**STATE OF MICHIGAN**
**DEPARTMENT OF ENVIRONMENTAL QUALITY**
**WATER RESOURCES DIVISION**

In the matter of:

ACO-000249
Date Entered: May 10, 2016

Ceres Farms, LLC
1251 North Eddy Street
Suite 200
South Bend, Indiana 46617
_____/

## ADMINISTRATIVE CONSENT ORDER

This settlement document results from allegations by the Michigan Department of Environmental Quality (MDEQ), Water Resources Division (WRD). The MDEQ alleges Ceres Farms, LLC (Ceres Farms), the owner of property located at 5425 Bluewater Highway, T7N, R7W, Section 31, Easton Township, Ionia County, Michigan (Property), and adjacent properties located at 5191 Bluewater Highway, Saranac, Michigan 48881, and 5213 Bluewater Highway, Saranac, Michigan 48884 (Adjacent Properties), is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq*. (Part 31), including the requirements for floodplains in Part 31; Part 91, Soil Erosion and Sedimentation Control, of the NREPA, MCL 324.9101 *et seq*. (Part 91); Part 301, Inland Lakes and Streams, of the NREPA, MCL 324.30101 *et seq.* (Part 301); Part 303, Wetlands Protection, of the NREPA, MCL 324.30301 *et seq*. (Part 303); and the administrative rules promulgated thereunder with respect to the Property and Adjacent Properties. Ceres Farms is a person, as defined by Section 301 of the NREPA, MCL 324.301, and is registered with the Michigan Department of Licensing and Regulatory Affairs as able to conduct business in the State of Michigan under Identification Number D9081N. Ceres Farms and the MDEQ agree to amicably resolve the alleged violations at the Property and Adjacent Properties set forth herein through entry of this Administrative Consent Order (Consent Order).

## I. STIPULATIONS

Ceres Farms and the MDEQ 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 and the rules promulgated pursuant thereto provide for the protection, conservation, and the control of pollution of the water resources of the state. Section 3108 of Part 31, MCL 324.3108, also prohibits certain activities impacting floodplains unless otherwise permitted.

1.3 Part 91 and the rules promulgated pursuant thereto provide for the control of soil erosion and sedimentation arising from earth change activities.

1.4 Part 301 and the rules promulgated pursuant thereto provide requirements necessary to protect inland lakes and streams.

1.5 Part 303 and the rules promulgated pursuant thereto provide for conservation and protection of wetlands, which are waters of the state.

1.6 The MDEQ is authorized by Section 3112(4) of Part 31, Section 9112(7) of Part 91, Section 30112(1) of Part 301, and Section 30315 of Part 303, to enter orders requiring persons to abate pollution or otherwise cease or correct activities in violation of a specific part. The director of the MDEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).

1.7 Ceres Farms consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the MDEQ and is enforceable as such under Section 3112(4) of Part 31, Section 9112(7) of Part 91, Section 30112(1) of Part 301, and Section 30315 of Part 303. Ceres Farms agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.

1.8 Ceres Farms and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Ceres Farms that the law has been violated.

1.9 Mr. Perry Vieth, signatory to this Consent Order, certifies that he is fully authorized by Ceres Farms to enter into the terms and conditions of this Consent Order and to execute and legally bind Ceres Farms to this document.

1.10 Ceres Farms shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

## II. FINDINGS

2.1 On June 27, 2014, the MDEQ conducted a site inspection in response to a complaint received from the Michigan Department of Transportation (MDOT) regarding construction activities at the Property.

2.2 During the June 27, 2014, site inspection, the MDEQ observed that soil material Ceres Farms excavated during construction of a driveway was deposited in and around a stream and immediately adjacent to a steep ravine. The driveway was constructed through a steep sand embankment to provide access to an agricultural field. Sediment was deposited into waters of the state (including an unnamed stream which is tributary to the Grand River), wetlands contiguous to the unnamed stream and the Grand River, and the floodplain of the Grand River. Further, sediment was observed in an MDOT culvert that passes below State Highway M-21.

2.3 The MDEQ also observed between two and twelve inches of sediment deposited on the lawns of the Adjacent Properties. Sediment and ponded water was observed in the crawlspace beneath the Adjacent Property located at 5191 Bluewater Highway, Saranac, Michigan.

2.4 The MDEQ conducted additional site inspections on June 30, 2014, July 9, 2014, July 10, 2014, July 16, 2014, July 23, 2014, July 24, 2014, August 12, 2014, and August 14, 2014, and noted that violations observed during the June 27, 2014, site inspection were ongoing.

2.5 During the July 23, 2014, site inspection, MDEQ staff observed violations of Part 303 and the floodplain provisions of Part 31.

2.6 On July 9, 2014, the MDEQ issued Violation Notice No. VN-005869 to Ceres Farms alleging violations of Parts 31, 91, and 301 resulting from the construction of the driveway. (See Exhibit A).

2.7 On August 28, 2014, the MDEQ issued Enforcement Notice (EN) No. EN000249 (attached as Exhibit B) to Ceres Farms alleging violations of Parts 31, 91, 301, and 303 that included the following:

a. Ceres Farms failed to apply for and obtain a Part 91 permit prior to construction of the driveway. A Part 91 permit is required for any earth change conducted within 500 feet of a lake or stream or one acre or greater in size.
b. Ceres Farms failed to employ a certified storm water operator to oversee the earth change activity and failed to conduct and document site inspections as required under Part 31.
c. Ceres Farms failed to develop soil erosion and sedimentation control (SESC) plans in accordance with Parts 31 and 91.
d. As a result of this construction, sediment was discharged off-site and into waters of the state in violation of Parts 31 and 91.
e. Ceres Farms failed to install SESC measures to ensure sediment does not discharge off-site and into waters of the state in violation of Parts 31 and 91.
f. During rain events, excavated soil was carried by storm water and deposited in over 1000 feet of an unnamed stream which is a tributary to the Grand River, filling and diminishing the stream without a permit in violation of Part 301.
g. Soil fill was carried by storm water and deposited within wetland areas adjacent to the unnamed stream and adjacent to the Grand River without a permit in violation of Part 303.
h. Soil fill was carried by storm water and deposited in approximately 0.67 acres of the 100-year floodplain of the Grand River without a permit in violation of Section 3108 of Part 31, MCL 324.3108.

2.8 Ceres Farms submitted to the MDEQ, and the MDEQ and the Ionia County Drain Commission approved, the "Chase Farm Soil Erosion and Sedimentation Control (SESC) Plan." Ceres Farms also submitted to the MDEQ a "Notice of Coverage" as required under Rule 2190 promulgated pursuant to Part 31, 2006 AACS, R 323.2190 (Permit-by-Rule).

## III. COMPLIANCE PROGRAM

It is therefore agreed and ordered that Ceres Farms shall take the following actions to comply with and to prevent further violations of Parts 31, 91, 301, and 303:

3.1 Ceres Farms shall comply with all Parts 31, 91, 301, and 303, and the associated rules, including obtaining and maintaining all required permits and seeking permit modification as required under law for the Property and Adjacent Properties.

3.2 Ceres Farms shall not conduct any activity within streams, wetlands or floodplains regulated under Parts 301, Part 303, or Part 31 of the NREPA at the Property or Adjacent Properties, except as provided by this Consent Order, or as authorized by separate permit issued by the WRD. This Consent Order does not obviate the need to acquire additional state, local, or federal permits as may be required by law.

3.3 Ceres Farms shall implement all stream, wetland, floodplain and property restoration activities detailed in the MDEQ-approved "Chase Farm Soil Erosion and Sedimentation Control (SESC) Plan" that was prepared by the engineering firm of Hurley and Stewart, LLC, dated December 4, 2014, and last revised December 4, 2014, specifically pages C-1, C-2, C-3, C-4, C-5, and C-6 (SESC Plan). The SESC Plan is designed, among other things to restore the unnamed stream channel, wetland area, and floodplain area on the Property and Adjacent Properties to the conditions that existed prior to the alleged violations and to provide for temporary and permanent soil stabilization measures for all disturbed areas of the Property and Adjacent Properties as described in the SESC Plan.

3.4 Ceres Farms shall complete the stream, wetland, and floodplain restoration activities and the installation of the permanent SESC measures as detailed in the SESC Plan not later than June 1, 2016. Upon completion of the stream, wetland, and floodplain restoration activities as required under the SESC Plan (or approved plans with revisions under Section IV of the Consent Order), Ceres Farms shall provide to the WRD, at the address provided in in Section 3.11, written notification of completion of the stream, wetland, and floodplain restoration activities.

3.5 Ceres Farms shall ensure permanent stabilization of the Property and Adjacent Properties not later than September 1, 2016. All temporary SESC measures, such as

silt fencing, will be removed once permanent stabilization is attained for the Property and Adjacent Properties.

3.6 Ceres Farms shall schedule a final site review with the MDEQ to verify the Property and Adjacent Properties have been permanently stabilized. Once the MDEQ determines the Property and Adjacent Properties are permanently stabilized, Ceres Farms shall file with the MDEQ a Notice of Termination pursuant to Rule 2190 within ten (10) days of the final site review.

3.8 Ceres Farms shall submit all inspection logs kept by the certified storm water operator pursuant to the Permit-By-Rule for the previous month by the 10th of each month until Ceres Farms files the Notice of Termination with the MDEQ certifying the permanent stabilization of the Property and Adjacent Properties.

3.9 Ceres Farms shall monitor and maintain the sediment trap located within the stream (including removal of accumulated sediment) for a period of two (2) years following the filing of the Notice of Termination pursuant to Paragraph 3.7. After this monitoring and maintenance period, the MDEQ shall determine if any sediment remaining from the driveway construction is harmfully affecting the stream. If MDEQ determines it is not, then Ceres Farms shall leave the sediment trap in place and allow the formation of the original stream contours as shown in the approved plan as determined by the MDEQ. If sediment is still migrating to the sediment trap after this monitoring and maintenance period due to the driveway construction as determined by the MDEQ, Ceres Farms will continue to monitor and maintain the sediment trap for an additional period of one (1) year.

3.10 To the extent that corrective actions under the SESC Plan are required to be conducted on property owned or controlled by persons other than Ceres Farms, Ceres Farms shall obtain a written, limited-term easement sufficient to allow Ceres Farms to fully implement any and all corrective actions necessary to maintain compliance with the SESC Plan. The easement shall be recorded with the County Register of Deeds.

3.11 Ceres Farms shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Grand Rapids District Supervisor, WRD, MDEQ, 350 Ottawa Avenue NW, Unit 10, Grand Rapids, Michigan 49503-2316. The cover letter

with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

## IV. MDEQ APPROVAL OF SUBMITTALS

4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the MDEQ by Ceres Farms, the following process and terms of approval shall apply.

4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.

4.3 In the event the MDEQ disapproves a work plan, proposal, or other document, it will notify Ceres Farms, in writing, specifying the reasons for such disapproval. Ceres Farms shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the MDEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the MDEQ, the MDEQ will notify Ceres Farms of this disapproval.

4.4 In the event the MDEQ approves with specific modifications, a work plan, proposal, or other document, it will notify Ceres Farms, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The MDEQ may require Ceres Farms to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the MDEQ, the MDEQ will notify Ceres Farms of this disapproval.

4.5 Upon MDEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.

4.6 Failure by Ceres Farms to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of

this Consent Order and shall subject Ceres Farms to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3.

4.7 Any delays caused by Ceres Farms' failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter Ceres Farms' responsibility to comply with any other deadline(s) specified in this Consent Order.

4.8 No informal advice, guidance, suggestions, or comments by the MDEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by Ceres Farms will be construed as relieving Ceres Farms of its obligation to obtain written approval, if and when required by this Consent Order.

## V. EXTENSIONS

5.1 Ceres Farms and the MDEQ agree that the MDEQ may grant Ceres Farms a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the MDEQ, WRD, Enforcement Unit Chief, P.O. Box 30458, Lansing, Michigan 48909-7958, and the Grand Rapids District Supervisor at 350 Ottawa Avenue NW, Unit 10, Grand Rapids, Michigan 49503-2316, no later than ten (10) business days prior to the pertinent deadline, and shall include:

a. Identification of the specific deadline(s) of this Consent Order that will not be met.
b. A detailed description of the circumstances that will prevent Ceres Farms from meeting the deadline(s).
c. A description of the measures Ceres Farms has taken and/or intends to take to meet the required deadline.
d. The length of the extension requested and the specific date on which the obligation will be met.

The Grand Rapids District Supervisor or a designee, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the MDEQ, and if applicable, signed by both parties.

## VI. REPORTING

6.1 Ceres Farms shall verbally report any violation(s) of the terms and conditions of this Consent Order to the MDEQ, WRD Grand Rapids District Supervisor at 616-356-0500 by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). Ceres Farms shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

## VII. RETENTION OF RECORDS

7.1 Upon request by an authorized representative of the MDEQ, Ceres Farms shall make available to the MDEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to the NREPA or its rules. All such documents shall be retained by Ceres Farms for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by the NREPA or its rules.

## VIII. RIGHT OF ENTRY

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

## IX. PENALTIES

9.1 Within 30 days after the effective date of this Consent Order, Ceres Farms shall pay to the State of Michigan $10,000 as compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Consent Order. Payment shall be made in accordance with paragraph 9.5.

9.2 Within 30 days after the effective date of this Consent Order, Ceres Farms shall pay to the State of Michigan a civil fine of $20,000 for the violations specified in Section II of this Consent Order. Payment shall be made in accordance with paragraph 9.5.

9.3 For each failure to comply with a provision of Section III or IV of this Consent Order, Ceres Farms shall pay stipulated penalties of $200 per violation per day for 1 to 7 days of violation, $300 per violation per day for 8 to 14 days of violation, and $500 per violation per day for each day of violation thereafter. Payments shall be made in accordance with paragraph 9.5.

9.4 For each failure to comply with a provision of Section VI, VII, or VIII of this Consent Order, or any other requirement of this Consent Order, Ceres Farms shall pay stipulated penalties of **$200** per violation per day for each day of violation. Payments shall be in accordance with paragraph 9.5.

9.5 All payments shall be submitted within 30 days of receipt of an invoice from the MDEQ. Ceres Farms agrees to pay all funds due pursuant to this Consent Order by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for MDEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for MDEQ, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. 40080**.

9.6 Ceres Farms agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1 and 9.2 above. Ceres Farms further agrees not to contest the legality of any stipulated penalties assessed pursuant to paragraphs 9.3 or 9.4, above, but reserves the right to dispute the factual basis upon which a demand by the MDEQ for stipulated penalties is made.

9.7 The MDEQ reserves its rights to seek interest on any unpaid sums due pursuant to the terms of the Consent Order. Subject to the other provisions of this Section IX, the MDEQ may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Order. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

## X. FORCE MAJEURE

10.1 Ceres Farms shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Ceres Farms' obligations under this Consent Order in accordance with this section.

10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of Ceres Farms, such as: an Act of God, untimely review of permit applications or submissions by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by Ceres Farms' diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Ceres Farms' actions or omissions.

10.3 Ceres Farms shall notify the MDEQ, by telephone, by no later than the close of the next business day following detection of any event that may cause a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within five calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by Ceres Farms to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Ceres Farms shall adopt all reasonable measures to avoid or minimize any such delay. Nothing in this Paragraph obviates the need to report violations as required by Paragraph 6.1 of this Consent Order.

10.4 Failure of Ceres Farms to comply with the notice requirements and time provisions under paragraph 10.3 shall render this Section X void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3, above.

10.5 If the parties agree that the delay or anticipated delay was beyond the control of Ceres Farms, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the MDEQ is the final

decision-maker on whether or not the matter at issue constitutes a force majeure. The burden of proving that any delay was beyond the reasonable control of Ceres Farms, and that all the requirements of this Section X have been met by Ceres Farms, rests with Ceres Farms.

10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Ceres Farms qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

## XI. GENERAL PROVISIONS

11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of Ceres Farms to comply with the requirements of the NREPA and its rules, and Ceres Farms reserves all its rights, privileges, claims and defenses related to any matter or property not covered by this Consent Order.

11.2 The MDEQ and Ceres Farms consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Parts 31, 91, 301, and 303 of the NREPA. .

11.3 This Consent Order in no way affects Ceres Farms' responsibility to comply with any other applicable state, federal, or local laws or regulations.

11.4 The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

11.5 The parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Consent Order prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.

11.6 Nothing in this Consent Order is or shall be considered to affect any liability Ceres Farms may have for natural resource damages caused by Ceres Farms' ownership and/or

operation of the Property and the violations that occurred on the Adjacent Properties. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources and Ceres Farms reserves all its rights, privileges, claims and defenses related to any such future action.

11.7 In the event Ceres Farms sells or transfers the Property, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, Ceres Farms shall also notify the WRD Grand Rapids District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD's Grand Rapids District Supervisor at 350 Ottawa Avenue NW, Grand Rapids, Michigan, 49503-2316 within 30 days of assuming the obligations of this Consent Order.

11.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.

11.9 This Consent Order 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.

11.10 The effective date of this Consent Order is the date it is signed by the WRD Chief.

## XII. TERMINATION

12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the MDEQ. Prior to issuance of a written TN, Ceres Farms shall submit a request consisting of a written certification that Ceres Farms has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. A suggested form for providing the required written certification is appended as Exhibit C. Specifically, an acceptable certification shall include:

a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.

b. A statement that all required information has been reported to the WRD District Supervisor.

c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the Property. The MDEQ may also request additional relevant information. The MDEQ shall not unreasonably withhold issuance of a TN.

## Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

Peter Ostlund, Acting Chief
Water Resources Division

5/10/2016
Date

**CERES FARMS, LLC**

By: Perry Vieth
Title: President & Senior Managing Member

4-29-2016
Date

**APPROVED AS TO FORM:**

By: John Fordell Leone, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

5-09-2016
Date

# EXHIBIT A

STATE OF MICHIGAN

DEPARTMENT OF ENVIRONMENTAL QUALITY

GRAND RAPIDS DISTRICT OFFICE

RICK SNYDER
GOVERNOR

DAN WYANT
DIRECTOR

July 9, 2014

**CERTIFIED MAIL**
**RETURN RECEIPT**

Mr. Nathan Kaehler
Ceres Farms LLC
1251 North Eddy Street, Suite 200
South Bend, Indiana 46617

**VN No. VN-005869**

Dear Mr. Kaehler:

SUBJECT: Violation Notice

The Michigan Department of Environmental Quality (MDEQ), Water Resources Division (WRD), has determined that the driveway construction project conducted by Ceres Farms LLC 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 (Part 31) based on an inspection conducted in response to observations reported to the MDEQ by the Michigan Department of Transportation on June 27, 2014. The inspection also revealed violations from Parts 301 and 91.

In accordance with the terms of Part 31 Section 324.3109(1), which states in part: *"A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:*

*(a) To the public health, safety, or welfare.*
*(b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.*
*(c) To the value or utility of riparian lands.*
*(d) To livestock, wild animals, birds, fish, aquatic life, or plants or to their growth or propagation.*
*(e) To the value of fish and game."*

Soil stockpiles have been placed at the mouth of an unnamed tributary. Sand from these stockpiles has eroded and discharged to a tributary of the Grand River. As a result of this discharge, the receiving water contained unnatural turbidity and sediment which is a violation of Part 31.

Several inches of sand have been deposited onto the streambed of the tributary which is a violation of Part 301, Inland Lakes and Streams of NREPA (Part 301).

# EXHIBIT A



Part 91, Soil Erosion and Sedimentation (SESC) of NREPA (Part 91) R323.1704 requires a SESC permit for earth work conducted within 500' of a lake or stream. Since the stockpiles were placed within 500' of the unnamed tributary, a SESC permit was required. Conducting this work without a SESC permit is a violation of Part 91. Additionally, as a result of the erosion, several inches of sand have been deposited onto the private property of at least two landowners. This is also a violation of Part 91.

The violations identified in this Violation Notice have not been corrected and are ongoing.

To comply with Part 31, remove and/or stabilize all sources of sedimentation to prevent additional sedimentation from occurring. To comply with Part 301, remove all fill from the tributary streambed. The streambed and banks shall be restored to its original contours with all fill material removed to expose the native soils and/or vegetation below the fill. No additional excavation is allowed. Upon removal, the fill material shall be placed in a location outside of any regulated water body, wetland or 100-year floodplain. Compliance with Part 91 shall be achieved by applying for a SESC permit and restoring adjacent private property to its original condition.

Ceres Farms LLC should take immediate action to achieve and maintain compliance with the terms and conditions of Part 31, Part 301 and Part 91.

Please submit a written plan to this office by **July 25, 2014**. At a minimum, the response shall include how compliance will be achieved for Part 31, Part 301, and Part 91 and a proposed timeframe.

If you have any factual information you would like us to consider regarding the violations identified in this Notice, please provide them with your written response.

Compliance with the terms of this Notice does not relieve Ceres Farms LLC of any liability, past or present from the failure to comply with the Part 31 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

The MDEQ reserves its right to take all necessary and appropriate enforcement actions for all violations observed to date and any violations that occur in the future. This may include civil action seeking fines, enforcement costs and injunctive relief, and potential criminal prosecution.

Due to the severity of the noncompliance, the matter is being evaluated for escalated enforcement.

# EXHIBIT A



We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this Notice, or if you would like to arrange a meeting to discuss it, please contact Ms Brandie Jacobs Stefanski, Senior Environmental Quality Analyst at 616-356-0211; stefanskib@michigan.gov; or the Michigan Department of Environmental Quality, Water Resources Division, Grand Rapids District Office, 350 Ottawa Avenue NW, Unit 10, Grand Rapids, Michigan 49503-2341.

Sincerely,

Michael J. Worm
District Supervisor
Grand Rapids District Office
Water Resources Division – MDEQ

cc: Mr. John Bush, Ionia County Drain Commission
Mr. Paul Spitzley, Ionia County Road Commission
Mr. Tom Kitcey, Michigan Department of Transportation (via email)
Mr. Barry Selden, Enforcement Unit, WRD – MDEQ (via email)

# EXHIBIT B

STATE OF MICHIGAN

DEPARTMENT OF ENVIRONMENTAL QUALITY

LANSING

RICK SNYDER
GOVERNOR

DAN WYANT
DIRECTOR

***NOTICE No. EN-000249***

CERTIFIED MAIL 7009 2820 0001 9804 3667

Mr. Nathan Kaehler
Ceres Farms, LLC
1251 North Eddy Street
Suite 200
South Bend, Indiana 46617

## ENFORCEMENT NOTICE

Mr. Nathan Kaehler
Ceres Farms, LLC
1251 North Eddy Street
Suite 200
South Bend, Indiana 46617

Dear Mr. Kaehler:

SUBJECT: Ceres Farm Driveway
5425 Bluewater Highway
T7N, R7W, Section 31, Easton Township, Ionia County, Michigan (Property)

The Michigan Department of Environmental Quality (MDEQ), Water Resources Division (WRD), Grand Rapids District Office, has referred Ceres Farms, LLC (Ceres Farms), to the WRD, Water Enforcement Unit, requesting escalated enforcement actions for violations of law as set forth herein.

Please be advised that Ceres Farms, has failed to comply with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*, including the Floodplain provisions, and the rules promulgated thereunder (Part 31). Ceres Farms has also failed to comply with Part 91, Soil Erosion and Sedimentation Control (SESC), of the NREPA, MCL 324.9101 *et seq.*, and the rules promulgated thereunder (Part 91); Part 301, Inland Lakes and Streams, of the NREPA, MCL 324.30101 *et seq.*, and the rules promulgated thereunder (Part 301); and Part 303, Wetlands Protection, of the NREPA, MCL 324.30301 *et seq.*, and the rules promulgated thereunder (Part 303).

You are further advised that the WRD has notified Ceres Farms in the enclosed Violation Notice (VN) 005869 dated June 9, 2014, regarding this matter. On July 18, 2014, the MDEQ received a response from Ceres Farms and determined it was inadequate. Furthermore, Ceres Farms has failed to conduct the required action to achieve compliance with state law referenced herein.

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Please be advised that the MDEQ, WRD, has identified the following violations, as a result of the driveway construction and soil relocation that has occurred on the Property:

Part 31 and Part 91

- Ceres Farms failed to apply for and obtain a Part 91 permit prior to construction of this project. A Part 91 permit is required for any earth change conducted within 500 feet of a lake or stream or one acre or greater in size.
- Ceres Farms failed to have the site under the supervision of a certified storm water operator as required under Part 31.
- Ceres Farms failed to conduct and document site inspections as required under Part 31.
- Ceres Farms failed to develop SESC plans in accordance with Parts 31 and 91.
- As a result of this construction, sediment was discharged off-site and into waters of the state which is a violation of Parts 31 and 91.
- Ceres Farms failed to install SESC measures to ensure sediment does not discharge off-site and into waters of the state in violation of Parts 31 and 91.

Part 301 and Part 303

- Soil was washed into and deposited in over 1000 feet of an unnamed stream which is tributary to the Grand River, filling and diminishing the stream without a permit in violation of Part 301.
- Soil fill was deposited within wetland areas adjacent to the unnamed stream and adjacent to the Grand River without a permit in violation of Part 303.
- Soil fill was deposited within approximately 0.67 acre of the 100-year floodplain of the Grand River without a permit in violation of the Floodplain Provisions found in Part 31.

Ceres Farms is requested to immediately undertake all actions necessary to resolve all violations identified in the above-mentioned and in the enclosed violation letter.

In consideration of the requirements of Parts 301 and 303, the WRD has determined that a permit would not have been approved for this project. This Enforcement Notice also serves as an Order to Restore under Parts 301 and 303 and requires Ceres Farms to take the necessary actions to restore the stream, wetlands, and floodplain to its original condition.

The MDEQ reserves its right to take all necessary and appropriate enforcement actions for all violations of Parts 31, 91, 301, and 303, of the NREPA that have occurred to date and any violations of the NREPA that may occur in the future. These actions may include, but are not limited to, seeking civil fines, injunctive relief, natural resources damages, costs associated with this enforcement action, including attorney costs and any other relief available to the MDEQ.

Ceres Farms' continuing failure to comply with the terms of Parts 31, 91, 301, and 303, of the NREPA or other requirements set forth in this Enforcement Notice may result in additional fines, penalties, or other actions.

A meeting with Ceres Farms and its representatives, and the MDEQ, WRD's enforcement staff has been scheduled to discuss the issues detailed in this Enforcement Notice

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and their potential resolution. The meeting has been scheduled for 10:00 a.m. on September 8, 2014, at Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48933. If you cannot participate in this meeting, please contact Mr. Matt Remus, Enforcement Analyst, Water Enforcement Unit, WRD, at 517-284-5493; remusm@michigan.gov; immediately upon your receipt of this Enforcement Notice to schedule an alternate meeting date.

We anticipate your cooperation in resolving this matter.

**STATE OF MICHIGAN**
**DEPARTMENT OF ENVIRONMENTAL QUALITY**
**WATER RESOURCES DIVISION**

Date Issued: 28 August 2014

Barry H. Selden, Chief
Water Enforcement Unit
Water Resources Division

**ADDRESS FOR FURTHER CORRESPONDENCE:**

Matt Remus, Enforcement Analyst
Water Enforcement Unit
Water Resources Division
P.O. Box 30458
Lansing, Michigan 48909-7958

cc: Mr. Peter Ostlund, MDEQ
Mr. Luis Saldivia, MDEQ
Ms. Brandie Stefanski, MDEQ
Mr. Matt Remus, MDEQ
Mr. Dave Pingel, MDEQ