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

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY,

Plaintiff,

v

HOLLOO FARMS, LLC,

Defendant.

No. 2022- 0213 -CE

HON. _____
JUDGE JAMES S. JAMO

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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, Elizabeth Morrisseau and Nadia M. Hamade, Assistant Attorneys General, states as follows:

## NATURE OF THE CASE

1. This is a civil action for injunctive relief to require Defendant Holloo Farms, LLC (Holloo Farms) to comply with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq.* (Part 31), Mich Admin Code, R 323.2205, and General Permit MIG010000.

2. Defendant's failure to comply with Part 31 of the NREPA, Mich Admin Code, R 323.2205, and General Permit MIG010000, as described in this Complaint, threatens to impair the natural resources of Calhoun County by overloading the Kalamazoo River, Lake Allegan, and related water bodies with nutrients and introducing bacteria and other pathogens from animal waste into the waters of the state.

3. Further, Defendant's longstanding, ongoing refusal to fully comply with permitting requirements threatens the integrity of the EGLE permitting program because Defendant has gained an unfair financial advantage relative to compliant permittees.

4. EGLE also seeks civil fines, attorney fees, and costs.

5. EGLE brings this action under Part 31 of the NREPA.

## JURISDICTION AND VENUE

6. 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, MCL 600.605.

7. This Court has personal jurisdiction over Holloo Farms under Section 711 of the Revised Judicature Act, MCL 600.711.

8. Venue in this Court is proper under Section 3115(1) of the NREPA, MCL 324.3115(1).

## PARTIES

9. 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.

10. Holloo Farms is a limited liability company incorporated in 1999 under the laws of the State of Michigan.

11. Holloo Farms is a "person" within the meaning of MCL 324.301(h).

## STATUTORY AND REGULATORY BACKGROUND

### Part 31 of the NREPA

12. Michigan enacted Part 31 of the NREPA 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.

13. 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.

14. Under Part 31 of the NREPA, 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).

15. "Waters of the state," as defined by Part 31 of the NREPA, 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).

16. "Waste or waste effluent" includes water that contains polluting substances such as manure, milkhouse waste, sileage leachate, and chemicals.

17. 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).

18. 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).

19. 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.*

20. 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.

21. 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 Envtl Qual*, 292 Mich App 106, 110 (2011).

22. 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.

23. Thus, permits issued under Part 31 of the NREPA are state permits that meet federal NPDES permitting requirements so that EGLE can issue NPDES permits instead of the EPA.

## CAFO Regulation

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

25. Specific to this Complaint, large CAFOs are dairy operations that stable or confine more than 700 mature dairy cows. Mich Admin Code, R 323.2103(g)(i).

26. 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.

27. 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 *Escheria 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).

28. Pollution can reach surface waters from improperly managed production areas, overflowing from insufficiently sized, designed, or maintained waste storage structures, or through improper land application. (*Id.*)

29. A CAFO production area includes animal confinement areas, manure storage areas, raw materials storage areas, and waste containment areas.

30. Pollution can also reach surface waters by traveling through groundwater after being improperly discharged to the ground. (*Id.* at 2979–80.)

31. Another way pollution can reach surface waters is by traveling through tiles, which are artificial drainage mechanisms comprised of perforated piping installed beneath agricultural fields that move water off those fields.

32. CAFO waste can enter tile lines directly into surface tile inlets or indirectly through the soil and into the underground tile line.

33. Tiles typically discharge to surface waters, either directly or through conduits.

34. When they reach surface waters, nutrients, such as nitrogen and phosphorous, can harm water quality.

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

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

37. 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.)

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

39. 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.

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

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

42. 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.

43. Land application is the process of spreading CAFO waste onto fields to dispose of it. Although manure is the most commonly understood component of land applied CAFO waste, that waste also includes both production area waste and CAFO process wastewater, as defined in Mich Admin Code, R 2102(j) and R 2104(e), described below. This Complaint uses the term CAFO waste to include both defined terms.

44. Although manure has some value as a fertilizer, CAFOs typically produce more manure than nearby farm fields require for fertilizing purposes.

45. Moreover, land application of CAFO waste regularly occurs during times of the year when there are no growing crops to uptake the fertilizing components.

46. 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.

47. Examples of improper land application include when CAFO waste is applied to fields with saturated soils, when too much CAFO waste is applied to a field, or when the CAFO waste is applied too close to surface waters or to prohibited fields. See Mich Admin Code, R 323.2196(5)(a)(ix).

48. Liquid waste storage structures, as relevant here, are in-ground, engineered and designed, lined structures that capture and store up to millions of gallons of CAFO waste, including manure, bedding, milkhouse waste, sileage leachate runoff, mortality leachate, and other contaminated production area runoff.

49. Solid waste storage structures, as relevant here, are open structures containing solid CAFO waste that have semi-permeable floors so any liquids, including contaminated storm water, can drain into a liquid waste storage structure.

50. If the waste storage structures are not properly maintained, they may not perform as engineered, resulting in discharges to groundwater or surface water. Likewise, if the waste storage structures are not designed and sized appropriately, this may also result in discharges to groundwater or surface water.

51. Over time, the solid components of the stored liquid waste settle at the bottom of liquid waste storage structures and accumulate, slowly decreasing the amount of storage space available if not routinely removed.

52. Clean storm water from precipitation and snow melt can become contaminated by CAFO waste and discharge to waters of the state, when storm water comes in contact with: (a) production area waste, due to permit

noncompliance and poor production area housekeeping; (b) raw materials such as oils, cleaning chemicals, and the like, that are not properly stored in the production area; and (c) non-production areas such as access roads and material handling areas due to poor housekeeping.

53. Typically, CAFOs have both storm water inlets that collect clean storm water and route it to a storm water outfall, as well as production area waste inlets that collect production area waste, including contaminated storm water, and route it to waste storage structures.

54. Sometimes, CAFOs install production area waste catch basins near storm water inlets to attempt to prevent production area waste from entering those inlets.

55. EGLE regulates CAFOs primarily to prevent the discharge of pollutants into the waters of the state. Mich Admin Code, R 323.2196 (CAFO Rule).

56. The section of the Part 31 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[.] 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. "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);

f. "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, sileage 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

g. "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).

57. Although the CAFO Rule is based on 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.

58. Michigan requires all owners or operators of large 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).

59. CAFO owners or operators that are not complying with the terms of a general permit, among other reasons, may be required to obtain an individual permit instead. Mich Admin Code, R 323.2191(3)(b).

60. Whether pursuant to a general NPDES permit or an individual NPDES permit, all CAFO owners or operators must each develop and implement a comprehensive nutrient management plan (CNMP). Mich Admin Code, R 323.2196(5)(a).

61. A CNMP contains procedures and recordkeeping requirements that detail how a CAFO will house its animals and how it will store, handle, and manage

the associated waste, including whether and how much waste will be manifested to third parties. Mich Admin Code, R 2196(5)(a) and (e).

62. Although Part 31 does not define the term "manifest," another section of the NREPA does, and that definition is useful in understanding the general concept as it relates to managing waste. Part 111, Hazardous Waste Management, of the NREPA, MCL 324.11101 *et seq.*, defines the term "manifest" as a "form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage." MCL 324.11103(8).

**Surface Water Quality Standards, Part 4 Rules**

63. The Part 4 administrative rules for surface water quality promulgated under Part 31, Mich Admin Code, R 323.1041 *et seq.* (Part 4 Rules), establish water quality standards for surface waters. Mich Admin Code, R 323.1041.

64. Among other things, the Part 4 Rules prohibit surface waters from containing unnatural turbidity, color, foams, settleable solids, and suspended solids. Mich Admin Code, R 323.1050.

65. Further, the Part 4 Rules establish the following limits of microorganisms: (a) from May 1 through October 31, surface waters shall contain no more than 300 *E. coli* per 100 milliliters (mL) of water; and at all other times, surface waters shall contain no more than 1,000 *E. coli* per 100 mL. Mich Admin Code, R 323.1062(1) and (2), R 323.1044(i) and (x), and R 323.100(2).

## Groundwater Discharge, Part 22 Rules

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

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

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

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

70. 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. Mich Admin Code, R 323.2204, R 323.2210(f).

71. 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).

72. The Part 22 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).

73. The Part 22 Rules also prohibit all unauthorized, injurious discharges. Mich Admin Code, R 323.2205.

74. 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).

75. Part 201 defines "hazardous substances" to include "hazardous waste" as defined by Part 111, Hazardous Waste Management, of the NREPA, MCL 324.1101 *et seq.* (Part 111). MCL 324.20101(x)(*iii*).

76. Part 111 defines "hazardous waste" to include waste "that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may...pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed." MCL 324.11103(3).

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

78. Under the Cleanup Criteria Rules, the generic groundwater cleanup criteria for phosphorous in the groundwater surface water interface is 1,000 micrograms per liter (ug/L). Mich Admin Code, R 299.44 and 299.49(EE).

79. Under the Cleanup Criteria Rules, the generic groundwater cleanup criteria for nitrite in drinking water is also 1,000 ug/L. Mich Admin Code, R 299.44.

## CAFO General Permit

80. On April 30, 2015, EGLE issued the 2015 CAFO General Permit, MIG010000, (General Permit) (attached as Ex A), which is an NPDES wastewater discharge general permit for the CAFO source category and was a renewal of a prior CAFO general permit.

81. A CAFO in Michigan must obtain a certificate of coverage under the General Permit from EGLE for authorization to operate. (*Id.* at p 1.)

82. To minimize the risk of polluting surface waters of the State, the General Permit establishes requirements for waste storage structure construction and maintenance, land application of CAFO waste, housekeeping measures to prevent production area waste from contaminating otherwise clean stormwater, inspections, and recordkeeping.

83. The General Permit does not authorize discharges to groundwater. (*Id.*, p 5, Part I, Section A(1).)

84. The General Permit expressly prohibits dry weather discharges, the discharge of any CAFO waste and runoff that fail to meet specified restrictions, and discharges from land application that fail to meet specified restrictions or that cause an exceedance of Michigan's Water Quality Standards, which are contained in the Part 4 Rules. (*Id.*, p 5, Part I, Section A(3).)

## Waste Storage Structure Requirements in the General Permit

85. Under the General Permit, permittees must: (a) ensure that newly constructed, large waste storage structures conformed to the U.S. Department of

Agriculture's National Resource Conservation Service (NRCS) Conservation Practice Standard 313 (NRCS 313), 2014; (b) maintain records documenting or demonstrating that any existing structure was constructed to, or provides equivalent environmental protection to, NRCS 313, 2003 or 2005; and (c) stop using structures that did not meet the requirements of Part I of the General Permit by a date to be specified in the certificate of coverage. (*Id.*, pp 7–8, 17, Part I, Section B(1)(b)(2), Section B(1)(b)(2)(c), and Section C(2).)

86. The General Permit also requires permittees to store all CAFO waste in these specially designed storage structures, except for solid stackable manure collected in barn prior to transfer to storage. (*Id.*, p 8, Part I, Section B(1)(d)(7).)

87. "Solid stackable manure" is defined by the General Permit as "manure and manure mixed with bedding that can be piled up or stacked and will maintain a piled condition . . . [that] will also have the characteristic that it can be shoveled with a pitchfork." (*Id.*, p 24, Part II, Section A.)

88. The General Permit requires that all CAFO waste storage structures, including structures for stacking solids, include an easily visible and clearly marked depth gauge, which must indicate operational, emergency, and freeboard volumes, and, for solids storage, may be permanently marked on sidewalls. (*Id.*, p 6, Part I, Section B(1)(b)(1).)

89. The General Permit requires permittees to have CAFO waste storage structures capable of holding at least six months' worth of waste. (*Id.*, p 6, Part I, Section B(1)(a)(1).)

90. To ensure waste storage structures are sufficiently sized, permittees must include within their CNMPs accurate information about waste production and waste storage capacity. (*Id.*, p 6, Part I, Section B(1)(a)(4).)

91. The General Permit requires that all CAFO waste-handling equipment, including piping and transfer lines, and all runoff management devices, like storm water and production area waste inlets and production area waste catch basins, be accessible to allow for required visual inspections, which necessitates frequent removal of vegetation, snow, and any other obstructions from these devices. (*Id.*, p 9, Part I, Section B(2)(f)(3).)

92. The General Permit requires permittees to inspect waste storage structures weekly to ensure they can adequately contain CAFO waste. Permittees must also make sure woody vegetation does not grow in or on waste storage structures because roots of such vegetation can undermine the structure's storage capacity. Further, permittees must ensure woody vegetation does not establish on storage structures because such growth impairs the ability to perform weekly inspections. (*Id.*, pp 7–8, Part I, Section B(1)(c)(1) and (1)(d)(3).

93. Permittees must protect the integrity of waste storage structures, which can include avoiding excessive solid accumulation on waste storage structures. (*Id.*, p 7, Part I, Section B(1)(d)(5).)

94. The General Permit requires permittees to maintain specific records of both the design volume of waste storage structures and solid accumulation to ensure that the integrity of the structure's liner is protected, that waste storage

structures are big enough to store all the CAFO waste produced in a six-month period, and that there is sufficient freeboard volume to protect against precipitation-caused runoff. (*Id.*, pp 6, 8, Part I, Section B(1)(a)(3) and (4) and (1)(d)(5).)

95. The General Permit also requires permittees to update CNMPs to reflect new animal housing facilities and new waste storage structures. (*Id.*, p 16, Part I, Section B(4)(e)(5).

**Land Application Requirements in the General Permit**

96. The General Permit requires permittees to prepare and periodically revise a CNMP detailing the practices they will undertake to comply with the General Permit. (*Id.*, pp 14–16, Part I, Section B(4).)

97. Broadly speaking, the purpose of the CNMP is to ensure that permittees avoid land applying CAFO waste in a manner that is likely to result in unauthorized discharges to waters of the state.

98. Among other things, the CNMP must list all surface water connections in fields where CAFO operators land apply CAFO waste, as determined through required field assessments that must be kept in the CNMP. (*Id.*, p 9, Part I, Section B(3)(a).)

99. The General Permit requires each permittee to conduct, and document in its CNMP, a field-by-field assessment of all land application areas and use the assessment, along with other considerations, to ensure that the amount, timing, and method of application of CAFO waste does not exceed the capacity of the soil to

assimilate the CAFO waste and does not cause unauthorized discharges to waters of the state. (*Id.*, p 9, Part I, Section B(3)(a).)

100. The General Permit contains additional requirements for application to frozen or snow-covered ground without incorporation or injection, including a specific field-by-field assessment protocol that ensures no CAFO waste applied during these conditions will discharge to waters of the state. (*Id.*, p 35, Part III.)

101. Pursuant to that section, permittees must identify in their CNMPs areas of fields that are suitable for winter application. (*Id.*, p 35, Part III.)

102. CAFO waste may not be land-applied on frozen or snow-covered ground within 100 feet of a water of the state or a conduit thereto. (*Id.*, p 14, Part I, Section B(3)(g)(1).)

103. The General Permit also requires permittees to maintain certain land application records, including information about both field conditions and weather forecasts during the time of application. (*Id.*, p 13, Part I, Section B(3)(d)(1).)

104. The General Permit limits the amount of phosphorus and nitrogen that CAFOs may land apply to a given location every year. (*Id.*, pp 10–11, Part I, Section B(3)(c)(1) and (2).)

105. The General Permit requires permittees to either incorporate CAFO waste or inject it subsurface within 24 hours of applying it, with exceptions that are not applicable here. (*Id.*, p 14, Part I, Section B(3)(f).)

**Production Area Requirements in the General Permit**

106. Under the General Permit, permittees must divert clean storm water from contaminated production areas, including the areas where animals are housed, where animals frequently walk, sileage pads, and feedstock storage areas. (*Id.*, p 8, Part I, Section B(2)(b).)

107. The General Permit requires permittees to visually inspect all clean storm water diversion devices and outlets weekly. (*Id.*, p 9, Part I, Section B(2)(f)(1).)

108. Any deficiencies discovered during those inspections "shall be corrected immediately." (*Id.*, p 9, Part I, Section B(2)(4)(c).)

109. Those visual inspections and correction requirements ensure that permittees promptly identify and correct pathways to route pollutants away from clean storm water and prevent storm water contamination.

110. The General Permit requires permittees to implement good housekeeping practices to minimize and control pollutants in storm water discharges associated with non-production areas, including immediate access roads used or traveled by carriers of raw materials, waste material, or by-products used or created by the facility, sites used for handling material other than CAFO waste, refuse sites, sites used for the storage and maintenance of material handling equipment, and shipping and receiving areas. (*Id.*, p 14, Part I, Section B(3)(h).) When production area waste from these particular areas contaminates storm water, this is commonly referred to as spillage and track out.

### Recordkeeping Requirements in the General Permit

111. As an assurance that permitted CAFOs are performing required inspections and maintenance to prevent their operations from polluting Michigan's water resources, the General Permit requires permittees to maintain records for at least five years, including, among other things, the following:

a. Records of weekly visual inspection of all clean storm water diversion devices and outlets, (*Id.*, p 9, Part I, Section B(2)(f)(1) and (5));

b. Records of inspections that accurately identify deficiencies in inspections, proper operation, and maintenance of all CAFO waste-handling equipment and all runoff management devices to prevent unauthorized discharges, as well as any effort taken by the CAFO to correct such deficiencies, (*Id.*, p 9, Part I, Section B(2)(f)(3), and (5));

c. Records of daily clean water line inspections, (*Id.*, pp 9 and 15, Part I, Section B(2)(f)(2) and (5);

d. Records of the current design volume of any CAFO waste storage structures (*Id.*, pp 6 and 15, Part I, Section B(1)(a)(4) and (4)(c)); and

e. Records of annual land application equipment calibration (*Id.*, pp 10 and 15, Part I, Section B(3)(b)(6) and (4)(c).).

## GENERAL ALLEGATIONS

112. After Peter Johannes Leonardus Antonius Loonen organized Holloo Farms in about April 2000, he conveyed five parcels of farmland he owned to Defendant, and Defendant acquired several other parcels in the vicinity and within Calhoun County to expand the animal feeding operations.

113. Defendant owns and manages the animals, animal feeding operations, waste collection and spreading equipment, waste management and disposal, and

labor at two separate locations: Holloo Farms Headquarters and Holloo Farms Satellite.

114. Holloo Farms Headquarters is located in Eckford Township, Calhoun County, Michigan, and has the following legal description:

> Certain land situated in Eckford Township, Calhoun County, Michigan, described as: the Southeast 1/4 of the Southeast 1/4 of Section 16, Town 3 South, Range 5 West; also, Southwest 1/4 of the Southeast 1/4 of Section 16, Town 3 South, Range 5 West; excepting commencing at the South 1/4 corner of Section 16, Town 3 South, Range 5 West, Eckford Township, Calhoun County, Michigan, thence North along the North and South 1/4 line of said Section 16, 216.00 feet, thence East parallel with the South line of said Section 16, 472.00 feet, thence South, parallel with the North and South 1/4 line of said section, 216.00 feet, thence west along the South line of said Section 16, 472.00 feet to the point of beginning (77.66+/- acres); commonly known as 20737 F Drive South, Marshall, MI 49068; Tax Parcel ID# 13-09-160-003-00 (Ex B, Calhoun County GIS Parcel Report 09-160-003-00).

115. Holloo Farms Satellite is located in Albion Township, Calhoun County, Michigan, and has the following legal description:

> Certain land situated in Albion Township, Calhoun County, Michigan, described as: the West 1/2 of the Northwest 1/4 of Section 20, and the Northwest 1/4 of the Southwest 1/4 of said Section 20, Town 3 South, Range 4 West, excepting a 2 Rod strip on the West described in the deed recorded in Liber 405, Page 515, Calhoun County Records (118 acres); commonly known as 25160 F Drive South, Homer, MI 49245; Tax Parcel ID# 13-01-120-021-00 (Ex C, Calhoun County GIS Parcel Report 01-120-021-00).

116. Defendant's operations at Holloo Farms Headquarters were first authorized under the 2005 General Permit pursuant to a certificate of coverage that EGLE issued on September 9, 2008.

117. At all times relevant to this Complaint, Defendant is required to manage the CAFO waste produced from Holloo Farms Headquarters in accordance

with the General Permit (Ex A), pursuant to Certificate of Coverage No. MIG010167 (attached as Ex D) that EGLE issued on November 14, 2016.

118. On information and belief, Defendant established animal feeding operations at Holloo Farms Satellite sometime in 2016 or 2017.

119. Defendant applied for coverage under the 2020 General Permit, but because the Department has not yet issued certificates of coverage under that permit due to an ongoing contested case, Defendant's animal feeding operations remain covered by, and subject to, the 2015 General Permit.

120. At Holloo Farms Headquarters, Defendant owns and manages animal feeding operations of between 1,818 to 1,840 mature dairy cattle and between 450 to 600 other cattle, which includes, without limitation, collecting and spreading the associated CAFO waste on approximately 2,851.5 acres of land in Calhoun County.

121. Upon information and belief, Defendant owns and manages animal feeding operations of approximately 1,000 other cattle at the Holloo Farms Satellite, which includes, without limitation, collecting and spreading the associated CAFO waste on an undisclosed amount of land in Michigan.

122. Every year, Defendant manages a system for disposing of Holloo Farms Headquarters' CAFO waste by land applying it on over 100 nearby fields, all located in Calhoun County, some of which are owned by Defendant, and all of which are listed in Defendant's CNMP. (Ex E, Land Application Map).

123. Fields 2S and 3S, the source of the 2004, 2005, 2008, and 2019 discharges, are among the fields identified in Defendant's CNMP as fields receiving CAFO waste and that are owned and managed by Defendant.

124. Defendant's recent field spread plans identify that a tile line exists in Field 2S, but not in Field 3S.

125. Defendant's recent field-by-field assessments identify Field 3S as containing tile lines that are three to six feet in depth, with notes to monitor the tile outlet before and after land application. In those same assessments, Defendant does not identity Field 2S as having tile lines.

126. In the most recent Annual Report, submitted for the year 2020, Defendant reported that Holloo Farms Headquarters produced 16,723,200 gallons of liquid waste and 5,000 tons of solid waste.

127. The production area at Holloo Farms Headquarters spans approximately 25 acres and includes four barns with the capacity to house between 1,818 to 1,840 cattle, an approximately 9,000 square foot milking parlor with capacity to milk all lactating dairy cattle at least twice a day, an approximately 129,000 square foot sileage pad, an approximately 74,000 square foot composting area, an approximately 15,000 square foot feedstock storage area including four separate stalls with a combined area of approximately 2,400 square feet. (Ex F, Holloo Farms Headquarters CNMP Map.)

128. Holloo Farms Headquarters has three liquid waste storages structures that the current CNMP identifies as the Concrete Lagoon, the Settling Pit, and the Earthen Storage. (Ex F.)

129. Holloo Farms Headquarters has two solid waste storage structures, not identified as such in the current CNMP, but nonetheless identified within the CNMP site map as the Compost Pad and Solid Stacking. (*Id.*) Defendant has never submitted any engineering documentation for either of the solid waste storage structures.

130. Through Defendant's application for coverage under the 2020 version of the General Permit, Defendant recognized both the Compost Pad and the Solid Stacking as solid waste storage structures and acknowledged having no engineering documents for them.

131. Upon information and belief, from at least 2005 and until 2020, the Settling Pit and the Earthen Storage were connected by an automatic equalizing pipe, which Defendant removed in 2020.

132. Holloo Farms Headquarters has multiple storm water inlets that transport what should be clean storm water to the storm water outfall.

133. Some of those storm water inlets are near production area waste catch basins that are intended to catch production area waste before it can enter the storm water inlets.

134. Holloo Farms Headquarters also has production area waste inlets that collect liquid production area waste and transport it to waste storage structures.

135. Relevant here, there is a storm water inlet located northeast of the sileage pad (Sileage Pad Inlet), near a production area waste catch basin, which, on information and belief, is intended to collect production area waste from getting into the Sileage Pad Inlet.

136. There is also a production area waste inlet intended to collect sileage leachate from the sileage pad and direct it to the liquid waste storage structures.

137. Further, there is a storm water inlet located southeast of the commodities shed (Commodity Shed Inlet).

138. Defendant has not reported the amount of CAFO waste produced at Holloo Farms Satellite. Based on aerial analysis and field observations, Defendant houses a significant number of animals here and produces significant amounts of both liquid and solid waste.

139. Further, Defendant has the capacity to store at least 200,000 gallons of liquid waste per linear foot of depth at Holloo Farms Satellite in the approximately 38,000 square foot liquid waste storage structure at the south end of the farm.

140. Defendant has the capacity to stack solid waste several feet high in the approximately 10,000 square foot solid waste storage area at Holloo Farms Satellite.

141. Improperly managing the CAFO waste produced at Holloo Farms Headquarters and Holloo Farms Satellite 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, which, in turn, render surface water unsafe for drinking or recreation.

142. In a typical year, Defendant manifests a relatively small portion of the CAFO waste produced by Holloo Farms Headquarters, and third parties apply that CAFO waste to fields, including, upon information and belief, within Calhoun County.

143. Defendant land applies at least some of the CAFO waste produced by Holloo Farms Satellite in Calhoun County.

144. Upon information and belief, Defendant uses the same workers and waste spreading equipment for both Holloo Farms Headquarters and Holloo Farms Satellite.

145. Further, upon information and belief, Defendant uses the feed, equipment, and workers, stored, kept, or stationed at Holloo Farms Headquarters for feeding operations at both Holloo Farms Headquarters and Holloo Farms Satellite.

146. Based on aerial imagery, there is no bulk feed stored at Holloo Farms Satellite.

147. Additionally, upon information and belief, Defendant uses the same cattle trailer to transfer cattle between the Holloo Farms Headquarters and Holloo Farms Satellite.

148. Upon information and belief, Defendant owns all the cattle located at Holloo Farms Headquarters.

149. Upon information and belief, Defendant owns all the cattle located at Holloo Farms Satellite.

150. Milking operations occur at Holloo Farms Headquarters.

151. Dairy cows, bulls, heifers (female cattle that have not given birth yet), calves, and far off dry cows (pregnant female cattle) are housed at Holloo Farms Headquarters.

152. Upon information and belief, heifers and calves are also housed at Holloo Farms Satellite.

153. Upon information and belief, cattle are moved between Holloo Farms Headquarters and Holloo Farms Satellite.

154. Defendant also manages CAFO waste produced from animal feeding operations at Holloo Farms Satellite, but Certificate of Coverage No. MIG010167 does not cover animal feeding operations at that location because Defendant did not identify them during the permit application process, nor did Defendant update its CNMP to include information about the new animal housing facilities and waste storage structures there, or the amount of waste produced there annually.

155. Additionally, Defendant is responsible for land applying or manifesting all CAFO waste produced at Holloo Farms Headquarters and Holloo Farms Satellite.

156. Holloo Farms Headquarters and Holloo Farms Satellite are each individually an "AFO" within the meaning of Mich Admin Code, R 323.2102(b).

157. At least 700 mature dairy cattle are stabled or confined at Holloo Farms Headquarters.

158. Holloo Farms Headquarters is a "large CAFO" within the meaning of Mich Admin Code, R 323.2103(g).

159. Upon information and belief, Defendant uses a common system for the disposal of the CAFO waste produced at Holloo Farms Headquarters and Holloo Farms Satellite.

160. The animal feeding operations at Holloo Farms Headquarters and Holloo Farms Satellite are collectively a "large CAFO" within the meaning of Mich Admin Code, R 323.2103(g).

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

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

163. Budlong Drain discharges into Huckleberry Drain, which discharges into Wilder Creek, the Kalamazoo River, and ultimately Lake Michigan.

164. Corn sileage is a whole corn plant that is processed and partially fermented and must be stored at the appropriate moisture level and airtight to allow it to further ferment.

165. Corn sileage is used as cattle feed.

166. Sileage, through the fermenting process, becomes highly acidic and produces leachate, which is high in nutrients and acidic.

167. Sileage leachate also exhibits high biochemical oxygen demand (BOD), which means that it consumes readily available oxygen in the natural environment.

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

169. Low oxygen, resulting from discharges of high BOD waste, among other things, can also result in heavy metals being released to groundwater.

170. *E. coli* should not be present in clean storm water.

**Defendant's History of Noncompliance**

171. In 2004, the Calhoun County Drain Commissioner contacted EGLE about suspected discharge of manure from Defendant's operations into Budlong Drain, which is connected to Huckleberry Drain through a tile and an open ditch.

172. Upon investigation, which included water sampling and testing, EGLE determined that there had been an unauthorized discharge to surface waters resulting in discolored water, the presence of foam, manure odors, and elevated levels of nitrogen and phosphorus.

173. In 2005, EGLE received another complaint through the Calhoun County NRCS office about a discharge of manure and other pollutants to Huckleberry Drain.

174. Upon investigation, EGLE determined that the discharge came from Defendant, specifically from fields currently identified as Field 2S and 3S in Defendant's CNMP.

175. In 2008, EGLE received yet another complaint through the Calhoun County NRCS office about a discharge of manure and other pollutants to Huckleberry Drain.

176. Since it first obtained a certificate of coverage in 2008 for the 2005 version of the General Permit, Defendant has struggled to maintain compliance with its NPDES permits, particularly the requirements specific for land application, production area housekeeping, recordkeeping, and waste storage structures.

177. Prior to March 28, 2016, Defendant repeatedly violated multiple provisions of the General Permit related to land application of CAFO waste, waste storage structure capacity, stopping production area waste from contaminating clean stormwater, production area housekeeping, required inspections, and recordkeeping, including failure to maintain land application records.

178. Defendant similarly has a history of noncompliance with those same provisions in earlier versions of the General Permit.

179. After March 28, 2016, Defendant's violations continued.

180. Throughout the years, Defendant has undertaken various measures, some temporary, some permanent, to come into compliance with some, but not all, permit conditions.

181. To remedy relatively recent violations of the General Permit associated with poor housekeeping and failure to keep production area waste like feed material out of clean storm water, in approximately 2014, Defendant installed a concrete pad at the west side of Holloo Farms Headquarters to store sileage.

182. Relatedly, in approximately August of 2017, Defendant also installed a concrete pad in front of the commodity shed at Holloo Farms Headquarters to store feed material.

183. After the sileage was moved to the concrete pad constructed in 2014, Defendant began storing solid stackable waste in the area that previously held the sileage, but Defendant never listed the location as a waste storage structure in the CNMP, nor did it mark a depth gauge on the waste storage structure.

184. Around that same timeframe, Defendant also began storing mortalities and other solid waste in the Compost Pad, but Defendant never listed the location as a waste storage structure in the CNMP, nor did it mark a depth gauge on the waste storage structure.

185. Upon reviewing Defendant's 2016 Annual Report, through which Defendant provided information about the prior year's operation, EGLE determined that Defendant violated the General Permit by applying too much nitrogen, both contained in manure mixed with other CAFO waste and in commercial fertilizer, to at least 13 fields. EGLE informed Defendant of these permit violations through a written compliance communication. (Ex G, March 31, 2017, Compliance Correspondence.)

186. On June 12, 2017, EGLE inspected Holloo Farms Headquarters production areas and conducted further factfinding regarding the contents of the 2016 Annual Report.

187. During the June 12, 2017 inspection, EGLE observed the following violations of the General Permit: (a) Defendant was failing to divert clean storm water from production area waste; (b) Defendant did not visually inspect all clean storm water diversion devices and outlets weekly; (c) Defendant failed to maintain good housekeeping measures near the Commodity Shed Inlet; (d) Defendant failed to maintain a depth gauge in all CAFO waste storage structures; (e) Defendant failed to properly maintain waste storage structures to ensure adequate weekly inspections, including the removal of any established woody vegetative growth; (f) Defendant failed to inspect the storm water inlet located north of the barns labeled Group 1, 2 and Group 3, 4; and (g) Defendant failed to remove accumulated solids from waste storage structures in a manner consistent with the farm's CNMP or to otherwise update the CNMP to reflect any unusable space within the structure.

188. On June 26, 2017, EGLE issued a Violation Notice, VN-007381, summarizing these violations. (Ex H, Violation Notice VN-007381.)

**Multiple violations cause an unlawful wintertime discharge leading to subsequent inspections that reveal additional, ongoing noncompliance.**

189. Defendant never achieved six months' storage in the waste storage structures located at Holloo Farms Headquarters between November 1, 2018, and December 31, 2018, as required by Part I, Section B(1)(d)(2) of the General Permit.

190. There is a visible tile surface inlet on Field 2S that, upon information and belief, may be connected to underground tile from both Fields 2S and 3S.

191. That visible tile surface inlet discharges water to a conduit to Huckleberry Drain.

192. In Annual Reports submitted for the years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, Defendant identified Field 2S as being tiled, but not Field 3S.

193. Field assessments Defendant prepared since 2015 indicate that Field 3S is tiled, note that the tile outlet should be monitored before and after land application, and that Field 2S is not tiled.

194. Defendant never identified tile inlets in Fields 2S or 3S in the CNMP field maps and never followed required setbacks from the unidentified tile inlets.

195. In Annual Reports submitted for the years 2008, 2009, 2010, 2011, 2012, 2013, Defendant identified Field 3S as a field that should not have CAFO waste applied during the winter.

196. In Annual Reports for the years 2016, 2017, and 2018, Defendant identified both Fields 2S and 3S as fields that should not have CAFO waste applied during the winter.

197. When Defendant analyzed fields 2S and 3S using the Michigan Manure Application Risk (MARI) scoring system in 2019, as required by Part III of the General Permit, the analysis revealed that the fields were medium and high risk. Pursuant to Part III of the General Permit, Defendant should not have applied any CAFO waste to those fields during the wintertime.

198. Previously, Defendant caused wintertime discharges to occur from Fields 2S and 3S into Huckleberry Drain, first in 2004, then in 2005, and again in 2008.

199. On January 26, 2019, Defendant applied 196,000 gallons of CAFO waste to Field 2S and 188,000 gallons to Field 3S, without incorporating or injecting it within 24 hours, as required by Part I, Section B(3)(e) and Part I, Section B(1)(d)(7) of the General Permit.

200. Defendant also did not maintain 100-foot setbacks from the tile inlet on Field 2S that discharges to a conduit to Huckleberry Drain, as required by Part I, Section B(3)(g)(1) of the General Permit.

201. After the snow melted from the fields, in March 2019, upon information and belief, at least 72,000 gallons of runoff contaminated with CAFO waste from Field 2S and Field 3S were discharged into Huckleberry Drain.

202. That discharge caused Huckleberry Drain to exceed the state water quality standard codified at Mich Admin Code, R 323.1050 due to unnatural turbidity, color, foams, settleable solids, and suspended solids, in violation of Part I, Section A(3) of the General Permit.

203. Defendant provided no data demonstrating that the discharge to Huckleberry Drain did not cause or contribute to an exceedance of any state water quality standards, as allowed by Part I, Section (C)(1)(e) of the General Permit.

204. Defendant did not notify EGLE of the discharge to Huckleberry Drain, as required by Part I, Section C(1) of the General Permit.

205. Instead, EGLE discovered the discharge because the Calhoun County Drain Commissioner contacted the agency on March 11, 2019, concerned about what appeared to be manure-laden wastewater discharging to Budlong Drain.

206. In response to that complaint, EGLE went to fields 2S and 3S on March 11, 2019, and observed a direct discharge of manure to Huckleberry Drain.

207. After observing the discharge to Huckleberry Drain, EGLE performed a site inspection of Holloo Farms Headquarters, which included inspecting records.

208. The March 11, 2019, inspection revealed land application and recordkeeping violations of the General Permit that led to the unlawful discharge.

209. Said inspection also revealed that Defendant applied CAFO waste to ten other fields with MARI scores of medium or high risk.

210. The unlawful discharge continued until March 12, 2019, when Defendant successfully stopped it by constructing a temporary sand berm.

211. EGLE issued a violation notice to Defendant on April 9, 2019, summarizing the multiple violations associated with the unlawful discharge. (Ex I, Violation Notice VN-009409.)

212. On September 24, 2019, EGLE conducted a site inspection of Holloo Farms Headquarters, which revealed the following additional violations: (a) Defendant failed to maintain weather forecast reports for each land application event, in violation of Part I, Section B(3)(d)(1) of the General Permit; and (b) Defendant failed to properly maintain the waste storage structure, in violation of Part I, Section B(1)(b)(1) of the General Permit; and (c) Defendant failed to have a

depth gauge on the waste storage structure, in violation of Part I, Section B(1)(b)(3) of the General Permit.

213. EGLE summarized the violations uncovered during the September 24, 2019, inspection and sent Defendant a Second Violation Notice and Enforcement Notice, indicating that the agency determined the violations needed to be resolved with a legally enforceable agreement that included a compliance program and a civil fine, among other requirements. (Ex J, November 4, 2019, Second Violation Notice and Enforcement Notice.)

**Final Site Inspection Before Litigation**

214. On November 5, 2021, EGLE inspected Holloo Farms Headquarters, including an inspection of the production area and Fields 97, 98, and 7W, collecting water samples from the storm water outfall and the Sileage Pad Inlet, and record review. (Ex K, November 5, 2021, Holloo Farms Inspection Report; Ex L (Composite), Results of November 5, 2021, Water Quality Samples; Ex M, Holloo Photo Log 1; Ex N, Holloo Photo Log 2; Ex O, Holloo Photo Log 3.)

215. During the November 5, 2021, inspection, EGLE observed sileage leachate runoff discharging from the sileage pad at Holloo Farms Headquarters to Field 7W instead of being directed to the production area waste inlet.

216. EGLE observed burnt vegetation of Field 7W, indicating that the discharge had high levels of nutrients and chemicals, typical of sileage leachate composition.

217. On information and belief, after harvesting the 2020 corn crop, Defendant placed sileage on the south side of the sileage pad in a manner that did not ensure that all sileage leachate and runoff would flow to the production area waste inlet.

218. During that inspection, EGLE observed inconsistencies between markings on waste storage structures and stated storage capacity in Defendant's CNMP. Specifically, the CNMP lists the Earthen Structure as being 21 feet deep, however the depth measurements at the north wall of the Earthen Structure stopped at 20 feet, with no markings for emergency or freeboard volume.

219. Similarly, the CNMP lists the Concrete Lagoon structure as 24.5 feet deep, with a staff depth gauge. Instead, the Concrete Lagoon has spray paint markings that stop at 20 feet, with no emergency or freeboard volumes marked.

220. Although the CNMP describes the Settling Pit as only collecting waste from the milk cow barns, EGLE observed that it collects runoff from the Commodity Shed area and the Compost Pad, as well.

221. The CNMP describes the Settling Pit as hydraulically connected to the Earthen Storage. However, because Defendant removed an automatic equalization pipe between the two pits, it is now possible for the Settling Pit to overflow.

222. EGLE observed no depth gauge and no markings for operational, emergency, and freeboard volumes on the Settling Pit.

223. During that same inspection at Holloo Farms Headquarters, EGLE observed poor housekeeping measures at the production area and failure to follow the facility operation and maintenance protocol.

224. In addition to the sileage leachate runoff EGLE observed, EGLE also observed the following: (a) overgrown vegetation at the base of the eastern side of the Group 3, 4 Barn; (b) significant vegetation and woody debris growing in the Concrete Lagoon; (c) overgrown vegetation around storm water inlets and related structures; (d) production area waste collected in and around the Sileage Pad Inlet; (e) Compost Pad material spilling over the structure's sidewall; and (f) production area waste and several barrels of various chemicals, including detergents and petroleum products, among which was a punctured barrel of oil, exposed to clean storm water.

225. EGLE reviewed Defendant's inspection reports, none of which revealed any deficiencies. However, because of the obvious and ongoing violations described above, Defendant either failed to perform the inspections properly or failed to accurately document the deficiencies in the inspection reports and correct them.

226. During the November 2021 inspection at Holloo Farms Headquarters, EGLE sampled what should have been clean storm water from the Sileage Pad Inlet and from the storm water outfall. (Ex L.)

227. During the inspection, EGLE observed rushing water through storm water inlets and related structures and a much lower flow of water discharging

from the storm water outfall, indicating unexplained system discrepancies and discharges to groundwater.

228. Water samples collected from the storm water outfall indicated the following parameters:

a. *E. coli*: 1600 per mL;

b. Nitrite: 680 ug/l; and

c. Total Phosphorous: 120 mg/l.

(*Id.*)

229. Water samples collected from the Sileage Pad Inlet indicated the following parameters:

a. *E. coli*: 3500 per mL;

b. BOD: 60.3 milligrams per liter (mg/l); and

c. Total Phosphorous: 4800 ug/l.

(*Id.*)

230. Based on EGLE's subsequent analysis and review of this water quality data, Defendant is not keeping production area waste out of clean storm water.

231. Further, the effluent characteristics exceed groundwater cleanup criteria under Part 201 for nitrite and phosphorous, as well as the surface water quality standard for microorganisms.

232. EGLE observed that the surface water downgradient of the storm water outfall discharge was bright green with visible algae growth, indicating high levels of nutrients. (Ex O, at p 2.)

233. EGLE also observed indicia of improperly land applied CAFO waste on Fields 97, 98, and 7W. (Ex O, at pp 7–8.)

234. On November 2, 2021, Defendant applied CAFO waste to Field 97.

235. On November 3, 2021, Defendant applied CAFO waste to Field 98.

236. The week of November 1, 2021, Defendant applied CAFO waste to Field 7W.

237. It had not rained more than 0.5 inch in 24 hours since October 29, 2021.

238. On all three fields, EGLE observed ponding of water, tire rutting, and blocky soil chunks.

239. Field 7W was partially chisel plowed, but portions of the field were too wet to drag the chisel plow through, as indicated by tire tracks in the field as opposed to chisel marks which would have covered up the tire tracks.

240. That same day, EGLE observed various machines moving from Holloo Farms Headquarters to Holloo Farms Satellite, including a machine that transferred sileage from the sileage pad at Holloo Farms Headquarters to Holloo Farms Satellite.

241. EGLE also observed a waste tanker leave Holloo Farms Satellite and spread CAFO waste on fields nearby.

242. On January 18, 2022, EGLE issued Violation Notice No. VN-012570 to Defendant, describing the above-mentioned violations and requesting information and proof of compliance by January 31, 2022. (Ex P, Violation Notice VN-012570.)

243. Defendant did not timely comply with all of EGLE's requests for information, nor did it demonstrate permit compliance by January 31, 2022.

## COUNT I—VIOLATIONS OF PART 31 AND RULE 2205—INJURIOUS DISCHARGES TO GROUNDWATER

244. Paragraphs 1 through 243 are hereby realleged and incorporated by reference.

245. 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."

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

247. Upon information and belief, since November 1, 2020, Defendant discharged sileage leachate to groundwater, in violation of MCL 324.3112(1) and Mich Admin Code, R 323.2205.

248. Since March 28, 2016, Defendant discharged pollutants to groundwater by failing to keep production area waste out of multiple storm water inlets, which discharge to groundwater, in violation of MCL 324.3112(1) and Mich Admin Code, R 323.2205.

249. 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).

250. 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 II—GENERAL PERMIT VIOLATIONS: CONTAMINATING CLEAN STORM WATER

251. Paragraphs 1 through 250 are hereby realleged and incorporated by reference.

252. Since March 28, 2016, Defendant failed to install and maintain proper mechanisms to divert production area waste from coming into contact with clean storm water and failed to clean debris and contaminated runoff from storm water inlets at multiple locations, including the sileage pad, old feedstock storage area marked as Solid Stacking, Compost Pad, outside the Group 3, 4 barn, parlor, the old freestall barn, and the fresh cow barn, all in violation of Part I, Sections B(2)(b), and (B)(2)(f) of the General Permit.

253. From at least June 12, 2017, until September 30, 2017, Defendant failed to maintain the area located adjacent to the Holloo Farms Headquarters sileage pad free from production area materials and allowed materials from operational activities, such as spillage or track out, combined with wind-blown production materials, to accumulate in the Sileage Pad Inlet, in violation of Part I, Sections B(2)(b) and (B)(2)(f) of the General Permit.

254. From at least June 12, 2017, until September 30, 2017, Defendant failed to perform weekly storm water system inspections for the storm water inlet

located north of the barns labelled Group 1, 2 and Group 3, 4, in violation of Part I, Section B(2)(f)(1) of the General Permit.

255. For that same time period, Defendant also failed to maintain records of those weekly inspections, in violation of Part I, Section B(2)(f)(5) of the General Permit.

256. Defendant repeatedly failed to properly inspect the production area at Holloo Farms Headquarters as evidenced by its failure to document and correct obvious housekeeping violations, such as sileage leachate discharging from the sileage pad, production area waste entering the Sileage Pad Inlet, overgrown vegetation at the Group 3, 4 Barn, overgrown vegetation blocking views of storm water inlets and related structures, and the exposure of production area waste and chemicals to clean storm water, all in violation of Part I, Section B(2)(f)(1) of the General Permit.

257. 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 the General Permit. MCL 324.3115(1).

258. Under Part 31, this Court may order Defendant to comply with the General Permit and award reasonable attorney fees and costs. MCL 324.3115(1).

## COUNT III—GENERAL PERMIT VIOLATIONS: IMPROPER LAND APPLICATION AND ASSOCIATED UNLAWFUL DISCHARGE

259. Paragraphs 1 through 258 are hereby realleged and incorporated by reference.

260. As reported in Defendant's 2016 Annual Report, Defendant applied excessive nitrogen to 13 fields, which are 13 separate violations of Part I, Section B(3)(c)(1)(c) of the General Permit.

261. In the winter of 2019, Defendant land applied CAFO waste on at least 12 fields that scored medium or high risk on the MARI, which are 12 separate violations of Part III of the General Permit.

262. Before land applying CAFO waste on fields 2S and 3S on or about January 26, 2019, Defendant failed to first properly assess those fields to ensure that the planned land application would not cause an unauthorized discharge, which are two separate violations of Part I, Section B(3)(a)(4) and (3)(b) of the General Permit.

263. To date, Defendant failed to identify surface water connections in Field 2S and Field 3S in the CNMP, which are two ongoing violations of Part I, Section B(3)(d)(1) of the General Permit.

264. Defendant failed to fully complete Land Application Records to indicate the field conditions at the time of the January 2019 application to Field 2S and Field 3S, which are two separate violations of Part I, Section B(3)(d)(1) of the General Permit.

265. Defendant failed to maintain weather forecast records for those two land application events, which are two separate violations of Part I, Section B(3)(d)(1) of the General Permit.

266. When land applying the CAFO waste to Field 2S and Field 3S on January 26, 2019, Defendant did so within 100 feet of a conduit to Huckleberry Drain, which are two separate violations of Part I, Section B(3)(g)(1) of the General Permit.

267. Defendant's January 26, 2019, land application resulted in a discharge from March 11-12, 2019, that exceeded the state water quality codified at Mich Admin Code, R 323.1050, because it caused the receiving water to contain unnatural turbidity, color, foams, settleable solids, and suspended solids, in violation of Part I, Section A(3) of the General Permit.

268. Defendant failed to report the prohibited discharge, which is a single violation of Part I, Section C(1) of the General Permit.

269. During the week of November 1, 2021, Defendant improperly applied CAFO waste to Fields 97, 98, and 7W, which are three separate violations of Part I, Section B(3)(a)(1) of the General Permit.

270. 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 the General Permit. MCL 324.3115(1).

271. Under Part 31, this Court may order Defendant to comply with the General Permit and award reasonable attorney fees and costs. MCL 324.3115(1).

## COUNT IV—GENERAL PERMIT VIOLATIONS: WASTE STORAGE STRUCTURE VIOLATIONS

272. Paragraphs 1 through 271 are hereby realleged and incorporated by reference.

273. Since March 28, 2016, Defendant failed to adequately control woody and tall vegetation on the banks of all three waste storage structures at Holloo Farms Headquarters, in violation of Part I, Sections B(1)(c), B(1)(d), and B(2)(f)(3) of the General Permit.

274. From at least June 12, 2017, until October 20, 2020, Defendant failed to maintain the Earthen Storage waste storage structure at Holloo Farms Headquarters by allowing severe solid accumulation, in violation of Part I, Section A(3)(d) of the General Permit.

275. Continuously since March 28, 2016, Defendant failed to have a depth gauge or properly mark operational, emergency, and freeboard volumes of the three liquid waste storage structures at Holloo Farms Headquarters, in violation of Part I, Section B(1)(b)(1) of the General Permit.

276. Continuously since March 28, 2016, Defendant failed to update the CNMP to reflect actual storage capacity of each liquid waste storage structure at Holloo Farms Headquarters, failed to properly describe the connection between the Settling Pit and the Earthen Structure waste storage structures, and failed to accurately describe what waste flows into the Settling Pit, all in violation of Part I, Section B(1)(a)(4) of the General Permit.

277. Defendant failed to achieve the necessary six-month storage capacity by December 1, 2018, which is a single violation of Part I, Section B(1)(d)(2) of the General Permit.

278. Continuously since March 28, 2016, Defendant failed to list the Compost Pad and the Solid Stacking as solid waste storage structures in the CNMP, in violation of Part I, Section B(1)(a)(4) of the General Permit.

279. Continuously since March 28, 2016, Defendant failed to provide engineering documents for either the Compost Pad or the Solid Stacking solid waste storage structures, in violation of Part I, Section B(1)(b)(2) of the General Permit.

280. Since it first began using the solid and liquid storage structures at Holloo Farms Satellite in 2016 or 2017, Defendant failed to provide engineering documents, in violation of Part I, Section B(1)(b)(2) of the General Permit.

281. Continuously since March 28, 2016, Defendant failed to mark the Compost Pad and the Solid Stacking solid waste storage structure with depth gauges or required depth markings, in violation of Part I, Section B(1)(b)(1) of the General Permit.

282. 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 the General Permit. MCL 324.3115(1).

283. Under Part 31, this Court may order Defendant to comply with the General Permit and award reasonable attorney fees and costs. MCL 324.3115(1).

## COUNT V—GENERAL PERMIT VIOLATIONS: CNMP VIOLATIONS

284. Paragraphs 1 through 283 are incorporated herein by reference.

285. Defendant's animal operations at the Holloo Farms Satellite, combined with Defendant's animal feeding operations at Holloo Farms Headquarters, constitute a "CAFO" under the meaning of Mich Admin Code, R 323.2102(i), as identified in Part II, Section A of the General Permit, because Defendant uses a common system for the disposal of waste produced at both locations.

286. Defendant never updated its CNMP to include the new animal housing facilities and waste storage facility at these animal feeding operations, in violation of Part I, Section B(4)(e)(5) of the General Permit.

287. Defendant never included required information about the waste storage structures located at Holloo Farms Satellite, nor about the waste produced from those operations in its CNMP, in violation of in violation of Part I, Section B(1)(a)(4) of the General Permit.

288. Defendant never submitted required information about these new animal feeding operations on its Annual Reports, in violation of Part I, Section B(4)(d) of the General Permit.

289. 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 the General Permit. MCL 324.3115(1).

290. Under Part 31, this Court may order Defendant to comply with the General Permit and award reasonable attorney fees and costs. MCL 324.3115(1).

## DEMAND FOR JUDGMENT

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

A. Find that Defendant is not complying with and has not complied with the following conditions of the General Permit specific to contaminated storm water, land application, waste storage structures, and the CNMP: Part I, Sections A(3), A(3)(d), B(1)(a)(4), B(1)(b)(1), B(1)(b)(2), B(1)(c), B(1)(d), B(1)(d)(2), B(2)(b), B(2)(f), B(2)(f)(1), B(2)(f)(3), B(2)(f)(5), B(3)(a)(1), B(3)(a)(3)(B), B(3)(a)(4), B(3)(c)(1)(C), B(3)(d)(1), B(3)(g)(1), B(4)(d), B(4)(e)(5), and C(1), and Part III;

B. Find that Defendant is not entitled to the groundwater permit exemption under Mich Admin Code, R 323.2210(f) because its discharge does not meet the requirements of Mich Admin Code, R 323.2204;

C. Order Defendant to comply with the terms of the General Permit until the Department issues an individual NPDES permit, at which point Defendant must comply with the conditions of that permit;

D. Order Defendant to comply with Part 31 and Mich Admin Code, R 323.2205;

E. Enjoin Defendant from unlawfully discharging waste into waters of the State;

F. 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, the General Permit, and Mich Admin Code, R 323.2205;

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/ *Elizabeth Morrisseau*
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Date: March 28, 2022

LF: Holloo Farms, Inc. (EGLE)/AG#2021-0330536-B/Complaint 2022-03-28