

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION**

In the matter of:

AACO-000166

Date Entered: 1-2-2014

Shupe Dairy, Inc.  
1891 Pinnebog Road  
Elkton, Michigan 48731

ACO-000166

---

**AMENDED ADMINISTRATIVE CONSENT ORDER**

Administrative Consent Order (ACO) ACO-000166 entered on May 6, 2013, between the Department of Environmental Quality (DEQ), Water Resources Division (WRD), and Shupe Dairy, Inc. (Shupe Dairy) is hereby amended as follows. Upon the consent of the parties and by the authority granted to the DEQ by Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), it is hereby AGREED AND ORDERED:

**FINDINGS**

- 2.8 As a result of the events described below, the DEQ issued a Violation Notice (VN-005596) dated June 6, 2013, which informed Shupe Dairy that the facility would be referred for escalated enforcement, and requested a response from Shupe Dairy staff within 15 days of the facility's receipt of the VN.
- 2.9 In a response letter to the DEQ, undated but sent via electronic mail on June 21, 2013, Shupe Dairy staff reported that on May 13, 2013, an employee was instructed to apply agricultural waste-contaminated water to a grassed pasture in order to reduce the level of agricultural waste-contaminated water in the 'manure lagoon storage' (waste storage structure). This land application of agricultural waste-contaminated water is through a center pivot irrigation system connected to the waste storage structure. This employee reportedly connected a pipe incorrectly, and another pipe, which was under repair at the time of the application, was pressurized, and began to leak.
- 2.10 The application of agricultural waste-contaminated water to the grassed pasture began

at approximately 2:00 p.m. on May 13, 2013. Meanwhile, the leak flowed northwest across a grassed field, where it then reached the McMullen Drain, a tributary of the Pinnebog River. The discharge of agricultural waste into waters of the state constitutes a violation of Part 31 of the NREPA. Shupe Dairy staff, upon discovery of the discharge, turned off the pumping machinery, and began to build three earthen dams in a ravine on the 'Richmond' field in order to stop the discharge.

- 2.11 Due to the large volume of flow in the McMullen Drain and the Pinnebog River, Shupe Dairy staff reported they could not block, contain, or dispose of the large amount of agricultural waste-contaminated water. Therefore, Shupe Dairy staff reported that from 10:00 p.m. to 6:00 a.m., staff began pumping clean, aerated water from an on-site irrigation lagoon into the McMullen Drain. At approximately 2:00 a.m., Shupe Dairy staff attempted to call DEQ staff to report the release. Later, DEQ staff advised Shupe Dairy staff to call the Pollution Emergency Alerting System (PEAS) regarding the discharge, which Shupe Dairy staff did at approximately 7:00 a.m. on May 14, 2013.
- 2.12 At approximately 8:00 a.m., DEQ staff, Shupe Dairy staff, and the Huron County Emergency Services (HCES) Manager met at the facility to inspect the scene. DEQ staff inspected the three earthen dams referenced in paragraph 2.10, and observed that a large amount of agricultural waste-contaminated water had collected upstream of the dams. DEQ staff advised Shupe Dairy staff that the agricultural waste-contaminated water collected behind the dams should be left in place. DEQ staff reported that the dams appeared to be effectively keeping the agricultural waste-contaminated water from discharging to the McMullen Drain at this time. The amount of agricultural waste-contaminated water that was discharged to waters of the state and the amount of rinse water used is unknown.
- 2.13 On May 17, 2013, at approximately 11:00 am, DEQ staff responded to a report of a fish kill in the lower Pinnebog River from Port Crescent State Park (PCSP) staff. PCSP staff indicated that a manure odor was associated with the area of the fish kill. Michigan Department of Natural Resources (DNR) staff was also on the scene. DNR staff observed dozens of dead fish along Sand Road in the Pinnebog River.
- 2.14 On May 18, 2013, DNR staff contacted DEQ staff, indicating that another fish kill had

been reported, located in a section of the McMullen Drain, from Moore Road through Chandler Township and Meade Township. DNR staff reportedly observed numerous dead fish, which appeared to be minnows and creek chubs, throughout this stretch of the McMullen Drain.

- 2.15 On the morning of May 22, 2013, DEQ staff advised Shupe Dairy staff that area citizens had reported observing dead fish in the Pinnebog River. DEQ staff further suggested Shupe Dairy staff to assemble a cleanup crew to attend to the remaining dead fish.
- 2.16 From approximately 3:00 p.m. to 9:30 p.m. on May 22, 2013, Shupe Dairy staff investigated the Pinnebog River, from the confluence of the McMullen Drain and the Pinnebog River to Weaver Road. Shupe Dairy staff reported in the undated letter from June 21, 2013, that they found approximately six dead fish.
- 2.17 On the morning of May 23, 2013, Shupe Dairy staff continued to investigate and collect dead fish from the Pinnebog River, downstream of Weaver Road. Shupe Dairy staff reported in the undated letter from June 21, 2013, that they collected the following: 15 common carp, 15 Pike, 8 Walleye, 2 Salmon, 2 Bass, 1 Lamprey, and a number of small fish Shupe Dairy staff could not identify.
- 2.18 Additionally, DEQ staff noted that animal mortalities were not being properly composted at the site, and identified corrective measures necessary for Shupe Dairy to comply with the National Pollutant Discharge Elimination System (NPDES) Permit under Part 31, for which it applied in accordance with paragraph 3.1 of ACO-000166.

### **COMPLIANCE PROGRAM**

Paragraph 3.8 of ACO-000166 shall be amended as specified below:

- 3.8 Not later than December 31, 2013, Shupe Dairy staff shall install one slide gate valve in the Richmond field storm water swale located upstream of the McMullen Drain. The slide gate valve shall be designed and incorporated into the storm water swale dam to stop any contaminated irrigation or storm water flow from the Richmond Field. The slide gate valve shall be used for emergency purposes, in the unlikely event of an accidental

release of agricultural waste. At all times, Shupe Dairy shall comply with the terms of its National Pollutant Discharge Elimination System (NPDES) Permit and applicable law.

The following paragraphs shall be added to Section III. Compliance Program:

- 3.10 Not later than **December 31, 2013**, Shupe Dairy staff shall re-route the upstream drainage water around Richmond field, so that it flows to the McMullen Drain.
- 3.11 Shupe Dairy staff shall conduct routine, but not less than annual, CNMP and safety training. Shupe Dairy staff shall develop this plan and submit to DEQ, WRD, Saginaw Bay District staff by not later than **December 31, 2013**. This approved training program shall be incorporated into the CNMP not later than **10 days** after receipt of approval from DEQ staff.
- 3.12 By not later than **December 31, 2013**, Shupe Dairy staff, or an agent authorized to act on Shupe Dairy's behalf, shall discontinue the practice of placing livestock mortalities in an area where the resulting leachate is not properly collected, and begin managing mortalities according to Part I.A.b.4) of NPDES Permit No. MIG019000.
- 3.13 By not later than December 31, 2013, Shupe Dairy staff shall vegetate the area between the dairy operation and the McMullen Drain with a 35 foot buffer, which shall be maintained to protect the McMullen Drain.
- 3.14 Shupe Dairy staff shall incorporate the Manure Application Check-Off List (Appendix A) into the CNMP for the Facility. Shupe Dairy staff shall utilize this check-off list each time Shupe Dairy staff applies agricultural waste to fields, and shall preserve completed lists at the Facility with the Comprehensive Nutrient Management Plan (CNMP). Any revisions to this check-off list shall be presented to Saginaw Bay District staff for review and approval.

#### **IX. PENALTIES**

Paragraphs 9.2, 9.3, and 9.8 of ACO-000166 shall be amended as specified below:

- 9.2 Shupe Dairy agrees to pay a civil fine of **\$10,000 DOLLARS** for the violations specified in

Section II of ACO-000166. Additionally, Shupe Dairy agrees to pay a civil fine of **\$9,600 DOLLARS** for the violations specified in Section II of this Amended ACO. Payment shall be made in accordance with the schedule in 9.3, below.

- 9.3 Payment shall be made according to the following table, and in accordance with paragraph 9.8 of AACO-000166:

Payment Date	Payment Amount
Not later than <b>July 1, 2013</b>	\$1714.27
Not later than <b>August 31, 2013</b>	\$1714.27
Not later than <b>November 30, 2013</b>	\$1714.27
Not later than <b>February 28, 2014</b>	\$2914.27
Not later than <b>May 31, 2014</b>	\$2914.27
Not later than <b>August 31, 2014</b>	\$2914.27
Not later than <b>November 30, 2014</b>	\$2914.27
Not later than <b>February 28, 2015</b>	\$2914.27
Not later than <b>May 31, 2015</b>	\$1200.00
Not later than <b>August 31, 2015</b>	\$1200.00
Not later than <b>November 30, 2015</b>	\$1200.00

- 9.8 Shupe Dairy 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. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40026**.

#### GENERAL PROVISIONS

All approved work plans required by this Second Amended Consent Order shall be incorporated by reference into ACO-000166 and shall be enforceable in accordance with its provisions.

All other terms and conditions of ACO-000166 shall remain in full force and effect and are not altered by this Amended Consent Order, except as specifically prescribed in this document.

The effective date of this Amended Consent Order shall be the date upon which the chief of the DEQ, WRD signs this document.

**Signatories**

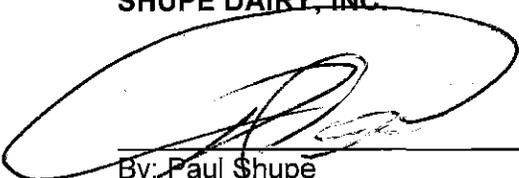
The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Amended Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

  
\_\_\_\_\_  
William Creal, Chief  
Water Resources Division

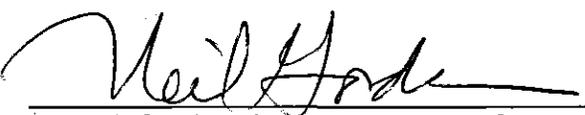
1/2/2014  
Date

**SHUPE DAIRY, INC**

  
\_\_\_\_\_  
By: Paul Shupe

12-11-13  
Date

**APPROVED AS TO FORM:**

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

12/20/2013  
Date