



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



KEITH CREAGH
DIRECTOR

March 28, 2016

CERTIFIED MAIL 7011 2970 0004 5028 6039

Mr. John Vander Dussen
Prairie View Dairy, LLC
8734 Milo Road
Delton, Michigan 49046

Dear Mr. Vander Dussen:

SUBJECT: Prairie View Dairy, LLC (PVD) Administrative Consent Order (ACO)

Enclosed please find an original, signed copy of ACO-000298 (ACO) entered between the Michigan Department of Environmental Quality (DEQ) and PVD, for the resolution of the violations documented pursuant to Part 31, Water Resources Protection of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the promulgated rules. The ACO became effective March 22, 2016. Enclosed is the invoice for payment. Payment is due within 30 days of receiving this letter and invoice and no later than April 30, 2016. Additionally, I have enclosed a certification form which is suggested for use when certifying final compliance and requesting termination of the ACO as mentioned in Section 12.1 of the ACO.

The DEQ appreciates PVD's cooperation with the resolution of these matters. If you have any questions, please contact me at 517-284-5494; browna2@mchigan.gov; or DEQ, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,

Angela M. Brown, Enforcement Specialist
Water Enforcement Unit
Water Resources Division

Enclosures

cc: Mr. Jerrod Sanders, DEQ



Michigan Dept of Environmental Quality
 Water Resources Division
 Enforcement
INVOICE

Issued under the authority of Public Act 451 of 1994
Failure to submit payment by the date due will
result in penalties as prescribed by law.

C0158003 Ref No:

Prairie View Dairy, LLC
 12850 Parker Road
 Delton, MI 49046

Invoice Number:	960205
Invoice Date:	March 28, 2016
Payment Due:	April 30, 2016

Prairie View Dairy, LLC
 12850 Parker Road
 Delton, MI 49046

Please be sure to reference the settlement ID#
 on the check when you remit payment.

Invoice Item	Quantity	Unit Cost	Total Cost
WRD ACO SETTLEMENT WRD60016	1	\$6,500.00	\$6,500.00

Payment Due: April 30, 2016

Total:	\$6,500.00
Tax:	\$0.00
Total Invoice:	\$6,500.00

MAKE CHECK OR MONEY ORDER PAYABLE TO: **STATE OF MICHIGAN**
 TO ENSURE PROPER CREDIT, SEND THIS PORTION WITH PAYMENT TO:
Michigan Dept of Environmental Quality
Cashiers Office-ACO
PO Box 30657
LANSING, MI 48909-8157

(Please note or make any mailing corrections below)

Prairie View Dairy, LLC
 12850 Parker Road
 Delton, MI 49046

C0158003 Ref No:

INVOICE NO:	
960205	
WRD	ACO

For Cashier's Use Only:



Michigan Department of Environmental Quality
Water Resources Division

ADMINISTRATIVE CONSENT ORDER TERMINATION REQUEST

The completion of this form is voluntary and is intended to be used as guidance for persons that are eligible to request the DEQ to issue a Termination Notice of their Administrative Consent Order (ACO). However, it may not be relied upon as being legally sufficient to cover all potential issues related to the specific requirements of the ACO. The DEQ does not assume any liability for the use of this document and encourages the user to seek independent legal advice before using this form to draft its certification and request for Termination of its ACO.

PLEASE TYPE OR PRINT

1. ACO	ADMINISTRATIVE CONSENT ORDER NUMBER:		
2. Facility Owner or Legally Authorized Representative	Facility Owner/Legally Authorized Representative Who Signed the ACO:		
	Address:		Address 2 or P.O. Box:
	City:	State:	Zip Code:
	Telephone:	Fax:	E-mail address:
3. Compliance Section	Summarize each completed requirement in the Compliance Section of the ACO give the completion date. Please use additional sheets if necessary:		



Michigan Department of Environmental Quality
Water Resources Division

ADMINISTRATIVE CONSENT ORDER TERMINATION REQUEST

3. Certification	<p>I, enter the name of owner or legally authorized representative, hereby certify that each requirement of the ACO that was entered into with the Department of Environmental Quality (DEQ) on enter the date has been complied with and completed including paying all money required by the ACO including but not limited to costs, civil fines, stipulated fines and fees. I also certify that all information that I am required to report to the DEQ, enter District Office District Office Supervisor has been reported and that all records I am required to maintain pursuant to the ACO are being maintained at the facility (or other location as specified in Section 12 of the ACO). I hereby request that the DEQ Issue a Termination Notice, formally terminating the ACO in recognition of the resolution of the matters therein. I certify under penalty of law that this certification is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of a fine for having knowledge of violations and certifying that there are none.</p> <p>Print Name _____ Title _____</p> <p>Signature _____ Date _____</p>
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Please mail this completed form to the DEQ, Water Resources Division, District Office that is listed in Section III of the ACO the Owner/Legally Responsible Representative entered into with the DEQ. Addresses for the district offices are listed below.

Cadillac District Office
120 West Chapin Street
Cadillac, MI 49601-2158

Kalamazoo District Office
7953 Adobe Road
Kalamazoo, MI 49009-5025

Gaylord Field Office
2100 West M-32
Gaylord, MI 49735-9282

Lansing District Office
P.O. Box 30242
Lansing, MI 48909-7742

Grand Rapids District Office
350 Ottawa Avenue, NW, Unit 10
Grand Rapids, MI 49503-2316

Saginaw Bay District Office
401 Ketchum Street, Suite B
Bay City, MI 48708-5430

Jackson District Office
301 East Louis Glick Highway
Jackson, MI 49201-1556

Southeast Michigan District Office
27700 Donald Court
Warren, MI 48092-2793

Upper Peninsula District Office
1504 West Washington Street
Marquette, MI 49855

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

In the matter of:

Agreement: ACO-000298

Date Entered: 3-22-16

Prairie View Dairy, LLC
12850 Parker Road
Delton, Michigan 49046

SETTLEMENT AGREEMENT

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges Prairie View Dairy, L.L.C. (Prairie View Dairy), located at 12850 Parker Road, Delton, Michigan, Barry County, is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act 1994, as amended (NREPA), MCL 324.3101 *et seq.* Prairie View Dairy 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 (DLARA) as able to conduct business in the state of Michigan under Identification Number B4535T. Prairie View Dairy and the DEQ agree to resolve the alleged violations set forth herein by entry of this settlement agreement ("Settlement Agreement" or "Agreement").

I. STIPULATIONS

Prairie View Dairy 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, Water Resources Protection, of the NREPA ("Part 31"), MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, provide for the protection, conservation, and the control of pollution of the water resources of the state.
- 1.3 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA, MCL 324.3112(4), to enter orders requiring persons to abate pollution or otherwise cease or correct activities in violation of a specific part. The director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).

- 1.4 Prairie View Dairy consents to the issuance and entry of this Settlement Agreement and stipulates that the entry of this agreement constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31. Prairie View Dairy agrees not to contest the issuance of this Settlement Agreement, and agrees that the resolution of this matter by the entry of this Settlement Agreement is appropriate and acceptable. It is also agreed that this Settlement Agreement shall become effective ("Effective Date") on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.5 Prairie View Dairy and the DEQ agree that the signing of this Settlement Agreement is for settlement purposes only and does not constitute an admission by Prairie View Dairy that the law has been violated and shall not affect Prairie View Dairy's future eligibility for certification under the Michigan Agricultural Environmental Assurance Program.
- 1.6 The signatory to this Settlement Agreement certifies that he is fully authorized by Prairie View Dairy to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Prairie View Dairy to this document. Prairie View Dairy hereby agrees to comply with the requirements of this Settlement Agreement to resolve the alleged violations stated in Section II of this Settlement Agreement and agrees to achieve compliance with Part 31 of the NREPA and the rules promulgated pursuant thereto by fulfilling the terms of Section III of this Settlement Agreement.

II. FINDINGS

- 2.1 Prairie View Dairy owns and operates a dairy farm operation located at 12850 Parker Road in Delton, Michigan, Barry County. Prairie View Dairy is a large Concentrated Animal Feeding Operation (CAFO).
- 2.2 During a site inspection on March 10, 2015, DEQ staff observed that, during quickly changing weather conditions, manure which had been land applied in February of 2015, was discharging to waters of the state in violation of Prairie View Dairy's Certificate of Coverage (COC) No. MIG010123, effective September 21, 2011, issued under the National Pollutant Discharge Elimination System (NPDES) General Permit. No. MIG019000 (collectively "the permit.").

- 2.3 Between February 10 - 12, 2015, Prairie View Dairy applied manure to an agricultural field (PO 9A 1-3) listed in their Comprehensive Nutrient Management Plan (CNMP). The field is owned by Vander Dussen Properties LLC and is located near the address of 9057 Milo Road, Delton, Michigan, Barry County. The manure was applied to frozen and snow covered ground and was not incorporated.
- 2.4 During the evening of March 9, 2015, Prairie View Dairy received information from the Prairieville Township supervisor that manure laden runoff was covering parts of Milo Road. Prairie View Dairy staff responded and placed approximately four yards of sand in the path of the flow.
- 2.5 At approximately 6:00 a.m. on March 10, 2015, Prairie View Dairy found that the sand berm had eroded, so another four yards of sand was put in place as an effort to stop the flow. At approximately 8:00 a.m. Prairie View Dairy placed approximately fifteen straw bales in front of the sand berm to block the flow. Prairie View Dairy also created a sump and, with use of a pump, attempted to capture flowing liquids and pump to an area of the field where it could be contained.
- 2.6 At approximately 10:40 a.m. on March 10, 2015, WRD Staff received a complaint indicating that there was significant amount of manure on Milo Road. WRD staff responded and arrived on site at approximately 1:30 p.m.
- 2.7 WRD staff reported that they smelled an odor of manure. As the snow melted, manure-laden runoff water was leaving the field and traveling down Milo Road, west of South Lockshore Road. From there, the manure-laden runoff entered a catch basin in the ditch that leads to a subsurface storm sewer system. WRD staff observed the manure laden runoff exiting the storm sewer system approximately 200 yards to the west (downslope) on the south side of Milo Road and flowing southerly approximately 100 feet, where it discharged to the north end of West Gilkey Lake. The unauthorized discharge of agricultural waste to waters of the state is a violation of the permit, Rule 2196(5) of Part 31's Waste Water Discharge Rules, Michigan Administrative Code, R 323.2196(5). and Section 3109 of the NREPA, MCL 324.3109.
- 2.8 In observing the discharge to West Gilkey Lake, WRD staff observed that the lake water was brown and contained foam, manure solids, and unnatural turbid water. This is a

violation of Rule 1050(a), (b), (d), (f), and (g) of Part 31's Water Quality Standards Rules, Michigan Administrative Code, R 323.1050(a), (b), (d), (f), and (g). WRD Staff documented their observations with photographs. WRD staff also contacted the local health department.

- 2.9 On March 11, 2015, WRD staff returned to the site and found that the discharge was still occurring. Water samples were obtained of the discharge and in the receiving water (West Gilkey Lake). The analytical results showed elevated levels of phosphorus, suspended solids, turbidity, and ortho phosphate, which is indicative of the presence of agricultural waste in violation of Part 31 and the permit.
- 2.10 On March 12, 2015, at approximately 11:30 a.m., WRD staff confirmed that the discharge had stopped. On March 14, 2015, the DEQ received a written CAFO Discharge Report from Prairie View Dairy, dated March 13, 2015.
- 2.11 WRD staff advised that at the time of the March 10, 2015, inspection, some of the Prairie View Dairy daily land application records for the field in question were not available. This is a violation of the Permit at Part I.B.11.
- 2.12 Additionally, Prairie View Dairy did not verbally report the discharge to the DEQ as required by the Permit at Part II.C.6.
- 2.13 Prairie View Dairy was issued a Violation Notice (VN No. VN-006056) by the WRD on May 13, 2015. The letter stated that the WRD staff observed an unlawful discharge of manure to West Gilkey Lake. Prairie View Dairy responded to the VN in a letter emailed to the WRD on June 10, 2015.
- 2.14 Prairie View Dairy was not able to calculate the discharged volume of waste water in gallons or tons. Prairie View Dairy offered no estimate in the amount of manure that was released.
- 2.15 The WRD alleges that West Gilkey Lake was adversely impacted by the discharge of manure. The receiving water contained unnatural turbidity, color, foams, settleable solids, suspended solids, and excess nutrients in quantities that are or may become injurious to designated uses of the lake. The direct or indirect discharge into the waters

of the state of a substance that is or may become injurious to designated uses is a violation of Section 3109(1) of NREPA, MCL 324.3109(1).

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED THAT Prairie View Dairy shall take the following actions to prevent further violations of Part 31:

- 3.1 Within 60 days after the Effective Date of this Settlement Agreement, Prairie View Dairy shall provide WRD with an Emergency Action Plan (EAP) as described in its June 10, 2015, response to Violation Notice No. VN-006056 (Attachments A and B). In addition to the criteria proposed in that response, the EAP shall meet the following requirements:
 - a. Include all contact information and notification/reporting requirements that are applicable to spills and discharges that may occur at the farm.
 - b. Be readily available in a prominent location at the farm headquarters that is accessible to all employees.
 - c. Include a signature page documenting that those Prairie View Dairy employees, who are involved with any part of the farm's waste management process, have reviewed and understand that contents of the EAP.
 - d. Shall annually review and update the EAP. The review and updates shall be recorded within the EAP by April 1st of the following year.
- 3.2 With respect to agricultural field "PO 9A 1-3", when such field is frozen or snow covered, Prairie View Dairy is prohibited from land applying CAFO waste without incorporation.
- 3.3 With regards to all other fields identified in the CNMP, and through May 1, 2018, prior to any application of CAFO waste to frozen or snow covered ground without incorporation, Prairie View Dairy shall provide a notification report via electronic mail to the Kalamazoo District Office of WRD by noon on the business day (Monday through Friday, excluding state holidays) immediately prior to the day of the planned application. Each report shall include all of the following:

- a. A list of the field(s) to which CAFO waste will be applied.
- b. Specific date(s) on which CAFO waste will be applied to the fields.
- c. An up-to-date Manure Application Risk Index (MARI) evaluation for all listed fields.
- d. The current depth of the average snow cover on all listed fields.
- e. A seven (7) day local weather forecast, including temperature and chance of rain, dated no earlier than one (1) day prior to the date of the anticipated manure application.

3.4 Until May 1, 2018, Prairie View Dairy is prohibited from applying CAFO waste to frozen or snow covered ground without incorporation, if either of the following conditions exist:

- a. The weather forecast noted in paragraph 3.3() predicts daily high temperature above 32 degrees Fahrenheit, or
- b. The average depth of snow on the surface of the receiving field is equal to or greater than 5 inches.

3.5 Until May 1, 2018, Prairie View Dairy is prohibited from manifesting CAFO waste to any third party where such waste will be surface applied, without incorporation, during the months of January, February or March, to frozen or snow-covered ground unless the recipient contractually agrees to adhere to paragraphs 3.3 and 3.4 above. In addition, all information required in paragraphs 3.3 and 3.4 shall be provided to WRD no less than one day prior to the day the CAFO waste is transferred to the recipient. Prairie View Dairy, or the third party on Prairie View Dairy's behalf, may submit this information. Failure to properly submit this information may limit Prairie View Dairy's ability to manifest to a third party in the future.

3.6 Until May 1, 2018, Prairie View Dairy shall submit all reports, work plans, specifications, schedules, or any other writing required by the section to the Kalamazoo District Office District Supervisor, WRD, DEQ, 7953 Adobe Road, Kalamazoo, Michigan 49009.

IV. DEQ APPROVAL OF SUBMITTALS

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Settlement Agreement to be submitted to the DEQ by Prairie View Dairy, the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Settlement Agreement 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 Settlement Agreement.
- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify Prairie View Dairy, in writing, specifying the reasons for such disapproval. Prairie View Dairy 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 DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify Prairie View Dairy of the disapproval.
- 4.4 In the event the DEQ approves with specific modifications a work plan, proposal, or other document, it will notify Prairie View Dairy 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 DEQ may require Prairie View Dairy 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 DEQ, the DEQ will notify Prairie View Dairy of this disapproval.
- 4.5 Upon DEQ 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 Settlement Agreement and shall be enforceable in accordance with the provisions of this Settlement Agreement.

- 4.6 Failure by Prairie View Dairy to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Settlement Agreement and shall subject Prairie View Dairy to the enforcement provisions of this Settlement Agreement, including the stipulated penalty provisions specified in paragraph 9.3.
- 4.7 Any delays caused by Prairie View Dairy's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter Prairie View Dairy's responsibility to comply with any other deadline(s) specified in this Settlement Agreement.
- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by Prairie View Dairy will be construed as relieving Prairie View Dairy of its obligation to obtain written approval, if and when required by this Settlement Agreement.

V. EXTENSIONS

- 5.1 Prairie View Dairy and the DEQ agree that the DEQ may grant Prairie View Dairy a reasonable extension of the specified deadlines set forth in this Settlement Agreement. Any extension shall be preceded by a written request in duplicate to the DEQ, WRD, Enforcement Unit Chief, P.O. Box 30458, Lansing, Michigan 48909-7958, and the Kalamazoo District Office District Supervisor at the address in paragraph 3.6, no later than ten business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Settlement Agreement that will not be met.
 - b. A detailed description of the circumstances that will prevent Prairie View Dairy from meeting the deadline(s).
 - c. A description of the measures Prairie View Dairy 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.

- 5.2 The Kalamazoo District Office District Supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Settlement Agreement shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

VI. REPORTING

- 6.1 Prairie View Dairy shall verbally report any violation(s) of the terms and conditions of this Settlement Agreement to the Kalamazoo District Office District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such verbal 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). Prairie View Dairy shall report any anticipated violation(s) of this Settlement Agreement to the above-referenced individual in advance of the relevant deadlines whenever possible. The DEQ may, at its sole discretion, and in appropriate circumstances, waive the notice requirements of this paragraph 6.1.

VII. RETENTION OF RECORDS

- 7.1 Upon request by an authorized representative of the DEQ, Prairie View Dairy shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Settlement Agreement or pursuant to Part 31 or its rules. All such documents shall be retained by Prairie View Dairy for at least a period of five years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

VIII. RIGHT OF ENTRY

- 8.1 Prairie View Dairy 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 Settlement Agreement. 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.

IX. PENALTIES

- 9.1 Within 30 days after the Effective Date of this Settlement Agreement, Prairie View Dairy agrees to pay to the State of Michigan one thousand five hundred (\$1,500) **DOLLARS** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Settlement Agreement. Payment shall be made in accordance with paragraph 9.4 of this Settlement Agreement.
- 9.2 Within 30 days after the Effective Date of this Settlement Agreement, Prairie View Dairy agrees to pay to the State of Michigan a civil fine of five thousand (\$5,000.00) **DOLLARS** for the violations specified in Section II of this Settlement Agreement. Payment shall be made in accordance with paragraph 9.4 of this Settlement Agreement.
- 9.3 For each failure to comply with a provision of Section III of this Settlement Agreement, but only following written notice of such default and a failure to cure such a default with seven (7) days following receipt of written notice of such default, Prairie View Dairy shall pay stipulated penalties of **\$100** per violation per day for 1 to 7 days of violation, **\$200** per violation per day for 8 to 14 days of violation, and **\$300** per violation per day for each day of violation thereafter. Payments shall be made in accordance with paragraph 9.4.
- 9.4 Prairie View Dairy agrees to pay all funds due pursuant to this Settlement Agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 West Ottawa Street, Lansing, Michigan 48933 not later than 30 days after receipt of an invoice from the DEQ. To ensure proper credit, all payments made pursuant to this Settlement Agreement must include the **Payment Identification No. WRD60016**.
- 9.5 Prairie View Dairy agrees not to contest the legality of the amounts paid pursuant to paragraphs 9.1 and 9.2 above. Prairie View Dairy further agrees not to contest the legality of any stipulated penalties pursuant to paragraph 9.3 or the interest penalties

assessed pursuant to paragraph 9.5, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

- 9.6 The DEQ reserves its rights to seek interest on any unpaid sums due pursuant to the terms of the Settlement Agreement. Subject to the other provisions of this Section IX, the DEQ may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Settlement Agreement. 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 Prairie View Dairy shall perform the requirements of this Settlement Agreement within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure Event." Any delay in the performance attributable to a "Force Majeure Event" shall not be deemed a violation of Prairie View Dairy's obligations under this Settlement Agreement in accordance with this section.
- 10.2 For the purpose of this Settlement Agreement, a "Force Majeure Event" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of Prairie View Dairy, and includes among other things, an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by Prairie View Dairy's diligence and that delay the performance of an obligation under this Settlement Agreement. "Force Majeure Event" 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 Prairie View Dairy's actions or omissions.
- 10.3 Prairie View Dairy shall notify the DEQ, by telephone, within 48 hours of discovering any Force Majeure Event that causes a delay in its compliance with any provision of this Settlement Agreement. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise

cause or causes of delay, the measures taken by Prairie View Dairy to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Prairie View Dairy 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 Agreement.

- 10.4 Failure of Prairie View Dairy 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 Force Majeure Event. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3, above.
- 10.5 The parties agree that if the delay or anticipated delay was beyond the control of Prairie View Dairy, this may be so stipulated and the parties may agree upon an appropriate modification of this Settlement Agreement. However, with respect to such an agreement, the DEQ is the final decision maker on whether or not the matter at issue constitutes a Force Majeure Event. Otherwise, the burden of proving that any delay was beyond the reasonable control of Prairie View Dairy and that a Force Majeure Event occurred, and that all the requirements of this Section X have been met by Prairie View Dairy, rests with Prairie View Dairy.
- 10.6 An extension of one compliance date based upon a particular Force Majeure Event does not necessarily mean that Prairie View Dairy 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 Settlement Agreement, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of Prairie View Dairy to comply with the requirements of the NREPA and its rules.

- 11.2 The DEQ and Prairie View Dairy consent to enforcement of this Settlement Agreement in the same manner and by the same procedures for all final orders entered pursuant to Part 31 and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 *et seq.*
- 11.3 This Settlement Agreement in no way affects Prairie View Dairy's 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 Settlement Agreement, and at its discretion may also seek stipulated fines or statutory fines for any violation of this Settlement Agreement. However, the WRD is precluded from seeking both a stipulated fine under this Settlement Agreement and a statutory fine for the same violation.
- 11.1 The parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Settlement Agreement prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
- 11.2 Nothing in this Agreement is or shall be considered to affect any liability Prairie View Dairy may have for natural resource damages caused by Prairie View Dairy's 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.
- 11.3 In the event Prairie View Dairy sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this Settlement Agreement in connection with such sale or transfer. Within 30 calendar days, Prairie View Dairy shall also notify the WRD Kalamazoo 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 Settlement Agreement has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Settlement Agreement must agree, in writing, to assume all of the obligations of this Settlement Agreement. A copy of that agreement shall be forwarded to the WRD Kalamazoo District Supervisor within 30 days of assuming the obligations of this Settlement Agreement.

- 11.4 The provisions of this Settlement Agreement shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.5 This Settlement Agreement constitutes a civil settlement and satisfaction as to the resolution of the alleged violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

XII. TERMINATION

- 12.1 This Settlement Agreement shall remain in full force and effect until the date set forth by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Prairie View Dairy shall submit a request consisting of a written certification that Prairie View Dairy has fully complied with the requirements of this Settlement Agreement and has made payment of any fines, including stipulated penalties, required in this Settlement Agreement. A suggested form for providing the required written certification is appended as **Exhibit 1**. Specifically, this 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 district supervisor.
 - c. Confirmation that all records required to be maintained pursuant to this Settlement Agreement are being maintained at the facility.

The DEQ may also request additional relevant information to determine whether or not Prairie View Dairy has complied with this Agreement. The DEQ 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 Settlement Agreement to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

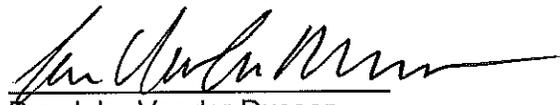
DEPARTMENT OF ENVIRONMENTAL QUALITY



Peter Ostlund, Acting Chief
Water Resources Division

3-22-2016
Date

PRAIRIE VIEW DAIRY, LLC



By: John Vander Dussen
Its: Member

3-16-16
Date

APPROVED AS TO FORM:



By: Neil D. Gordon, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

3/18/16
Date