable to CAFOs that implement and apply the CWA and NREPA. The new conditions set rigid standards with which CAFOs and CAFO waste recipients must comply. The new conditions are not merely guidelines but have the force and effect of “rules” not formally promulgated. The record indicates that EGLE chose not to follow the applicable APA procedures to adopt a new rule or amend the existing rule pertaining to CAFO permits. Instead, it essentially created an agency regulation, standards, and instructions of general applicability that implements or applies law enforced or administered by the agency.

The issue in this case is not whether EGLE has authority to create or amend rules with provisions like the new conditions, but whether it has and may circumvent the rule promulgation procedure and expand the scope of generally applicable regulatory standards and restrictions by requiring compliance with conditions without promulgation of them as rules. We conclude that an affected party may challenge the validity and applicability of conditions imposed by EGLE as permit conditions as in this case when such conditions prohibit what the existing rule permits. An interested person seeking to challenge the validity or applicability of such conditions may do so under MCL 24.264.

Under MCL 24.264, however, an “action for declaratory judgment *may not* be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously.” (Emphasis added.) The plain language of MCL 24.264 does not impose further administrative remedy exhaustion requirements. To be clear, the statute does not require persons seeking to challenge the validity or applicability

⁶ See 2010 general permit Part I, Section A(7)(e), (f) and 2015 general permit Part I, Section B(3)(e), (f).

⁷ See 2010 general permit Part I, Section A(7)(g) and 2015 general permit Part I, Section B(3)(g).

of a rule to challenge EGLE action in a contested case under MCL 24.271, by petitioning for a contested case hearing, or under MCL 24.263 by seeking a declaratory ruling as to the applicability to an actual state of facts. But the Legislature made clear that the prerequisite to commencing an action for a declaratory judgment under MCL 24.264 is a request for a declaratory ruling from the agency. The statute makes clear this must first be done or the court lacks jurisdiction to hear the case.

In this case, the record indicates that plaintiffs never first requested a declaratory ruling from EGLE. Accordingly, plaintiffs failed to meet the statutory prerequisite for filing and commencing a declaratory judgment action. Consequently, plaintiffs' action for declaratory judgment could not be commenced and the Court of Claims lacked jurisdiction, which required dismissal. The trial court concluded that it lacked jurisdiction and dismissed the case because plaintiffs had not exhausted all administrative remedies available related to their contested case. While this was factually correct and the trial court reached the correct result, the trial court's legal reasoning was erroneous. Accordingly, we affirm the trial court's dismissal of the case because it reached the right result, albeit for the wrong reason. See *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Plaintiffs argue that a footnote in *Mich Farm Bureau*, 292 Mich App 106, makes compliance with MCL 24.264's presuit requirement unnecessary. We disagree.

In *Mich Farm Bureau*, the plaintiffs had formally requested from the DEQ⁸ a declaratory ruling under MCL 24.263,⁹ that an administrative rule requiring CAFOs to apply for and obtain NPDES permits did not apply to CAFOs that had not had, and did not propose to have, an actual discharge of pollutants. *Id.* at 117-118. The DEQ granted the plaintiffs' request and issued a ruling. *Id.* at 118. Later, the plaintiffs commenced an action by filing a complaint for declaratory relief in the circuit court. *Id.* at 116. In its motion for summary disposition, the DEQ contended that, rather than commencing the declaratory judgment action in circuit court, the APA required the plaintiffs to seek judicial review of the DEQ's declaratory ruling pursuant to MCL 24.263. *Id.* at 118. The circuit court determined that the plaintiffs' request to the DEQ had, in reality, been a challenge to the *validity* of the rule rather than a request for a ruling on the *applicability* of the rule

⁸ EGLE was formerly known as the Department of Environmental Quality (DEQ).

⁹ MCL 24.263 provides:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

to “an actual state of facts” within the meaning of MCL 24.263. *Id.* The circuit court observed that the plaintiffs’ request for a declaratory ruling had raised only a question of law with no need for factual development, and that no statutory authority permitted the DEQ to make rulings or pronouncements concerning the “substantive validity” of its own rule. The circuit court concluded that the proper mechanism for challenging the substantive validity of the rule was an action for declaratory relief in the circuit court under MCL 24.264, and denied the DEQ’s motion for summary disposition. *Id.* at 119.¹⁰

Plaintiffs in this appeal rely on the following footnote in *Mich Farm Bureau*:

We perceive no error in the circuit court’s ruling on this matter. As the circuit court properly concluded, plaintiffs did not truly request “a declaratory ruling as to the applicability to an actual state of facts of a . . . rule . . . of the agency” within the meaning of MCL 24.263. Instead, and more accurately, what plaintiffs actually requested was a simple declaration that Rule 2196 was invalid. As Dean LeDuc has explained in his treatise on Michigan administrative law, MCL § 24.263 “empowers an agency to issue a declaratory ruling only as to the applicability of a rule, not as to its validity.” LeDuc, *Michigan Administrative Law* (2001), § 8:13, p 576 (emphasis added). “The reason for this is obvious, an agency is unlikely to find its own rules invalid and those rules are presumed to be valid anyway. Courts will ultimately determine the validity of a rule.” *Id.* Because plaintiffs sought to challenge the validity of Rule 2196 rather than its applicability to a particular state of facts, they were not required to ask the DEQ for a declaratory ruling under MCL § 24.263 in the first instance, and were instead entitled to directly commence this declaratory judgment action in the circuit court pursuant to MCL 24.264. Nor did the exhaustion requirement of MCL 24.264 apply to plaintiffs given that they sought to challenge the validity of Rule 2196 rather than its applicability. See LeDuc, § 8:13, p 577. “The exhaustion requirement of [MCL 24.264] (requiring resort first to the submission of a [request for a] declaratory ruling) applies only when a plaintiff wishes to challenge the applicability of a rule to an actual state of facts.” *Id.* [*Id.* at 119 n 7.]

The footnote cites statements from a treatise that neither has precedential value nor reflects the primacy of Michigan law regarding statutory interpretation, which requires courts to enforce the unambiguous legislative intent as expressed in the plain language of a statute. MCL 24.264’s prerequisite to commencing a declaratory judgment action cannot be ignored even if an agency is unlikely to find its own rules invalid. The footnote is dicta, and therefore, not binding precedent, because it was “unnecessary to determine the case at hand . . .” *People v Peltola*, 489 Mich 174, 190 n 32; 803 NW2d 140 (2011). Moreover, *Mich Farm Bureau* is distinguishable from the case

¹⁰ The plaintiffs thereafter moved for summary disposition, arguing in part that the administrative rule at issue, Mich Admin Code, R 323.2196, was an invalid regulation and that the promulgation of the rule exceeded the scope of the DEQ’s statutory rulemaking authority under Part 31 of the NREPA and that the rule was arbitrary, capricious, and inconsistent with the intent of the Legislature. *Id.* at 120.

at bar because in that case, the plaintiff had sought a declaratory ruling under MCL 24.263, and received such a ruling from the agency before filing suit. Further, in *Mich Farm Bureau* this Court considered the *substantive* validity of a *rule* actually promulgated by the agency. *Mich Farm Bureau* and its footnote in particular is not dispositive in this case.

We hold that the Court of Claims achieved the right result albeit for the wrong reason. This case could not be commenced in the trial court because plaintiffs failed to first seek a declaratory ruling from EGLE before filing their declaratory judgment action, as required by MCL 24.264. Because this ruling is dispositive, we decline to address the other issues raised by plaintiffs on appeal. This ruling is without prejudice to plaintiffs' ability to seek a declaratory ruling from the agency under MCL 24.264.

Affirmed.

/s/ James Robert Redford

/s/ Michael F. Gadola

/s/ Deborah A. Servitto

EXHIBIT D



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



LIESL EICHLER CLARK
DIRECTOR

December 29, 2022

VIA EMAIL

Michigan Farm Bureau, et al.
c/o Legal Counsel, Michael J. Pattwell
Clark Hill
215 South Washington Square, Suite 200
Lansing, Michigan 48933

Dear Michael J. Pattwell:

SUBJECT: Denial of Request for Declaratory Ruling by Michigan Farm Bureau, et al.

The Department of Environment, Great Lakes, and Energy (EGLE) received the Request for Declaratory Ruling dated December 2, 2022, that you submitted on behalf of Michigan Farm Bureau and 162 other entities (Request). The Request concerns the validity of certain permit conditions contained within the 2020 National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operations (CAFO) General Permit (2020 General Permit).

Specifically, the Request asks whether the new conditions are “rules” under MCL 24.207, and whether they are invalid for not having been promulgated as rules. (Request, ¶¶ 176, 177.) Although the Request states that it is focused on the 2020 General Permit, it also describes a permit condition requiring CAFOs located in Total Maximum Daily Load (TMDL) watersheds to comprehensively evaluate their operations. (Request, ¶ 174, subpart k.) That permit condition was included in the 2010 and 2015 general permits as well as the 2020 General Permit.

All the permit conditions flagged in the Request have also been challenged through a contested case pending before the Michigan Office of Administrative Hearings and Rules. (Request, ¶ 174, subparts a through k); See also, *In re Petition of Mich Farm Bureau*, (Docket No. 20-009773), filed May 26, 2020. These same permit conditions were also challenged through a declaratory action filed with the Court of Claims. *Mich Farm Bureau v Mich Dep’t of Environment, Great Lakes, and Energy* (Docket No. 20-000148-MZ), opinion issued December 30, 2020. The dismissal of that action was subsequently appealed to the Court of Appeals. The Court of Appeals, in a published decision upholding the lower court’s dismissal of the premature challenge, determined that the permit conditions should first be challenged via request for a declaratory ruling, and that the permit conditions are unlawfully promulgated rules. *Mich Farm Bureau v Dep’t of Env’t, Great Lakes, & Energy*, ___ Mich App ___, *8 (2022) (Docket

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No. 356088); see also *Mich Farm Bureau v Dep't of Environment, Great Lakes, and Energy*, order of the Michigan Court of Appeals on Motion for Reconsideration, (Docket No. 356088), issued November 17, 2022. Today, EGLE moved the Michigan Supreme Court to vacate that reasoning, or alternately to grant leave to appeal it. *Mich Farm Bureau v Mich Dep't of Environment, Great Lakes, and Energy*, Application for Leave to Appeal, filed December 29, 2022.

The Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.101 *et seq.* (APA), states, "On request of an interested person, an agency *may* issue a declaratory ruling as to the applicability of an actual state of facts of a statute administered by the agency or of a rule or order of the agency." MCL 24.263 (emphasis added). When it appears in statutes, "may" reflects discretion and "does not mandate an action." *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 32 (2016), quoting *In re Weber Estate*, 257 Mich App 558, 562 (2003) (quotation marks omitted).

EGLE is not required to respond to a request for a declaratory ruling, and in certain instances is forbidden from responding. "If relevant facts necessary to issue a declaratory ruling are contested, then a declaratory ruling shall not be issued." Mich Admin Code, R 324.81. As more fully explained below, and because the Request requires the analysis of relevant contested facts, EGLE must deny the Request.

First, a brief history of the source category and applicable law and regulations to put the Request into context.

Statutory and Regulatory Background

EGLE is authorized to issue NPDES permits under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.3101 *et seq.*, and in accordance with delegated authority under the federal Clean Water Act, 33 USC 1251 *et seq.* As directed by Section 3106 of Part 31, MCL 324.3106, and in accordance with Section 3103(3) of Part 31, MCL 324.3103(3), EGLE promulgated state water quality standards, which the United States Environmental Protection Agency (USEPA) subsequently approved as "applicable standards" for issuing NPDES permits under Part 402(c) of the federal Clean Water Act, 33 USC 1342(c); see Mich Admin Code, R 323.1041 *et seq.* (Part 4, Water Quality Standards). As directed by Section 3106 of Part 31, MCL 324.3106, as required to maintain delegated federal authority to issue NPDES permits, and in accordance with Section 3103(3) of Part 31, MCL 324.3103(3), EGLE also promulgated rules specific to Wastewater Discharge Permits. See Mich Admin Code, R 323.2101 *et seq.* (Part 21 Permitting Rules).

The Part 21 Permitting Rules include general requirements for all NPDES permits, including the following:

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When applicable, a permit issued by the department shall contain terms and conditions deemed necessary by the department to ensure compliance with at least the following effluent standards and limitations: . . .

(d) Any other more stringent limitation deemed necessary by the department to meet applicable water quality standards, treatment standards, or schedules of compliance established pursuant to part 31 of the act or rules promulgated pursuant thereto, or necessary to meet other federal law or regulation enacted or promulgated subsequent to these rules, or required to meet any applicable water quality standards, including applicable requirements necessary to meet maximum daily loads established by and incorporated into the state's continuing planning process required pursuant to section 303 of the federal act.

Mich Admin Code, R 323.2137(d).

This state regulation is similar to the following federal NPDES permitting regulation, which is incorporated by reference into the Part 21 Permitting Rules:

(d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality. . . .

40 CFR 122.44 (2005) (incorporated by reference into Mich Admin Code, R 323.2189(2)(h)).

In 2003 the USEPA issued regulations specifying effluent limitation guidelines (ELGs) in the form of qualitative best management practices (BMPs) that control discharges of pollution from CAFO production areas and land application areas. 68 Fed Reg 7269 (February 12, 2003) (codified at 40 CFR 9, 122, 123, 412) (2003). When it developed those ELGs, the USEPA specifically abstained from establishing wintertime land application requirements and selecting phosphorus soil levels, leaving those decisions to state permitting authorities. 68 Fed Reg at 7209, 7212. The Second Circuit Court of Appeals upheld the new federal standards but found that the Clean Water Act prohibits the USEPA from requiring CAFOs to obtain NPDES permits based on potential discharges. *Waterkeeper All, Inc v US EPA*, 399 F3d 486, 505, 524 (CA 2, 2005).

Before the legal challenge to the federal regulations had run its course, EGLE issued its own regulations specific to CAFOs, which drew from the federal regulations, including the requirement that all CAFOs, except those that demonstrate no potential to

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discharge, must obtain NPDES permits. See Mich Admin Code, R 323.2102(i), (j); R 323.2103(f), (g), (k), (m); R 323.2104(d), (e), and (o); R 323.2196; and R 323.2189(2)(m). Although the state regulations, like the federal regulations, focus on controlling discharges from production areas and land application areas, the state definition of the term “land application area” is broader than the federal definition, extending to land not owned or leased by permittees. Compare Mich Admin Code, R 323.2103(f) with 40 CFR 412.2(e) (2003).

Among other things, the new state regulations set minimum standards for what CAFOs must contain in their comprehensive nutrient management plans (CNMPs). Mich Admin Code, R 323.2196(5)(a) (“*At a minimum*, [CNMPs] shall include”) (emphasis added). Minimum means “[o]f, relating to, or constituting the smallest acceptable or possible quantity in a given case.” *Black’s Law Dictionary* (11th ed). See *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 223 (2009) (stating that undefined terms in a statute are given “their plain and ordinary meanings” and citing *Halloran v Bhan*, 470 Mich 572, 578 (2004) for the proposition that it is proper to consult a dictionary for undefined statutory terms). In other words, minimum establishes a floor, not a ceiling.

Those minimum requirements for CNMPs include a prohibition of land application of CAFO waste on ground that is frozen, saturated, or snow-covered if the waste “*may* enter waters of the state.” Mich Admin Code, R 323.2196(5)(a)(ix)(A) (emphasis added). “May” means “[t]o be a possibility.” *Black’s Law Dictionary* (11th ed). See *Halloran v Bhan*, 470 Mich at 578. In other words, the Part 21 Permitting Rules prohibit the land application of CAFO waste to frozen, saturated, or snow-covered ground if it *might* enter waters of the state.

The Court of Appeals subsequently upheld EGLE’s authority to develop a more stringent CAFO permitting framework than the USEPA. *Mich Farm Bureau v Dep’t of Environmental Quality*, 292 Mich App 106, 137 (2011) (“Michigan is perfectly free to adopt NPDES permitting and discharge standards that are more stringent than the federal requirements.”) Parties to that challenge elected to focus on whether Part 31 authorized EGLE to require all CAFOs, regardless of demonstrated discharges, to obtain NPDES permits. They did not challenge the substantive requirements for those permits. As a result, under the doctrine of *res judicata*, they waived challenges they could have otherwise brought against those new rules. *Dart v Dart*, 460 Mich 573, 586, (1999) (explaining that Michigan courts “broadly” apply the doctrine of *res judicata*, which bars “every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised, but did not.”).

Permitting CAFOs

EGLE first began authorizing discharges from CAFOs pursuant to NPDES permits in 2002 and issued its first general permit for the source category in 2004, which it subsequently reissued in 2005. At the time, there were fewer than 100 CAFOs

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discharging to Michigan surface waters. EGLE issued general permits for this source category again in 2010, 2015, and 2020.

Currently, there are approximately 300 permitted CAFOs authorized to discharge to Michigan surface waters. CAFOs today contain more animals than CAFOs did two decades ago when EGLE first began authorizing discharges from this source category. As a result, this source category has the potential to discharge more waste from more locations. Based on annual reports submitted by permitted CAFOs, in 2020, this source category produced 3.9 billion gallons of liquid waste and 1.3 million tons of solid waste per year.

CAFOs may discharge waste to surface waters subject to TMDLs from production areas and land application areas, through direct surface water discharge as well as through groundwater infiltration. Sixty-five percent of CAFO production areas are located within *E. coli* TMDL watersheds. Because CAFOs are not currently required to report the precise locations of land application areas in a manner that is readily integrated into mapping software, EGLE cannot state how many land application areas are located within TMDL watersheds. However, CAFOs state that they typically dispose of CAFO waste at land application areas located within a five- to ten-mile radius of production areas. Ninety percent of CAFO production areas are located within five miles of an existing *E. coli* TMDL watershed. Ninety-five percent of CAFO production areas are located within ten miles of an existing *E. coli* TMDL watershed.

CAFO process wastewater and production area waste, as defined at Mich Admin Code, R 323.2102(j) and R 323.2104(j), referred to herein as CAFO waste, contains, among other things, the following pollutants: nutrients, primarily phosphorus, which itself includes both dissolved reactive phosphorus and particulate phosphorus, and microorganisms, including *E. coli*. When nutrients discharge to surface water, they can impact levels of dissolved oxygen, as well as physical characteristics of the surface water itself. CAFO waste can reach surface water directly through surface runoff, through tile line discharges, and by leaching into groundwater and then discharging to surface water. Both the likelihood, and extent, of these discharges depend on many factors, including the amount of CAFO waste applied, the pollutant concentration in the CAFO waste, timing and method of land application, precipitation, ambient temperature, soil conditions, soil type, and both whether and to what extent fields are tiled.

EGLE may not authorize CAFOs to discharge pursuant to a general permit without first reviewing each individual CAFO's CNMP to confirm that its restrictions sufficiently protect surface water. *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 555 (2008). Further, under Section 324.3106 of Part 31, EGLE may not authorize CAFOs to discharge pollutants without first assuring that the discharges will assure compliance with water quality standards. MCL 324.3106. Based on the typical waste stream produced by this source category, the following water quality standards are most relevant:

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- Mich Admin Code, R 323.1060(1), (2) (plant nutrients, including phosphorus);
- Mich Admin Code, R 323.1062(1), (2) (microorganisms);
- Mich Admin Code, R 323.1050 (physical characteristics);
- Mich Admin Code, R 323.1055 (taste- or odor-producing substances); and
- Mich Admin Code, R 323.1064(1); R 323.1065(1), (2); R 323.1043(r) (dissolved oxygen).

Contested Facts

The Request sets out nine separately numbered paragraphs of what are purported to be uncontested facts. (Request, ¶¶ 165–173.) EGLE does not agree that these paragraphs contain uncontested facts. Relevant to the Request, EGLE does not concur with the assertion suggested in paragraphs 168–171 that the only standards applicable to CAFOs are found in Mich Admin Code, R 323.2196.

The Part 21 Permitting Rules include standards applicable to all source categories required to obtain NPDES permits, including the requirement that NPDES permits be more stringent than those standards when necessary to safeguard water quality. Mich Admin Code, R 323.2137(d) and R 323.2189(2)(h). Although the Request references Rule 2196, the initial portion of that section relates to when and how CAFOs obtain permits, not what should be included within them. Mich Admin Code, R 323.2196(1)-(4).

The minimum permitting requirements specific to the CAFO source category are located in Mich Admin Code, R 323.2196(5), with reference to definitions specific to CAFOs found in Mich Admin Code, R 323.2102, R 323.2103, and R 323.2104. Further, the Part 21 Permitting Rules incorporate federal regulations specific to CAFOs in Mich Admin Code, R 323.2189(2)(m). Thus, the applicable regulatory framework includes both the generally applicable requirements of the Part 21 Permitting Rules and the specific requirements for the CAFO source category laid out in Mich Admin Code, R 323.2196(5) and R 323.2189(2)(m), all of which must be considered in relation to the Part 4, Water Quality Standards.

Moreover, it is necessary to consider facts, including water quality data and studies regarding the efficacy of BMPs, to determine whether the new permit conditions exceed the scope of the applicable regulatory framework. Although EGLE is confident that scientific data, including firsthand observations from EGLE compliance staff, support its decision to include the new permit conditions in the 2020 General Permit, those facts were contested in the pending contested case. Thus, there are contested facts both relevant and necessary to respond to the Request. The following partial list includes examples:

- The relationship between discharges of dissolved reactive phosphorus discharges and the soil phosphorus levels of tilled land application areas;

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- Whether allowing land application of CAFO waste until soil phosphorus levels have increased to 150 parts per million (ppm) prevents discharges of nutrients to surface water;
- Whether CAFO waste is a balanced fertilizer, or whether it contains more phosphorus than crops need, relative to nitrogen, leading those that use CAFO waste to fertilize crops to apply more phosphorus than needed for proper agricultural utilization;
- The likelihood of discharges of *E. coli* from land application areas covered with wheat stubble, as compared to land application areas;
- The comparative and combined efficacy of vegetated buffers and setbacks at decreasing surface runoff of CAFO waste;
- How to best prevent runoff of CAFO waste from frozen or snow-covered land application areas;
- Whether CAFOs that are verified through the Michigan Agriculture Environmental Assurance Program (MAEAP) discharge less pollution to surface waters than CAFOs that are not MAEAP-verified, and if so, how much less;
- Whether limited use of commercial fertilizer or land application of CAFO waste presents a greater threat to Michigan's surface waters;
- Whether land application of CAFO waste benefits soil health and reduces the potential of runoff to surface waters;
- Whether CAFO waste that is land applied in the wintertime will result in proper agricultural utilization, or whether it is primarily waste disposal; and
- Whether tiling increases or decreases surface runoff and discharges of land applied CAFO waste.

Conclusion

As a result, the existence of contested, relevant facts necessary to respond to this Request prohibits EGLE from granting this Request. If you have any questions, please contact Teresa Seidel, Director, Water Resources Division, at 517-281-1251; SeidelT@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,



Liesl Eichler Clark
Director
517-284-6700

SUBJECT: Denial of Request for Declaratory Ruling by Michigan Farm Bureau, et al.

Page 8

December 29, 2022

cc: Zachary C. Larsen, Clark Hill
Elizabeth Morrisseau, Department of Attorney General
Jennifer Rosa, Department of Attorney General
Aaron B. Keatley, Chief Deputy Director, EGLE
Teresa Seidel, EGLE
Phil Argiroff, EGLE
Christine Alexander, EGLE
Christopher Conn, EGLE

EXHIBIT E

Rulemaking Process Summary

The process for creating, amending, and rescinding administrative rules is governed by the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328. (Note this is an overview and does not include all required provisions).

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RFR	<ul style="list-style-type: none"> ▲ A department must submit a Request for Rulemaking (RFR) to MOAHR to begin the rulemaking process. ▲ MOAHR reviews and approves the RFR and notifies the Joint Committee on Administrative Rules (JCAR).
------------	--



Draft Rules Agency: 90 days*	<ul style="list-style-type: none"> ▲ Rules are drafted by the agency and submitted by the agency's Regulatory Affairs Officer (RAO) to MOAHR to review for legal authority. ▲ MOAHR approves the draft rules and notifies JCAR. MOAHR sends the draft to the Legislative Service Bureau (LSB) for informal editing according to format and style requirements. ▲ The agency makes the suggested LSB edits to the draft rules and sends to MOAHR.
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RIS Agency: 35 days* Public Hearing Agency: 40 days*	<ul style="list-style-type: none"> ▲ A Regulatory Impact Statement & Cost-Benefit Analysis (RIS) is prepared by the agency and sent to MOAHR for approval 28 days prior to the public hearing. MOAHR notifies JCAR. ▲ A Notice of Public Hearing is prepared by the agency and sent to MOAHR. MOAHR notifies JCAR. ▲ The Notice is published in 3 newspapers, including 1 in the UP, not less than 10 days but no more than 60 days prior to the hearing. ▲ MOAHR publishes the Notice and draft rules in the <i>Michigan Register</i>. ▲ The agency holds a public hearing for public comment.
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JCAR Report Agency: 40 days*	<ul style="list-style-type: none"> ▲ The agency submits the final draft of the rules and the JCAR Report to MOAHR. ▲ MOAHR submits the final draft to LSB to formally certify the rules. ▲ MOAHR legally certifies the rules and sends the JCAR Report, including the final draft of the rules, certifications, RFR, and RIS to JCAR.
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JCAR	<ul style="list-style-type: none"> ▲ The JCAR Report and rules must be submitted to JCAR within 1 year after the public hearing, or there must be a subsequent public hearing. ▲ The JCAR Report summarizes the purpose of the draft rules and any comments made at the public hearing or submitted in writing. ▲ The rules must be before JCAR for 15 session days, unless JCAR grants a waiver of the remaining days. ▲ During those 15 days, JCAR may object to the rules, but then must introduce legislation within another 15 session days to stop or delay the rules. ▲ Rules can be filed by MOAHR with the Office of the Great Seal after 15 session days expire or after JCAR has waived the 15 session day requirement.
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Certificate of Adoption Agency: 25 days* Filing with Office of the Great Seal	<ul style="list-style-type: none"> ▲ The agency director confirms the intent to adopt the rules by submitting a Certificate of Adoption to MOAHR. ▲ MOAHR files the final rules with the Office of the Great Seal. ▲ The rules may become effective immediately upon filing, or at a later date specified by the agency in the rules. ▲ On the effective date, MOAHR amends the Michigan Administrative Code to reflect the new language of the rules.
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*Estimated number of days it takes for an agency to submit rulemaking document.

Revised: January 31, 2020

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STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.: TEMP-8ZRJN74X
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Case Title:
MICHIGAN FARM BUREAU, ET AL v. MI DEP'T OF ENVIRO, GREAT LAKES

Priority: NONE	Filing Option: File Only
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Filer Information

Filer
Zachary Larsen
215 South Washington Square
Lansing, MI 48933-1888

Attorney
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Lansing, MI 48933-1888

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Filing Summary

Filing Type	Filing Name	Fee
Summons and Complaint	MFB - Summons & Complaint with Exhibits	\$150.00
	eFiling System Fee:	\$25.00
Stipulation and Order	MFB - Stipulation to Hold in Abeyance (signed w. consent)	\$0.00
	NON-REFUNDABLE Automated Payment Service Fee:	\$5.25
	Total:	\$180.25

Alternate Payment Reason: None

The document(s) listed above were electronically filed with the Michigan Court of Claims.

TEMP-8ZRJN74X-32438475

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ATTACHMENT 7

977 N.W.2d 789 (Mem)
Supreme Court of Michigan.

LAKESHORE GROUP, Charles Zolper,
Jane Underwood, Lucie Hoyt, William
Reininga, Kenneth Altman, Dawn Schumann,
George Schumann, Marjorie Schumam, and
[Lakeshore Camping](#), Plaintiffs-Appellants,

v.

[STATE of Michigan](#), Defendant,

and

Department of Environmental
Quality, Defendant-Appellee.

SC: 159033

|

COA: 341310

|

July 28, 2022

Court of Claims: 17-000140-MZ

Order

On April 6, 2022, the Court heard oral argument on the application for leave to appeal the December 18, 2018 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[Bernstein, J.](#) (concurring).

Michigan has an expansive statutory scheme to protect the state's environment and natural resources, which is known as the Natural Resources and Environmental Protection Act (NREPA), [MCL 324.101 et seq.](#) The NREPA contains several subsections that are intended to regulate different aspects of the environment. Two NREPA subsections are at issue here: the Michigan environmental protection act (MEPA), [MCL 324.1701 et seq.](#), and the sand dunes protection and mining act (SDPMA), [MCL 324.35301 et seq.](#)

As the dissent notes, MEPA is of vital importance to Michigan, particularly given the constitutional directive to “provide for the protection of the air, water and other natural resources of the state from pollution, impairment and

destruction.” [Const. 1963, art. 4, § 52](#). Like Justice WELCH, I am troubled by some of the uncertainty and inconsistency in the interpretation of MEPA. However, there are a few reasons why this case does not present the proper vehicle for resolving those issues.


At issue in this case is plaintiffs’ MEPA challenge to permits authorized by the Department of Environmental Quality (DEQ)¹ for a plan to convert part of a critical dune area into a residential development. But these permits were issued under the SDPMA, not MEPA. Although the SDPMA does not outright say that it provides the exclusive pathway to challenging permits granted under its provisions, MEPA does not appear to offer an alternate route to challenging SDPMA permits.

First, the SDPMA places restrictions on who may challenge a permit. Contrast language in MEPA, which allows broad challenges by asserting that “any person may maintain an action,” [MCL 324.1701\(1\)](#), against language in the SDPMA, which explains that “an applicant for a permit or ... the owner of the property immediately adjacent to the proposed use [who] is aggrieved by a decision of the department in regard to the issuance or denial of a permit” may request a hearing, [MCL 324.35305\(1\)](#). The SDPMA thus limits those who may challenge a permit granted by the DEQ solely to property owners who *790 are both immediately adjacent to the proposed use and who are aggrieved by the DEQ's decision. This is far more restrictive than the “any person” language used in MEPA.

Second, the SDPMA and MEPA also differ in noting what body first reviews challenges to permits. MEPA states that circuit courts have original jurisdiction. [MCL 324.1701\(1\)](#). But when SDPMA permits are challenged, a “hearing shall be conducted by the [DEQ] as a contested case hearing in the manner provided for in the [Administrative Procedures Act, [MCL 24.201 et seq.](#)]” [MCL 324.35305\(1\)](#).

Third, the standards of review in both subsections differ. The standard of review described in MEPA appears to favor permit challengers, and it explains that review is “*for the protection of the air, water, and other natural resources and the public trust in these resources* from pollution, impairment, or destruction.” [MCL 324.1701\(1\)](#) (emphasis added). But the standard of review under the SDPMA appears to favor development, and it states that all permits “*shall be approved unless ... the [DEQ] determines that the use will significantly*

damage the public interest on the privately owned land....” MCL 324.35304(1)(g) (emphasis added).


MEPA and the SDPMA both outline procedures dictating how DEQ-granted permits may be challenged. However, the procedures outlined under each subsection are significantly different from one another. When read together, it appears that MEPA provides general authorization for challenging a permitting decision, while the SDPMA provides specific authorization to challenge permitting decisions made under the SDPMA.² Accordingly, we apply the well-established canon of statutory interpretation that holds that, in the event of a conflict, the more specific provision controls over the more general one.  *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645, 132 S.Ct. 2065, 182 L.Ed.2d 967 (2012) (explaining that the canon has full application to statutes “in which a general authorization and a more limited, specific authorization exist side by side”); *TOMRA v. Dep’t of Treasury*, 505 Mich. 333, 350, 952 N.W.2d 384 (2020). Because the SDPMA presents the more specific pathway to challenging permits authorized under the SDPMA and MEPA does not expressly state that an individual may use MEPA provisions to challenge *791 SDPMA permits, plaintiffs’ MEPA action must fail.³ Otherwise, MEPA would seemingly create a workaround through which: (1) the statutory restrictions on who may challenge SDPMA permits would be rendered meaningless; (2) no permit challengers would be motivated to file their challenges within the DEQ as the SDPMA requires, if they could get a more favorable standard of review by raising a MEPA challenge; and (3) the DEQ’s expertise, which the SDPMA appears to rely on by requiring SDPMA permit challenges to originate within the DEQ, would be absent from the circuit court’s primary review of the record.⁴

Although I share many of the dissent’s concerns that this Court should ensure that MEPA is consistently and faithfully interpreted, I do not believe this case presents the proper opportunity to review the language of MEPA, as it more properly concerns the application of the SDPMA. Accordingly, I vote to deny leave.

Welch, J. (dissenting).



I respectfully dissent from this Court’s denial order. In Michigan, “[t]he conservation and development of the natural resources of the state are ... of paramount public concern in the interest of the health, safety and general welfare of

the people.” *Const.* 1963, art. 4, § 52. The Legislature was specifically directed in the Michigan Constitution to “provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.” *Id.* In 1970, following its constitutional mandate, the Legislature led the national conservation and environmental protection movement by enacting the Michigan Environmental *792 Protection Act (MEPA), 1970 PA 127. MEPA authorized “[t]he attorney general or any person” to file an “action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.”

 MCL 324.1701(1). This was the first environmental citizen-suit statute in the world, and it later served as inspiration for the citizen-suit provisions of the federal Clean Air Act and Clean Water Act. See Sax & DiMento, *Environmental Citizen Suits: Three Years’ Experience Under the Michigan Environmental Protection Act*, 4 Ecology LQ 1 (1974). The author of the document that became MEPA was renowned environmental law scholar Joseph Sax. Professor Sax made clear in a 1972 article that MEPA was intended to be supplementary to all other environmental laws and regulations that were in existence or that might one day be enacted unless its applicability was suspended by the Legislature:

Naturally, it is always open to the legislature to enact an explicit exception to [MEPA]. Just as they have enacted the law, so is it within their authority to modify it; but one ought to be cautious in reading implied modifications into statutes of general application such as [MEPA]. Moreover, when attempting to determine legislative policy, it is important to compare the present status of a 1970 law, like [MEPA], with that of some much older statute that is asserted to undercut [MEPA’s] environmental mandate. [Sax & Conner, *Michigan’s Environmental Protection Act of 1970*:

A Progress Report, 70 Mich L Rev 1003, 1063-1064 (1972).]





A few years later, this Court seemed to echo Professor Sax's understanding when it upheld MEPA's constitutionality and made clear that it “does more than give standing to the public and grant equitable powers to the Circuit Courts, it also imposes a duty on individuals and organizations both in the public and private sectors to prevent or minimize degradation of the environment which is caused or is likely to be caused by their activities.”  *Ray v. Mason Co. Drain Comm'r*, 393 Mich. 294, 306, 224 N.W.2d 883 (1975). “[T]he Legislature spoke as precisely as the subject matter permits and in its wisdom left to the courts the important task of giving substance to the standard by developing a common law of environmental quality.”  *Id.*



MEPA's applicability to a governmental body's final administrative approval of projects that will or are likely to harm the environment was unquestioned for decades. In 1972, Ralph MacMullen, then director of the Michigan Department of Natural Resources, was quoted as saying:

“It is true that the Natural Resources Commission, upon my recommendation, approved construction.... It is likewise true that suit has been brought under [MEPA] by persons who disagree with that decision. The Act—one of the landmark pieces of environmental legislation in the nation—was passed for precisely that reason; to allow dissenting citizens an opportunity to register their dissents in court. Even though we have been made the defendants in this suit, we welcome it as an expression of public interest in the environment, and another step toward redefining the law so that we can better interpret the wishes of the people.” [*Michigan's EPA: A Progress Report*, 70 Mich L Rev at 1004, quoting MacMullen, Letter to the Editor, Lansing State Journal (January 28, 1972), p. A6 (italics omitted).]

***793** This Court at one point similarly understood MEPA's clear language and intent, as demonstrated by its decision in *West Mich. Environmental Action Council, Inc. v. Natural Resources Comm.*, 405 Mich. 741, 275 N.W.2d 538 (1979) (*WMEAC*). The plaintiffs in *WMEAC* brought a direct MEPA lawsuit against *permitting decisions by a state entity that authorized third-party conduct* that would cause harm or impairment to the environment and natural resources—

specifically, oil and gas drilling in the Pigeon River Country State Forest. The Court first recognized that, pursuant to MEPA, the “*issuance of the permits to drill ten exploratory wells was properly before the circuit court as conduct alleged to be likely to pollute, impair and destroy*” natural resources. *Id.* at 751, 275 N.W.2d 538 (emphasis added). This Court not only held that the trial court erred by deferring to the agency's conclusions during environmental review, but it also held that issuance of the permits was likely to result in the impairment or destruction of the local elk population in violation of MEPA. *Id.* at 755-760, 275 N.W.2d 538. The Court therefore reversed and remanded the case to the trial court for entry of a “permanent injunction prohibiting the drilling of the ten exploratory wells pursuant to” the permits. *Id.* at 760, 275 N.W.2d 538. Importantly, like the facts alleged in this case, it was the Natural Resource Commission's administrative permitting decisions and its conclusions reached during an environmental review of the proposed project that were challenged in *WMEAC*, not the subsequent drilling conduct of the permit holder.⁵

In 2004, this Court held in  *Preserve the Dunes, Inc. v. Dep't of Environmental Quality*, 471 Mich. 508, 684 N.W.2d 847 (2004), without mentioning *WMEAC* or any conflicting Court of Appeals precedent, that MEPA does not authorize an indirect challenge to the issuance of a mining permit on the basis that an agency erred by determining that a company was eligible to apply for a permit under MCL 624.63702(1) and MCL 624.63704(2).  *Id.* at 519, 684 N.W.2d 847. In reaching this conclusion, the Court stated that “[a]n improper administrative decision, standing alone, does not harm the environment. Only wrongful conduct offends MEPA.”  *Id.* Read one way, this statement could be understood to be inconsistent with *WMEAC* and with the rule that MEPA is “supplementary to existing administrative and regulatory procedures provided by law,” MCL 324.1706, as the dissenting justices aptly recognized,  *Preserve the Dunes*, 471 Mich. at 525-526, 534-538, 684 N.W.2d 847 (KELLY, J., dissenting).

This Court overruled  *Preserve the Dunes* in 2010.  *Anglers of the AuSable, Inc. v. Dep't of Environmental Quality*, 488 Mich. 69, 77, 793 N.W.2d 596 (2010) (“The permit from the DEQ serves as the trigger for the environmental harm to occur. The permit process is entirely related to the environmental harm that flows from an

improvidently granted, or unlawful, permit.”). But after the 2010 election and a change in the Court’s composition, a majority of this Court granted a motion for reconsideration and vacated its prior decision as moot. *794 *Anglers of the AuSable, Inc. v. Dep’t of Environmental Quality*, 489 Mich. 884, 796 N.W.2d 240 (2011).

In this case, the plaintiffs alleged, in part, that the issuance of the contested permits under the sand dune protection and management act (SDPMA), MCL 324.35301 *et seq.*, as well as the manner in which the Department of Environmental Quality reviewed and processed sand dune permit applications, threatened the environment and natural resources, and thus violated MEPA.⁶ At this point, no one disputes that plaintiffs have a right to sue the permittee under MEPA or to participate in the administrative review process. Legal proceedings are ongoing using those processes. Instead, in this action, the Court is asked to decide whether MEPA provides the plaintiffs a separate cause of action to sue the state agency directly under MCL 324.1701 to challenge the agency’s review and issuance of the requested permits.

The Court of Appeals majority applied *Preserve the Dunes* as a blanket rule that denies the ability of persons to sue a state agency when the person claims that the issuance of a permit or license violates MEPA. The majority held that, “[s]imply put, the issuance of a permit is too far removed from the environmental harm to be actionable as ‘conduct’ under MEPA.” *Lakeshore Group v. Michigan*, unpublished per curiam opinion of the Court of Appeals, issued December 18, 2018 (Docket No. 341310), p. 4, 2018 WL 6624870. The majority further held that the plaintiffs’ only options were to utilize the administrative appeal process under the Administrative Procedures Act, MCL 24.201 *et seq.*, or to sue the permit holder directly under MEPA, MCL 324.1701, but they could not challenge a permitting decision in a lawsuit without first going through the administrative review process.⁷

The dissenting judge read *Preserve the Dunes* as foreclosing direct MEPA challenges against purely procedural administrative decisions that have “no relevance to or impact on the environment” *Lakeshore Group* (RONAYNE KRAUSE, J., dissenting), unpub. op. at 3. However, she did not believe *Preserve the Dunes* “insulate[d] all administrative determinations from MEPA challenges *per se*,” and she would have remanded the case

and instructed the trial court to “evaluate[] each of the DEQ’s alleged errors to determine whether they had a proximate causal connection to the alleged environmental harm.” *Id.*

The Court of Appeals’ decision in this case demonstrates that *Preserve the Dunes* has been read to foreclose all direct MEPA challenges against government agencies that are based on the issuance of a permit or license authorizing third-party conduct that will or is likely to harm the state’s natural resources. I believe this presents a matter of practical and jurisprudential importance, and I would have granted the application for leave to appeal. If the Court of Appeals majority’s reading of *Preserve the Dunes* is correct, then *Preserve the Dunes* is in conflict with *WMEAC*. There would have been no basis for this Court, under *Preserve the Dunes*, to conclude that the “issuance of the permits ... was properly before the circuit court,” *795 *WMEAC*, 405 Mich. at 751, 275 N.W.2d 538, or to grant permanent injunctive relief to the plaintiffs.

But Judge RONAYNE KRAUSE and the plaintiffs in this case raised compelling arguments that would allow the Court to harmonize the *Preserve the Dunes* decision with *WMEAC* by limiting the former to procedural or intermediate administrative decisions that are disconnected from the final approval authorizing harmful conduct. This would leave both decisions in place while still allowing a person to pursue a MEPA action challenging an agency’s final permitting decision that required the agency to determine whether the proposed conduct would cause unlawful harm to the environment or natural resources.

Additionally, it is critical to remember that the SDPMA and most other modern environmental regulatory and permitting laws did not exist in Michigan when MEPA was enacted in 1970. Even the Administrative Procedures Act of 1969 was in its infancy when MEPA was passed. Recognizing that more laws and regulations would be enacted, the Legislature declared that MEPA is “supplementary to existing administrative and regulatory procedures provided by law.” MCL 324.1706. MEPA also granted circuit courts authority to permit third parties to intervene in administrative proceedings, MCL 324.1705(1), or, in original MEPA actions, to direct parties to seek relief in administrative, licensing, or other proceedings as is necessary and available, MCL 324.1704(2). In the latter situation, the court is to retain jurisdiction, MCL 324.1704(4), and after the administrative

proceedings have concluded, the “court shall adjudicate the impact of the defendant's conduct on the” natural resources at issue or the public trust in those resources, [MCL 324.1704\(3\)](#).

To alleviate the risk of endless litigation, “collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.” [MCL 324.1705\(3\)](#). If the Legislature intended to insulate state permitting decisions from lawsuits brought under MEPA, then surely it would have said so expressly rather than having set forth a pathway for how litigation should proceed. For example, the Legislature could have declared that a contested case hearing and subsequent appeal are the *exclusive* means of challenging such decisions under the relevant permitting statute or that MEPA does not apply.⁸ I also find [*796](#) compelling this Court's prior statement that the final issuance of a permit “serves as the trigger for the environmental harm to occur” and that “[t]he permit process is entirely related to the environmental harm that flows from an improvidently granted, or unlawful, permit,” [Anglers of the AuSable](#), 488 Mich. at 77, 793 N.W.2d 596, vacated 489 Mich. 884, 796 N.W.2d 240. At a minimum, permitting decisions that require an agency to evaluate the environmental impacts of the proposed conduct are directly connected to the actual conduct that final approval process authorizes.

The concurrence opines that this case does not present the “proper opportunity to review the language of MEPA, as it more properly concerns the application of the SDPMA.” But the potential for conflict between provisions of MEPA and the SDPMA was not addressed by the courts below. Nor could those courts have reached that issue, because [Preserve the Dunes](#) has been interpreted as a blanket prohibition against filing a MEPA action to challenge an agency's permitting decision that authorizes third-party conduct. The current reading of [Preserve the Dunes](#) would

seem to deprive courts of the ability to debate the legal implications of the SDPMA's administrative-hearing and judicial-review provision, [MCL 324.35305](#); the competing jurisdictional statements under [MCL 324.1701\(1\)](#) and [MCL 324.35305\(1\)](#); and the competing standards of review under [MCL 324.1701](#) and [MCL 325.35304\(1\)\(g\)](#). In other words, so long as all agency permitting decisions that authorize third-party conduct are insulated from third-party MEPA challenges, there will be little opportunity to analyze the intricacies of how MEPA interacts with an agency's duties under specific permitting statutes. The Court's decision to deny leave in this case effectively ensures that these issues will remain unresolved.

I am troubled by the inconsistencies between the Court of Appeals' interpretation and application of [Preserve the Dunes](#) in this case and this Court's decision in [WMEAC](#) and the “common law of environmental quality,” [Ray](#), 393 Mich. at 306, 224 N.W.2d 883, that developed in the time between the two decisions. Accordingly, I question the correctness of the Court of Appeals majority's decision in this case. The Court has missed an opportunity to clarify its precedent and the applicability of MEPA to final administrative decisions authorizing conduct that will or is likely to harm our state's natural resources or the public trust in those resources. I would have granted leave to appeal or resolved this case on the merits. I respectfully dissent from the Court's decision to do neither.

[McCormack](#), C.J., and [Cavanagh](#), J., join the statement of [Welch](#), J.









All Citations


977 N.W.2d 789 (Mem)




Footnotes



- 1 The DEQ is now known as the Department of Environment, Great Lakes, and Energy. Executive Order No. 2019-02.
- 2 Although MEPA contains a provision that says, “This part is supplementary to existing administrative and regulatory procedures provided by law,” [MCL 324.1706](#), this is hardly evidence that MEPA could provide an entirely different route for challenging SDPMA permits. MEPA does not define “supplementary,” so we

look to a dictionary to help us define it. *South Dearborn Environmental Improvement Ass'n, Inc. v. Dep't of Environmental Quality*, 502 Mich. 349, 361, 917 N.W.2d 603 (2018). "Supplementary" is defined, in part, as "[a]dded or serving as a supplement: ADDITIONAL." *Merriam-Webster's Collegiate Dictionary* (11th ed.). "Supplement" is also defined, in part, as "[s]omething that completes or makes an addition." *Id.* This suggests that MEPA could complete any gaps in the SDPMA. As stated, there are no gaps to complete here, as the SDPMA provides its own process for challenging permitting decisions. To the extent that these definitions suggest that MEPA could allow for an *additional* process, it is unclear that the mere use of the word "supplementary" in MCL 324.1706 would allow individuals to ignore the specific process outlined in the SDPMA for challenging a SDPMA-granted permit. Our role in interpreting statutes is to give effect to every written word to effectuate the intent of the Legislature. *Apsey v. Mem. Hosp.*, 477 Mich. 120, 127, 730 N.W.2d 695 (2007) (citation omitted). The mere presence of the word "supplementary" in MEPA cannot lead to the conclusion that the more restrictive SDPMA process may be rendered meaningless. To find otherwise would violate the rule of statutory interpretation that no word of a statute should be made nugatory. *Id.*

- 3 Plaintiffs present no caselaw showing that SDPMA permits may be challenged through the mechanisms outlined under MEPA. Even assuming that SDPMA permits could be so challenged, this case would not be an appropriate vehicle for interpreting MEPA provisions for two additional reasons. First, plaintiffs already raised a challenge to these permits under the SDPMA and this Court remanded to the administrative tribunal to conduct a hearing. *Lakeshore Group v. Dep't of Environmental Quality*, 507 Mich. 52, 57, 968 N.W.2d 251 (2021). Second, defendant argues, and plaintiffs do not contest, that the permits at issue may have already expired.
- 4 The dissent, while noting that these issues were not addressed by the lower courts, would welcome plaintiffs' invitation to revisit  *Preserve the Dunes, Inc. v. Dep't of Environmental Quality*, 471 Mich. 508, 684 N.W.2d 847 (2004). However, I do not read  *Preserve the Dunes* as "depriv[ing] courts of the ability to debate the legal implications [of] the SDPMA's administrative-hearing and judicial-review provision ...; the competing jurisdictional statements ...; and the competing standards of review," as the dissent argues. (Second alteration in original.) Rather,  *Preserve the Dunes* involved the interpretation of the MEPA alongside a *different* subsection of NREPA—the sand dune mining act (SDMA), MCL 324.63701 *et seq.*—and should thus not be binding on decisions related to the SDPMA.  *Id.* at 511, 684 N.W.2d 847. Moreover, both the majority and dissent in  *Preserve the Dunes* seemed to agree that the specific statutory language of the SDMA should control the analysis in that case. Compare  *id.* at 519-520, 684 N.W.2d 847 (explaining that the three pathways to judicial review of an administrative decision include "the review process prescribed in the statute," which was unavailable in that case because the SDMA did not expressly establish such a process), with  *id.* at 532-535, 684 N.W.2d 847 (KELLY, J., dissenting) (using the particular statutory requirements outlined in the SDMA to explain why there should be a cause of action under the MEPA). In short, I am not convinced that  *Preserve the Dunes* prevents us from taking up a future case in which the parties have developed a lower-court record that tees up the proper interpretation of the MEPA as compared to the SDPMA. Nor am I convinced that we should overlook the specific procedural pathways articulated in the SDPMA in order to allow this MEPA challenge to move forward.
- 5 As recognized in Haynes, *Michigan Environmental Law Deskbook* (2d ed.), § 14.12, p. 7, following *WMEAC*, the Court of Appeals has held that MEPA allows for direct lawsuits challenging the issuance of building permits, see *Comm. for Sensible Land Use v. Garfield Twp.*, 124 Mich. App. 559, 564-565, 335 N.W.2d 216 (1983), and "[i]t is apparent that although administrative conduct is sufficient to invoke the MEPA, the

determinative point is whether that administrative action is the last hurdle in moving from the paperwork to the outdoors,”  *Wortelboer v. Benzie Co.*, 212 Mich. App. 208, 221, 537 N.W.2d 603 (1995).

- 6 The SDPMA—originally enacted by 1976 PA 222—and MEPA are both subparts of the Natural Resources and Environmental Protection Act, [MCL 324.101 et seq.](#), following the enactment of legislation that consolidated several laws concerning Michigan’s environment and natural resources. See 1994 PA 451.
- 7 This statement appears inconsistent with the recognition in  *Preserve the Dunes* that MEPA “does not require that a plaintiff exhaust administrative remedies.”  *Preserve the Dunes*, 471 Mich. at 538, 684 N.W.2d 847.
- 8 The administrative-hearing provision of the SDPMA, [MCL 324.35305\(1\)](#), states that a permit applicant or the “owner of the property immediately adjacent to the proposed use” who are “aggrieved” by the permitting decision have a statutory right to request a formal contested case hearing under [MCL 24.201 to 24.328](#). No provision of the SDPMA refers to MEPA. But the scope of individuals who have a right to a contested case hearing under [MCL 324.35305](#), which is a distinct administrative proceeding, is obviously narrower than those to whom MEPA granted the right to file an original action or request intervention. See  [MCL 324.1701](#); [MCL 324.1704](#); [MCL 324.1705](#).

I disagree with the concurrence’s suggestion that the clear mandate that MEPA be “supplementary to existing administrative and regulatory procedures provided by law,” [MCL 324.1706](#), renders it a gap-filler that only applies when the Legislature has not provided another path for administrative or judicial review. I agree that to be “supplementary” is best understood as being an addition to something. But this suggests that [MCL 324.1706](#) should be harmonized with other environmental statutes in the absence of an irreconcilable conflict. See, e.g., *Hannay v. Dep’t of Transp.*, 497 Mich. 45, 57, 860 N.W.2d 67 (2014) (“[W]ords and phrases used in an act should be read in context with the entire act and assigned such meanings as to harmonize with the act as a whole,” and “‘a word or phrase should be given meaning by its context or setting.’”) (citation omitted);  *Nowell v. Titan Ins Co.*, 466 Mich. 478, 482, 648 N.W.2d 157 (2002) (providing that “provisions of a statute that could be in conflict must, if possible, be read harmoniously”). Reading the SDPMA as restricting a direct action under MEPA by implication and without attempting to harmonize these neighboring environmental statutes effectively negates [MCL 324.1706](#). Such a reading also arguably conflicts with the express language in [MCL 324.1706](#) and [MCL 324.1704\(3\)](#) and (4)—all of which contemplate the existence of additional statutes or procedural mechanisms—and  [MCL 324.1701\(1\)](#), which grants the “attorney general or any person” a direct cause of action that is not limited by proximity to the location of the proposed use. This Court has not grappled with these issues.