

Responsiveness Summary

Bustorf Dairy Concentrated Animal Feeding Operation Permit No. MI0058565

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

An NPDES permit may be contested within 60 days of issuance by filing a petition for a Contested Case Hearing with the State Office of Administrative Hearings and Rules of the Michigan Department of Energy, Labor, and Economic Growth. A petition may be obtained from the Internet at <http://www.deq.state.mi.us/documents/deq-oah-eqp0201.dot>.

An application and draft permit were initially public noticed on March 10, 2008, and a public hearing was public noticed on April 15, 2008, and held on May 21, 2008. The permit was then denied on June 30, 2008, based on the applicant not meeting the requirements of Rule 323.1098, Antidegradation. The applicant subsequently submitted a new application with an expanded Antidegradation Demonstration and increased the design volume of the waste storage structures. The new application, new draft permit, and a public hearing were public noticed on September 19, 2008, with the hearing held on October 20, 2008.

The public hearing was attended by about 150 people. Approximately 44 oral statements were made during the hearing. Among the speakers were representatives of Bustorf Dairy including Mr. Bustorf, the Leonidas Township attorney, local citizens, nearby property owners, and others. In excess of 100 written comments were received, including 15 form letters (some with additional individual comments) and 14 letters from the Portage North Middle School Environmental Club. Two citizens in particular submitted lengthy, detailed opposition letters with extensive supporting documentation. There was a mix for and against issuance of the permit among all of the written and oral comments.

Below is a narrative discussion of the Antidegradation Demonstration and permit conditions. Some comments were received regarding 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. However, all matters were considered as part of the decision on the Antidegradation Determination.

Antidegradation

Due to the DEQ's antidegradation basis for the denial of the previous Bustorf Dairy application, and public comments provided on antidegradation during that process, the applicant significantly expanded the Antidegradation Demonstration to address the DEQ's concerns and the public comments. That resulted in the submittal of many comments addressing antidegradation and economic issues.

The Antidegradation Rule requires that the applicant demonstrate the economic and/or social development and benefits to the area for any new or increased pollutant loadings to surface waters that may result from issuance of an NPDES permit. The DEQ is the decision-making authority for NPDES permits in Michigan and, therefore, must include a consideration of Rule 323.1098 in the permitting decision process. The DEQ makes the demonstration available

for public review so that the public has an opportunity to support or rebut the assertions made in the demonstration. The DEQ reviews submitted information regarding antidegradation and makes a judgment on the information as presented, in order to determine whether degradation of water quality is necessary to support important social and/or economic development in the area where the surface waters are located.

In making its judgment, the DEQ needs to determine if the demonstration shows that the lowering of water quality is necessary to support important social and/or economic development in the area. In that regard, the DEQ has determined that there will be important economic and/or social development in the local area from the existence of this dairy. The basis for this determination is an analysis of each of the assertions made in the Antidegradation Demonstration, as provided below.

Assertions made in the applicant's Antidegradation Demonstration:

1. There would be an economic and social benefit of 26 on-farm jobs, resulting in \$770,880 total wages per year plus bonuses and benefits.

It was not disputed that the dairy would provide jobs. The number of jobs was disputed somewhat, but the DEQ found that about 26 permanent jobs was a reasonable assertion. Comments were received criticizing the quality of the permanent jobs. Statements were made that the jobs would have low pay, would lower the average income of the township, were not important jobs, the employees would only be migrant workers, and most of the money would not stay in the local community. The DEQ finds that even if they are low-paying jobs that lower the average income, they are new jobs with additional income not currently available; they are important jobs to those who hold the jobs; whether or not they are migrant workers cannot be considered by the DEQ; and, even if only to purchase cigarettes and beverages, some money will stay in the local community. This is an important social and/or economic benefit.

2. There would be an economic and social benefit of 85 – 115 indirect jobs, including veterinarians, trucking, cattle haulers, custom crop harvesters, animal service technicians, sales and supply, farm consultants, and fuel suppliers.

Studies were cited showing how many indirect jobs dairy CAFOs generate. The DEQ believes that the dairy will generate indirect jobs as any new business will. How many of those jobs will be within the watershed was disputed by public comment; however, the applicant stated in writing that he would work with local businesses. The DEQ believes that some indirect jobs will be created within the watershed and that this is an important social and/or economic benefit.

3. There would be local silage purchase of about \$2,250,000 per year.

The applicant's Antidegradation Demonstration stated that silage would be purchased locally. The DEQ believes that silage will be purchased within the watershed and that this is an important social and/or economic benefit.

4. Annual milk sales of \$11,000,000 results in an indirect economic benefit to the State of Michigan's economy of \$43,000,000, with a majority in the St. Joseph watershed.

Milk sales provide income for the dairy, which is then used for all of the items listed above, such as wages, silage purchases, and expenditures which generate indirect jobs. This assertion is a duplication of previously-stated benefits and is not an additional social and/or economic benefit.

5. New building construction of almost \$12,000,000. Construction materials will be obtained as close to the site as possible.

Certainly, construction of the dairy is a significant investment; however, the applicant makes no claim as to how much of the \$12,000,000 will be spent within the area. The DEQ finds that it is believable that construction materials will be purchased as close to the site as possible. This assertion was disputed by public comment, stating that the applicant did not document which items would be purchased locally and where. The DEQ finds that it is unknown whether supplies will be purchased within the area and cannot determine if this is an important social and/or economic benefit.

6. Property values will not be negatively impacted and could be possibly increased.

This assertion was disputed by public comment, including an analysis by a professional real estate appraiser that included references to studies showing decreased property values and Michigan Tax Tribunal cases where reductions in property values were granted due to the proximity of animal agriculture. The DEQ finds that it is unknown if there is a likelihood of significant increased property values and, therefore, cannot determine if this is an important social and/or economic benefit.

7. Fertilizer cost savings due to manure utilization - \$160,000 to \$300,000 per year.

The replacement of commercial fertilizer with manure will provide a cost savings to the farmers using the manure. The benefit of this assertion was disputed by public comment, stating that this practice would result in lower fertilizer sales and would not provide a net economic benefit within the watershed. The DEQ cannot determine if this is an important social and/or economic benefit.

8. Property taxes of \$150,000 per year.

The payment of property taxes is required by law and taxes are used to pay for services demanded by citizens. Governments are not profit-making entities and tax collections only pay the cost of providing demanded services, if that. Therefore, local taxes paid by the dairy will only pay for government services required directly and indirectly by the dairy. The assertion that taxes would provide an economic benefit was disputed by public comment, stating that damage to roads would be a significant cost to local government. The DEQ finds that the payment of property taxes is balanced by the need for services and that road damage may be an additional expense. Therefore, this is not an important social and/or economic benefit.

Permit Conditions

Many commenters stated concerns about the threat the proposed dairy posed to the state's water resources. These comments discussed the negative effects discharges would have to both surface water and groundwater. The permit does not authorize any discharges to groundwater, and Michigan's groundwater discharge regulations exempt dairies with less than 3500 mature dairy cows from groundwater permitting. Concerns regarding surface waters include unauthorized discharges from both the production area and land application areas. Several commenters expressed concerns regarding overflows from improperly sized and managed waste storage structures at the production area. Commenters also discussed runoff and tile-line discharges from land application areas. The commenters believe unauthorized discharges have a reasonable potential to reach local drains and creeks – Bear Creek, Nottawa Creek, and the St. Joseph River.

In response to these concerns, the DEQ added four requirements to the public-noticed version of the permit:

1. Storage structures shall be designed for an operational volume of all large CAFO waste generated from the operation of the large CAFO in a 12-month or greater time period.
2. Prior to population of the dairy with cows, the permittee shall submit to the DEQ a report with detailed calculations documenting the basis for sizing the storage structures. Once the DEQ approves the documentation, the dairy may be populated. Thereafter, reports shall be submitted to the DEQ at the time of population, 6 months after population, and 12 months after population, demonstrating that the quantity of waste collected in the storage structures is the quantity expected based on the calculations and assumptions used to design the structures. If the quantity of waste collected indicates that the permittee does not have 12 months' storage, then the DEQ may order the herd size reduced to achieve 12 months' storage as determined by the DEQ. The permittee may then make changes to the production area and/or increase the storage volume. After approval by the DEQ, the permittee may repopulate the facility.
3. If the level of any storage structure enters the freeboard volume, the permittee shall provide a report to the DEQ explaining why the excursion occurred and what changes have been implemented to prevent its reoccurrence. In the event of two or more excursions over the life of the permit, the DEQ may require the permittee to make changes to the production area or reduce the herd size to eliminate the excursions.
4. In the event of 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 changes will be made to prevent its reoccurrence. Upon approval by the DEQ, the permittee may resume use of a field where an unauthorized discharge occurred.

See the revised permit for the exact language.

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