

## Vreba-Hoff Dairy

Vreba-Hoff Dairy, LLC is a large concentrated animal feeding operation (CAFO) in Lenawee and Hillsdale Counties near Hudson, Michigan. The Vreba-Hoff Dairy (which includes Vreba-Hoff Dairy I and Vreba-Hoff Dairy II) has had a long history of violations of water quality protection statutes and rules which has resulted in the degradation of several surface waters in the vicinity of the dairy. Vreba-Hoff Dairy currently houses approximately 5,500 cows. The Department of Environmental Quality (DEQ) negotiated a comprehensive Consent Judgment with Vreba-Hoff Dairy in 2004 to resolve violations alleged by the DEQ in its lawsuits filed in 2003 and 2004, including 25 separate discharges of waste to waters of the state.

The 2004 Consent Judgment required that Vreba-Hoff install a treatment system that would treat all agricultural wastes (which generally includes manure, milking parlor wastewater, waste feed materials, and contaminated storm water).

In January 2007, the Department of Attorney General (DAG), on behalf of the DEQ, filed a "Motion to Show Cause" in the 30<sup>th</sup> Judicial Circuit to commence civil contempt proceedings related to Vreba-Hoff's failure to comply with the terms of the 2004 Consent Judgment. Specifically, Vreba-Hoff failed to properly operate the waste treatment system which resulted in additional discharges of waste to waters of the state and other violations of the 2004 Consent Judgment. The Court ordered the parties into mediation with retired Judge Lawrence Glazer serving as the facilitator.

At the close of that lengthy process, the parties entered into an Interim Order in June 2007 that modified the 2004 Consent Judgment, primarily by allowing Vreba-Hoff to install a separate waste treatment system that would meet objective effluent limitations (i.e. pollutant standards) recommended by Vreba-Hoff's consultants. (*document available at <http://www.michigan.gov/deq/0,1607,7-135-3313---,00.html> under Spotlight*). Vreba-Hoff began using that treatment system, known as the EarthMentor, in September 2007, despite the DEQ's concerns that the EarthMentor was not being operated as represented to the DEQ and Judge Glazer during mediation.

The Interim Order required that numbers of cows at the Dairy Operation be reduced to a level consistent with Vreba-Hoff's manure treatment capabilities. Any herd increase would depend on continued compliance with the Interim Order, construction and operation of the new treatment system, attainment of standards, and penalty payments for past violations.

Throughout the summer of 2007 Vreba-Hoff again failed to comply with the terms of the 2007 Interim Order. The DAG sent a demand for payment of stipulated penalties and cow removal in September 2007. Specifically, the DEQ sought stipulated penalties and cow removal for violations of the Interim Order generally associated with Vreba-Hoff's failure to properly manage structures filled with old waste (which resulted in discharges of waste to waters of the state) and the failure to construct and manage the new EarthMentor treatment system in accordance with the terms of the Interim Order. Vreba-Hoff continually bypassed a critical component of the EarthMentor system, despite numerous warnings from the DEQ that such an action would negatively affect treatment system efficiencies.

The 2007 Interim Order expanded the 2004 Consent Judgment's "dispute resolution" procedures to establish an on-going role for retired Judge Glazer as the Dispute Resolution Facilitator (DRF) responsible for hearing disputes that the parties cannot resolve themselves

and advising the court, if necessary. As the parties were unable to agree on an appropriate course of action related to the violations of the Interim Order alleged by the DEQ in September 2007, briefs were prepared for the DRF's review and recommendation. "Oral argument" was heard on May 29, 2008, and June 9, 2008.

In the midst of the Dispute Resolution proceeding, Vreba-Hoff advised the DEQ of its intention to irrigate wastewater from the EarthMentor treatment system containing twice the concentration of pollutants allowed under the Interim Order. Irrigation began in late July and continued into the fall of 2008. The DEQ provided guidance to Vreba-Hoff on September 11, 2008, for use in hiring a qualified engineering firm to evaluate the EarthMentor treatment system and ascertain necessary operational or structural improvements to achieve compliance with the Interim Order; however Vreba-Hoff did not heed this advice from DEQ's own engineers and analysts.

The DRF issued an opinion on liability on August 14, 2008, finding in DEQ's favor on nearly all points. A second, final opinion was issued by the DRF on November 6, 2008, finding that Vreba-Hoff owes \$223,500 in stipulated penalties arising from liability for the violations detailed in the August 14, 2008, opinion on liability (*document available upon request*). Vreba-Hoff appealed the opinion of the DRF to Judge James Giddings of the Ingham County Circuit Court, as allowed by the Interim Order.

Vreba-Hoff's appeal of the DRF opinion was narrowly drawn in that Vreba-Hoff purported to only seek a delay in payment of the \$223,500 until additional cows may be brought back to the dairies. However, the failure of the treatment system (and failure by Vreba-Hoff to ever certify that the system was constructed as designed and capable of treating the waste) prevents the addition of cows. In essence, Vreba-Hoff's appeal sought to rescind the bargained for limits on herd size that were critical to the DEQ agreeing to the installation of the new EarthMentor treatment system.

Since there are no factual issues in dispute and Vreba-Hoff's requested relief was not authorized under the Consent Judgment or Interim Order, the DAG filed a Motion for Summary Disposition requesting the court dismiss Vreba-Hoff's appeal and order immediate payment of the \$223,500.00 penalty.

After briefing by the parties (*documents available upon request*), Judge Giddings heard oral argument on April 16, 2009. At the close of the hearing, Judge Giddings granted DEQ's motion, accepted the DRF's Report and Recommendation, and directed the Defendant Vreba-Hoff to pay to the Plaintiffs \$223,500.00 "as fines presently due and owing, not later than Monday, May 18, 2009."

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