

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER BUREAU**

In the matter of administrative
proceedings against:

FTO-SW08-010
Date Entered: 7-17-08

Kurncz Farms, Inc.
4100 Gilson Road
St. Johns, Michigan 48879

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order (ACO) results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB), that Kurncz Farms, Inc. (Kurncz Farms) who owns and operates a large concentrated animal feeding operation (CAFO), located at 4100 Gilson Road, County of Clinton, State of Michigan, is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 et seq.; and the rules promulgated under Part 31. Specifically, the DEQ alleges that Kurncz Farms has failed to submit a complete application for a National Pollutant Discharge Elimination System (NPDES) permit. Kurncz Farms was advised of the incomplete status of its NPDES application in a letter dated April 14, 2008 (Exhibit A). Kurncz Farms and the DEQ agree to resolve the violations alleged in Exhibits A and B by entry of this ACO.

I. STIPULATIONS

Kurncz Farms and the DEQ stipulate as follows:

- 1.1 The NREPA, MCL 324.101 et seq., is an act that controls pollution to protect the environment and natural resources in the state.

- 1.2 Part 31 of the NREPA, MCL 324.3101 et seq. (Part 31), and rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.3 Section 3106 of Part 31, being MCL 324.3106, states in part that, “[t]he department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state.”
- 1.4 Revisions to administrative rules promulgated pursuant to Part 31, effective April 6, 2005, require that all large CAFOs obtain NPDES permits in accordance with state law and administrative rules. Specifically, subrule 2196(2) provides a schedule for permit application, coverage, and renewal. All CAFOs operating under an equivalent document approved by the department shall apply for an NPDES permit not later than July 1, 2007. 2005 ACS R 323.2196(2)(b). For CAFO already covered under NPDES General Permit MIG440000 issued on December 13, 2002, an application was also due not later than July 1, 2007. 2005 ACS R 323.2196(2)(g).
- 1.5 Section 3112 of Part 31 provides within subsection (1), being MCL 324.3112(1) that, “[a] person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.”
- 1.6 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.7 Kurncz Farms stipulates to the issuance and entry of this ACO to comply by consent and stipulates that the termination of this matter by a final order to be entered as an ACO is proper and acceptable. Kurncz Farms further agrees not to contest the issuance of this ACO. This ACO, thus, shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Field Operations Division Chief of the WB, as delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.8 Kurncz Farms and the DEQ agree that the signing of this ACO is for settlement purposes only and does not constitute an admission by Kurncz Farms that the law has been violated.

- 1.9 Kurncz Farms shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II, Compliance Program, of this ACO.

II. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT Kurncz Farms will take the following actions to prevent further violations of Part 31:

- 2.1 Kurncz Farms or an agent authorized to act on Kurncz Farms's behalf shall submit necessary items identified in Exhibit A to the DEQ not later than 30 days after the effective date of this Consent Order in order to complete the deficient NPDES permit application previously submitted. Missing application materials shall be sent to the following address to ensure proper processing:

For U.S. Mail Delivery only

Michigan Department of Environmental Quality
Water Bureau Permits Section
Lakes Michigan & Superior Unit
P.O. Box 30273
Lansing, Michigan 48909-7773

For Courier Service Providers (i.e. Fed Ex, UPS, hand delivery)

Michigan Department of Environmental Quality
Water Bureau Permits Section
Lakes Michigan & Superior Unit
2nd Floor North, Constitution Hall
525 West Allegan Street
Lansing, Michigan 48933

- 2.2 Not later than October 1, 2008, Kurncz Farms or an agent authorized to act on Kurncz Farms' behalf shall submit a copy of the current Comprehensive Nutrient Management Plan (CNMP) for the CAFO, including a spreading plan for the upcoming calendar year. The CNMP shall be provided to the WB district office at the following address:

Michigan Department of Environmental Quality
Water Bureau
Lansing District Supervisor
P.O. Box 30242
Lansing, Michigan 48909-7742

III. RETENTION OF RECORDS

- 3.1 Upon request by an authorized representative of the DEQ, Kurncz Farms shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this ACO or pursuant to Part 31 or its rules. All such documents shall be retained by Kurncz Farms for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

IV. RIGHT OF ENTRY

- 4.1 Kurncz Farms shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this ACO. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

V. PENALTIES

- 5.1 Kurncz Farms agrees to pay a civil fine of **\$5,000** to the State of Michigan in resolution of this matter. Payment shall be made within 30 days of the effective date of this ACO in accordance with paragraph 5.2.
- 5.2 Kurncz Farms agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the DEQ at the following address:

Michigan Department of Environmental Quality
Revenue Control Unit
P.O. Box 30657
Lansing, Michigan 48909-8157

To ensure proper credit, all payments made pursuant to this ACO must include the **Payment Identification Number WTR-1087**.

5.3 Kurncz Farms agrees not to contest the legality of the civil fine paid pursuant to paragraph 5.1, above.

VI. GENERAL PROVISIONS

6.1 With respect to any violations not specifically addressed and resolved by this ACO, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of Kurncz Farms to comply with the requirements of the NREPA and its rules.

6.2 The DEQ and Kurncz Farms consent to enforcement of this ACO in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 et seq.

6.3 This ACO in no way affects Kurncz Farms' responsibility to comply with any other applicable state, federal, or local laws or regulations.

6.4 Nothing in this ACO is or shall be considered to affect any liability Kurncz Farms may have for natural resource damages caused by Kurncz Farms ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

6.5 The provisions of this ACO shall apply to and be binding upon the parties to this action, and their successors and assigns.

6.6 This ACO constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

VII. TERMINATION

7.1 This ACO shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Kurncz Farms shall submit a request to the WB Lansing District Supervisor at the address in Paragraph 2.2 consisting of a written certification that Kurncz Farms has fully complied with the requirements of this ACO and has made payment of any fines required in this ACO. Specifically, this certification shall include:

- a. The date of compliance with each provision of the compliance program in Section II, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to this ACO are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

