

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION

In the matter of:

ACO-000246

Date Entered: 3/24/15

Weber Dairy Farms, LLC
1732 North 8 Mile Road
Pinconning, Michigan 48650

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). Weber Dairy Farms, LLC (Weber Dairy), is a medium size concentrated animal feeding operation (CAFO). The DEQ alleges Weber Dairy, located at 1732 North 8 Mile Road in Pinconning, Michigan, is in violation of its existing Administrative Consent Order No. ACO-SW07-021 entered by Weber Dairy and the DEQ effective February 20, 2008. The DEQ further alleges Weber Dairy is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.* Weber Dairy is a person, as defined by Section 301 of the NREPA, and is registered with the Michigan Department of Licensing and Regulatory Affairs as able to conduct business in the State of Michigan under Identification No. D0865R. Weber Dairy and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I. STIPULATIONS

Weber Dairy and the DEQ stipulate as follows:

- 1.1 The NREPA MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 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 On February 20, 2008, Weber Dairy and the DEQ entered into Administrative Consent Order No. ACO-SW07-021 (ACO) to resolve Part 31 violations resulting from improper

manure management and manure discharges to waters of the state. The ACO required Weber Dairy to prevent all discharges of animal waste generated by the facility to waters of the state. It also required that by December 31, 2009, Weber Dairy certify to the DEQ that it had waste storage structures in place and operational that were designed, constructed, maintained, and operational in accordance with Natural Resource Conservation Service standards, set forth in Conservation Practice Standard No. 313, Waste Storage Facility, dated June 2005 (NRCS 313 of 2005). The ACO further required that if by January 29, 2010, Weber Dairy was not able to certify the waste storage structures were in place and operational in accordance with NRCS 313 of 2005, then Weber Dairy would submit an administratively complete permit application for the National Pollutant Discharge Elimination System (NPDES) CAFO Permit in accordance with Part 21 Rules, promulgated under Part 31 of the NREPA.

1.4 Section 3109(1) of Part 31 states: "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."

1.5 Rule R 323.1050 of the Michigan Administrative Code (MAC), promulgated pursuant to Part 31 states: "The waters of the state shall not have any of the following unnatural physical properties in quantities which are or may become injurious to any designated use:

- (a) Turbidity.

- (b) Color.
- (c) Oil films.
- (d) Floating solids.
- (e) Foams.
- (f) Settleable solids.
- (g) Suspended solids.
- (h) Deposits."

- 1.6 Section 3106 of Part 31, MCL 324.3106, states that, "the 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."
- 1.7 Section 3112(1) of Part 31 states: "A person shall not discharge any waste or waste effluent into the waters of this state unless that person is in possession of a valid permit from the Department."
- 1.8 A medium CAFO means 200 to 699 mature dairy cows; or 300 to 999 cattle other than mature dairy cows according to 2006 AACRS, R 323.2103(m).
- 1.9 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.10 Weber Dairy 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. Weber Dairy agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the 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.

- 1.11 Weber Dairy and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Weber Dairy that the law has been violated.
- 1.12 The signatory to this Consent Order on behalf of the Weber Dairy agrees and attests that he is fully authorized to assure that the Weber Dairy will comply with all requirements under this Consent Order.
- 1.13 Weber Dairy shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order. Upon the effective date of this Consent Order, Weber Dairy and the DEQ agree that ACO-SW07-021 previously entered by both parties on February 20, 2008, shall terminate and be superseded by this Consent Order.

II. FINDINGS

- 2.1 Weber Dairy has failed to comply with ACO-SW07-021 referenced in paragraph 1.3, above. Weber Dairy constructed a waste storage structure in October 2011, but did not formally certify construction in accordance with NRCS 313 of 2005, despite the WRD extending the original December 31, 2009, certification deadline to December 31, 2011, in correspondence from the WRD to Weber Dairy dated March 15, 2011. Additionally, Weber Dairy did not submit an application, as required in the ACO, for a NPDES CAFO Permit by the original January 29, 2010, deadline, nor by the WRD extended deadline of January 29, 2012, set forth in the March 15, 2011 letter, due to an apparent misunderstanding on the part of Weber Dairy of the need to apply for the permit. Furthermore, Weber Dairy has not prevented animal waste from discharging to waters of the state, as required in ACO-SW07-021.

- 2.2 On November 27, 2013, the WRD issued Weber Dairy Violation Notice (VN) No. VN-005730, which identified Weber Dairy's noncompliance with ACO-SW07-021. The VN directed Weber Dairy to submit as-built plans, by not later than December 13, 2013, for the new waste storage structure confirming it was constructed in accordance with NRCS 313 of 2005. Weber Dairy did not submit the required as-built plans.
- 2.3 On January 16, 2014, the WRD issued Weber Dairy a letter explaining Weber Dairy may perform an Environmental Performance Equivalency Demonstration on the new waste storage structure confirming it was constructed environmentally equivalent to NRCS 313 of 2005, in lieu of the waste storage structure adhering to NRCS 313 of 2005 specifications. Weber Dairy was instructed to confirm environmental performance equivalency not later than July 30, 2014.
- 2.4 Documentation of the structural integrity of the new and expanded waste storage structure, built as an outcome of ACO-SW07-021, was submitted to the WRD for review and acceptance on December 10, 2014. The WRD, having reviewed the engineering evaluation of the waste storage structure, communicated its acceptance of environmental performance equivalency on December 23, 2014, via electronic mail.
- 2.5 On March 13, 2014, WRD received a complaint regarding manure discharging into a drain that flows to the Saginaw Bay and conducted a site inspection. WRD staff observed manure ponding on fields and flowing directly into Tebo Erickson Drain (drain), a water of the state which flows into the Saginaw Bay. This manure discharge impacted the drain for at least one mile downstream producing elevated levels of Biochemical Oxygen Demand (BOD), phosphorus and ammonia. As a result of the discharge, the receiving waters contained unnatural turbidity, color, foams, suspended solids, and deposits, which is a violation of Rule 50, promulgated pursuant to Part 31. The WRD notified Weber Dairy and directed it to stop the discharge immediately. Weber Dairy left a message with WRD staff explaining that earthen berms were constructed as a barrier between the manure-laden runoff and the drain in order to stop the discharge of manure into the drain.

- 2.5 On March 14, 2014, WRD staff conducted a follow up inspection and observed the manure runoff flowing through and around one of the earthen berms, and still discharging to the drain. WRD staff walked the site with a representative from Weber Dairy and showed him the discharge areas of concern.
- 2.6 On March 19, 2014, WRD staff conducted a follow up inspection and observed enlarged earthen berms which were controlling the manure runoff. Weber Dairy was instructed to monitor the area regularly and extend earthen berms as needed to ensure there are no additional manure discharges to waters of the state.
- 2.7 On March 27, 2014, the WRD issued Weber Dairy a Violation Notice (VN) No. VN-005783 as a consequence of discharging manure to waters of the state as identified in paragraphs 2.5 and 2.6, above.
- 2.8 On April 15, 2014, the WRD received from Weber Dairy a response to VN-005783 explaining manure was applied to the subject field on November 30, 2012. According to Weber Dairy, the field had frozen prematurely before the manure was properly incorporated. Weber Dairy further explained that due to the record snowfalls and low temperatures, the manure pit's push off ramps froze inhibiting access to the pit. This limited access resulted in hauling manure to the frozen field as needed. The frozen manure and snow thawed creating runoff. WRD staff alerted Weber Dairy to the runoff contamination of the drain, which prompted Weber Dairy to respond by constructing earthen berms.
- 2.9 On December 1, 2014, Weber Dairy submitted a Winter Spreading Plan to the WRD for review. This initial submittal was supplemented on December 18, 2014, and upon receipt of the additional information, the WRD accepted the Winter Spreading Plan via electronic mail dated December 23, 2014.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT Weber Dairy shall take the following actions to prevent further violations of Part 31:

- 3.1 Weber Dairy shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious pursuant to Section 3109(1) of Part 31 of the NREPA.
- 3.2 Upon the effective date of this Consent Order, Weber Dairy shall either:
 - (a) Plant and maintain a 35' vegetative buffer between the drain and any area where manure is applied, or
 - (b) Maintain a minimum 150' isolation distance between the drain and any area where manure is applied.
- 3.3 Within 60 days of a new NPDES CAFO General Permit being reissued by the WRD, Weber Dairy shall submit to the WRD an administratively complete permit application for a Certificate of Coverage under the new NPDES CAFO General Permit in accordance with the Part 21 Rules, promulgated under Part 31 of the NREPA.
- 3.4 Upon issuance of a Certificate of Coverage under the NPDES CAFO General Permit, Weber Dairy shall comply with all terms and conditions of the NPDES CAFO General Permit.
- 3.5 Weber Dairy shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the DEQ, WRD Saginaw Bay District Supervisor, 401 Ketchum Street, Suite B, Bay City, Michigan 48708-5430. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

IV. EXTENSIONS

4.1 Weber Dairy and the DEQ agree that the DEQ may grant Weber Dairy 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 DEQ, WRD Saginaw Bay District Supervisor at the address in paragraph 3.7 above, 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 Weber Dairy from meeting the deadline(s).
- c. A description of the measures Weber Dairy has taken and/or intends to take to meet the required deadline.
- d. The length of the extension requested and the specific date on which the obligation will be met.

The 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 Weber Dairy shall verbally report any violation(s) of the terms and conditions of this Consent Order to the WRD Saginaw Bay 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 violation(s). Weber Dairy 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, Weber Dairy 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 Weber Dairy for at least a period of three 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 Weber Dairy shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this 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 Weber Dairy agrees to pay to the State of Michigan 10,000.00 **DOLLARS** in resolution of alleged violations specified in Section II of this Consent Order. Payment shall be made in \$1,250.00 quarterly in accordance with the following schedule:

Payment 1: April 1, 2015

Payment 2: July 1, 2015

Payment 3: October 1, 2015

Payment 4: January 1, 2016

Payment 5: April 1, 2016

Payment 6: July 1, 2016

Payment 7: October 1, 2016

Payment 8: January 1, 2017

- 8.2 For each failure to comply with a provision of this Consent Order, Weber Dairy shall pay stipulated penalties of **\$200** per violation per day for 1 to 7 days of violation, **\$300** per violation per day for 8 to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter.
- 8.3 Weber Dairy agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, MI 48909-8157; or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing, MI 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40096**.
- 8.4 Weber Dairy agrees not to contest the legality of payment made pursuant to paragraph 8.1, above. Weber Dairy further agrees not to contest the legality of any stipulated penalties assessed pursuant to paragraph 8.2, 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 Weber Dairy 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 Weber Dairy'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 Weber Dairy, 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 Weber Dairy'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 Weber Dairy's actions or omissions.

- 9.3 Weber Dairy 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 Weber Dairy to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Weber Dairy shall adopt all reasonable measures to avoid or minimize any such delay.
- 9.4 Failure of Weber Dairy 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 10.3, above.
- 9.5 If the parties agree that the delay or anticipated delay was beyond the control of Weber Dairy, 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 Weber Dairy, and that all the requirements of this Section X have been met by Weber Dairy, rests with Weber Dairy.
- 9.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Weber Dairy qualifies for an extension of a subsequent compliance

date without providing proof regarding each incremental step or other requirement for which an extension is sought.

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 Weber Dairy to comply with the requirements of the NREPA and its rules.
- 10.2 The DEQ and Weber Dairy 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 Weber Dairy's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 10.4 The WRD 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 WRD 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 Weber Dairy may have for natural resource damages caused by Weber Dairy's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 10.6 In the event Weber Dairy sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer.

Within 30 calendar days, Weber Dairy shall also notify the WRD Saginaw Bay 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. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD Saginaw Bay 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, not less than two years following the effective date of this Consent Order. Prior to issuance of a written TN, Weber Dairy shall submit a request consisting of a written certification that Weber Dairy has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:

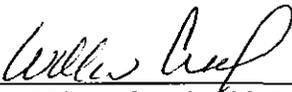
- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the WRD Saginaw Bay District Supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

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.

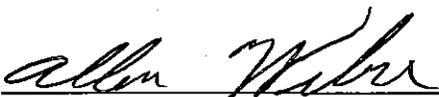
DEPARTMENT OF ENVIRONMENTAL QUALITY



By: William Creal, Chief
Water Resources Division

March 24, 2015
Date

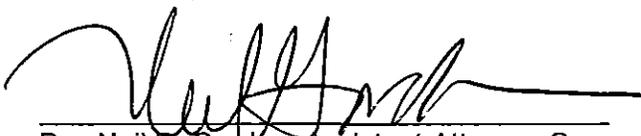
WEBER DAIRY FARMS, LLC



By: Allen Weber, President

3/16/15
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

3/16/2015
Date