

## Responsiveness Summary

### Waldron Dairy Concentrated Animal Feeding Operation Permit No. MI0057539

The National Pollutant Discharge Elimination System (NPDES) permit for Waldron Dairy Concentrated Animal Feeding Operation (CAFO) was issued and took effect on March 10, 2009. The Waldron Dairy-CAFO permit was revised to include several additional conditions. A summary of each condition is underlined in the answers below.

An NPDES permit may be contested within 60 days of permit issuance by filing a petition for Contested Case Hearing with the Office of Administrative Hearings in the Department of Energy, Labor and Economic Growth. A petition may be obtained via the Internet.

Hearings for both the Waldron and Vreba Hoff permits were held the same evening in the same location. Many of the comments, both verbal and written, were directed at both permits. Most of these are in the Vreba Hoff Responsiveness Summary, but a few are repeated here. The public hearing was attended by about 150 people. Forty people provided oral statements during the hearing, some more than once. Among the speakers were township and county officials, Adrian Dominican Sisters, Sierra Club representatives, local citizens, and nearby property owners. Twenty-two persons submitted written comments, some more than one. Most, but not all, statements were in objection to issuance of the permits.

Due to questions raised during the permit's public comment period, soil test results and land application access agreements were requested from the applicant. That information was subsequently made available for public comment. Comments were received from six people during that public comment period.

Below is a summary of the significant, relevant issues received during the public notice periods and at the Public Hearing regarding the issuance of the Waldron Dairy-CAFO NPDES Permit. In preparing this summary, actual comment language may have been abbreviated, paraphrased, and/or edited for clarity. Similar comments were combined into one comment. Some of the comments received regarded matters that were not within the regulatory authority of the Department of Environmental Quality (DEQ) to directly consider in the decision of whether to issue an NPDES permit, including odors and the effect of the proposed CAFO on property values and the existing roads. The DEQ, Water Bureau's (WB) responses follow each comment and are bolded.

#### **Comments Related to Land Application**

1. Comment: Most of the Waldron land application sites drain to county drains and land-applied waste will enter the county drain system. A recycle system or digester should be required.

**Response: The permit prohibits discharges from land application sites that cause or contribute to violations of water quality standards. Permit requirements are designed to assure that land-applied materials will remain in the soil and be used by crops. The permit also requires monitoring of the land application process before and after application for evidence of discharges and to identify any tiles that may be present in the fields used for land application. The permit has been revised to include additional requirements in the event of a discharge from any land application field: If there is an unauthorized discharge from any land application field the permittee shall cease using that field and provide a report to the DEQ explaining why the discharge occurred and**

**what steps have been taken to prevent its reoccurrence. Upon the DEQ's approval, the permittee may resume use of such fields.**

2. Comment: Many of the soil tests submitted with this second public notice were high, and many more were very high in phosphorus. Why are these fields allowed to be listed for manure application when they already have high levels of phosphorus?

**Response: Those are the ratings of the lab, not the DEQ's ratings. The permit limits applications of phosphorus at soil tests of 75 PPM and above, and prohibits application at 150 PPM and above. A few fields are above 75 PPM, but none are above 150 PPM. Therefore, all fields are available for land application.**

3. Comment: According to the Tri-State Agronomy Guide, *NO phosphorus should be applied if the current soil test levels exceed 40 ppm (or 80 lb) P205/acre*. This limit is listed for corn, wheat, corn silage, and soybeans. Why are there so many soil tests for fields which exceed those limits?

**Response: That is not an DEQ limit.**

4. Comment: According to Title 40 of the Code of Federal Regulations (40 CFR), Subpart 412.4, Best managements practices for land application of manure - (3) "*Multi-year phosphorus application* means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, NO additional manure is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal." Why are there soil tests for manure application fields in this permit which exceed crop needs (40 ppm or 80 lbs P205 per acre)?

**Response: 40 CFR 412.4 is referring to phosphorus added via the application of manure, not what is in the soil. This code states: "Multi-year phosphorus application means phosphorus applied to a field... In multi-year phosphorus applications, no additional manure is applied..." In both cases, it says 'applied'. The permit language is similar, but the permit language controls, not the 40 CFR language.**

5. Comment: Vreba-Hoff has stated that if a landowner does not farm the land himself, "but rents it to another farmer," then the landowner's permission "is unnecessary." Did the DEQ verify that absentee landowners have given permission for their fields to be included in this permit for manure application?

**Response: The DEQ is not involved in agreements between land owners and renters.**

6. Comment: One day before an Ohio Environmental Review Appeals Commission deadline, Vreba-Hoff submitted a new Manure Management Plan and claimed that the Ohio Department of Agriculture did not have to review it because it was an "operational change," even though the dairy had not been constructed and, therefore, is not in operation. Just like Waldron, they also claimed this new plan did not need public notice and comment. My question to the DEQ is, do you require any proof that the fields in this permit are legitimately available for manure application for the duration of this permit?

**Response: The DEQ does not require proof of access to fields listed in CAFO applications. We may investigate a particular situation brought to our attention, but CAFOs may add or delete land to their plan, or they may manifest waste to another entity in lieu of land application. We have CAFOs, primarily poultry but at least one dairy facility, that manifest all of their waste and conduct no land application activities.**

7. Comment: According to many studies and articles, over two acres are needed for each 1,400 lb. lactating cow if 50 lbs. of P205 is applied per acre. Does Waldron Dairy have two

acres per cow (plus heifers) after you remove all of the fields with high or very high soil test phosphorus levels?

**Response:** Those soil test ratings are not the DEQ's ratings. The application shows 3874 acres, 2230 dairy cows, and 600 heifers. Our CAFO rules and permits do not require a certain amount of acreage per cow; however, our CAFO permits have many restrictions on land application that are designed to protect water quality.

8. Comment: Waldron should not be allowed to apply to frozen or snow-covered ground.

**Response:** Waldron Dairy is allowed to apply to frozen and snow-covered ground only in accordance with the DEQ's technical standard regulating spreading on frozen and snow-covered ground. This is a restrictive technical standard that is designed to prevent discharges to surface waters from winter application.

9. Comment: The DEQ must require proof of access to all fields for manure application.

**Response:** The DEQ requested copies of access agreements and made those available for public comment. If evidence surfaces in the future to indicate a lack of access to significant acreage as listed in the permit application, or that there is a lack of adequate acreage, the DEQ may request additional proof of access at that time or take other actions as appropriate.

10. Comment: State permits must comply with federal regulations, and state permits may be more restrictive than federal regulations but never less restrictive. Can fields with very high levels of phosphorus have manure applied even though the current phosphorus levels already exceed the crop needs?

**Response:** State programs cannot be less restrictive than federal rules. Michigan operates its own permit program. Our rules and general permits have been approved by the United States Environmental Protection Agency (USEPA); therefore, state rule and permit language controls. The net result is that state regulations are not less restrictive than federal regulations, but they may be different. In Michigan's CAFO permits, soil test results divide fields into three broad categories. Then application rates are determined based on the category:

1. All application rates are limited based on nitrogen, including if the soil phosphorus test is 0 - 74 PPM.
  2. If the soil phosphorus test is 75 - 149 PPM, application rates are also limited to one or two crop years' worth of phosphorus.
  3. At 150 PPM and above, application of phosphorus is prohibited.
- The permit contains the specific language.

11. Comment: Most manure easement agreements are for one year, only one is longer and it is only two years. Manure easements should be long-term, at least five years, only with the landowner (not renters), and recorded with the registrar of deeds.

**Response:** The DEQ will not mandate the terms of contracts between landowners or renters and CAFOs. Nor will the DEQ require that manure easements be recorded with the registrar of deeds. The Waldron permit contains many restrictions and requirements for the land application of manure. Waldron must provide itself with access to sufficient land to meet all permit requirements or find alternate, legal methods of waste disposal. How Waldron accomplishes that shall be determined by Waldron and not by the DEQ.

12. Comment: Manure easement agreements seem missing for a few fields.

**Response:** All of the agreements received by the DEQ were made available for public comment. The DEQ does not require a specific amount of acreage for land application.

**Waldron must provide itself with access to sufficient land to meet all permit requirements or find alternate, legal methods of waste disposal.**

13. Comment: Manure applications should be limited to a crop's nitrogen needs. Based on the soil sample results, all fields can benefit from applied nitrogen. Many fields can also benefit from the application of phosphorus. The rest have soil phosphorus tests where phosphorus can be applied at the crop removal rate for either nitrogen or phosphorus, whichever is more limiting.

**Response: The DEQ does not disagree with the commenter's analysis of the soil test results.**

### **Comments Related to Receiving Waters and Designated Uses**

14. Comment: Bennett Drain regularly floods private property and may contain contaminants from Waldron Dairy. People may contact this contaminated water or land contacted by the contaminated water.

**Response: The permit prohibits discharges that will cause or contribute to violations of water quality standards. Those standards protect for partial body contact all year and full body contact May through October. In addition, permit requirements are designed to assure that land applied materials will remain in the soil and be used by crops.**

15. Comment: 40 CFR, Subpart 122.4, states that a permit may not be issued to a new discharger if the discharge will cause or contribute to a violation of water quality standards.

**Response: The Waldron permit prohibits discharges that cause or contribute to a violation of water quality standards. The permit contains many requirements to assure that illegal discharges are prevented and that any discharges do not cause or contribute to a violation of water quality standards.**

### **Comments Related to the Production Area**

16. Comment: Our farm has been in the family for over 100 years. Since the Waldron dairy has been there, we have had rats, flies, constant equipment noise, and odors, causing us to install air conditioning. This area is an accident waiting to happen.

**Response: NPDES permit conditions are for water quality protection. They do not address rats, flies, odors, or noise. Environmental accidents that result in permit violations will be addressed through the enforcement process.**

17. Comment: There is no process for the evaluation of waste storage structures.

**Response: The DEQ has developed guidance for structural evaluation of existing storage structures. That guidance is currently being revised. In addition, language has been added to the permit to assess volume design. The new language requires a demonstration to the DEQ, and approval by the DEQ, of the waste storage volume design prior to population of the expanded facility. This is followed with verification by the permittee after 6 and then 12 months of operation that the amount of wastes collected in the structures is consistent with the design. If the amount of waste collected shows there is less than the required 12 months of storage, then the permittee shall reduce the herd size to provide for 12 months of storage. After the permittee makes changes to the production area to reduce the amount of waste collected or increases storage size so that 12 months of storage capacity is achieved, the DEQ can allow repopulation.**

18. Comment: The applicant has not shown compliance with Natural Resource Conservation Service (NRCS) Practice Standard 313, Waste Storage Facility.

**Response: Waldron has provided written verification that all existing structures will be removed and replaced with new structures. Any new storage structures must be constructed to meet NRCS Standard 313.**

19. Comment: Ban open manure storage structures and aerial spraying.

**Response: The DEQ does not have sufficient evidence of water quality degradation due to properly-operated open storage structures and aerial spraying to be able to ban these practices.**

### **Comments Relating to Permit Compliance, Enforcement, and Issuance**

20. Comment: Waldron should not be allowed to expand due to public health and welfare. Cumulative impact must be assessed prior to allowing any expansion.

**Response: The permit contains the conditions necessary to protect human health and the environment. Permit requirements account for cumulative impacts.**

21. Comment: Vreba-Hoff has proved that it cannot properly manage its waste without polluting. These permits must be denied.

**Response: The DEQ believes that we must move forward with permit issuance to establish appropriate detailed requirements for this operation. The requirements other permitted CAFOs in the state are required to meet are contained in the Waldron permit. Additional requirements have been added to the permit to ensure proper management: If there is an excursion of the level of waste in any storage structure into the freeboard level, the permittee is required to take several actions, from providing a report to the DEQ after the first excursion to herd size reduction upon the DEQ's order after two or more excursions. Plus, the required amount of storage was increased from 6 to 12 months.**

22. Comment: The track record of these facilities is evidence enough to deny the expansion.

**Response: Vreba Hoff purchased Waldron Dairy about two years ago and has been responsible for its proper operation only since then. There has been one verified discharge, which they dispute. There have also been several operational deficiencies, some of which create the potential for a discharge. More recently, the facility has shown improvements in their operation. Under their consent order, they are required to follow General Permit No. MIG440000, the first CAFO general permit issued by the DEQ. The permit for Waldron is modeled after MIG019000, the most recent CAFO general permit issued by the DEQ. It contains additional restrictions and requirements to keep Waldron in compliance.**

### **Comments on Permit Conditions**

23. Comment: Do Michigan's NPDES requirements comply with the Clean Water Act.

**Response: Yes. Michigan's CAFO permits have been reviewed and approved by the USEPA.**

24. Comment: The Waldron permit should have the same conditions as the Vreba-Hoff permit.

**Response: The Vreba-Hoff permit has extensive requirements regarding the treatment system that is used for treating the process wastes at that facility. The treatment system is a requirement of the Vreba-Hoff consent judgments and interim order. Waldron does not have such a treatment system and is not a party to those judgments and orders.**

25. Comment: The Comprehensive Nutrient Management Plan (CNMP) should be submitted with permit applications.

**Response: The permit specifies the requirements of the Nutrient Management Plan, with certain reporting required to be in the CNMP. A CNMP for the Waldron Dairy has been previously submitted to the DEQ. The DEQ's rules do not require submittal of CNMPs with permit applications; however, the Waldron CNMP is available at the district office for review upon request.**

### **Miscellaneous Comments**

26. Comment: If Waldron cannot be approved for the Michigan Department of Agriculture's (MDA) sitting approval, how does that affect the permit process?

**Response: MDA sitting approval does not affect permit issuance.**

27. Comment: The Waldron and Vreba-Hoff CAFOs should be considered as one.

**Response: The facilities are owned by separate LLCs and, pursuant to the DEQ's rules governing when facilities are considered combined, the DEQ cannot consider them to be one. Also, language has been added to the permit to prohibit bringing outside waste into the Waldron facility.**

28. Comment: Why has this dairy been allowed to operate so long without a permit?

**Response: This is the second attempt at a permit for Waldron. The first attempt was stalled by the sale of the facility to Vreba-Hoff. The permit has now been issued.**

29. Comment: The Hillsdale County Drain Commissioner requests the following items concerning the Waldron Dairy:

A copy of all discharge records

Copy of as-builts upon completion of the project

All inspection requirements listed in Section A, Items 3 and 4

Reports of any overflows according to Section B, #1

Reports of any structure or dike disorder

To be notified the same as Section B, #4, Facility Contact

To be notified the same as "other reporting" in Part II, Section B, #2

To be notified the same as Part II, Section B, Items #5, 7, 8, and 13

The same right of entry as Part II, Section C, #6

The authority to close the dairy upon permit violation

**Response: The DEQ will not revise the permit to require that copies of these reports and notifications be submitted to the Hillsdale County Drain Commission. The Commissioner may periodically request this information from the DEQ or request the information directly from Waldron Dairy. The DEQ cannot grant the right of entry or the ability to close the dairy to other entities.**

30. Comment: Require an Environmental Impact Study for Waldron.

**Response: The DEQ does not have the legal authority to require this.**

31. Comment: The storm water pollution prevention plan must be submitted with the application.

**Response: The Waldron permit has the storm water requirements in the Nutrient Management Plan. Storm water records will be kept in Waldron's CNMP.**

Prepared on March 10, 2009, by Mike Bitondo, Permits Section, WB, DEQ