

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY,

Plaintiff,

v

DEBORAH BRENNER d/b/a J&D BRENNER
FARMS,

Defendant.

No. 24- 148 -CE

HON.

JUDGE WANDA M. STOKES

Matthew Meyerhuber (P84721)
Elizabeth Morrissette (P81899)
Assistant Attorneys General
Attorneys for Plaintiff
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664

There is no other pending or resolved civil action arising
out of the transaction or occurrence
alleged in the complaint.

COMPLAINT

Plaintiff, the Michigan Department of Environment, Great Lakes, and
Energy (EGLE), by and through its attorneys, Matthew Meyerhuber and Elizabeth
Morrissette, Assistant Attorneys General, states as follows:

NATURE OF THE CASE

1. This is a civil action for injunctive relief to require Defendant Deborah Brenner to comply with the Water Resources Protection Act, Part 31 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq.* (WRPA), and rules promulgated thereunder, specifically Mich Admin Code, R 323.2101 *et seq.* (Wastewater Rules), Mich Admin Code, R 323.1041 *et seq.* (Water Quality Standards), and Mich Admin Code, R 323.2201 *et seq.* (Groundwater Quality Rules).

2. Defendant's failure to comply with the Water Resources Protection Act and related rules, as described in this Complaint, threatens to impair the natural resources of Allegan County by overloading the local watershed with nutrients and introducing bacteria and other pathogens from animal waste into the waters of the state.

3. The scope of the impairment is significant because Defendant's discharges impact a tributary of Pickle Drain, the connecting Pickle Drain, Rabbit River, Kalamazoo River, and ultimately Lake Michigan.

4. Relatedly, Defendant also threatens Michigan's groundwater resources by discharging harmful contaminants into groundwater, possibly into underground drinking water aquifers.

5. Further, Defendant's longstanding, ongoing failure to obtain and comply with a wastewater discharge permit threatens the integrity of the EGLE permitting program because Defendant has gained an unfair financial advantage relative to competing CAFOs that follow permitting requirements.

6. In addition to injunctive relief, EGLE also seeks civil fines, reasonable attorney fees, and costs.

7. EGLE brings this action under the Water Resources Protection Act, the administrative rules promulgated thereunder, and the common law of public nuisance.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under Section 3115(1) of the NREPA, MCL 324.3115(1), and under Section 605 of the Revised Judicature Act (RJA), MCL 600.605.

9. This Court has personal jurisdiction over Defendant Deborah Brenner under Section 701 of the Revised Judicature Act, MCL 600.701.

10. Venue in this Court is proper under Parts 31 of the NREPA. MCL 324.3115(1).

PARTIES

11. EGLE is the state department mandated to protect the natural resources of the state from pollution, impairment, and destruction. MCL 324.301, MCL 324.501, and Executive Order 2019-02. By Executive Order 2019-06, the former Michigan Department of Environmental Quality (DEQ) was renamed as EGLE. *Id.* To avoid confusion, this Complaint only refers to EGLE, even when describing actions taken when the agency was still named DEQ.

12. In particular, EGLE is mandated to “protect and conserve the water resources of the state[.]” MCL 324.3103.

13. Defendant Deborah Brenner is an individual residing within the state of Michigan, doing business as (d/b/a) J&D Brenner Farms.

14. Deborah Brenner is a “person” within the meaning of MCL 324.301(h).

STATUTORY AND REGULATORY BACKGROUND

Part 31 of the NREPA, the Water Resources Protection Act

15. Michigan enacted the Water Resources Protection Act to protect and conserve the water resources of the state and to prevent and control pollution of surface and underground waters of the state and the Great Lakes. MCL 324.3103.

16. Section 3109(1) of NREPA, MCL 324.3109(1), states:

(1) 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.

17. Under the Water Resources Protection Act, a person shall not discharge any waste or waste effluent into the waters of the state unless the person is in possession of a valid permit from EGLE. MCL 324.3112(1).

18. “Waters of the state,” as defined by the Water Resources Protection Act, include all “groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state.” MCL 324.3101(aa).

19. “Waste or waste effluent” includes water that contains polluting substances such as chemicals and agricultural waste such as manure, milkhouse waste, and silage leachate. Mich Admin Code, R 323.2104(aa)(ii), (viii), (xvi).

20. Congress created the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 USC 1251(a).

21. The Clean Water Act establishes a system of cooperative federalism that “recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.” 33 USC 1251(b).

22. A cornerstone of the Clean Water Act is the National Pollutant Discharge Elimination System (NPDES) program, which is a point source discharge permitting program that controls and limits the discharge of pollutants from point sources into surface waters. See 33 USC 1342(a)(1). The Clean Water Act

establishes requirements for NPDES permits, including that they contain discharge limits necessary to meet state and federal water quality standards. (*Id.*)

23. As is relevant here, “concentrated animal feeding operations” fall within the definition of a point source, under the Clean Water Act, 33 USC 1362(14), and, to operate, must be covered under, and comply with the terms of, an NPDES permit. 33 USC 1311; see also 33 USC 1362.

24. Under the Clean Water Act, the United States Environmental Protection Agency (EPA) can approve state NPDES permitting programs for states that have sufficient standards and resources. 33 USC 1342(b); *Michigan Farm Bureau v Dep’t of Env’tl Qual*, 292 Mich App 106, 110 (2011).

25. In 1973, the EPA authorized Michigan to implement the NPDES permitting program in lieu of the EPA. *Mich Farm Bureau*, 292 Mich App at 110.

26. Thus, permits issued under the Water Resources Protection Act are state permits that meet minimum federal NPDES permitting requirements so that EGLE can issue NPDES permits instead of the EPA.

Concentrated Animal Feeding Operations - CAFOs

27. Concentrated animal feeding operations (CAFOs) are “large-scale industrial operations that raise extraordinary numbers of livestock.” *Mich Farm Bureau*, 292 Mich App at 111 (internal citation omitted).

28. Housing that many animals in confinement “generate[s] large amounts of animal waste and pose[s] known risks to Michigan’s water resources.” *Mich Farm Bureau*, 292 Mich App at 144.

29. Among other things, the pollution associated with housing that many animals in a confined area includes manure and other animal waste that contains nutrients, such as nitrogen and phosphorous, and pathogens, such as *Escherichia coli* bacteria (*E. coli*), among other harmful contaminants. *NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for CAFOs (Proposed Rule)*, 66 FR 2960, 2976–79 (Jan 12, 2001).

30. Although that pollution includes both CAFO process wastewater, and production area waste, defined *infra*, this Complaint refers to them collectively, and in the alternative, as CAFO waste.

31. Michigan has cold winters that do not support the growth of vegetation year-round, so most animal feeding operations confine and feed or maintain animals more than 45 days each year. Facilities “where the animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and [where] crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility” are regulated as Animal Feeding Operations (AFOs). Mich Admin Code, R 323.2102(b). Certain types of AFOs are regulated as CAFOs when they satisfy certain conditions such as animal numbers or types of discharges. Mich Admin Code, R 323.2103(m)

32. Specific to this Complaint, large CAFOs are dairy operations that stable or confine more than 700 mature dairy cows, while medium CAFOs are dairy operation that stable or confine 200 to 699 mature dairy cows and discharge

pollutants to waters of the state. Mich Admin Code, R 323.2103(g)–(i); Mich Admin Code, R 323.2103(m).

33. CAFOs are broken down into two areas of operation: (1) the production area, where animals are housed, fed, and milked, and their waste is contained; and (2) the land application area, where the waste produced at the production area is spread for disposal.

34. Land application of CAFO waste occurs during times of the year when there are no growing crops to uptake the fertilizing components.

35. When improperly performed, land application of CAFO waste threatens waters of the state with potential discharges of nitrogen, phosphorous, bacteria, and other pollutants and pathogens.

36. At the production area, clean storm water from precipitation and snow melt can become contaminated if it comes in contact with CAFO waste due to poor production area housekeeping and poor production area design and construction; uncaptured storm water can result in polluted discharges to waters of the state.

37. Liquid waste storage structures, also part of the production area, are in-ground, engineered and designed, lined structures that capture and store tens of millions of gallons of CAFO waste, including manure, animal bedding, milkhouse waste, silage leachate runoff, mortality leachate, and other contaminated production area runoff.

38. A dairy CAFO with 650 mature dairy cows, and no other cattle—such as the Brenner Facility—generates approximately 6-9 million gallons of CAFO

waste annually, requiring a minimum storage capacity of approximately 3-5 million gallons.

39. The United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), developed engineering standards for these structures and some CAFOs seek grant funding to construct these liquid waste storage structures to meet the standards.

40. Typically, EGLE includes those industry standards in NPDES permits, to meet Michigan's requirements that all CAFO permits "ensure adequate storage of production area waste and CAFO process wastewater[.]" Mich Admin Code, R 323.5196(5)(a)(i).

41. If the waste storage structures are not designed and sized appropriately, they may overflow or leak, resulting in discharges to groundwater or surface water.

42. Likewise, if the waste storage structures are not properly maintained, they may not perform as engineered, resulting in discharges to groundwater or surface water.

43. CAFO waste can reach groundwater through improperly designed and engineered waste storage structures. *Food & Water Watch v EPA*, 20 F4th 506, 511 (CA 9, 2021).

44. CAFO waste from storage structures can also reach surface waters by traveling through groundwater after being improperly discharged to the ground.

(NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for CAFOs (Proposed Rule), 66 FR at 2979–80.)

45. Another way CAFO waste can reach surface waters is by traveling through tiles, which are mechanisms comprised of perforated piping installed beneath production areas and agricultural fields that artificially drain water off the land.

46. When CAFO waste reaches surface waters, nutrients, such as nitrogen and phosphorous, can harm water quality.

47. Additionally, elevated amounts of these nutrients can result in fish kills, increase stress in aquatic ecosystems, cause algae blooms, and contaminate shellfish, fish, and other animals that eat them. (*Id.* at 2981.)

48. Before reaching surface waters, excess amounts of nitrogen and phosphorous can harm soil quality and plants. (*Id.*)

49. High levels of nitrogen (particularly nitrate and nitrite) in drinking water can cause various degrees of illness and birth defects in humans, pets, and livestock. (*Id.* at 2982–83.)

50. Groundwater with high nitrogen levels may not be suitable for drinking water (for human and other animal purposes). (*Id.*)

51. Further, high levels of nitrogen in groundwater can significantly limit the value and possible uses of the land, including for domestic, commercial, industrial, agricultural, and recreational purposes.

52. Pathogens, such as *E. coli*, in surface waters can contaminate shellfish and fish, in turn harming people and other animals who consume them.

53. Swimming and fishing, in surface waters containing pathogens such as *E. coli* can result in gastrointestinal illness from contact.

54. Consuming or otherwise using groundwater contaminated with pathogens, such as *E. coli*, can make humans, pets, and livestock sick. (*Id.*)

55. Further, the presence of pathogens, such as *E. coli*, in groundwater can significantly limit the value and possible uses of the land, including for domestic, commercial, industrial, agricultural, and recreational purposes.

56. Low oxygen or a lack of oxygen in rivers, streams, and groundwater can also be injurious to plant and animal life.

57. Low oxygen, resulting from discharges of waste with high biochemical oxygen demand, among other things, can also result in toxic heavy metals being released to groundwater, and ultimately surface water.

58. Ammonia, chlorides, and copper are all toxic substances.

59. A total dissolved solids value is a measure of all organic and inorganic material dissolved in surface water, including salts such as chlorides.

60. Surface water with high total dissolved solids can disrupt osmoregulation across cellular membranes in aquatic organisms, causing significant damage and even death.

61. Surface water with high total dissolved solids can also corrode metal pipes and machinery.

62. High total dissolved solids can also render affected water unsuitable for drinking.

CAFO Regulation in Michigan

63. EGLE regulates CAFOs primarily to prevent the discharge of pollutants into the waters of the state. Mich Admin Code, R 323.2196; see also *Mich Farm Bureau v DEQ*, 292 Mich App at 137 (discussing MCL 324.3106.)

64. EGLE issues NPDES permits pursuant to the Wastewater Rules, found at Mich Admin Code, R 323.2101 *et seq.*

65. Although the Wastewater Rules incorporate by reference federal regulations developed by the EPA, “Michigan runs its own [CAFO] program under an enabling statute that is clearly more expansive than the federal Clean Water Act.” *Mich Farm Bureau*, 292 Mich App at 113,123.

66. The Wastewater Rules incorporate baseline federal regulations specific to CAFOs that explicitly recognize state authority and discretion to include more stringent requirements to meet, among other things, state water quality standards. Mich Admin Code, R 323.2189(2)(m) (incorporating 40 CFR 412 (2003); Mich Admin Code R 323.2189(2)(h) (incorporating 40 CFR 122.44 (2005)).

67. Those state water quality standards are duly promulgated rules, located at Mich Admin Code, R 323.1041 *et seq.* (Water Quality Standards).

68. The section of the Wastewater Rules specific to CAFOs contains the following definitions relevant to this Complaint:

a. “Animal feeding operation (AFO)” means a lot or facility . . . where the animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” Mich Admin Code, R 323.2102(b);

b. “CAFO process wastewater” means water directly or indirectly used in the operation of a CAFO for any of the following: (i) Spillage or overflow from animal or poultry watering systems; (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; (iii) Direct contact swimming, washing, or spray cooling of animals; (iv) Dust control; (v) Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding. Mich Admin Code, R 323.2102(j);

c. “Concentrated animal feeding operation (CAFO)” means an AFO that is defined as a large CAFO... Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.” Mich Admin Code, R 323.2102(i);

d. “Large CAFO” means an AFO that stables or confines as many as or more than . . . 700 mature dairy cows, whether milked or dry. . . Mich Admin Code, R 323.2103(g)-(i);

e. “Medium CAFO” means an AFO that “[h]as been designated by the department as a CAFO under R 323.2196(3),” or where “[p]ollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance,” or where “[p]ollutants are discharged directly into waters of the state from the production area which originate outside of and pass over, across, or through the facility or that otherwise come into direct contact with the animals confined in the operation,” and which includes. . . 200 to 699 mature dairy cows, whether milked or dry. . . Mich Admin Code, R 323.2103(m);

f. “Land application area” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, or subject to an access agreement to which production area waste or CAFO process wastewater is or may be applied. Land application area includes land not owned by the AFO owner or operator but the AFO owner or

operator has control of the land application of production area waste or CAFO process wastewater. Mich Admin Code, R 323.2103(f);

g. "Production area" means that part of an AFO that includes animal confinement area, manure storage area, raw materials storage area, and waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. Mich Admin Code, R 323.2104(d); and

h. "Production area waste" means manure and any waste from the production area and any precipitation, for example, rain or snow, which comes into contact with, or is contaminated by, manure or any of the components listed in the definition for "production area." Production area waste does not include water from land application areas. Mich Admin Code, R 323.2104(e).

69. Michigan requires all owners or operators of medium CAFOs to obtain an individual NPDES permit, a certificate of coverage under a general NPDES permit, or a determination from EGLE of no potential to discharge. Mich Admin Code, R 323.2196(1)(b), (4).

70. Among other things, NPDES permits issued to CAFOs include requirements intended to prevent surface runoff of CAFO waste from production areas and land application areas, as well as to prevent groundwater infiltration from improperly engineered or maintained waste storage structures. Mich Admin Code, R 323.2196(5)(a).

71. NPDES permits issued to CAFOs require them to collect and store all CAFO waste generated at production areas, including all precipitation contacting (and becoming contaminated by) CAFO waste.

72. CAFOs must collect and store that CAFO waste, including contaminated stormwater, in “adequate” waste storage structures. Mich Admin Code, R 323.2137(5)(a)(i).

73. Adequate waste storage structures have been engineered in accordance with duly promulgated regulations specific to wastewater lagoons, Mich Admin Code, R 323.2237, with the less stringent NRCS standard, or a demonstrated equivalent.

74. Adequate waste storage is not just a matter of engineering; but also depends on the amount of CAFO waste produced annually as well as regional rainfall. As a result, all CAFOs must have the capacity to store at least six months' worth of CAFO waste, plus additional storage to provide one foot of freeboard, plus emergency storage to ensure that the waste storage structures will not overflow from precipitation expected during regional 25-year, 24-hour storm events.

75. To minimize the risk of discharges to surface water from land application of CAFO waste to frozen or snow-covered ground, each permitted CAFO must demonstrate its waste storage capacity between November 1 and December 1 of each year.

76. CAFOs must submit documentation prepared by licensed professional engineers confirming that their waste storage structures meet the standards necessary to ensure adequate storage.

77. Further, under the NPDES permits issued to CAFOs, CAFO owners must ensure that all waste storage structures are operated and maintained appropriately to prevent any damage to their structural integrity, as such damage could result in discharges to groundwater and ultimately surface waters.

78. CAFO NPDES permits further require weekly inspections of waste storage structures.

Michigan Surface Water Quality Standards

79. The Water Quality Standards promulgated under Part 31, Mich Admin Code, R 323.1041 *et seq.*, limit the amount of nutrients that may be present in waters of the state. Mich Admin Code, R 323.1060.

80. Specifically, “at no time shall the surface waters of the state protected for total body contact recreation contain more than a maximum of 300 E. coli per 100 milliliters (mL) of water.” Mich Admin Code, R 323.1062(1).

Groundwater Discharge, Part 22 Rules

81. CAFOs, like other industrial facilities, are prohibited from discharging to waters of the state, except as authorized under a permit. MCL 324.3109(1).

82. Groundwater, like surface water, is a water of the state. MCL 324.3101(aa).

83. Discharges of waste to soil can migrate to the groundwater and can then travel through the groundwater to ultimately discharge to surface water.

84. The Part 22 administrative rules for groundwater quality promulgated under Part 31, Mich Admin Code, R 323.2201, *et seq.* (Groundwater Quality Rules), among other things, set certain requirements for discharges to groundwater. *See* Mich Admin Code, R 323.2204.

85. Generally speaking, CAFOs that meet specifically defined discharge requirements are not required to obtain permits to discharge to groundwater, unless they house more than 3,500 mature dairy cattle, or 5,000 of any other type of cattle. Mich Admin Code, R 323.2204, R 323.2210(f).

86. However, a CAFO with fewer than 3,500 mature dairy cattle that discharges to groundwater in a manner that is, or is likely to be, injurious to groundwater must obtain a groundwater discharge permit. Mich Admin Code, R 323.2204(2)(a).

87. The Groundwater Quality Rules define “injurious” as “any damage to or change in the condition of background groundwater quality that causes or may cause groundwater to no longer be fit for 1 or more protected uses.” Mich Admin Code, R 323.2201(s).

88. The Groundwater Quality Rules also prohibit all unauthorized, injurious discharges. Mich Admin Code, R 323.2205.

89. Relatedly, pursuant to Part 201, Environmental Remediation, of the NREPA, MCL 324.20101, *et seq.* (Part 201), EGLE has established groundwater

cleanup criteria for hazardous substances within the Cleanup Criteria Requirements for Response Activity, Mich Admin Code, R 299.1–299.50 (Cleanup Criteria Rules).

90. Levels of hazardous substances above the cleanup criteria are “injurious” to groundwater, within the meaning of Mich Admin Code, R 323.2201(s).

91. The Cleanup Criteria Rules establish limits for, among other things, nutrients like phosphorous and nitrite, and heavy metals like arsenic, manganese, and iron. See, e.g., Mich Admin Code, R 299.44, 299.49(EE).

92. Those limits are, in part, based on how the groundwater can be safely used, and parameters like pH and water hardness of the receiving groundwater. Mich Admin Code, R 299.49(A), (G), (X).

93. Nutrients, including phosphorous and nitrite, can contaminate groundwater above applicable limits in the Cleanup Criteria Rules.

94. Wastewater exhibiting high biochemical oxygen demand can mobilize metals, including but not limited to iron, manganese, and arsenic, above applicable limits in the Cleanup Criteria Rules.

GENERAL ALLEGATIONS

95. Currently, Defendant owns and manages animal feeding operations of approximately 650 mature dairy cattle, which includes, without limitation, collecting and spreading the waste produced from the animal feeding operations in Allegan County, Michigan.

96. Defendant owns and manages the animals, animal feeding operations, waste collection and spreading equipment, waste management and disposal, and labor at 2891 132nd Avenue, Hopkins, Allegan County, Michigan 49328 (the Brenner Facility.)

97. Since 2016 at the latest, Defendant has continuously confined and fed or maintained more than 299 mature dairy cows at the Brenner Facility, for at least a portion of each day, for 45 days in every 12-month period.

98. The production area at the Brenner Facility spans approximately 8 acres.

99. The Brenner Facility currently confines approximately 650 mature dairy cattle in barns.

100. The Brenner Facility has two liquid waste storage structures whose storage capacity is currently unknown. Defendant has not provided documentation of the design of the liquid waste storage structures and has claimed no documentation exists.

101. The Brenner Facility is currently a “medium CAFO” within the meaning of Mich Admin Code, R 323.2103(g).

102. Improper management of the CAFO waste produced at the Brenner Facility threatens nearby waters of the state with serious environmental and public health harms such as contaminated drinking water, surface water unsafe for recreation, and excess nutrients that harm aquatic life and contribute to algae blooms.

103. The Rabbit River is a water of the state, within the meaning of MCL 324.3101(aa).

104. Pickle Drain is a water of the state, within the meaning of MCL 324.3101(aa).

105. The unnamed tributary of Pickle Drain is a water of the state, within the meaning of MCL 324.3101(aa).

106. The Brenner Facility has approximately 2 acres of silage storage, which produces a significant amount of silage leachate, and which Defendant fails to collect and prevent from discharging.

107. Silage is a foliage plant product that is processed and partially fermented and must be stored at the appropriate moisture level and airtight to allow it to further ferment.

108. Silage, as described in the preceding paragraph, is used as cattle feed.

109. Silage, through the fermenting process, produces leachate, which is high in nutrients and acidic.

110. Silage leachate also exhibits high biochemical oxygen demand, which means that it consumes readily available oxygen in the natural environment.

111. For comparison, the standard biochemical oxygen demand of raw municipal sewage is approximately 500 milligrams per liter (mg/L), whereas the standard biochemical oxygen demand of silage leachate ranges from 20,000 mg/L to 80,000 mg/L.

**Defendant's longstanding refusal to permit operations, and continued
unlawful discharges to waters of the state**

112. In 2016, after an investigation in response to a citizen inquiry and review of a publication from the milk co-operative affiliated with the Brenner Facility, EGLE concluded that the Brenner Facility housed and fed a number of animals requiring coverage under a NPDES CAFO permit as a large CAFO.

113. On August 19, 2016, EGLE's Water Resources Division (WRD) issued a letter to Defendant explaining that EGLE had obtained information indicating that the Brenner Facility possibly housed and fed a number of animals requiring coverage under a NPDES CAFO permit. (Ex A., 08/19/2016 Letter.) EGLE asked Defendant to either (1) submit a complete NPDES application for a CAFO permit by November 1, 2016, (2) submit a No Potential to Discharge request by October 1, 2026, or (3) submit proof that the farm did not meet the minimum size requirement for a CAFO permit. (*Id.*)

114. Defendant did not make any significant improvements or provide a written response to the August 19, 2016 letter.

115. On April 12, 2017, and October 21, 2019, WRD conducted inspections at the Facility to determine if it met the requirements for NPDES CAFO permit coverage and to determine whether Defendant was complying with Part 31 and associated Rules.

116. During the April 12, 2017 inspection, EGLE staff observed an unlawful discharge of waste milk to the ground, multiple locations with potential to discharge to conveyance to waters of the state, and burnt vegetation between the bunker silo

and a drainage swale north of the bunker, indicating that excess nutrients were being discharged into the ground from the bunker silo.

117. During the October 21, 2019 inspection, EGLE staff observed an unlawful discharge of production area waste originating in the silage feed area, flowing into a catch basin with an outlet draining into a swale that flows to a tributary of the Rabbit River.

118. Consumers Energy Company owns a utility corridor, identified as Parcel ID 16-010-020-00, through which the aforementioned unlawful discharge ran.

119. On October 25, 2019, WRD issued Violation Notice (VN) No. VN-010114 (Ex B, 10/25/2019 Violation Notice) to Defendant, notifying her that she was violating the Water Resources Protection Act and that, to date, WRD had not received a written response to the letter dated August 19, 2016. WRD copied Consumers Energy Company on this Violation Notice.

120. Defendant did not make significant improvements in response to VN-010114 or formally respond to the Violation Notice.

121. On February 6, 2020, WRD issued a follow-up letter to both Defendant, and Consumers Energy Company, again requesting that Defendant and Consumers Energy Company provide a response to VN-010114. (Ex C, 02/06/2020 Follow-up letter.)

122. Despite the follow-up letter, Defendant still did not make any significant improvements in response to VN-010114 or formally respond to the Violation Notice.

123. On November 24, 2020, WRD issued an Enforcement Notice (EN) to notify Ms. Brenner that the unresolved, ongoing violations detailed in VN-010114 required formal resolution through entry of a legally enforceable document. (Ex D, 11/24/2020 Enforcement Notice.) WRD sent another letter to Consumers Energy on the same date, asking for a response. Consumers responded in writing, Ms. Brenner did not.

124. On several occasions between November 2020 and November 2022, Defendant communicated via telephone with EGLE staff about VN-010114 but never formally responded to the Violation Notice or Enforcement Notice in writing as requested by WRD.

125. Between November 2020 and November 2022, Defendant did not cease its unlawful waste discharges in response to VN-010114 or formally respond to the Violation Notice.

Escalated enforcement of ongoing violations

126. On November 18, 2022, undersigned counsel issued a letter to Defendant informing her that the still-unresolved, ongoing violations detailed in VN-010114 had been referred to the Michigan Department of Attorney General (DAG) for enforcement action. (Ex E, 11/18/2022 Letter.) This letter also requested that Defendant agree to schedule a site inspection by EGLE. To the best of

undersigned counsel's knowledge and information, Defendant was not represented by counsel as of November 18, 2022.

127. On January 5, 2023, WRD and DAG staff conducted a site inspection at the Brenner Facility. Ms. Brenner, Ms. Brenner's attorney, and Ms. Brenner's agricultural consultant were present for the inspection. The purpose of the inspection was to evaluate the facility for compliance regarding the violations of Part 31 previously noticed in VN-010114.

128. During the January 5, 2023 inspection, EGLE staff learned that Defendant had reduced the number of cattle at the Brenner Facility to approximately 650, meaning that the Brenner Facility would no longer be regulated as a large CAFO within the meaning of Mich Admin Code, R 323.2102(g)–(i).

129. During the January 5, 2023 inspection, EGLE staff observed discharges of waste originating in the production and silage feed areas and flowing into a catch basin with an outlet that drains into a swale that flows to a tributary of the Rabbit River, and uncontained waste on the ground discharging into groundwater.

130. To assess the waste discharges observed at the January 5, 2023 inspection, EGLE staff collected water samples from the outlet draining into the swale that flows to the tributary of the Rabbit River.

131. Laboratory results from the Water Resources Division's sampling conducted on January 5, 2023, indicated that water from the outlet described in the preceding paragraph had a biochemical oxygen demand of 7,010 mg/L. (Ex F,

01/12/2024 Laboratory Report). For comparison, the standard biochemical oxygen demand of raw municipal sewage, before treatment, is approximately 500 mg/L.

132. The laboratory results from Water Resources Division's sampling conducted on January 5, 2023, also returned extreme readings for chlorides, conductivity, total suspended solids, turbidity, ammonia, Kjeldahl Nitrogen-N, nitrate/nitrite-N, total organic carbon, total phosphorus, calcium, copper, magnesium, zinc, and calculated hardness. The results also indicated a pH of 4.5, meaning that the water being discharged was acidic. (Ex G, 01/25/2023 Laboratory Reports.)

133. On February 23, 2023, WRD issued Second Violation Notice (SVN) No. SVN-01316 to Ms. Brenner detailing the findings of the January 5, 2023 inspection. (Ex H, 02/23/2023 Second Violation Notice.) WRD identified continuing violations of Part 31 and provided the water quality sample results for the unauthorized discharge from the facility's production area. SVN-01316 requested that Ms. Brenner provide a response with corrective actions to WRD.

134. In an April 14, 2023 letter, Defendant, through counsel, provided a response to SVN-01316 describing several alleged corrective actions taken by Defendant before and after the January 5, 2023 inspection. (Ex I, 04/14/2023 Letter from Defendant's counsel.)

135. The aforementioned alleged corrective actions taken by Defendant were insufficient and undertaken without review or approval by EGLE staff.

136. EGLE began in earnest to pursue negotiation of an administrative consent order (ACO) requiring Defendant to take certain corrective actions and apply for a CAFO permit.

137. Defendant and her counsel met with EGLE and undersigned counsel on June 5, 2023, in accordance with MCL 324.1511(1)(a), and discussed potentially resolving the violations listed and described in the violation notices issued on October 25, 2019 and February 3, 2023. During routine monitoring of the watershed of a tributary to Pickle Drain near the Brenner Facility between September 6 and October 6, 2023, EGLE observed *E. coli* at concentrations between 4,387 and 5,351 *E. coli* per 100 mL. (Ex J, 10/25/2023 Pickle Drain Watershed Map with 30-day *E. coli* Mean Measurements.)

138. Pickle Drain is designated for the following uses: (a) agriculture; (b) navigation; (c) industrial water supply; (d) warmwater fishery; (e) other indigenous aquatic life and wildlife; (f) partial body contact recreation; (g) fish consumption; and (h) total body contact recreation from May 1 through October 31. Michigan's Water Quality Standards mandate that surface waters rated for total body contact recreation shall not contain more than 300 *E. coli* per 100 mL.

139. At the time of testing in September-October of 2023, Pickle Drain was designated for total body contact and contained over ten times the acceptable concentration of *E. coli* bacteria.

140. Based on the proximity of the aforementioned Pickle Drain tributary watershed to the Brenner Facility, EGLE determined that the Brenner Facility was

the most likely source of the elevated *E. coli* levels observed. This data further supports the enforcement notices and violation notices EGLE previously sent to Defendant.

141. On October 23, 2023, EGLE, through undersigned counsel, informed Brenner's counsel of the existence of the additional *E. coli* data, and that, at the time of sampling, the data showed that the Brenner Facility continued to be a source of pollution.

142. On December 18, 2023, Defendant and her counsel again met with EGLE and undersigned counsel in accordance with MCL 324.1511(1)(a) and discussed potentially resolving the violations listed and described in the violation notices issued on October 25, 2019 and February 3, 2023.

143. While pursuing settlement negotiations, the parties executed a series of tolling agreements running through March 1, 2024.

144. To the present date, attempts to resolve the alleged violations have been unsuccessful, and unlawful discharges have continued at the Brenner Facility.

145. Defendant is responsible for continuing unlawful discharges of CAFO waste into waters of the state since approximately April 12, 2017.

146. As of February 29, 2024, Defendant has failed to fully resolve the alleged violations, notably failing to apply for an NPDES permit.

COUNT I – VIOLATION OF PART 31 – FAILURE TO PERMIT CAFO

147. Paragraphs 1 through 146 are hereby realleged and incorporated by reference.

148. Under Mich Admin Code, R 323.2196(1), CAFOs are point sources that require NPDES permits.

149. At all times since approximately April 12, 2017, Defendant has maintained the Brenner Facility as either a large or medium CAFO without applying for coverage under an NPDES permit.

150. The Brenner Facility's failure to obtain a permit is a continuous violation of Mich Admin Code, R 323.2196(1).

151. Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of rules promulgated under Part 31. MCL 324.3115(1).

152. In addition to imposing civil fines, this Court may order Defendant to comply with Part 31 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT II—VIOLATIONS OF PART 31 – UNLAWFUL DISCHARGES TO SURFACE WATERS

153. Paragraphs 1 through 152 are hereby realleged and incorporated by reference.

154. Under Part 31, a person may not directly or indirectly discharge substances into the waters of the state that are or may be injurious to, among other

things, public health, safety, or welfare, and recreational or other uses of the receiving waters. MCL 324.3109(1)(a) and (b).

155. Part 31 prohibits discharges to waters of this state, including both groundwater and surface waters, without a valid permit. MCL 324.3112(1).

156. Defendant has caused serious, continuing unpermitted discharges to waters of the state, including discharges from the Brenner Facility's production area and silage pads, and from its improperly engineered waste storage structure(s) to waters of the state.

157. Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of Part 31. MCL 324.3115(1).

158. Defendant's unpermitted discharges date back to April 12, 2017, when EGLE confirmed the existence of unlawful discharges during an inspection of the Brenner Facility.

159. To date, EGLE has incurred at least \$7,958.79 in enforcement costs in this matter. These costs continue to accrue.

160. This Court may order Defendant to comply with Part 31 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT III—VIOLATIONS OF PART 31 – INJURIOUS DISCHARGES TO GROUNDWATER

161. Paragraphs 1 through 160 are hereby realleged and incorporated by reference.

162. Under Part 31, a person may not directly or indirectly discharge substances into the waters of the state that are or may be injurious to, among other things, public health, safety, or welfare, and recreational or other uses of the receiving waters. MCL 324.3109(1)(a) and (b).

163. Part 31 prohibits discharges to waters of this state, including both groundwater and surface waters, without a valid permit. MCL 324.3112(1).

164. MCL 324.3112(1) prohibits any person from “discharg[ing] any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.”

165. Rule 2205 of the Part 22 Rules also prohibits all unauthorized, injurious discharges to groundwater. Mich Admin Code, R 323.2205.

166. Defendant has caused serious, continuing unpermitted discharges to waters of the state, including discharges from the Brenner Facility’s production area and silage pads, and from its improperly engineered waste storage structure(s) to waters of the state.

167. Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of Part 31. MCL 324.3115(1).

168. Defendant’s unpermitted discharges date back to April 12, 2017, when EGLE confirmed the existence of unlawful discharges during an inspection of the Brenner Facility.

169. To date, EGLE has incurred at least \$7,958.79 in enforcement costs in this matter. These costs continue to accrue.

170. This Court may order Defendant to comply with Part 31 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT IV – VIOLATIONS OF PART 31 – CAUSING OR CONTRIBUTING TO WATER QUALITY STANDARD EXCEEDANCE

171. Paragraphs 1 through 170 are hereby realleged and incorporated by reference.

172. Part 4 Water Quality Standards set thresholds and limits on toxins, dissolved oxygen, bacteria, and other criteria needed to maintain aquatic life and healthy safe water quality. Mich Admin Code, R 323.1041 *et seq.*

173. MCL 324.3112(1) prohibits any person from “discharg[ing] any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.”

174. Rule 2205 of the Part 22 Rules also prohibits all unauthorized, injurious discharges to groundwater. Mich Admin Code, R 323.2205.

175. Defendant has caused serious, continuing discharges of CAFO waste to permeable ground around the Brenner Facility’s production area and silage pads, and into the groundwater aquifers immediately below the production area.

176. Defendant’s discharges to surface water have directly contributed to violation of Part 4’s water quality standards for *E. coli* bacteria.

177. Under Part 31, Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of MCL 324.3112(1) and Mich Admin Code, R 323.2205. MCL 324.3115(1).

178. Defendant's unpermitted discharges date back to April 12, 2017, when EGLE confirmed the existence of unlawful discharges during an inspection of the Brenner Facility.

179. To date, EGLE has incurred at least \$7,958.79 in enforcement costs in this matter.

180. Under Part 31, this Court may order Defendant to comply with MCL 324.3112(1) and Mich Admin Code, R 323.2205 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT V: PUBLIC NUISANCE

181. Paragraphs 1 through 180 are hereby realleged and incorporated by reference.

182. Under the Water Resources Protection Act, violations of MCL 324.3109 constitute evidence of a prima facie public nuisance that the Attorney General may abate. MCL 324.3109(6).

183. Defendant has caused serious, continuing discharges of CAFO waste through overland flow and drainage ditches that eventually become a tributary of Pickle Drain, and ultimately the connecting Pickle Drain, Rabbit River, Kalamazoo River, and Lake Michigan.

184. Defendant discharges waste and contaminated wastewater to permeable ground around the Brenner Facility's production area and silage pads and into the groundwater aquifers immediately below the production area.

185. Each of Defendant's unlawful discharges are prima facie evidence that the Brenner Facility is a public nuisance.

186. At common law, this Court may abate a public nuisance.

DEMAND FOR JUDGMENT

Plaintiff respectfully requests that this Honorable Court grant the following relief:

- A. Find that Defendant is in violation of Part 31 of the NREPA and the associated rules;
- B. Order Defendant to obtain and comply with an NPDES permit;
- C. Find that Defendant is not entitled to the groundwater permit exemption under Mich Admin Code, R 323.2210(f) because their discharge does not meet the requirements of Mich Admin Code, R 323.2204;
- D. Order Defendant to abate the public nuisance by enjoining Defendant from unlawfully discharging waste into waters of the state;
- E. Order Defendant to pay civil fines of not less than \$2,500 and no more than \$25,000 per day of violation of Part 31 and associated rules;
- F. Order Defendant to pay enforcement costs not less than \$7,958.79;
- G. Order Defendant to pay reasonable attorney fees and costs; and
- H. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Matthew J. Meyerhuber
Matthew Meyerhuber (P84721)
Elizabeth Morrisseau (P81899)
Assistant Attorneys General
Attorneys for Plaintiff
Michigan Department of
Attorney General
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
MeyerhuberM1@michigan.gov
MorrisseauE@michigan.gov

Date: February 27, 2024

LF: Brenner, Deborah (EGLE)/AG #2022-0358571-A/Complaint 2024-02-27

Approved, SCAO

Original - Court
1st copy - Defendant

JUDGE WANDA M. STOKES

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 30TH INGHAM JUDICIAL CIRCUIT COUNTY	SUMMONS	CASE NO. 2024- <i>142</i> -CE
---	----------------	---

Court address: 313 W. Kalamazoo Street, 1st Floor, Lansing, Michigan 48933
 Court telephone no.: 517-483-6500

Plaintiff's name, address, and telephone no.
 Michigan Department of Environment, Great Lakes, and Energy
 525 W. Allegan Street
 Lansing, MI 48909
 (517) 284-6700

v

Defendant's name, address, and telephone no.
 Deborah Brenner
 d/b/a J&D Brenner Farms
 2891 132nd Avenue
 Hopkins, MI 49328
 (616) 293-4104

Plaintiff's attorney, bar no., address, and telephone no.
 Matthew Meyerhuber (P84721); and Elizabeth Morrisseau (P81899); Assistant Attorneys General
 ENRA - P.O.Box 30755
 Lansing, MI 48909
 (517) 335-7664

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where

it was given case number _____ and assigned to Judge _____

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date FEB 28 2024	Expiration date* MAY 29 2024	Court clerk BRANDI BUCK <i>[Signature]</i>
----------------------------------	--	--

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

I served personally by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____
Date and time

Signature _____ on behalf of _____

Name (type or print) _____

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY,

Plaintiff,

v

DEBORAH BRENNER d/b/a J&D BRENNER
FARMS,

Defendant.

No. 24- 142 -CE

HON.

JUDGE WANDA M. STOKES

Matthew Meyerhuber (P84721)
Elizabeth Morrissette (P81899)
Assistant Attorneys General
Attorneys for Plaintiff
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664

There is no other pending or resolved civil action arising
out of the transaction or occurrence
alleged in the complaint.

COMPLAINT

Plaintiff, the Michigan Department of Environment, Great Lakes, and
Energy (EGLE), by and through its attorneys, Matthew Meyerhuber and Elizabeth
Morrissette, Assistant Attorneys General, states as follows:

NATURE OF THE CASE

1. This is a civil action for injunctive relief to require Defendant Deborah Brenner to comply with the Water Resources Protection Act, Part 31 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq.* (WRPA), and rules promulgated thereunder, specifically Mich Admin Code, R 323.2101 *et seq.* (Wastewater Rules), Mich Admin Code, R 323.1041 *et seq.* (Water Quality Standards), and Mich Admin Code, R 323.2201 *et seq.* (Groundwater Quality Rules).

2. Defendant's failure to comply with the Water Resources Protection Act and related rules, as described in this Complaint, threatens to impair the natural resources of Allegan County by overloading the local watershed with nutrients and introducing bacteria and other pathogens from animal waste into the waters of the state.

3. The scope of the impairment is significant because Defendant's discharges impact a tributary of Pickle Drain, the connecting Pickle Drain, Rabbit River, Kalamazoo River, and ultimately Lake Michigan.

4. Relatedly, Defendant also threatens Michigan's groundwater resources by discharging harmful contaminants into groundwater, possibly into underground drinking water aquifers.

5. Further, Defendant's longstanding, ongoing failure to obtain and comply with a wastewater discharge permit threatens the integrity of the EGLE permitting program because Defendant has gained an unfair financial advantage relative to competing CAFOs that follow permitting requirements.

6. In addition to injunctive relief, EGLE also seeks civil fines, reasonable attorney fees, and costs.

7. EGLE brings this action under the Water Resources Protection Act, the administrative rules promulgated thereunder, and the common law of public nuisance.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under Section 3115(1) of the NREPA, MCL 324.3115(1), and under Section 605 of the Revised Judicature Act (RJA), MCL 600.605.

9. This Court has personal jurisdiction over Defendant Deborah Brenner under Section 701 of the Revised Judicature Act, MCL 600.701.

10. Venue in this Court is proper under Parts 31 of the NREPA. MCL 324.3115(1).

PARTIES

11. EGLE is the state department mandated to protect the natural resources of the state from pollution, impairment, and destruction. MCL 324.301, MCL 324.501, and Executive Order 2019-02. By Executive Order 2019-06, the former Michigan Department of Environmental Quality (DEQ) was renamed as EGLE. *Id.* To avoid confusion, this Complaint only refers to EGLE, even when describing actions taken when the agency was still named DEQ.

12. In particular, EGLE is mandated to “protect and conserve the water resources of the state[.]” MCL 324.3103.

13. Defendant Deborah Brenner is an individual residing within the state of Michigan, doing business as (d/b/a) J&D Brenner Farms.

14. Deborah Brenner is a “person” within the meaning of MCL 324.301(h).

STATUTORY AND REGULATORY BACKGROUND

Part 31 of the NREPA, the Water Resources Protection Act

15. Michigan enacted the Water Resources Protection Act to protect and conserve the water resources of the state and to prevent and control pollution of surface and underground waters of the state and the Great Lakes. MCL 324.3103.

16. Section 3109(1) of NREPA, MCL 324.3109(1), states:

(1) 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.

17. Under the Water Resources Protection Act, a person shall not discharge any waste or waste effluent into the waters of the state unless the person is in possession of a valid permit from EGLE. MCL 324.3112(1).

18. “Waters of the state,” as defined by the Water Resources Protection Act, include all “groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state.” MCL 324.3101(aa).

19. “Waste or waste effluent” includes water that contains polluting substances such as chemicals and agricultural waste such as manure, milkhouse waste, and silage leachate. Mich Admin Code, R 323.2104(aa)(ii), (viii), (xvi).

20. Congress created the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 USC 1251(a).

21. The Clean Water Act establishes a system of cooperative federalism that “recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.” 33 USC 1251(b).

22. A cornerstone of the Clean Water Act is the National Pollutant Discharge Elimination System (NPDES) program, which is a point source discharge permitting program that controls and limits the discharge of pollutants from point sources into surface waters. See 33 USC 1342(a)(1). The Clean Water Act

establishes requirements for NPDES permits, including that they contain discharge limits necessary to meet state and federal water quality standards. (*Id.*)

23. As is relevant here, “concentrated animal feeding operations” fall within the definition of a point source, under the Clean Water Act, 33 USC 1362(14), and, to operate, must be covered under, and comply with the terms of, an NPDES permit. 33 USC 1311; see also 33 USC 1362.

24. Under the Clean Water Act, the United States Environmental Protection Agency (EPA) can approve state NPDES permitting programs for states that have sufficient standards and resources. 33 USC 1342(b); *Michigan Farm Bureau v Dep’t of Env’tl Qual*, 292 Mich App 106, 110 (2011).

25. In 1973, the EPA authorized Michigan to implement the NPDES permitting program in lieu of the EPA. *Mich Farm Bureau*, 292 Mich App at 110.

26. Thus, permits issued under the Water Resources Protection Act are state permits that meet minimum federal NPDES permitting requirements so that EGLE can issue NPDES permits instead of the EPA.

Concentrated Animal Feeding Operations - CAFOs

27. Concentrated animal feeding operations (CAFOs) are “large-scale industrial operations that raise extraordinary numbers of livestock.” *Mich Farm Bureau*, 292 Mich App at 111 (internal citation omitted).

28. Housing that many animals in confinement “generate[s] large amounts of animal waste and pose[s] known risks to Michigan’s water resources.” *Mich Farm Bureau*, 292 Mich App at 144.

29. Among other things, the pollution associated with housing that many animals in a confined area includes manure and other animal waste that contains nutrients, such as nitrogen and phosphorous, and pathogens, such as *Escherichia coli* bacteria (*E. coli*), among other harmful contaminants. *NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for CAFOs (Proposed Rule)*, 66 FR 2960, 2976–79 (Jan 12, 2001).

30. Although that pollution includes both CAFO process wastewater, and production area waste, defined *infra*, this Complaint refers to them collectively, and in the alternative, as CAFO waste.

31. Michigan has cold winters that do not support the growth of vegetation year-round, so most animal feeding operations confine and feed or maintain animals more than 45 days each year. Facilities “where the animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and [where] crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility” are regulated as Animal Feeding Operations (AFOs). Mich Admin Code, R 323.2102(b). Certain types of AFOs are regulated as CAFOs when they satisfy certain conditions such as animal numbers or types of discharges. Mich Admin Code, R 323.2103(m)

32. Specific to this Complaint, large CAFOs are dairy operations that stable or confine more than 700 mature dairy cows, while medium CAFOs are dairy operation that stable or confine 200 to 699 mature dairy cows and discharge

pollutants to waters of the state. Mich Admin Code, R 323.2103(g)–(i); Mich Admin Code, R 323.2103(m).

33. CAFOs are broken down into two areas of operation: (1) the production area, where animals are housed, fed, and milked, and their waste is contained; and (2) the land application area, where the waste produced at the production area is spread for disposal.

34. Land application of CAFO waste occurs during times of the year when there are no growing crops to uptake the fertilizing components.

35. When improperly performed, land application of CAFO waste threatens waters of the state with potential discharges of nitrogen, phosphorous, bacteria, and other pollutants and pathogens.

36. At the production area, clean storm water from precipitation and snow melt can become contaminated if it comes in contact with CAFO waste due to poor production area housekeeping and poor production area design and construction; uncaptured storm water can result in polluted discharges to waters of the state.

37. Liquid waste storage structures, also part of the production area, are in-ground, engineered and designed, lined structures that capture and store tens of millions of gallons of CAFO waste, including manure, animal bedding, milkhouse waste, silage leachate runoff, mortality leachate, and other contaminated production area runoff.

38. A dairy CAFO with 650 mature dairy cows, and no other cattle—such as the Brenner Facility—generates approximately 6-9 million gallons of CAFO

waste annually, requiring a minimum storage capacity of approximately 3-5 million gallons.

39. The United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), developed engineering standards for these structures and some CAFOs seek grant funding to construct these liquid waste storage structures to meet the standards.

40. Typically, EGLE includes those industry standards in NPDES permits, to meet Michigan's requirements that all CAFO permits "ensure adequate storage of production area waste and CAFO process wastewater[.]" Mich Admin Code, R 323.5196(5)(a)(i).

41. If the waste storage structures are not designed and sized appropriately, they may overflow or leak, resulting in discharges to groundwater or surface water.

42. Likewise, if the waste storage structures are not properly maintained, they may not perform as engineered, resulting in discharges to groundwater or surface water.

43. CAFO waste can reach groundwater through improperly designed and engineered waste storage structures. *Food & Water Watch v EPA*, 20 F4th 506, 511 (CA 9, 2021).

44. CAFO waste from storage structures can also reach surface waters by traveling through groundwater after being improperly discharged to the ground.

(NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for CAFOs (Proposed Rule), 66 FR at 2979–80.)

45. Another way CAFO waste can reach surface waters is by traveling through tiles, which are mechanisms comprised of perforated piping installed beneath production areas and agricultural fields that artificially drain water off the land.

46. When CAFO waste reaches surface waters, nutrients, such as nitrogen and phosphorous, can harm water quality.

47. Additionally, elevated amounts of these nutrients can result in fish kills, increase stress in aquatic ecosystems, cause algae blooms, and contaminate shellfish, fish, and other animals that eat them. (*Id.* at 2981.)

48. Before reaching surface waters, excess amounts of nitrogen and phosphorous can harm soil quality and plants. (*Id.*)

49. High levels of nitrogen (particularly nitrate and nitrite) in drinking water can cause various degrees of illness and birth defects in humans, pets, and livestock. (*Id.* at 2982–83.)

50. Groundwater with high nitrogen levels may not be suitable for drinking water (for human and other animal purposes). (*Id.*)

51. Further, high levels of nitrogen in groundwater can significantly limit the value and possible uses of the land, including for domestic, commercial, industrial, agricultural, and recreational purposes.

52. Pathogens, such as *E. coli*, in surface waters can contaminate shellfish and fish, in turn harming people and other animals who consume them.

53. Swimming and fishing, in surface waters containing pathogens such as *E. coli* can result in gastrointestinal illness from contact.

54. Consuming or otherwise using groundwater contaminated with pathogens, such as *E. coli*, can make humans, pets, and livestock sick. (*Id.*)

55. Further, the presence of pathogens, such as *E. coli*, in groundwater can significantly limit the value and possible uses of the land, including for domestic, commercial, industrial, agricultural, and recreational purposes.

56. Low oxygen or a lack of oxygen in rivers, streams, and groundwater can also be injurious to plant and animal life.

57. Low oxygen, resulting from discharges of waste with high biochemical oxygen demand, among other things, can also result in toxic heavy metals being released to groundwater, and ultimately surface water.

58. Ammonia, chlorides, and copper are all toxic substances.

59. A total dissolved solids value is a measure of all organic and inorganic material dissolved in surface water, including salts such as chlorides.

60. Surface water with high total dissolved solids can disrupt osmoregulation across cellular membranes in aquatic organisms, causing significant damage and even death.

61. Surface water with high total dissolved solids can also corrode metal pipes and machinery.

62. High total dissolved solids can also render affected water unsuitable for drinking.

CAFO Regulation in Michigan

63. EGLE regulates CAFOs primarily to prevent the discharge of pollutants into the waters of the state. Mich Admin Code, R 323.2196; see also *Mich Farm Bureau v DEQ*, 292 Mich App at 137 (discussing MCL 324.3106.)

64. EGLE issues NPDES permits pursuant to the Wastewater Rules, found at Mich Admin Code, R 323.2101 *et seq.*

65. Although the Wastewater Rules incorporate by reference federal regulations developed by the EPA, “Michigan runs its own [CAFO] program under an enabling statute that is clearly more expansive than the federal Clean Water Act.” *Mich Farm Bureau*, 292 Mich App at 113,123.

66. The Wastewater Rules incorporate baseline federal regulations specific to CAFOs that explicitly recognize state authority and discretion to include more stringent requirements to meet, among other things, state water quality standards. Mich Admin Code, R 323.2189(2)(m) (incorporating 40 CFR 412 (2003); Mich Admin Code R 323.2189(2)(h) (incorporating 40 CFR 122.44 (2005)).

67. Those state water quality standards are duly promulgated rules, located at Mich Admin Code, R 323.1041 *et seq.* (Water Quality Standards).

68. The section of the Wastewater Rules specific to CAFOs contains the following definitions relevant to this Complaint:

a. “Animal feeding operation (AFO)” means a lot or facility . . . where the animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” Mich Admin Code, R 323.2102(b);

b. “CAFO process wastewater” means water directly or indirectly used in the operation of a CAFO for any of the following: (i) Spillage or overflow from animal or poultry watering systems; (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; (iii) Direct contact swimming, washing, or spray cooling of animals; (iv) Dust control; (v) Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding. Mich Admin Code, R 323.2102(j);

c. “Concentrated animal feeding operation (CAFO)” means an AFO that is defined as a large CAFO... Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.” Mich Admin Code, R 323.2102(i);

d. “Large CAFO” means an AFO that stables or confines as many as or more than . . . 700 mature dairy cows, whether milked or dry. . . Mich Admin Code, R 323.2103(g)–(i);

e. “Medium CAFO” means an AFO that “[h]as been designated by the department as a CAFO under R 323.2196(3),” or where “[p]ollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance,” or where “[p]ollutants are discharged directly into waters of the state from the production area which originate outside of and pass over, across, or through the facility or that otherwise come into direct contact with the animals confined in the operation,” and which includes. . . 200 to 699 mature dairy cows, whether milked or dry. . . Mich Admin Code, R 323.2103(m);

f. “Land application area” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, or subject to an access agreement to which production area waste or CAFO process wastewater is or may be applied. Land application area includes land not owned by the AFO owner or operator but the AFO owner or

operator has control of the land application of production area waste or CAFO process wastewater. Mich Admin Code, R 323.2103(f);

g. "Production area" means that part of an AFO that includes animal confinement area, manure storage area, raw materials storage area, and waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. Mich Admin Code, R 323.2104(d); and

h. "Production area waste" means manure and any waste from the production area and any precipitation, for example, rain or snow, which comes into contact with, or is contaminated by, manure or any of the components listed in the definition for "production area." Production area waste does not include water from land application areas. Mich Admin Code, R 323.2104(e).

69. Michigan requires all owners or operators of medium CAFOs to obtain an individual NPDES permit, a certificate of coverage under a general NPDES permit, or a determination from EGLE of no potential to discharge. Mich Admin Code, R 323.2196(1)(b), (4).

70. Among other things, NPDES permits issued to CAFOs include requirements intended to prevent surface runoff of CAFO waste from production areas and land application areas, as well as to prevent groundwater infiltration from improperly engineered or maintained waste storage structures. Mich Admin Code, R 323.2196(5)(a).

71. NPDES permits issued to CAFOs require them to collect and store all CAFO waste generated at production areas, including all precipitation contacting (and becoming contaminated by) CAFO waste.

72. CAFOs must collect and store that CAFO waste, including contaminated stormwater, in “adequate” waste storage structures. Mich Admin Code, R 323.2137(5)(a)(i).

73. Adequate waste storage structures have been engineered in accordance with duly promulgated regulations specific to wastewater lagoons, Mich Admin Code, R 323.2237, with the less stringent NRCS standard, or a demonstrated equivalent.

74. Adequate waste storage is not just a matter of engineering; but also depends on the amount of CAFO waste produced annually as well as regional rainfall. As a result, all CAFOs must have the capacity to store at least six months’ worth of CAFO waste, plus additional storage to provide one foot of freeboard, plus emergency storage to ensure that the waste storage structures will not overflow from precipitation expected during regional 25-year, 24-hour storm events.

75. To minimize the risk of discharges to surface water from land application of CAFO waste to frozen or snow-covered ground, each permitted CAFO must demonstrate its waste storage capacity between November 1 and December 1 of each year.

76. CAFOs must submit documentation prepared by licensed professional engineers confirming that their waste storage structures meet the standards necessary to ensure adequate storage.

77. Further, under the NPDES permits issued to CAFOs, CAFO owners must ensure that all waste storage structures are operated and maintained appropriately to prevent any damage to their structural integrity, as such damage could result in discharges to groundwater and ultimately surface waters.

78. CAFO NPDES permits further require weekly inspections of waste storage structures.

Michigan Surface Water Quality Standards

79. The Water Quality Standards promulgated under Part 31, Mich Admin Code, R 323.1041 *et seq.*, limit the amount of nutrients that may be present in waters of the state. Mich Admin Code, R 323.1060.

80. Specifically, “at no time shall the surface waters of the state protected for total body contact recreation contain more than a maximum of 300 E. coli per 100 milliliters (mL) of water.” Mich Admin Code, R 323.1062(1).

Groundwater Discharge, Part 22 Rules

81. CAFOs, like other industrial facilities, are prohibited from discharging to waters of the state, except as authorized under a permit. MCL 324.3109(1).

82. Groundwater, like surface water, is a water of the state. MCL 324.3101(aa).

83. Discharges of waste to soil can migrate to the groundwater and can then travel through the groundwater to ultimately discharge to surface water.

84. The Part 22 administrative rules for groundwater quality promulgated under Part 31, Mich Admin Code, R 323.2201, *et seq.* (Groundwater Quality Rules), among other things, set certain requirements for discharges to groundwater. *See* Mich Admin Code, R 323.2204.

85. Generally speaking, CAFOs that meet specifically defined discharge requirements are not required to obtain permits to discharge to groundwater, unless they house more than 3,500 mature dairy cattle, or 5,000 of any other type of cattle. Mich Admin Code, R 323.2204, R 323.2210(f).

86. However, a CAFO with fewer than 3,500 mature dairy cattle that discharges to groundwater in a manner that is, or is likely to be, injurious to groundwater must obtain a groundwater discharge permit. Mich Admin Code, R 323.2204(2)(a).

87. The Groundwater Quality Rules define “injurious” as “any damage to or change in the condition of background groundwater quality that causes or may cause groundwater to no longer be fit for 1 or more protected uses.” Mich Admin Code, R 323.2201(s).

88. The Groundwater Quality Rules also prohibit all unauthorized, injurious discharges. Mich Admin Code, R 323.2205.

89. Relatedly, pursuant to Part 201, Environmental Remediation, of the NREPA, MCL 324.20101, *et seq.* (Part 201), EGLE has established groundwater

cleanup criteria for hazardous substances within the Cleanup Criteria Requirements for Response Activity, Mich Admin Code, R 299.1–299.50 (Cleanup Criteria Rules).

90. Levels of hazardous substances above the cleanup criteria are “injurious” to groundwater, within the meaning of Mich Admin Code, R 323.2201(s).

91. The Cleanup Criteria Rules establish limits for, among other things, nutrients like phosphorous and nitrite, and heavy metals like arsenic, manganese, and iron. See, e.g., Mich Admin Code, R 299.44, 299.49(EE).

92. Those limits are, in part, based on how the groundwater can be safely used, and parameters like pH and water hardness of the receiving groundwater. Mich Admin Code, R 299.49(A), (G), (X).

93. Nutrients, including phosphorous and nitrite, can contaminate groundwater above applicable limits in the Cleanup Criteria Rules.

94. Wastewater exhibiting high biochemical oxygen demand can mobilize metals, including but not limited to iron, manganese, and arsenic, above applicable limits in the Cleanup Criteria Rules.

GENERAL ALLEGATIONS

95. Currently, Defendant owns and manages animal feeding operations of approximately 650 mature dairy cattle, which includes, without limitation, collecting and spreading the waste produced from the animal feeding operations in Allegan County, Michigan.

96. Defendant owns and manages the animals, animal feeding operations, waste collection and spreading equipment, waste management and disposal, and labor at 2891 132nd Avenue, Hopkins, Allegan County, Michigan 49328 (the Brenner Facility.)

97. Since 2016 at the latest, Defendant has continuously confined and fed or maintained more than 299 mature dairy cows at the Brenner Facility, for at least a portion of each day, for 45 days in every 12-month period.

98. The production area at the Brenner Facility spans approximately 8 acres.

99. The Brenner Facility currently confines approximately 650 mature dairy cattle in barns.

100. The Brenner Facility has two liquid waste storage structures whose storage capacity is currently unknown. Defendant has not provided documentation of the design of the liquid waste storage structures and has claimed no documentation exists.

101. The Brenner Facility is currently a “medium CAFO” within the meaning of Mich Admin Code, R 323.2103(g).

102. Improper management of the CAFO waste produced at the Brenner Facility threatens nearby waters of the state with serious environmental and public health harms such as contaminated drinking water, surface water unsafe for recreation, and excess nutrients that harm aquatic life and contribute to algae blooms.

103. The Rabbit River is a water of the state, within the meaning of MCL 324.3101(aa).

104. Pickle Drain is a water of the state, within the meaning of MCL 324.3101(aa).

105. The unnamed tributary of Pickle Drain is a water of the state, within the meaning of MCL 324.3101(aa).

106. The Brenner Facility has approximately 2 acres of silage storage, which produces a significant amount of silage leachate, and which Defendant fails to collect and prevent from discharging.

107. Silage is a foliage plant product that is processed and partially fermented and must be stored at the appropriate moisture level and airtight to allow it to further ferment.

108. Silage, as described in the preceding paragraph, is used as cattle feed.

109. Silage, through the fermenting process, produces leachate, which is high in nutrients and acidic.

110. Silage leachate also exhibits high biochemical oxygen demand, which means that it consumes readily available oxygen in the natural environment.

111. For comparison, the standard biochemical oxygen demand of raw municipal sewage is approximately 500 milligrams per liter (mg/L), whereas the standard biochemical oxygen demand of silage leachate ranges from 20,000 mg/L to 80,000 mg/L.

**Defendant's longstanding refusal to permit operations, and continued
unlawful discharges to waters of the state**

112. In 2016, after an investigation in response to a citizen inquiry and review of a publication from the milk co-operative affiliated with the Brenner Facility, EGLE concluded that the Brenner Facility housed and fed a number of animals requiring coverage under a NPDES CAFO permit as a large CAFO.

113. On August 19, 2016, EGLE's Water Resources Division (WRD) issued a letter to Defendant explaining that EGLE had obtained information indicating that the Brenner Facility possibly housed and fed a number of animals requiring coverage under a NPDES CAFO permit. (Ex A., 08/19/2016 Letter.) EGLE asked Defendant to either (1) submit a complete NPDES application for a CAFO permit by November 1, 2016, (2) submit a No Potential to Discharge request by October 1, 2026, or (3) submit proof that the farm did not meet the minimum size requirement for a CAFO permit. (*Id.*)

114. Defendant did not make any significant improvements or provide a written response to the August 19, 2016 letter.

115. On April 12, 2017, and October 21, 2019, WRD conducted inspections at the Facility to determine if it met the requirements for NPDES CAFO permit coverage and to determine whether Defendant was complying with Part 31 and associated Rules.

116. During the April 12, 2017 inspection, EGLE staff observed an unlawful discharge of waste milk to the ground, multiple locations with potential to discharge to conveyance to waters of the state, and burnt vegetation between the bunker silo

and a drainage swale north of the bunker, indicating that excess nutrients were being discharged into the ground from the bunker silo.

117. During the October 21, 2019 inspection, EGLE staff observed an unlawful discharge of production area waste originating in the silage feed area, flowing into a catch basin with an outlet draining into a swale that flows to a tributary of the Rabbit River.

118. Consumers Energy Company owns a utility corridor, identified as Parcel ID 16-010-020-00, through which the aforementioned unlawful discharge ran.

119. On October 25, 2019, WRD issued Violation Notice (VN) No. VN-010114 (Ex B, 10/25/2019 Violation Notice) to Defendant, notifying her that she was violating the Water Resources Protection Act and that, to date, WRD had not received a written response to the letter dated August 19, 2016. WRD copied Consumers Energy Company on this Violation Notice.

120. Defendant did not make significant improvements in response to VN-010114 or formally respond to the Violation Notice.

121. On February 6, 2020, WRD issued a follow-up letter to both Defendant, and Consumers Energy Company, again requesting that Defendant and Consumers Energy Company provide a response to VN-010114. (Ex C, 02/06/2020 Follow-up letter.)

122. Despite the follow-up letter, Defendant still did not make any significant improvements in response to VN-010114 or formally respond to the Violation Notice.

123. On November 24, 2020, WRD issued an Enforcement Notice (EN) to notify Ms. Brenner that the unresolved, ongoing violations detailed in VN-010114 required formal resolution through entry of a legally enforceable document. (Ex D, 11/24/2020 Enforcement Notice.) WRD sent another letter to Consumers Energy on the same date, asking for a response. Consumers responded in writing, Ms. Brenner did not.

124. On several occasions between November 2020 and November 2022, Defendant communicated via telephone with EGLE staff about VN-010114 but never formally responded to the Violation Notice or Enforcement Notice in writing as requested by WRD.

125. Between November 2020 and November 2022, Defendant did not cease its unlawful waste discharges in response to VN-010114 or formally respond to the Violation Notice.

Escalated enforcement of ongoing violations

126. On November 18, 2022, undersigned counsel issued a letter to Defendant informing her that the still-unresolved, ongoing violations detailed in VN-010114 had been referred to the Michigan Department of Attorney General (DAG) for enforcement action. (Ex E, 11/18/2022 Letter.) This letter also requested that Defendant agree to schedule a site inspection by EGLE. To the best of

undersigned counsel's knowledge and information, Defendant was not represented by counsel as of November 18, 2022.

127. On January 5, 2023, WRD and DAG staff conducted a site inspection at the Brenner Facility. Ms. Brenner, Ms. Brenner's attorney, and Ms. Brenner's agricultural consultant were present for the inspection. The purpose of the inspection was to evaluate the facility for compliance regarding the violations of Part 31 previously noticed in VN-010114.

128. During the January 5, 2023 inspection, EGLE staff learned that Defendant had reduced the number of cattle at the Brenner Facility to approximately 650, meaning that the Brenner Facility would no longer be regulated as a large CAFO within the meaning of Mich Admin Code, R 323.2102(g)-(i).

129. During the January 5, 2023 inspection, EGLE staff observed discharges of waste originating in the production and silage feed areas and flowing into a catch basin with an outlet that drains into a swale that flows to a tributary of the Rabbit River, and uncontained waste on the ground discharging into groundwater.

130. To assess the waste discharges observed at the January 5, 2023 inspection, EGLE staff collected water samples from the outlet draining into the swale that flows to the tributary of the Rabbit River.

131. Laboratory results from the Water Resources Division's sampling conducted on January 5, 2023, indicated that water from the outlet described in the preceding paragraph had a biochemical oxygen demand of 7,010 mg/L. (Ex F,

01/12/2024 Laboratory Report). For comparison, the standard biochemical oxygen demand of raw municipal sewage, before treatment, is approximately 500 mg/L.

132. The laboratory results from Water Resources Division's sampling conducted on January 5, 2023, also returned extreme readings for chlorides, conductivity, total suspended solids, turbidity, ammonia, Kjeldahl Nitrogen-N, nitrate/nitrite-N, total organic carbon, total phosphorus, calcium, copper, magnesium, zinc, and calculated hardness. The results also indicated a pH of 4.5, meaning that the water being discharged was acidic. (Ex G, 01/25/2023 Laboratory Reports.)

133. On February 23, 2023, WRD issued Second Violation Notice (SVN) No. SVN-01316 to Ms. Brenner detailing the findings of the January 5, 2023 inspection. (Ex H, 02/23/2023 Second Violation Notice.) WRD identified continuing violations of Part 31 and provided the water quality sample results for the unauthorized discharge from the facility's production area. SVN-01316 requested that Ms. Brenner provide a response with corrective actions to WRD.

134. In an April 14, 2023 letter, Defendant, through counsel, provided a response to SVN-01316 describing several alleged corrective actions taken by Defendant before and after the January 5, 2023 inspection. (Ex I, 04/14/2023 Letter from Defendant's counsel.)

135. The aforementioned alleged corrective actions taken by Defendant were insufficient and undertaken without review or approval by EGGLE staff.

136. EGLE began in earnest to pursue negotiation of an administrative consent order (ACO) requiring Defendant to take certain corrective actions and apply for a CAFO permit.

137. Defendant and her counsel met with EGLE and undersigned counsel on June 5, 2023, in accordance with MCL 324.1511(1)(a), and discussed potentially resolving the violations listed and described in the violation notices issued on October 25, 2019 and February 3, 2023. During routine monitoring of the watershed of a tributary to Pickle Drain near the Brenner Facility between September 6 and October 6, 2023, EGLE observed *E. coli* at concentrations between 4,387 and 5,351 *E. coli* per 100 mL. (Ex J, 10/25/2023 Pickle Drain Watershed Map with 30-day *E. coli* Mean Measurements.)

138. Pickle Drain is designated for the following uses: (a) agriculture; (b) navigation; (c) industrial water supply; (d) warmwater fishery; (e) other indigenous aquatic life and wildlife; (f) partial body contact recreation; (g) fish consumption; and (h) total body contact recreation from May 1 through October 31. Michigan's Water Quality Standards mandate that surface waters rated for total body contact recreation shall not contain more than 300 *E. coli* per 100 mL.

139. At the time of testing in September-October of 2023, Pickle Drain was designated for total body contact and contained over ten times the acceptable concentration of *E. coli* bacteria.

140. Based on the proximity of the aforementioned Pickle Drain tributary watershed to the Brenner Facility, EGLE determined that the Brenner Facility was

the most likely source of the elevated *E. coli* levels observed. This data further supports the enforcement notices and violation notices EGLE previously sent to Defendant.

141. On October 23, 2023, EGLE, through undersigned counsel, informed Brenner's counsel of the existence of the additional *E. coli* data, and that, at the time of sampling, the data showed that the Brenner Facility continued to be a source of pollution.

142. On December 18, 2023, Defendant and her counsel again met with EGLE and undersigned counsel in accordance with MCL 324.1511(1)(a) and discussed potentially resolving the violations listed and described in the violation notices issued on October 25, 2019 and February 3, 2023.

143. While pursuing settlement negotiations, the parties executed a series of tolling agreements running through March 1, 2024.

144. To the present date, attempts to resolve the alleged violations have been unsuccessful, and unlawful discharges have continued at the Brenner Facility.

145. Defendant is responsible for continuing unlawful discharges of CAFO waste into waters of the state since approximately April 12, 2017.

146. As of February 29, 2024, Defendant has failed to fully resolve the alleged violations, notably failing to apply for an NPDES permit.

COUNT I – VIOLATION OF PART 31 – FAILURE TO PERMIT CAFO

147. Paragraphs 1 through 146 are hereby realleged and incorporated by reference.

148. Under Mich Admin Code, R 323.2196(1), CAFOs are point sources that require NPDES permits.

149. At all times since approximately April 12, 2017, Defendant has maintained the Brenner Facility as either a large or medium CAFO without applying for coverage under an NPDES permit.

150. The Brenner Facility's failure to obtain a permit is a continuous violation of Mich Admin Code, R 323.2196(1).

151. Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of rules promulgated under Part 31. MCL 324.3115(1).

152. In addition to imposing civil fines, this Court may order Defendant to comply with Part 31 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT II—VIOLATIONS OF PART 31 – UNLAWFUL DISCHARGES TO SURFACE WATERS

153. Paragraphs 1 through 152 are hereby realleged and incorporated by reference.

154. Under Part 31, a person may not directly or indirectly discharge substances into the waters of the state that are or may be injurious to, among other

things, public health, safety, or welfare, and recreational or other uses of the receiving waters. MCL 324.3109(1)(a) and (b).

155. Part 31 prohibits discharges to waters of this state, including both groundwater and surface waters, without a valid permit. MCL 324.3112(1).

156. Defendant has caused serious, continuing unpermitted discharges to waters of the state, including discharges from the Brenner Facility's production area and silage pads, and from its improperly engineered waste storage structure(s) to waters of the state.

157. Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of Part 31. MCL 324.3115(1).

158. Defendant's unpermitted discharges date back to April 12, 2017, when EGLE confirmed the existence of unlawful discharges during an inspection of the Brenner Facility.

159. To date, EGLE has incurred at least \$7,958.79 in enforcement costs in this matter. These costs continue to accrue.

160. This Court may order Defendant to comply with Part 31 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT III—VIOLATIONS OF PART 31 – INJURIOUS DISCHARGES TO GROUNDWATER

161. Paragraphs 1 through 160 are hereby realleged and incorporated by reference.

162. Under Part 31, a person may not directly or indirectly discharge substances into the waters of the state that are or may be injurious to, among other things, public health, safety, or welfare, and recreational or other uses of the receiving waters. MCL 324.3109(1)(a) and (b).

163. Part 31 prohibits discharges to waters of this state, including both groundwater and surface waters, without a valid permit. MCL 324.3112(1).

164. MCL 324.3112(1) prohibits any person from “discharg[ing] any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.”

165. Rule 2205 of the Part 22 Rules also prohibits all unauthorized, injurious discharges to groundwater. Mich Admin Code, R 323.2205.

166. Defendant has caused serious, continuing unpermitted discharges to waters of the state, including discharges from the Brenner Facility’s production area and silage pads, and from its improperly engineered waste storage structure(s) to waters of the state.

167. Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of Part 31. MCL 324.3115(1).

168. Defendant’s unpermitted discharges date back to April 12, 2017, when EGLE confirmed the existence of unlawful discharges during an inspection of the Brenner Facility.

169. To date, EGLE has incurred at least \$7,958.79 in enforcement costs in this matter. These costs continue to accrue.

170. This Court may order Defendant to comply with Part 31 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT IV – VIOLATIONS OF PART 31 – CAUSING OR CONTRIBUTING TO WATER QUALITY STANDARD EXCEEDANCE

171. Paragraphs 1 through 170 are hereby realleged and incorporated by reference.

172. Part 4 Water Quality Standards set thresholds and limits on toxins, dissolved oxygen, bacteria, and other criteria needed to maintain aquatic life and healthy safe water quality. Mich Admin Code, R 323.1041 *et seq.*

173. MCL 324.3112(1) prohibits any person from “discharg[ing] any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.”

174. Rule 2205 of the Part 22 Rules also prohibits all unauthorized, injurious discharges to groundwater. Mich Admin Code, R 323.2205.

175. Defendant has caused serious, continuing discharges of CAFO waste to permeable ground around the Brenner Facility’s production area and silage pads, and into the groundwater aquifers immediately below the production area.

176. Defendant’s discharges to surface water have directly contributed to violation of Part 4’s water quality standards for *E. coli* bacteria.

177. Under Part 31, Defendant is subject to a civil fine of not less than \$2,500 and no more than \$25,000 per day of violation of MCL 324.3112(1) and Mich Admin Code, R 323.2205. MCL 324.3115(1).

178. Defendant's unpermitted discharges date back to April 12, 2017, when EGLE confirmed the existence of unlawful discharges during an inspection of the Brenner Facility.

179. To date, EGLE has incurred at least \$7,958.79 in enforcement costs in this matter.

180. Under Part 31, this Court may order Defendant to comply with MCL 324.3112(1) and Mich Admin Code, R 323.2205 and award reasonable attorney fees and costs. MCL 324.3115(1).

COUNT V: PUBLIC NUISANCE

181. Paragraphs 1 through 180 are hereby realleged and incorporated by reference.

182. Under the Water Resources Protection Act, violations of MCL 324.3109 constitute evidence of a prima facie public nuisance that the Attorney General may abate. MCL 324.3109(6).

183. Defendant has caused serious, continuing discharges of CAFO waste through overland flow and drainage ditches that eventually become a tributary of Pickle Drain, and ultimately the connecting Pickle Drain, Rabbit River, Kalamazoo River, and Lake Michigan.

184. Defendant discharges waste and contaminated wastewater to permeable ground around the Brenner Facility's production area and silage pads and into the groundwater aquifers immediately below the production area.

185. Each of Defendant's unlawful discharges are prima facie evidence that the Brenner Facility is a public nuisance.

186. At common law, this Court may abate a public nuisance.

DEMAND FOR JUDGMENT

Plaintiff respectfully requests that this Honorable Court grant the following relief:

- A. Find that Defendant is in violation of Part 31 of the NREPA and the associated rules;
- B. Order Defendant to obtain and comply with an NPDES permit;
- C. Find that Defendant is not entitled to the groundwater permit exemption under Mich Admin Code, R 323.2210(f) because their discharge does not meet the requirements of Mich Admin Code, R 323.2204;
- D. Order Defendant to abate the public nuisance by enjoining Defendant from unlawfully discharging waste into waters of the state;
- E. Order Defendant to pay civil fines of not less than \$2,500 and no more than \$25,000 per day of violation of Part 31 and associated rules;
- F. Order Defendant to pay enforcement costs not less than \$7,958.79;
- G. Order Defendant to pay reasonable attorney fees and costs; and
- H. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Matthew J. Meyerhuber
Matthew Meyerhuber (P84721)
Elizabeth Morrisseau (P81899)
Assistant Attorneys General
Attorneys for Plaintiff
Michigan Department of
Attorney General
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
MeyerhuberM1@michigan.gov
MorrisseauE@michigan.gov

Date: February 27, 2024

LF: Brenner, Deborah (EGLE)/AG #2022-0358571-A/Complaint 2024-02-27

EXHIBIT A



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
KALAMAZOO DISTRICT OFFICE



C. HEIDI GREYER
DIRECTOR

August 19, 2016

Ms. Deb Brenner, Owner
J&D Brenner Farms
2450 130th Avenue
Hopkins, Michigan 49328

Dear Ms. Brenner:

SUBJECT: Concentrated Animal Feeding Operation (CAFO) Permit

It has come to the attention of the Department of Environmental Quality (DEQ) that your farm at 2891 132nd Avenue, Hopkins, Michigan, 49328, may be a farm of the size that would require you to obtain a CAFO National Pollutant Discharge Elimination System (NPDES) permit as administered by the DEQ's Water Resources Division. The DEQ has sufficient evidence to believe this to be the case and therefore the reason for this communication. There are a few options to move forward as outlined below:

- 1) Submit a complete NPDES application for a CAFO permit by November 1, 2016,
- 2) Submit a No Potential To Discharge request by October 1, 2016,
- 3) Submit proof the farm does not meet the minimum size requirements required for a CAFO permit.

Please provide a response to this letter by September 2, 2016, indicating how you would like to proceed. Please note, if you do not believe you need a permit, please provide us with a few dates and times within the next 60 days when we could conduct an inspection at your facility to verify this information.

Thank you for your cooperation with this matter. Should you have any questions or would like to schedule a meeting to discuss this letter, please contact me at 269-330-6079; washburnb2@michigan.gov; or 7953 Adobe Road, Kalamazoo, Michigan, 49009-5025.

Bruce Washburn
Kalamazoo District Office
Water Resources Division

BW:dmm

EXHIBIT B



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
KALAMAZOO DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

October 25, 2019

VN No. VN-010114

CERTIFIED MAIL-RETURN RECEIPT REQUESTED & E-MAIL

Ms. Deb Brenner
J&D Brenner Farms
2450 130th Avenue
Hopkins, Michigan 49328

Dear Ms. Brenner:

SUBJECT: Violation Notice, Concentrated Animal Feeding Operation (CAFO) Inspection and Requirement to Obtain a Permit

The Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), has determined that the J&D Brenner Farms is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*, and the administrative rules promulgated thereunder being 2006 AACR 323.2101 *et seq.*, as amended (Part 31). As a result, WRD staff inspected the J&D Brenner Farms, located at 2891 132nd Avenue, Hopkins, 49328, on April 12, 2017, to determine compliance with Part 31 of the NREPA. WRD staff also observed and confirmed that the farm still had dairy cattle and was operational on October 21, 2019.

During the April 12, 2017, inspection, WRD staff met with Mr. Aaron Brenner, representing J&D Brenner Farms, to conduct an on-site inspection. This was at the request of WRD and acceptance from Ms. Deb Brenner that WRD complete an inspection to determine if a permit was needed as outlined in the August 19, 2016, letter and subsequent meeting on September 2, 2016. The farm maintained they were under the animal numbers that required a permit, although public records suggested otherwise. The farm stated they had 690 mature dairy cattle and approximately 500 other cattle.

The inspection was focused on an evaluation of the facility including the waste storage structures, feed storage area, calf hutch area, outside animal lots, and adjacent farmstead areas. No records were asked for or reviewed during the inspection. The following observations were made during the April 12, 2017 inspection:

- There are several locations with the potential to discharge to conveyances to waters of the state from the production area.
- Waste milk was observed being discharged to the ground.
- Outside animal lots were not maintained as pasture with significant areas with no vegetation and the animals were being supplemented with feed.
- In the most northern outside animal lot soil erosion was evident with the potential to discharge into the nearby tributary.
- There was burnt vegetation between the bunker silo and a drainage swale north of the bunker, indicating excess nutrients were leaving the bunker silo.
- Several surface drain inlets around the farm were noted and these were near production areas with few measures to prevent a discharge.
- Calf hutches were located in an area that production area runoff was not collected.
- There was limited data about the two waste storage structures on-site and it was not clear how much operational capacity the farm had.

On October 21, 2019, WRD staff observed the unlawful discharge of production area waste from the silage feed area to a catch basin with an unknown outlet and to a drainage swale that leads north to a small tributary of the Rabbit River. The farm is not authorized to discharge this material into the waters of the state, which is a violation of Part 31 of the NREPA.

To date, the farm has not applied for a permit, requested a No Potential To Discharge Determination, or provided proof the farm does not need a CAFO permit as requested in WRD's letter dated August 19, 2016.

The violations identified in this Violation Notice are continuing. J&D Brenner Farms should take immediate action to achieve and maintain compliance with the terms and conditions of Part 31 including seeking permit coverage for a CAFO permit.

Please provide a response that should be submitted to this office **by December 2, 2019**. At a minimum, the response shall include:

1. Photographic evidence that the discharge areas have been fixed to prevent future discharges.
2. A timeline to install permanent measures, i.e. collection, diversion, or storage of all production area waste.
3. Documentation of the current operator of the farm, referred to as J&D Brenner Farms in this letter, has permission/authority to operate on land owned by Ms. Deb Brenner and Consumers Energy Company.
4. Documentation that the operator of the farm has authority to prevent future discharges originating on and/or conveyed across land owned by Ms. Deb Brenner and Consumers Energy Company
5. An acknowledgment that the responsible party or all landowners involved will apply for coverage under a National Pollutant Discharge Elimination System permit for discharges noted in this letter.
6. A proposed timeline to return to compliance with Part 31 and for applying and complying with the CAFO permit.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response. Additionally, due to the circumstances of this case, it is being referred for potential escalated enforcement.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this Violation Notice or if you would like to arrange a meeting to discuss it, please contact me at WashburnB2@michigan.gov; 269-330-6079; or Department of Environment, Great Lakes, and Energy, WRD, 7953 Adobe Road, Kalamazoo, Michigan 49009-5025.

Sincerely,



Bruce Washburn
Kalamazoo District Office
Water Resources Division

BW:DMM

cc: Consumers Energy Company
Mr. Dave Pingel, EGLE (email)
Ms. Jen Klang, EGLE (email)

EXHIBIT C



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
KALAMAZOO DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

February 6, 2020

VIA E-MAIL & CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Ms. Deborah Brenner
2891 132nd Avenue
Hopkins, Michigan 49328

Consumers Energy Company
Attn: Lisa Groom-EP7-443
One Energy Plaza
Jackson, Michigan 49021

Dear Mses. Brenner and Groom:

SUBJECT: Follow Up to Violation Notice No. VN-010114 Dated October 25, 2019
Designated Name: J&D Brenner Farms

Please be aware that VN-010114 (enclosed) identified violations and requested information from J&D Brenner Farms (facility). However, to date, no response has been received from the facility. Therefore, as legal landowners from which the violations in VN-010114 have occurred, Ms. Brenner and Consumers Energy Company (collectively described as you) are being notified that you are in violation of state law. Additionally, you were in receipt of the original letter.

Both parcels are in Allegan County, Monterey Township, Section 10, Parcel ID: 16-010-020-00 (Consumers Energy Company), and Parcel IDs: 16-010-017-10 and 16-010-018-10 (Deborah S Brenner).

In order to move forward with these violations, please either respond jointly or separately with any or all of the following applicable information and submit to this office **by February 28, 2020**:

1. A complete response to VN-010114.
2. A timeline and actions you plan to take to cease the unauthorized discharges originating from property you own.
3. Proof that you are not the owner/operator of the animal feeding operation.
4. Evidence you have granted permission to the facility to operate on your land and if not, a statement to the contrary.

If you have any other factual information you would like us to consider regarding the violations identified in this letter or VN-010114, please provide them with your written response. Additionally, due to the circumstances of this case, it is being referred for potential escalated enforcement.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding the Violation Notice or if you would like to arrange a meeting to discuss it, please contact Mr. Bruce Washburn, Kalamazoo District Office, Water Resources Division, at 269-330-6079; WashburnB2@michigan.gov; or Department of Environment, Great Lakes, and Energy, 7953 Adobe Road, Kalamazoo, Michigan 49009-5025.

Sincerely,



Jennifer Klang
District Supervisor
Kalamazoo District Office
Water Resources Division
269-568-2697
klangj@michigan.gov

JK:BW:DMM

Enclosure

cc: J&D Brenner Farms
Mr. Dave Pingel, EGLE
Mr. Bruce Washburn, EGLE

EXHIBIT D



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING

EGLE

LIESL EICHLER CLARK
DIRECTOR

CERTIFIED MAIL 7020 0090 0001 7358 8363

Ms. Deborah S. Brenner
2450 130th Avenue
Hopkins, Michigan 49328

ENFORCEMENT NOTICE

Dear Ms. Brenner:

THE DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY (EGLE), WATER RESOURCES DIVISION (WRD), Kalamazoo District Office, has referred the matter of Ms. Deborah S. Brenner (hereinafter "Owner") to the Enforcement Unit (EU) requesting escalated enforcement actions for violations of law by as set forth herein.

PLEASE BE ADVISED that the Owner 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.* (Part 31); and the Part 21, Wastewater Discharge Permits, administrative rules promulgated pursuant to Part 31, Mich Admin Code, R 323.2101 *et seq.* (Part 21 Rules).

WRD staff performed inspections of the Animal Feeding Operation referred to as "J&D Brenner Farms" located at 2891 132nd Avenue, Hopkins, Michigan 49328 (hereinafter "Facility") on April 12, 2017, and October 21, 2019, respectively, to determine if the Facility met the requirements of National Pollutant Discharge Elimination System Concentrated Animal Feeding Operation Permit coverage and to determine if the Facility is in compliance with Part 31 and the Part 21 Rules.

During the inspection on April 12, 2017, WRD staff observed several locations in the production area with the potential to discharge wastewater to waters of the state. During the inspection on October 21, 2019, WRD staff observed an illicit discharge of production area waste originating in the silage feed area and flowing into a catch basin with an unknown outlet and additionally into a drainage swale that leads to a small tributary of the Rabbit River. The discharge of animal production waste to waters of the state is a violation of Section 324.3109 of Part 31, 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."*

As well as Section 324.3112 of Part 31, which states in part:

"A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department"

The WRD issued Violation Notice (VN) number VN-010114 to Ms. Brenner on October 25, 2019, summarizing the findings from the two inspections. (A copy of VN-010114 is enclosed.) The VN additionally required the submittal of either a wastewater discharge permit application or a request for No Potential To Discharge Determination as described in a letter sent by the WRD to Ms. Brenner on August 19, 2016. On February 6, 2020, a follow-up letter was sent to Ms. Brenner and Consumers Energy Company requesting additional information regarding the violations of Part 31 and the Part 21 Rules. (A copy of the February 6, 2020, follow-up letter is also enclosed.) To date, the WRD has not received either submittal nor any response from Ms. Brenner.

YOU ARE ADVISED THAT the discharge of wastewater described above, originating on the property identified by Parcel Number 16-010-017-10, partially flows into a swale located on property identified by Parcel Number 16-010-020-10, which is a utility corridor owned by Consumers Energy Company, and continues through Parcel Number 16-010-018-10 and into a small tributary of the Rabbit River.

YOU ARE HEREBY NOTIFIED that the violations identified in this Enforcement Notice (EN) are violations of Part 31 and the Part 21 Rules.

THE VIOLATIONS identified herein, as well as any additional violations discovered hereafter, must be formally resolved through entry of a legally enforceable document, such as an Administrative Consent Order (Consent Order) that would include an agreed upon Compliance Program to resolve the aforementioned violations and payment of a civil fine, among other requirements.

The WRD reserves its right to take all necessary and appropriate enforcement actions for all violations of Part 31 and the Part 21 Rules that have occurred to date and any violations of the Part 31 and the Part 21 Rules that may occur in the future. These actions may include, but are not limited to, seeking civil fines, injunctive relief, natural resources damages, and all costs associated with this enforcement action, including attorney costs and any other relief available to the WRD.

The Owner's continuing failure to comply with the terms of the Part 31, the Part 21 Rules or other requirements set forth in this EN may result in additional fines, penalties, or other actions.

Pursuant to Section 324.1511 of the NREPA, the Owner MAY request a preliminary meeting with the EU to discuss the issues detailed in this EN. If you would like to request

such a meeting, please contact Ms. Kailey Schoen, Environmental Quality Analyst, WRD, at 517-331-6571 or SchoenK@Michigan.gov; not later than ten days from your receipt of this EN.

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
WATER RESOURCES DIVISION**

Date Issued: November 24, 2020



David R. Pingel, Supervisor
Enforcement Unit
Water Resources Division

ADDRESS FOR FURTHER CORRESPONDENCE:

Kailey Schoen
Environmental Quality Analyst
Enforcement Unit
Water Resources Division
P.O. Box 30458
Lansing, Michigan 48909-7958

Enclosures

cc: Ms. Amy Lounds, EGLE
Mr. Luis Saldivia, EGLE
Ms. Jennifer Klang, EGLE
Mr. Bruce Washburn, EGLE
Ms. Kailey Schoen, EGLE



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
KALAMAZOO DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

October 25, 2019

VN No. VN-010114

CERTIFIED MAIL-RETURN RECEIPT REQUESTED & E-MAIL

Ms. Deb Brenner
J&D Brenner Farms
2450 130th Avenue
Hopkins, Michigan 49328

Dear Ms. Brenner:

SUBJECT: Violation Notice, Concentrated Animal Feeding Operation (CAFO) Inspection and Requirement to Obtain a Permit

The Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), has determined that the J&D Brenner Farms is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*, and the administrative rules promulgated thereunder being 2006 AACRS R 323.2101 *et seq.*, as amended (Part 31). As a result, WRD staff inspected the J&D Brenner Farms, located at 2891 132nd Avenue, Hopkins, 49328, on April 12, 2017, to determine compliance with Part 31 of the NREPA. WRD staff also observed and confirmed that the farm still had dairy cattle and was operational on October 21, 2019.

During the April 12, 2017, inspection, WRD staff met with Mr. Aaron Brenner, representing J&D Brenner Farms, to conduct an on-site inspection. This was at the request of WRD and acceptance from Ms. Deb Brenner that WRD complete an inspection to determine if a permit was needed as outlined in the August 19, 2016, letter and subsequent meeting on September 2, 2016. The farm maintained they were under the animal numbers that required a permit, although public records suggested otherwise. The farm stated they had 690 mature dairy cattle and approximately 500 other cattle.

The inspection was focused on an evaluation of the facility including the waste storage structures, feed storage area, calf hutch area, outside animal lots, and adjacent farmstead areas. No records were asked for or reviewed during the inspection. The following observations were made during the April 12, 2017 inspection:

- There are several locations with the potential to discharge to conveyances to waters of the state from the production area.
- Waste milk was observed being discharged to the ground.
- Outside animal lots were not maintained as pasture with significant areas with no vegetation and the animals were being supplemented with feed.
- In the most northern outside animal lot soil erosion was evident with the potential to discharge into the nearby tributary.
- There was burnt vegetation between the bunker silo and a drainage swale north of the bunker, indicating excess nutrients were leaving the bunker silo.
- Several surface drain inlets around the farm were noted and these were near production areas with few measures to prevent a discharge.
- Calf hutches were located in an area that production area runoff was not collected.
- There was limited data about the two waste storage structures on-site and it was not clear how much operational capacity the farm had.

On October 21, 2019, WRD staff observed the unlawful discharge of production area waste from the silage feed area to a catch basin with an unknown outlet and to a drainage swale that leads north to a small tributary of the Rabbit River. The farm is not authorized to discharge this material into the waters of the state, which is a violation of Part 31 of the NREPA.

To date, the farm has not applied for a permit, requested a No Potential To Discharge Determination, or provided proof the farm does not need a CAFO permit as requested in WRD's letter dated August 19, 2016.

The violations identified in this Violation Notice are continuing. J&D Brenner Farms should take immediate action to achieve and maintain compliance with the terms and conditions of Part 31 including seeking permit coverage for a CAFO permit.

Please provide a response that should be submitted to this office **by December 2, 2019**. At a minimum, the response shall include:

1. Photographic evidence that the discharge areas have been fixed to prevent future discharges.
2. A timeline to install permanent measures, i.e. collection, diversion, or storage of all production area waste.
3. Documentation of the current operator of the farm, referred to as J&D Brenner Farms in this letter, has permission/authority to operate on land owned by Ms. Deb Brenner and Consumers Energy Company.
4. Documentation that the operator of the farm has authority to prevent future discharges originating on and/or conveyed across land owned by Ms. Deb Brenner and Consumers Energy Company
5. An acknowledgment that the responsible party or all landowners involved will apply for coverage under a National Pollutant Discharge Elimination System permit for discharges noted in this letter.
6. A proposed timeline to return to compliance with Part 31 and for applying and complying with the CAFO permit.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response. Additionally, due to the circumstances of this case, it is being referred for potential escalated enforcement.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this Violation Notice or if you would like to arrange a meeting to discuss it, please contact me at WashburnB2@michigan.gov; 269-330-6079; or Department of Environment, Great Lakes, and Energy, WRD, 7953 Adobe Road, Kalamazoo, Michigan 49009-5025.

Sincerely,



Bruce Washburn
Kalamazoo District Office
Water Resources Division

BW:DMM

cc: Consumers Energy Company
Mr. Dave Pingel, EGLE (email)
Ms. Jen Klang, EGLE (email)



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
KALAMAZOO DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

February 6, 2020

VIA E-MAIL & CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Ms. Deborah Brenner
2891 132nd Avenue
Hopkins, Michigan 49328

Consumers Energy Company
Attn: Lisa Groom-EP7-443
One Energy Plaza
Jackson, Michigan 49021

Dear Meses. Brenner and Groom:

SUBJECT: Follow Up to Violation Notice No. VN-010114 Dated October 25, 2019
Designated Name: J&D Brenner Farms

Please be aware that VN-010114 (enclosed) identified violations and requested information from J&D Brenner Farms (facility). However, to date, no response has been received from the facility. Therefore, as legal landowners from which the violations in VN-010114 have occurred, Ms. Brenner and Consumers Energy Company (collectively described as you) are being notified that you are in violation of state law. Additionally, you were in receipt of the original letter.

Both parcels are in Allegan County, Monterey Township, Section 10, Parcel ID: 16-010-020-00 (Consumers Energy Company), and Parcel IDs: 16-010-017-10 and 16-010-018-10 (Deborah S Brenner).

In order to move forward with these violations, please either respond jointly or separately with any or all of the following applicable information and submit to this office **by February 28, 2020**:

1. A complete response to VN-010114.
2. A timeline and actions you plan to take to cease the unauthorized discharges originating from property you own.
3. Proof that you are not the owner/operator of the animal feeding operation.
4. Evidence you have granted permission to the facility to operate on your land and if not, a statement to the contrary.

If you have any other factual information you would like us to consider regarding the violations identified in this letter or VN-010114, please provide them with your written response. Additionally, due to the circumstances of this case, it is being referred for potential escalated enforcement.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding the Violation Notice or if you would like to arrange a meeting to discuss it, please contact Mr. Bruce Washburn, Kalamazoo District Office, Water Resources Division, at 269-330-6079; WashburnB2@michigan.gov; or Department of Environment, Great Lakes, and Energy, 7953 Adobe Road, Kalamazoo, Michigan 49009-5025.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Klang". The signature is fluid and cursive, with a large initial "J" and "K".

Jennifer Klang
District Supervisor
Kalamazoo District Office
Water Resources Division
269-568-2697
klangj@michigan.gov

JK:BW:DMM

Enclosure

cc: J&D Brenner Farms
Mr. Dave Pingel, EGLE
Mr. Bruce Washburn, EGLE

EXHIBIT E

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P. O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

November 18, 2022

VIA CERTIFIED MAIL #7016 3560 0000 4590 6020

Ms. Deborah Brenner
J&D Brenner Farms
2891 132nd Avenue
Hopkins, MI 49328

Re: Enforcement Action against J&D Brenner Farms; Violation Notice
VN-010114

Dear Ms. Brenner:

I understand that you have represented J&D Brenner Farms as its sole proprietor in correspondences regarding the aforementioned violation notice (VN-010114) with my client, the Michigan Department of Environment, Great Lakes, and Energy (the Department). This matter has been referred to the Department of Attorney General for enforcement action under MCL 324.3112(4).

I am contacting you on the assumption that you are not represented by legal counsel. Please confirm whether this is correct. Alternatively, if you are represented by legal counsel, please provide me with your attorney's contact information. If you have not yet retained legal counsel, I recommend that you do so immediately.

As you are no doubt aware, the Department has determined that J&D Brenner Farms' concentrated animal feeding operations (CAFO) violated Part 31, Water Resource Protection, of the Natural Resources and Environmental Protection Act, (NREPA), MCL 324.3101 *et seq.*, including rules promulgated thereunder, specifically the Part 21 Rules, Wastewater Discharge Permits, Mich Admin Code, R 323.2101 *et seq.* The violations are serious and primarily relate to improperly managing, storing, and land applying production area waste and CAFO process wastewater, related unlawful discharging of waste into waters of the state, and failing to apply for a CAFO National Pollutant Discharge Elimination System permit.

Ms. Deborah Brenner

Page 2

November 18, 2022

I look forward to discussing resolution of these violations with you; however, if we are unable to reach a mutually agreeable solution, the Department will likely request that I initiate litigation to seek civil penalties, injunctive relief, and compliance costs. In the Department's experience, site inspections can assist parties in amicably resolving disputes instead of resorting to costly and time-intensive litigation. Please respond within fourteen (14) days of receipt of this letter and provide a list of dates that you would consent to a site inspection at J&D Brenner Farms, preferably during November or December of this year (2022).

After the site inspection, I propose that we schedule a meeting regarding the violations described in the aforementioned violation notice, as well as any additional violations discovered during the site inspection. That meeting will be a settlement meeting, which the Department is required to offer you before initiating litigation, in accordance with MCL 324.1511(a).

Sincerely,

/s/ Matthew J. Meyerhuber
Matthew Meyerhuber
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
(517) 335-7664
meyerhuberm1@michigan.gov

MJM/rc

cc: Kailey Schoen, EGLE (via email)

EXHIBIT F

From: Megan Chilcote <mchilcote@meritlabs.com>
Sent: 1/12/2023 4:11:55 PM
To: "Washburn, Bruce (EGLE)" <WASHBURNB2@michigan.gov>
Cc: "klangj2@michigan.gov" <klangj2@michigan.gov>
Subject: Analytical Report Brenner Farms, Set S44067
Attachments: RPT.COC.S44067.01(01)_BRENNER_FARMS.PDF

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Megan Chilcote
Merit Laboratories, Inc.
2680 East Lansing Drive | East Lansing, MI 48823
(517) 332-0167 x130 | Direct: (517) 827-2729

Please tell us how we are doing. Click here

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.surveymonkey.com%2F%2F97S7FKC&data=05%7C01%7CWASHBURNB2%40michigan.gov%7C6488cc68edda4e1dddc108daf4e1b9f7%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C638091547940684507%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjojV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C&sdata=lu96IDQUkrrPds%2FAutkQIyeT2bbxLlotlccV7zKHm7I%3D&reserved=0> to fill out our Customer Survey

This message is intended only for the addressed person(s) and may contain privileged, confidential, and/or disclosure-exempt information. Dissemination, distribution, or copying of this communication is strictly prohibited by any other than the intended recipient or an agent or employee thereof. If you have received this communication in error, please notify us immediately and delete this message.

ATTACHMENT NAME:

RPT.COC.S44067.01(01)_BRENNER_FARMS.PDF

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image



Analytical Laboratory Report

Report ID: S44067.01(01)
Generated on 01/12/2023

Report to

Attention: Bruce Washburn
EGLE - Water Resources Div.
525 West Allegan Street
P.O. Box 30242
Lansing, MI 48909

Phone: 269-330-6079 FAX:
Email: washburnb2@mi.gov

Additional Contacts: Jennifer Klang

Report produced by

Merit Laboratories, Inc.
2680 East Lansing Drive
East Lansing, MI 48823

Phone: (517) 332-0167 FAX: (517) 332-6333

Contacts for report questions:

John Lavery (johnlavery@meritlabs.com)
Barbara Ball (bball@meritlabs.com)

Report Summary

Lab Sample ID(s): S44067.01
Project: Brenner Farms
Collected Date(s): 01/05/2023
Submitted Date/Time: 01/06/2023 14:25
Sampled by: Bruce Washburn
P.O. #: CAFO

Table of Contents

Cover Page (Page 1)
General Report Notes (Page 2)
Report Narrative (Page 2)
Laboratory Certifications (Page 3)
Qualifier Descriptions (Page 3)
Glossary of Abbreviations (Page 3)
Method Summary (Page 4)
Sample Summary (Page 5)

Maya Murshak
Technical Director



Analytical Laboratory Report

General Report Notes

Analytical results relate only to the samples tested, in the condition received by the laboratory.

Methods may be modified for improved performance.

Results reported on a dry weight basis where applicable.

'Not detected' indicates that parameter was not found at a level equal to or greater than the reporting limit (RL).

When MDL results are provided, then 'Not detected' indicates that parameter was not found at a level equal to or greater than the MDL.

40 CFR Part 136 Table II Required Containers, Preservation Techniques and Holding Times for the Clean Water Act specify that samples for acrolein and acrylonitrile, and 2-chloroethylvinyl ether need to be preserved at a pH in the range of 4 to 5 or if not preserved, analyzed within 3 days of sampling.

QA/QC corresponding to this analytical report is a separate document with the same Merit ID reference and is available upon request.

Full accreditation certificates are available upon request. Starred (*) analytes are not NELAP accredited.

Samples are held by the lab for 30 days from the final report date unless a written request to hold longer is provided by the client.

Report shall not be reproduced except in full, without the written approval of Merit Laboratories, Inc.

Limits for drinking water samples, are listed as the MCL Limits (Maximum Contaminant Level Concentrations)

PFAS requirement: Section 9.3.8 of U.S. EPA Method 537.1 states "If the method analyte(s) found in the Field Sample is present in the

FRB at a concentration greater than 1/3 the MRL, then all samples collected with that FRB are invalid and must be recollected and reanalyzed."

Samples submitted without an accompanying FRB may not be acceptable for compliance purposes.

Wisconsin PFAs analysis: MDL = LOD; RL = LOQ. LOD and LOQ are adjusted for dilution.

Report Narrative

There is no additional narrative for this analytical report



Analytical Laboratory Report

Laboratory Certifications

Authority	Certification ID
Michigan DEQ	#9956
DOD ELAP/ISO 17025	#69699
WBENC	#2005110032
Ohio VAP	#CL0002
Indiana DOH	#C-MI-07
New York NELAC	#11814
North Carolina DENR	#680
North Carolina DOH	#26702
Alaska CSLAP	#17-001
Pennsylvania DEP	#68-05884
Wisconsin DNR	FID# 399147320

Qualifier Descriptions

Qualifier	Description
!	Result is outside of stated limit criteria
B	Compound also found in associated method blank
E	Concentration exceeds calibration range
F	Analysis run outside of holding time
G	Estimated result due to extraction run outside of holding time
H	Sample submitted and run outside of holding time
I	Matrix interference with internal standard
J	Estimated value less than reporting limit, but greater than MDL
L	Elevated reporting limit due to low sample amount
M	Result reported to MDL not RDL
O	Analysis performed by outside laboratory. See attached report.
R	Preliminary result
S	Surrogate recovery outside of control limits
T	No correction for total solids
X	Elevated reporting limit due to matrix interference
Y	Elevated reporting limit due to high target concentration
b	Value detected less than reporting limit, but greater than MDL
e	Reported value estimated due to interference
j	Analyte also found in associated method blank
p	Benzo(b)Fluoranthene and Benzo(k)Fluoranthene integrated as one peak.
x	Preserved from bulk sample

Glossary of Abbreviations

Abbreviation	Description
RL/RDL	Reporting Limit
MDL	Method Detection Limit
MS	Matrix Spike
MSD	Matrix Spike Duplicate
SW	EPA SW 846 (Soil and Wastewater) Methods
E	EPA Methods
SM	Standard Methods
LN	Linear
BR	Branched



Analytical Laboratory Report

Method Summary

Method	Version
HACH 10360	HACH 10360



Analytical Laboratory Report

Sample Summary (1 samples)

Sample ID	Sample Tag	Matrix	Collected Date/Time
S44067.01	S1	Water	01/05/23 14:26



Analytical Laboratory Report

Lab Sample ID: S44067.01

Sample Tag: S1

Collected Date/Time: 01/05/2023 14:26

Matrix: Water

COC Reference:

Sample Containers

#	Type	Preservative(s)	Refrigerated?	Arrival Temp. (C)	Thermometer #
1	500ml Plastic	None	Yes	5.9	IR

Extraction / Prep.

Parameter	Result	Method	Run Date	Analyst	Flags
TBOD5 - Set*	Completed	HACH 10360	01/06/23 20:00	ASB	

Inorganics

Method: HACH 10360, Run Date: 01/11/23 21:24, Analyst: PJH

Parameter	Result	RL	MDL	Units	Dilution	CAS#	Flags
TBOD5*	7,010	3		mg/L	1200		

Merit Laboratories Login Checklist

Lab Set ID:S44067

Client:EGLE (MI Dept. of Environment, Great Lakes, and Energy)

Project: Brenner Farms

Submitted:01/06/2023 14:25 Login User: MMC

Attention: Bruce Washburn

Address: EGLE - Water Resources Div.

525 West Allegan Street

P.O. Box 30242

Lansing, MI 48909

Phone: 269-330-6079

FAX:

Email:washburnb2@mi.gov

Selection	Description	Note
-----------	-------------	------

Sample Receiving

- | | | |
|-----|--|--|
| 01. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Samples are received at 4C +/- 2C Thermometer # IR 5.9 |
| 02. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Received on ice/ cooling process begun |
| 03. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A | Samples shipped |
| 04. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A | Samples left in 24 hr. drop box |
| 05. | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A | Are there custody seals/tape or is the drop box locked |

Chain of Custody

- | | | |
|-----|--|--|
| 06. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | COC adequately filled out |
| 07. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | COC signed and relinquished to the lab |
| 08. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Sample tag on bottles match COC |
| 09. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A | Subcontracting needed? Subcontracted to: |

Preservation

- | | | |
|-----|--|---|
| 10. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Do sample have correct chemical preservation |
| 11. | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A | Completed pH checks on preserved samples? (no VOAs) |
| 12. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A | Did any samples need to be preserved in the lab? |

Bottle Conditions

- | | | |
|-----|--|---|
| 13. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | All bottles intact |
| 14. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Appropriate analytical bottles are used |
| 15. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A | Merit bottles used |
| 16. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Sufficient sample volume received |
| 17. | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A | Samples require laboratory filtration |
| 18. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Samples submitted within holding time |
| 19. | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A | Do water VOC or TOX bottles contain headspace |

Corrective action for all exceptions is to call the client and to notify the project manager.

Client Review By: _____ Date: _____



Analysis Request Sheet

Lab Work Order Number 2301062	Project Name BRENNER FARMS	Matrix WATER
Location ID Silage Pad	Program CAFO	CC Email 1 Klangj@michigan.gov
Dept-Division-District EGLE-WRD-Kukmaza	Activity	CC Email 2
State Project Manager BRUCE WASHBURN	Funding Source	CC Email 3
State Project Manager Email Washburnb2@michigan.gov	Location Code	Overflow Lab Choice 1 Merit Labs East Lansing
State Project Manager Phone (269) 330-6079	SUD Location Code	Overflow Lab Choice 2
		Project TAT Days
		Project Due Date
		Sample Collector BRUCE WASHBURN
		Sample Collector Phone 269-330-6079
		Contract Firm
		Contract Firm Primary Contact
		Primary Contact Phone
		Accept Analysis hold time codes

Lab Use Only	Field Sample Identification	Collection Date	Collection Time	Bottle Count	Comments	Field Cond	Field D.O.	Field pH	Field Secchi	Field Temp
44067.01	S1	1/5/23	14:26	1	BOD	Swab	-	4.38	-	4.70
	S2		14:27	1	GN		-		-	
	S3		14:27	1	Acid Preserved		-		-	
	S4		14:28	1	Acid Preserved		-		-	

MA - TOTAL METALS										GENERAL CHEMISTRY											
Copper - Cu	1	2	3	4	5	6	7	8	9	10	GN Ortho Phosphate - OP	1	2	3	4	5	6	7	8	9	10
Zinc - Zn	1	2	3	4	5	6	7	8	9	10	GN Suspended Solids - SS	1	2	3	4	5	6	7	8	9	10
Hardness - Ca, Mg	1	2	3	4	5	6	7	8	9	10	GN Turbidity	1	2	3	4	5	6	7	8	9	10
											GN Biological Oxygen Demand (BOD)	1	2	3	4	5	6	7	8	9	10
											GA Total Org Carbon - TOC	1	2	3	4	5	6	7	8	9	10
											GA Ammonia - NH3	1	2	3	4	5	6	7	8	9	10
											GA Nitrate+Nitrite - NO3+NO2	1	2	3	4	5	6	7	8	9	10
											GA Kjeldahl Nitrogen - KN	1	2	3	4	5	6	7	8	9	10
											GA Total Phosphorus - TP	1	2	3	4	5	6	7	8	9	10
											MN Chloride - Cl	1	2	3	4	5	6	7	8	9	10
											MN Conductivity	1	2	3	4	5	6	7	8	9	10
											MN pH	1	2	3	4	5	6	7	8	9	10

Chain of Custody	Relinquished by		Received By		Date / Time	
	Print Name & Org.	Bruce Washburn, EGLE WRD	Print Name & Org.	Fayrn Steel	1/6/23	9:27 AM
	Signature:	<i>Bruce Washburn</i>	Signature:	<i>Fayrn Steel</i>		
	Print Name & Org.	Fayrn Steel	Print Name & Org.	Leanne Murshak	1/6/23	9:24 AM
Signature:	<i>Fayrn Steel</i>	Signature:	<i>Leanne Murshak</i>		13:40	
Print Name & Org.	Leanne Murshak	Print Name & Org.	M. Olibo	1/6/23	14:25	
Signature:	<i>Leanne Murshak</i>	Signature:	<i>M. Olibo</i>			

IR 5.9

EXHIBIT G

25 January 2023

Work Order: 2301062

Price: \$206.50

BRUCE WASHBURN
EGLE-WRD-KALAMAZOO
7953 ADOBE RD
KALAMAZOO, MI 49009
RE: BRENNER FARMS

This is the official environmental laboratory report for testing conducted by the Michigan Department of Environment, Great Lakes, and Energy. Analyses performed by the laboratory were conducted using methods published by the U.S. Environmental Protection Agency, Standard Methods for the Examination of Water and Wastewater, ASTM, or other published or approved reference methods.

Kirby Shane
Laboratory Director

EGLE-WRD-KALAMAZOO
7953 ADOBE RD
KALAMAZOO MI, 49009

Project: BRENNER FARMS
Site Code: Silage Pad
Project Manager: BRUCE WASHBURN

Reported:
01/25/2023

Analytical Report for Samples

Sample ID	Laboratory ID	Matrix	Date Sampled	Date Received	Qualifier
S2	2301062-01	Water	01/05/2023	01/06/2023	
S3	2301062-02	Water	01/05/2023	01/06/2023	
S4	2301062-03	Water	01/05/2023	01/06/2023	

Notes and Definitions

- X3 Spike recovery is not applicable due to elevated target analyte concentration in the source sample.
- I Dilution required due to matrix interference; reporting limit (RL) raised.
- CXH Sample had exceeded EPA holding time for this analysis when received in the laboratory.
- A03 Result(s) and reporting limit(s) are estimated due to low matrix spike recovery.
- ND Indicates compound analyzed for but not detected at or above the reporting limit (RL).
- RL Reporting Limit
- NA Not Applicable

*****Case Narrative*****

Samples were received **1/6/2023 9:24:00AM** for client **EGLE-WRD-KALAMAZOO** as a part of project **BRENNER FARMS**.

Samples were logged and designated as Work Order # **2301062** on **1/6/2023 9:57:00AM**.

This Report was created **1/25/2023 2:51:12PM**.

Additional Notes/Narrative (if applicable):

**Client ID: S2
Lab ID: 2301062-01**

CAS #	Analyte	Result	RL	Units	Dilution	Analyzed Date	QC Batch	Method	Analyst	Qualifier
Inorganics-General Chemistry										
16887-00-6	Chloride	55	8.0	mg/L	2	01/13/23	B3A1304	4500 Cl- E	jh	I
	Conductivity	1920		umhos/cm	1	01/06/23	B3A0612	120.1	MB	
7723-14-0	Ortho Phosphate-P	40	0.50	mg/L	50	01/06/23	B3A0611	365.1	MB	
	pH	4.5		pH Units	1	01/06/23	B3A0612	4500 H+ B	MB	CXH
TSS	Total Suspended Solids	32	4	mg/L	1	01/06/23	B3A0613	2540 D	SG	
	Turbidity	26.4	10.0	NTU	10	01/06/23	B3A0609	180.1	SG	

Client ID: S3

Lab ID: 2301062-02

CAS #	Analyte	Result	RL	Units	Dilution	Analyzed Date	QC Batch	Method	Analyst	Qualifier
Inorganics-General Chemistry										
7664-41-7	Ammonia-N	23	1.0	mg/L	100	01/20/23	B3A2010	350.1	MB	
7727-37-9	Kjeldahl Nitrogen-N	150	10	mg/L	50	01/11/23	B3A1003	351.2	AM	
	Nitrate/Nitrite-N	0.89	0.010	mg/L	1	01/17/23	B3A1708	353.2	MB	
7440-44-0	Total Organic Carbon	1000	50	mg/L	100	01/06/23	B3A0606	5310 C	AM	
7723-14-0	Total Phosphorus-P	46	1.0	mg/L	100	01/17/23	B3A1704	365.1	AM	

Client ID: S4

Lab ID: 2301062-03

CAS #	Analyte	Result	RL	Units	Dilution	Analyzed Date	QC Batch	Method	Analyst	Qualifier
Inorganics-Metals										
7440-70-2	Calcium	180	1.0	mg/L	1	01/19/23	B3A1302	200.7	AM	
7440-50-8	Copper	30	1.0	ug/L	1	01/18/23	B3A1302	200.8	ARH	A03
	Hardness - Calculated	690	4.6	mg/L	1	01/19/23	[CALC]	2340 B	AM	
7439-95-4	Magnesium	61	0.5	mg/L	1	01/19/23	B3A1302	200.7	AM	
7440-66-6	Zinc	450	5.0	ug/L	1	01/18/23	B3A1302	200.8	ARH	



Analysis Request Sheet

Lab Work Order Number 2301062	Project Name BRENNER FARMS	Matrix WATER
Location ID Silage Pad	Program CAFO	CC Email 1 Klangj@michigan.gov
Dept-Division-District EGLE-WRD-Kalamazoo	Activity	CC Email 2
State Project Manager BRUCE WASHBURN	Funding Source	CC Email 3
State Project Manager Email Washburnb2@mi.gov	Location Code	Overflow Lab Choice 1 Merit Labs East Lansing
State Project Manager Phone (269) 330-6079	SUD Location Code	Overflow Lab Choice 2
		Project TAT Days
		Project Due Date
		Sample Collector BRUCE WASHBURN
		Sample Collector Phone 269-330-6079
		Contract Firm
		Contract Firm Primary Contact
		Primary Contact Phone
		Accept Analysis hold time codes

Lab Use Only	Field Sample Identification	Collection Date	Collection Time	Bottle Count	Comments	Field Cond	Field D.O.	Field pH	Field Secchi	Field Temp
1	S1	11/5/23	14:26	1	BOD	Swab	-	4.38	-	4.70C
2	S2		14:27	1	GN		-		-	
3	S3		14:27	1	Acid Preserved		-		-	
4	S4		14:28	1	Acid Preserved		-		-	
5										
6										
7										
8										
9										
10										

MA - TOTAL METALS										GENERAL CHEMISTRY												
Copper - Cu	1	2	3	4	5	6	7	8	9	10	GN	Ortho Phosphate - OP	1	2	3	4	5	6	7	8	9	10
Zinc - Zn	1	2	3	4	5	6	7	8	9	10	GN	Suspended Solids - SS	1	2	3	4	5	6	7	8	9	10
Hardness - Ca, Mg	1	2	3	4	5	6	7	8	9	10	GN	Turbidity	1	2	3	4	5	6	7	8	9	10
											GN	Biological Oxygen Demand (BOD)	1	2	3	4	5	6	7	8	9	10
											GA	Total Org Carbon - TOC	1	2	3	4	5	6	7	8	9	10
											GA	Ammonia - NH3	1	2	3	4	5	6	7	8	9	10
											GA	Nitrate+Nitrite - NO3+NO2	1	2	3	4	5	6	7	8	9	10
											GA	Kjeldahl Nitrogen - KN	1	2	3	4	5	6	7	8	9	10
											GA	Total Phosphorus - TP	1	2	3	4	5	6	7	8	9	10
											MN	Chloride - Cl	1	2	3	4	5	6	7	8	9	10
											MN	Conductivity	1	2	3	4	5	6	7	8	9	10
											MN	pH	1	2	3	4	5	6	7	8	9	10

Chain of Custody	Relinquished by	Received By	Date / Time
	Print Name & Org. Bruce Washburn, EGLE WRD	Fayrn Steel	11/6/23 9:27am
	Signature: <i>Bruce Washburn</i>	<i>Fayrn Steel</i>	
	Print Name & Org. Fayrn Steel		11/6/23 9:27am
Signature: <i>Fayrn Steel</i>			
Print Name & Org.			
Signature:			

EXHIBIT H



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
KALAMAZOO DISTRICT OFFICE



DANIEL EICHINGER
ACTING DIRECTOR

February 23, 2023

SVN No. SVN-01316

VIA EMAIL & CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Deb Brenner
J&D Brenner Farms
2450 130th Avenue
Hopkins, Michigan 49328

Dear Deb Brenner:

SUBJECT: Second Violation Notice

The Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), issued a Violation Notice, VN-010114, on October 25, 2019, in response to violations of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*, and the administrative rules promulgated thereunder being 2006 AACS R 323.2101 *et seq.*, as amended (Part 31). An additional letter was sent on February 6, 2020, to request a response. The J&D Brenner Farms (Farm) has not returned to compliance nor provided an adequate response to the Violation Notice.

On January 5, 2023, EGLE staff and staff from the Office of the Attorney General conducted an inspection at the Farm, located at 2891 132nd Avenue, Hopkins, Michigan, Allegan County, which included an evaluation of all production areas and water sampling of the runoff from the feed bunk production area. Based on the January 5, 2023, inspection, the violations identified in Violation Notice VN-010114 are continuing. Water sample results from the feed bunk runoff pipe outfall further indicate the Farm is continuing to discharge wastewater without authorization. As demonstrated in the Table 1 below, the water samples showed Biochemical Oxygen Demand (BOD) levels several times higher than that of human wastewater, low pH (acidic), phosphorus levels exceeding what would be allowed to be discharged to surface waters, and high levels of other analytes that indicate a potential for the discharge to become injurious.

**Table 1: J&D Brenner Farm Sample Results from
January 5, 2023**

Parameter	Result	Unit*
Biochemical Oxygen Demand (BOD)	7,010	mg/L
Ammonia-N	23	mg/L
Calcium	180	mg/L
Chloride	55	mg/L
Conductivity	1,920	umhos/cm

Copper	30	mg/L
Hardness - Calculated	690	mg/L
Kjeldahl Nitrogen-N	150	mg/L
Magnesium	61	mg/L
Nitrate/Nitrite-N	0.89	mg/L
Ortho Phosphate-P	40	mg/L
pH	4.5	pH Units
Total Organic Carbon	1,000	mg/L
Total Phosphorus-P	46	mg/L
Total Suspended Solids	32	mg/L
Turbidity	26.4	NTU
Zinc	450	mg/L

Highlighted rows referenced in text.

*mg/L = milligrams per liter; umhos/cm = micromhos;

NTU = turbidimetric turbidity unit

In accordance with the terms of Section 324.3109(1) of Part 31 of the NREPA that 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.*

On January 5, 2023, WRD staff observed the unlawful discharge of production area waste from the feed storage area to the ground and to conveyances to waters of the state. The Farm has ceased to utilize the calf hutch area and outside animal lots, thereby removing those areas from active production. Please see the enclosed Inspection Report for details of the inspection, areas evaluated, and their ratings. Additionally, the Farm has not applied for permit coverage. Pursuant to Michigan Administrative Code, R 323.2196(3) EGLE has determined the Farm is a CAFO and requires permit coverage.

The violations identified in the Violation Notice are violations of Part 31 of the NREPA. J&D Brenner Farms shall take immediate action to achieve and maintain compliance with the terms and conditions of Part 31 of the NREPA.

Please submit a response to the Kalamazoo office and the Attorney General's office by **April 1, 2023**. At a minimum, the response shall include:

1. Photographic evidence that all the discharge areas have been properly addressed to prevent future discharges.
2. A timeline to install permanent measures, i.e., collection, diversion, and/or storage of all production area waste.
3. A proposed timeline to return to compliance with Part 31; and for applying and complying with a Concentrated Animal Feeding Operation permit.

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

The WRD 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, injunctive relief, and potential criminal prosecution. Due to the severity of the noncompliance, we have referred this matter to the Department of Attorney General for escalated enforcement.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this Second Violation Notice or if you would like to arrange a meeting to discuss it, please contact Matthew Meyerhuber, Assistant Attorney General, Department of Attorney General, Environment, Natural Resources, and Agricultural Division, at 517-302-6483; MeyerhuberM1@michigan.gov.

Sincerely,



Jennifer Klang, District Supervisor
Kalamazoo District Office
Water Resources Division
269-568-2697 or KlangJ@Michigan.gov

Enclosure

cc: Paul Morgan, Willis Law
James DeYoung, CJD Farm Consulting, Inc.
Matthew Meyerhuber, Department of Attorney General
James Zellinger, EGLE
Anthony Klein, WRD, EGLE
Bruce Washburn, WRD, EGLE

EXHIBIT H.1

J&D Brenner Farms : 4C61741D-8803

CAFO Recon

Inspector: Bruce Washburn

Start Date: 01/05/2023

Facility Information		
1. Date of Inspection	01/05/2023	
2. Time of Inspection	12:00 PM	
3. Inspection Participants		
Name	Company	Phone Number
Deb Brenner	J&D Brenner Farm	616-293-4104
Aaron Brenner	J&D Brenner Farm	616-293-0788
Chelsa Weick	J&D Brenner Farm	-
Paul Morgan, J.D.	Willis Law	269-598-6982
Nick Tuori	Willis Law	269-492-1040
Matthew Meyerhuber	Michigan Department of Attorney General	517-302-6483
Anthony Klein	EGLE-WRD-Enforcement Unit	517-243-3734
Bruce Washburn	EGLE-WRD-Kalamazoo	269-330-6079
Jennifer Klang	EGLE-WRD-Kalamazoo	269-568-2697
James DeYoung	CJD Farm Consulting	616-608-5022
4. Wet Weather Inspection?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	
5. Site Name:	J&D Brenner Farm	
6. Was an inspection brochure given to the facility?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	
7. Was there a discussion about MiWaters and Authorized Users?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	
No one from the facility has signed up with MiEnviro Portal		
8. Is the facility MAEAP verified?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	
9. Herd Species and Inventory		
Species/Type	Number	
Mature Dairy Cows (milked or dry)	655	
The farm has removed all other cattle. Only approximately 5 calves on-site at most waiting to be picked up.		
10. Inspector Name	Bruce Washburn	
Areas Evaluated		
11. Animal Contact w/ Waters of State	Satisfactory	
All animals were kept in barns and calves were in hutches.		
12. Animal Mortality	Not Reviewed	
No evidence of mortalities nor evidence that they are stored in an uncollected area.		
13. Chemical Disposal	Not Reviewed	
14. CNMP	Un-Satisfactory	
No CNMP available, the farm has hired CJD Farm Consulting to put one together. The farm has received funding from NRCS to complete one.		

J&D Brenner Farms : 4C61741D-8803

CAFO Recon

Inspector: Bruce Washburn

Start Date: 01/05/2023

Areas Evaluated	
<i>15. Conservation Practices</i>	Not Applicable
None present and none mentioned by the farm.	
<i>16. Discharge(s)</i>	Un-Satisfactory
Several areas at the production area that were not collected resulting in discharge to surface waters and the ground. To the ground was silage and feed storage area on the north side of feed bunker and the northeast corner of the feed bunker. At least three metal grated covered catch basins in the feed area along with gravity floor to the surface water east of the feed bunker onto power companies land and into surface waters. EGLE sampled the discharge pipe from the north middle bunker where the runoff discharged to the ground and flow paths showed flow to the north eventually into waters of the state. The water was discolored, created foam, and was odiferous.	
<i>17. Divert Clean Water</i>	Not Reviewed
It is unclear and undocumented if the farm is diverted clean water to the extent possible. The farm and consultant have not completed a CNMP, and it was unclear during the inspection if either knew where all water flowed.	
<i>18. Inspection, Proper Operation & Maintenance</i>	Un-Satisfactory
Vegetation throughout the farm was minimally maintained and areas of runoff showed signs of disrepair. It is not clear if the farm is completing routine inspections and there is a lack of proper operation and maintenance. Portions of the north feed bunk wall were falling over, the runoff area at the northeast corner of the feed bunk had severe erosion and undercutting, outlets were covered with vegetation and unmarked.	
<i>19. Land Application of Waste</i>	Not Reviewed
<i>20. Manifesting</i>	Not Reviewed
<i>21. Non-Production Area Storm Water</i>	Marginal
The travel lane east of the waste storage structures running north and south, had erosion that needed to be controlled. Dirt travel lanes were muddy and tracking of material was evident that could enter storm water.	
<i>22. Other</i>	Marginal
The open lots and calf hutch area were depopulated, but still present and not planted with vegetation or other natural cover. Animals and waste were gone, but years of overuse on the open lot has left it in poor condition.	
<i>23. Record Keeping</i>	Not Reviewed
<i>24. Reporting Requirements</i>	Not Reviewed
<i>25. Waste Storage Structures</i>	Un-Satisfactory
No vegetation management, no indication of depth gauges, no design or storage capacity information. Inside side slopes were eroded and steeper than allowed by today's standards in the upper (south) structure. The upper structure was quite full for the time of the year.	

J&D Brenner Farms : 4C61741D-8803

CAFO Recon

Inspector: Bruce Washburn

Start Date: 01/05/2023

Areas Evaluated

26. Production Area

Unsatisfactory

Not all production area waste is being collected. None of the feed storage area was being collected during the inspection, there was wasted feed scraped out of the west end of the barns and in an area that was not collected. Direct discharges were occurring during the inspection.

EXHIBIT I

Willis Law

ATTORNEYS & COUNSELORS

491 WEST SOUTH STREET
KALAMAZOO, MICHIGAN 49007

OFFICE 269/492-1040 • 616/301-7177 • TOLL FREE 800/610-6938 • FAX 269/492-1042 • WWW.WILLIS.LAW

April 14, 2023

Jennifer Klang, District Supervisor
Kalamazoo District Office
Water Resources Division
Dept. of Environment, Great Lakes, and Energy
KlanJ@Michigan.gov

Via Email

**Re: Response to Second Violation Notice dated February 23, 2023;
FOR SETTLEMENT PURPOSES ONLY**

Dear Ms. Klang:

As you know, this firm represents Deborah Brenner (also, “Ms. Brenner”) and J&D Brenner Farms (collectively, J&D). This letter is intended as J&D’s response to the Second Violation Notice dated February 23, 2023 (SVN) and referencing the January 5, 2023 inspection of the farm by EGLE staff and staff from the Office of the Attorney General (and generally the allegations set forth in a Violation Notice dated October 25, 2019 and other correspondence from your office dated February 6, 2020).

Respectfully, this response and certain information provided herein at your request is for settlement purposes and is submitted in a good faith effort to find workable and reasonable solutions to the concerns raised by EGLE. We are committed to reaching common ground.

This response will include: 1) a summary timeline of events from our perspective; 2) actions taken to date to address issues raised by EGLE; 3) photographic evidence of measures to eliminate discharge; and 4) a potential timeline for the installation of permanent measures and compliance with Part 31 of the NREPA.

I. Timeline

April 12, 2017 The first interaction with EGLE as confirmed in an email from Bruce Washburn thanking Aaron Brenner for the tour around the farm and giving J&D a list of engineers and consultants.

October 25, 2019 VN-010114 makes reference to a letter August 19, 2016 (soliciting proof that J&D did not need an NPDES permit) and subsequent meeting September 2, 2016. This VN is in response to the April 12, 2017 inspection and lists several alleged violations that included the runoff from the silage pad, lack of documentation for the manure storages, calves on the dirt lots

 **Willis Law**
ATTORNEYS & COUNSELORS

north of the farm, and several other potential unlawful discharges of production area waste to a tributary of the Rabbit River. EGLE requested a response that included acknowledgement that the farm would be applying for an NPDES permit for the discharges identified in the letter.

February 6, 2020 Letter from Jennifer Klang (District Supervisor) is sent to J&D and to Consumers Energy requesting a "complete response to VN-010114" either jointly or separately by February 28, 2020, and stating that due to the circumstances of this case, it was being referred for potential escalated enforcement.

March 3, 2021 Deborah Brenner contacted EGLE to discuss the Enforcement Notice and to inquire about next steps and process. Ms. Brenner informed that she is working with USDA NRCS to make various changes at the J&D facility. Thereafter, ACO-05602 was delivered to J&D. This consent order requires the farm to apply for a CAFO permit, document that the manure storages meet the NRCS standard (by October 1, 2023), halt the runoff to the drain, document that all waste is being collected in the waste storage structures, documentation that all animals are kept inside or on vegetated pastures, obtain written authorization for any work conducted on property that is not owned by the J&D.

July 2021 Deborah Brenner, Bruce Washburn and Matt Lange had a conference call to discuss the ongoing issues.

Fall 2021 Deborah Brenner contacted James DeYoung, an Allegan MAEAP technician at CJD Farm Consulting, to arrange for assistance in developing a CNMP. Mr. DeYoung informed that he did not have capacity—from a timing perspective—to complete a CNMP for a new client and, therefore, suggested Ms. Brenner contact another provider or try back again in the spring, after April 1, 2022. Ms. Brenner stated that she had contacted other CNMP providers and had been told that they could not assist J&D, again, due to the providers' workload/capacity.

April 5, 2022 Deborah Brenner again reached out to James DeYoung about developing a CNMP. Mr. DeYoung and CJD Farm Consulting agreed to begin working on the plan in the fall of 2022.

August 2022 A meeting occurred at the farm attended by Deborah Brenner, Mike Ludlam, and James DeYoung to begin process of developing a CNMP for the farm. Thereafter, Mr. DeYoung began developing a CNMP for the farm with all the farm's soil tests and other ancillary information collected.

January 2023 On January 5, 2023, EGLE staff and staff from the Office of the Attorney General conducted an inspection at the Farm.

II. Actions Taken To Date

1) J&D is no longer using the bunker silo at the northeast end of the farm on Consumers property for 2 seasons. Bunker silo at SE corner of the farm is being used up and feed will not be stored there in the future. Additionally, the feed bunker by the road is empty.

2) Cattle have been removed from the north pastures. EGLE was notified of this change when it occurred.

3) No young calves or young stock are housed or raised at the farm other than a couple of calves that are picked up every couple of days. These calves are housed near the road and there is no runoff from this production area.

4) Animal numbers have not exceeded 700 mature cattle except for a couple days at a time. Current numbers are 649 lactating and dry.

5) farm has contracted with NRCS to develop a CNMP and apply for additional funding for repairing or reconstructing manure storage. CNMP is in process and expected to be completed by end of Summer 2023.

III. Actions To Prevent Discharge

Runoff from north end of bunker has been addressed and photos have been submitted (also attached at Tab A). Moving forward we would like to discuss these options for potential additional runoff from contaminated areas of the farm.

- 1) If runoff is to be released as clean water.
 - a. Runoff from south end of bunker (catch basin close to road) cannot collect any leachate or runoff from feed area. All dirty water needs to be diverted away from this area. This will likely require the farm to eliminate the south bunker silo for feed storage. This has been discussed.
 - b. Runoff to the catch basin next to the office can only be clean water. Dirty runoff must be diverted away from this basin to the north (new) catch basin collection system.
 - c. Drain in the feeding sump needs to be eliminated.
- 2) If runoff is to be collected:
 - a. A tank (sized appropriately for catching all runoff plus emergency volume must be constructed at before reaching the county drain east of the farm (going under powerlines).

- b. A pump (sized appropriately) and pipe need to be installed to direct the wastewater to an approved waste storage structure.
- c. The waste storage structure likely needs to be reconstructed to meet new size requirement and engineering standards. Farm's manure storage will need to provide six (6)
- d. months capacity for the manure and the additional wastewater at the farm.

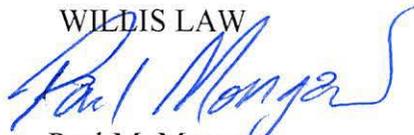
IV. Timeline For Installation Of Permanent Measures (i.e., collection, diversion, and/or storage of all production area waste) And Full Compliance (CAFOP)

Reconstruction of manure storage and installation of a new piping plan for the farm can be accomplished within 3-4 years utilizing NRCS funding. Alternatively, it may be possible to do it within 2-3 years depending on the weather, contractor availability, and non-NRCS financing. A CAFO permit application will require a full CNMP, which is in process now and targeted for completion by Mid-Summer.

In summation, in light of the history of events, covid impacts, and consultant availability, and other issues, J&D has made progress and taken significant actions, including reducing cattle numbers, getting animals off the back pasture, building the runoff collection system immediately after EGLE inspection, and otherwise will continue willingness to cooperate for full compliance. To that end, we look forward to a reasonable and final resolution and discussions that can lead to an appropriate, practical, and reasonable ACO. Please also consider this our request for a meeting with the Office of the Attorney General to schedule further discussions.

Very Truly Yours,

WILLIS LAW



Paul M. Morgan

Enclosures

copy: James DeYoung James@CJDFarmConsulting.com
Klang, Jennifer (EGLE) <KlangJ@michigan.gov>
Schoen, Kailey (EGLE) <SchoenK@michigan.gov>
Washburn, Bruce (EGLE) <WASHBURNB2@michigan.gov>
Morrisseau, Elizabeth (AG) <MorrisseauE@michigan.gov>
Meyerhuber, Matthew (AG) <MeyerhuberM1@michigan.gov>

Tab A









EXHIBIT J

