STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION

In the matter of:

ACO-000204
Date Entered: 9-9-2014

Jeffrey Taylor
d/b/a Willow Creek Farms
305 East Roosevelt Road
Ashley, Michigan 48806
_____/

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). Mr. Jeffrey Taylor owns and operates a business that he refers to as Willow Creek Farms, two large concentrated animal feeding operations (CAFOs), one located at 305 East Roosevelt Road, Ashley, Michigan 48806 (Home Site Facility); and the other located at 9887 Jerome Road, Perrinton, Michigan 48871 (Jerome Road Facility), collectively "Willow Creek Farms." The DEQ alleges Mr. Taylor is currently 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 at both locations. Specifically, the DEQ alleges that Mr. Taylor has failed to demonstrate, by the extended deadline, that waste storage structures meet the Natural Resources Conservation Service Conservation Practice Standard No. 313, Waste Storage Facility (NRCS 313), or the environmental performance equivalent to NRCS 313 through the submittal of an evaluation conducted by a licensed professional engineer as required by National Pollutant Discharge Elimination System (NPDES) Permit No. MIG019000 issued by the WRD to Mr. Taylor for Willow Creek Farms. The violation of this permit is a violation of state laws set forth in detail within Section I, below. Mr. Taylor and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I.STIPULATIONS

Mr. Taylor and the DEQ stipulate as follows:

1.1 The NREPA, MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.

1.2 Pollution Control, Part 31, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state.

1.3 Section 3106 of Part 31, MCL 324.3106, states that, "[t]he department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state."

1.4 A large CAFO means 700 or more mature dairy cows; or 1,000 or more cattle other than mature dairy cows; or 2,500 or more swine weighing 55 pounds or more; or 10,000 or more swine weighing less than 55 pounds, 2006 AACS, R 323.2103(g).

1.5 All large CAFOs in the state are required to obtain an NPDES permit. Certain large CAFOs are afforded the opportunity to operate under an NPDES General Permit (MIG019000), as is the case for Willow Creek Farms. A Certificate of Coverage (COC) is a facility-specific certificate issued to facilities operating under an NPDES General Permit.

1.6 Mr. Taylor was issued COC No. MIG010114 on April 25, 2012, providing coverage under MIG019000. That COC states, "On or before November 30, 2012, all large CAFO waste storage structures at the Willow Creek Farms-CAFO facility shall be constructed in accordance with NRCS standards, set forth in Conservation Practice Standard No. 313, Waste Storage Facility, dated June 2003."

1.7 Specifically, the failure to demonstrate construction to NRCS 313 or the environmental performance equivalent is a violation of Part I, Section A.4.a.2b "Structural Design" of NPDES Permit No. MIG019000. The above-referenced permit condition states, in part, at (C) Existing Storage Structures at Previously-Permitted CAFOs:

> "CAFOs previously permitted under General Permit No. MIG019000, issued November 2005, shall comply with the requirements for storage

structures as contained in that permit, including NRCS 313 2003 and any compliance dates set forth in the previously-issued COC, unless the Department modified the compliance dates in the reissued COC. Submittals shall be as follows:

ii) For demonstrations of environmental performance equivalent to NRCS 313 2003 submit the demonstration as accomplished through an evaluation by a professional engineer to the Department, on a form provided by the Department."

1.8 From 2010 to the present time, WRD staff has provided guidance on the waste storage structure evaluation requirements in written communications.

1.9 Mr. Taylor did not submit all of the required equivalency evaluations of the facility's waste storage structure(s) to the DEQ by the November 30, 2012, deadline.

1.10 On January 3, 2013, the WRD issued Willow Creek Farms Violation Notice (VN) No. VN-005477, advising of the missed deadline, and requesting submittal of the waste storage structure equivalency evaluation(s) by not later than January 18, 2013; the WRD did not receive the evaluation(s) by this date.

1.11 On December 30, 2013, Mr. Taylor submitted the required waste storage structure equivalency evaluations for both the Jerome Road Facility and Home Site Facility. The WRD determined thereafter that the structures at the Jerome Road Facility met NRCS 313 or the environmental equivalent. However, the structure at the Home Site Facility does not meet NRCS 313 or the environmental equivalent.

1.12 Mr. Taylor consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31, MCL 324.3112(4). Mr. Taylor agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent

Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA, MCL 324.301(b).

1.13 Mr. Taylor and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Mr. Taylor that the law has been violated.

1.14 Mr. Taylor agrees and attests that he will comply with all requirements under this Consent Order.

1.15 Mr. Taylor shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II, Compliance Program, of this Consent Order.

II. COMPLIANCE PROGRAM

It is therefore agreed and ordered that Mr. Taylor shall take the following actions at the Home Site Facility to comply with Part 31:

2.1 Not later than **October 1, 2014**, Mr. Taylor shall provide written notice to the DEQ certifying completion of one of the following options and:

a) Submit a final engineering review demonstrating the waste storage structure commonly referred to as "Home Site Barn 6 Concrete Block Structure" is in compliance with NRCS 313 of 2003 or 2005 or the environmental performance equivalent to NRCS 313; or

b) Obtain as-built drawings detailing all construction activities completed and confirming that the waste storage structure commonly referred to as "Home Site Barn 6 Concrete Block Structure" meets NRCS 313 of 2005 or has been reconstructed to meet the environmental equivalent. Mr. Taylor shall submit a copy of the as-built drawings to the WRD Lansing District Supervisor, P.O. Box 30242, Lansing, Michigan 48909-7742, not later than **October 11, 2014**; or

c) Properly close the waste storage structure commonly referred to as

"Home Site Barn 6 Concrete Block Structure" in accordance with Part I, Section B.2 "Closure of Structures and Facilities" of NPDES Permit No. MIG019000 and the Natural Resources Conservation Service Conservation Practice Standard No. 360, "Closure of Waste Impoundments," of 2005. Mr. Taylor shall provide written notification to the WRD Lansing District Supervisor within 15 days of completion of closure.

2.2 Mr. Taylor shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the WRD Lansing District Supervisor, P.O. Box 30242, Lansing, Michigan 48909-7742. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

III. DEQ APPROVAL OF SUBMITTALS

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

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

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

3.4 In the event the DEQ approves with specific modifications a work plan, proposal, or

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

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

3.6 Failure by Mr. Taylor to submit an approvable work plan, proposal, or other document, within the applicable timeframe specified above, constitutes a violation of this Consent Order and shall subject Mr. Taylor to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 8.2.

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

3.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, specifications, schedules, or any other writing submitted by Mr. Taylor will be construed as relieving Mr. Taylor of his obligation to obtain written approval, if or when required by this Consent Order.

IV. EXTENSIONS

4.1 Mr. Taylor and the DEQ agree that the DEQ may grant Mr. Taylor a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall

be preceded by a written request in duplicate to the DEQ, WRD, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the WRD Lansing District Supervisor at no later than ten business days prior to the pertinent deadline, and shall include:

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

The WRD Lansing District supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

V. REPORTING

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

VI. RETENTION OF RECORDS

6.1 Upon request by an authorized representative of the DEQ, Mr. Taylor shall make available to the DEQ all records, plans, logs, and other documents required to be

maintained under this Consent Order or pursuant to Part 31 or its rules. All such documents shall be retained by Mr. Taylor for at least a period of five years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

VII. RIGHT OF ENTRY

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

VIII. PENALTIES

8.1 Mr. Taylor agrees to pay to the State of Michigan **$2,500.00** in resolution of this matter. Payment shall be made within **30 days** of the effective date of this Consent Order.

8.2 For each failure to comply with a provision of Section II or Section III of this Consent Order, Mr. Taylor shall pay stipulated penalties of **$100.00** per violation per day for 1 to 7 days of violation, **$250.00** per violation per day for 8 to 14 days of violation, and **$500.00** per violation per day for each day of violation thereafter.

8.3 To ensure timely payment of the above civil fine and stipulated penalties, Mr. Taylor shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

8.4 Mr. Taylor agrees to pay all funds due pursuant to this agreement by check made

payable to the State of Michigan and delivered to Accounting Services Division, Cashier's Office for the DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for the DEQ, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40043.**

8.5 Mr. Taylor agrees not to contest the legality of the civil fine or costs paid pursuant to paragraph 8.1, above. Mr. Taylor further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 8.2 or 8.3, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

IX. FORCE MAJEURE

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

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

9.3 Mr. Taylor shall notify the DEQ, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause, or causes of delay, the measures taken by Mr. Taylor to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Mr. Taylor shall adopt all reasonable measures to avoid or minimize any such delay.

9.4 Failure of Mr. Taylor to comply with the notice requirements and time provisions under paragraph 9.3 shall render this Section IX void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 9.3, above.

9.5 If the parties agree that the delay or anticipated delay was beyond the control of Mr. Taylor, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision-maker on whether or not the matter at issue constitutes a force majeure. The parties to this Consent Order understand and agree that the final decision by the DEQ regarding a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of Mr. Taylor, and that all the requirements of this Section IX have been met by Mr. Taylor, rests with Mr. Taylor.

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

X. GENERAL PROVISIONS

10.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for

any failure on the part of Mr. Taylor to comply with the requirements of NREPA and its rules. Further, the WRD reserves its right to pursue appropriate action, including injunctive relief, to enforce the provisions of this Consent Order.

10.2 The DEQ and Mr. Taylor consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 *et seq.* and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 *et seq.*

10.3 This Consent Order in no way affects Mr. Taylor's responsibility to comply with any other applicable state, federal, or local laws or regulations.

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

10.5 Nothing in this Consent Order is or shall be considered to affect any liability Mr. Taylor may have for natural resource damages caused by Mr. Taylor's ownership and/or operation of Willow Creek Farms. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

10.6 In the event Mr. Taylor sells or transfers Willow Creek Farms, he shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, Mr. Taylor shall also notify the WRD Lansing District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale or transfer, Mr. Taylor shall obtain the consent of the purchaser and/or transferee, in writing, to

assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD Lansing District Supervisor within 30 days of assuming the obligations of this Consent Order.

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

10.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

XI. TERMINATION

11.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Mr. Taylor shall submit a request consisting of a written certification that he has fully complied with the requirements of this Consent Order and has made payment of any fines, including interest penalties, required in this Consent Order. Specifically, this certification shall include:

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

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

c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facilities.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

SIGNATORIES

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

William Creal, Chief
Water Resources Division

4/4/14
Date

JEFFREY TAYLOR

Jeffrey Taylor, Owner
Willow Creek Farms

3-5-14
Date

APPROVED AS TO FORM:

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

3/27/14
Date