

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
WATER RESOURCES DIVISION**

In the matter of:

ACO-CG-22-400

Date Entered: 4-13-2023

National Pollutant Discharge Elimination System
Wastewater Discharge General Permit
for Concentrated Animal Feeding Operations
Part 31, Water Resources Protection
_____ /

**GENERAL ADMINISTRATIVE CONSENT ORDER
FOR CONCENTRATED ANIMAL FEEDING OPERATIONS
WITH DIGESTERS OWNED BY A SEPARATE ENTITY**

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), issued National Pollutant Discharge Elimination System (NPDES) Wastewater Discharge General Permit for Concentrated Animal Feeding Operations (CAFOs), No. MIG010000, on April 30, 2015, with an expiration date of midnight, April 1, 2020 (2015 General Permit for CAFOs). CAFO facilities that were determined by EGLE to be eligible to be covered under the 2015 General Permit for CAFOs were issued a Certificate of Coverage (COC) pursuant to the 2015 General Permit for CAFOs. Expiration of the 2015 General Permit for CAFOs prevented modification of a CAFO facility's existing COC. The WRD reissued NPDES Wastewater Discharge General Permit for CAFOs, No. MIG010000, on March 27, 2020, with an effective date of April 1, 2020, and an expiration date of midnight, April 1, 2025 (2020 General Permit for CAFOs). The 2020 General Permit for CAFOs is currently subject to administrative appeal, and EGLE is not yet issuing new COCs. The parties to this General Administrative Consent Order for CAFOs With Digesters Owned by a Separate Entity (Consent Order) are the permittee, a person who was issued a COC pursuant to the 2015 General Permit for CAFOs and who has submitted an administratively complete application to request authorization under the 2020 General Permit for CAFOs (Permittee); the owner or operator of the anaerobic digester(s) servicing the Permittee's CAFO facility (Digester Owner); and EGLE. This Consent Order, through the submission of a Certificate of Entry (COE), identifies the steps to be taken by the Permittee and the Digester Owner to maintain compliance with 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 rules promulgated thereunder, at permitted CAFO facilities until COCs pursuant to the 2020 General Permit for CAFOs are issued.

The Permittee, the Digester Owner, and EGLE agree to resolve the matter set forth herein through entry of this Consent Order. By submitting to EGLE a COE for this Consent Order signed by the Permittee and the Digester Owner, the Permittee and the Digester Owner agree to be bound by the terms and conditions contained in this Consent Order. Upon EGLE's receipt of the COE, this Consent Order shall consist of both this document and the associated COE that together constitute the settlement document.

I. STIPULATIONS

The Permittee, the Digester Owner, and EGLE 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 Part 31 and the rules promulgated thereunder provide for the protection, conservation, and control of pollution of the water resources of the state.
- 1.3 Section 3112(1) of Part 31, MCL 324.3112(1), states, "A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department." Section 3101(aa) of Part 31, MCL 324.3101(aa), states that "waters of the state" include groundwaters, lakes, rivers, streams, and the Great Lakes within the jurisdiction of Michigan.
- 1.4 EGLE is authorized by Section 3112(4) of Part 31, MCL 324.3112(4) to enter orders requiring persons to abate pollution. The director of EGLE may delegate this authority to a designee under Section 301(b) of Part 3, Definitions, of the NREPA, MCL 324.301(b).
- 1.5 The Permittee and the Digester Owner stipulate that the resolution of this matter by entry of this Consent Order is appropriate and acceptable. The Permittee and the Digester Owner further agree not to contest this Consent Order or associated COE.
- 1.6 The Permittee, the Digester Owner, and EGLE agree that this Consent Order and

associated COE is for settlement purposes only and does not constitute an admission by the Permittee or the Digester Owner that any law has been violated.

- 1.7 The Permittee and the Digester Owner shall achieve compliance with MCL 324.3112(1) in accordance with the requirements contained in Section III of this Consent Order and any other requirements contained herein.
- 1.8 By submitting to EGLE a signed COE, the Permittee and the Digester Owner agree and attest that the signatories to the COE are fully authorized to bind the Permittee and the Digester Owner, respectively, to the terms and conditions set forth herein and assure the compliance with all requirements of this Consent Order. The COE shall contain an original signature by the Permittee and the Digester Owner, or a legally authorized representative of the Digester Owner as follows:
 - a. For a corporation, the form shall be signed by a principal executive officer of at least the level of vice president, or their designated representative, if the representative is responsible for the overall operation of the facility (appropriate documentation must be provided to demonstrate the position and responsibility of the designated representative).
 - b. For a limited liability company, the form shall be signed by a managing member.
 - c. For a limited liability partnership, the form shall be signed by a managing partner.
 - d. For a partnership, the form shall be signed by a general partner.
 - e. For a sole proprietorship, the form shall be signed by the proprietor.
 - f. For municipal, state, or other public facility, the form shall be signed by a principal executive officer, mayor, village president, city or village manager, or other duly authorized employee.
- 1.9 This Consent Order shall be considered a final order of EGLE and shall become effective with respect to a particular Permittee and Digester Owner on the date the WRD receives and approves the COE, provided the COE is properly signed by the Permittee and the

Digester Owner or a duly authorized representative of the Digester Owner, and the Permittee and the Digester Owner meet the eligibility requirements of this Consent Order. EGLE reserves its right to vacate the COE at any time if it determines that any conditions, eligibility requirements, or terms of this Consent Order are not satisfied.

II. FINDINGS

- 2.1 In the State of Michigan, the Permittee meets the definition of a CAFO and operates a CAFO facility (Facility), as identified in the COE.
- 2.2 The Permittee's COC pursuant to the 2015 General Permit for CAFOs is extended and cannot be modified. EGLE is not yet issuing new COCs pursuant to the 2020 General Permit for CAFOs.
- 2.3 An anaerobic digester will be owned and/or operated by the Digester Owner. The operation of an anaerobic digester(s) owned by the Digester Owner is not covered under the Permittee's current extended COC pursuant to the 2015 General Permit for CAFOs and without valid permit authorization for the anaerobic digester(s), the Permittee will be in violation of Section 3112(1) of Part 31, MCL 324.3112(1).
- 2.4 EGLE has received an administratively complete 2020 General Permit for CAFOs application for reissuance or modification from the Permittee.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Permittee and the Digester Owner shall comply with the following:

- 3.1 A written agreement shall be established between the Permittee and the Digester Owner that demonstrates each parties' obligations for the operation of an anaerobic digester(s) at the Facility. The Digester Owner shall be subject to the terms and conditions of the Permittee's COC pursuant to the 2015 General Permit for CAFOs, in accordance with the written agreement.
- 3.2 The Permittee and the Digester Owner shall submit to EGLE a signed COE.

- 3.3 Not later than 60 calendar days after the Effective Date of the COE, the Permittee or the Digester Owner shall create and maintain a Treatment System Contingency and Redundancy Plan (Plan) for the operation of the anaerobic digester(s) at the Facility consistent with the requirements of the 2015 General Permit for CAFOs. The Plan shall be updated as needed to reflect changes in the anaerobic digester(s) and/or conditions at the Facility while the anaerobic digester(s) is in operation at the Facility. The Plan shall be retained on-site at the Facility by the Permittee and made available to EGLE upon request. The Plan shall include all of the following:
- a. Actions to be taken by the Permittee if the anaerobic digester(s) at the Facility fails and must be bypassed for any reason, including handling and storage of partially digested contents.
 - b. Notification to EGLE of anaerobic digester(s) bypass in accordance with Part II.C.9.c and Part II.C.9.d of the 2015 General Permit for CAFOs.
 - c. If the anaerobic digester(s) is accepting material generated outside of the Facility pursuant to the 2015 General Permit for CAFOs, the Plan shall also specify procedures and timelines for communicating with any persons utilizing the anaerobic digester(s) and transporting wastes to and from the anaerobic digester(s), as well as the name, mailing address, email address, and phone number of those person(s).
- 3.4 Not later than 60 calendar days after the Effective Date of the COE, the Permittee shall submit to EGLE an up-to-date Comprehensive Nutrient Management Plan (CNMP) that includes the anaerobic digester(s) and the Plan described in Paragraph 3.3 of this Consent Order. The CNMP shall be kept for a minimum of five years. The CNMP shall include all of the following:
- a. A schematic or flow diagram of the anaerobic digester(s) process.
 - b. The operation and maintenance of the anaerobic digester(s).
 - c. A list of all materials, source of the materials, and percentages added to the anaerobic digester(s).

- 3.5 Treatment system structures shall be built to Natural Resources Conservation Service (NRCS) Conservation Practice Standard (CPS) 313 of 2017. Complete as-built plans, specifications, drawings, other design and construction required documentation, and related information shall be kept in the Permittee's CNMP, described in Paragraph 3.4 of this Consent Order. As-built plans shall be signed and stamped by a licensed professional engineer and state that the structure was built in accordance with NRCS CPS 313 of 2017. Signed and stamped design drawings do not constitute as-built plans. Required supporting documentation may include, but is not limited to, soils reports documenting suitability of liner material, groundwater investigations reports, pictures, survey notes, concrete, and/or batch tickets.
- 3.6 In accordance with Part I.C.11 of the 2015 General Permit for CAFOs, the anaerobic digester(s) may accept up to five (5) percent of the total treatment system volume of materials generated outside of the Facility. A maximum of five (5) percent of outside materials can be added to a single digester treatment batch. Outside materials include organic fats, oils and greases, certain food processing residuals, and manure from Animal Feeding Operations (AFOs). Outside materials not listed in the 2015 General Permit for CAFOs application for reissuance or modification shall not be added to the treatment system.
- 3.7 If the anaerobic digester(s) is accepting waste generated from an AFO, the Permittee shall maintain a signed waste treatment agreement with each contributor. At a minimum, each signed waste treatment agreement shall demonstrate how the AFO waste is being treated at the Facility, how much AFO waste is treated, which party maintains responsibility during the transport and treatment of the AFO waste, the source of the AFO waste, and provisions if the anaerobic digester(s) at the Facility ceases operations, temporarily or permanently. The signed waste agreements shall be kept with the Permittee's CNMP.
- 3.8 If the anaerobic digester(s) is accepting materials generated outside of the Facility, the Permittee shall certify via the MiEnviro Portal not later than 60 calendar days from the Effective Date of the COE all the following:

- a. Any outside material accepted by the anaerobic digester(s) is land applied or manifested by the Permittee pursuant to requirements of the 2015 General Permit for CAFOs.
 - b. Raw, outside material is adequately stored to prevent runoff to surface waters and groundwaters prior to treatment.
 - c. Raw or partially digested non-CAFO waste or AFO waste is not added to a CAFO waste storage structure.
 - d. Residuals removed or resulting from waste treatment, or left over after treatment or control has ceased, is disposed of in an environmentally compatible manner and according to applicable laws and rules.
 - e. Raw or partially digested outside material will not be land applied.
 - f. If applicable, storage of anaerobic digester(s) including outside material is included when the Permittee certifies 6-month storage pursuant to requirements outlined in Part I.B.1.a of the 2015 General Permit for CAFOs.
- 3.9 Outside materials not listed in Paragraph 3.6 of this Consent Order shall not be added to the anaerobic digester(s).
- 3.10 The anaerobic digester(s) shall not accept waste generated from other CAFO facilities.
- 3.11 The anaerobic digester(s) shall be operated in a manner consistent with the information provided to EGLE in an administratively complete 2020 General Permit for CAFOs application for reissuance or modification.
- 3.12 EGLE shall mail a copy of the fully executed COE to the Permittee and the Digester Owner.

IV. RIGHT OF ENTRY

- 4.1 The Permittee and the Digester Owner shall allow any authorized representative or contractor of EGLE, upon presentation of proper credentials, to enter upon the premises

of the Facility and anaerobic digester(s) at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order and Part 31. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder or any other applicable statutory provision.

V. PENALTIES

- 5.1 For each failure to comply with the provisions of Section III of this Consent Order, the Permittee and/or the Digester Owner, in accordance with the written agreement described in Paragraph 3.1 above, shall pay a stipulated penalty of \$100 per violation per day.
- 5.2 Stipulated penalties accruing under Paragraph 5.1 of this Consent Order shall be paid within 30 calendar days after written demand by EGLE in accordance with Paragraph 5.4 of this Consent Order.
- 5.3 To ensure timely payment of the stipulated penalties, the Permittee and/or the Digester Owner shall pay an interest penalty to the State of Michigan each time they fail to make a complete or timely payment. This interest penalty shall be based on the rate set forth in Section 6013(8) of the Revised Judicature Act, 1961 PA 236, as amended, 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.
- 5.4 The Permittee and the Digester Owner agree to pay any stipulated penalties and interest penalties assessed pursuant to Paragraphs 5.1, 5.2, and 5.3 of this Consent Order by check made payable to the State of Michigan, including **Payment Identification No. WRD40132**, mailed to the Michigan Department of Transportation, Accounting Services Division, Cashier's Office for EGLE, P.O. Box 30657, Lansing, Michigan 48909-8157; or hand delivered to the Michigan Department of Transportation, Accounting Services Division, Cashier's Office for EGLE, 425 West Ottawa Street, Lansing, Michigan 48933.
- 5.5 The Permittee and the Digester Owner agree not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to Paragraphs 5.1, 5.2, and 5.3 of this Consent Order but reserves the right to dispute the factual basis upon which a demand by

EGLE for stipulated penalties or interest penalties is made. The Permittee and the Digester Owner further agree not to contest the legality of the interest due identified on the COE.

VI. GENERAL PROVISIONS

- 6.1 Compliance with this Consent Order authorizes the Permittee and the Digester Owner to operate a digestion system at the Facility under the Permittee's existing COC pursuant to the 2015 General Permit for CAFOs. If EGLE is unable to issue a final decision on the Permittee's application for a 2020 General Permit for CAFOs because the Permittee fails to cure any and all deficiencies in the Permittee's application, EGLE reserves the right to pursue enforcement activities, including commencing a civil action pursuant to Section 3115 of Part 31, MCL 324.3115, for the Permittee's and the Digester Owner's violations of Section 3112 of Part 31, MCL 324.3112.
- 6.2 With respect to any violations not specifically addressed and resolved by this Consent Order, EGLE reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Permittee and the Digester Owner to comply with all applicable rules and statutes.
- 6.3 EGLE reserves the right to vacate this Consent Order after its effective date in the event EGLE discovers:
 - a. The Permittee or the Digester Owner misrepresented or omitted a fact that had a bearing on EGLE's determination that this Consent Order is applicable.
 - b. The discharge caused contamination, erosion, or other problems for which the Permittee or the Digester Owner may be liable.
 - c. The Permittee or the Digester Owner fails to fulfill any requirement of this Consent Order.
- 6.4 EGLE, the Permittee, and the Digester Owner 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.

- 6.5 This Consent Order in no way affects the Permittee's or the Digester Owner's responsibility to comply with any other applicable state, federal, or local laws or regulations, or administrative or court orders.
- 6.6 Nothing in this Consent Order is or shall be considered to affect any liability that the Permittee or the Digester Owner may have for natural resource damages caused by the 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.
- 6.7 In the event the Permittee or the Digester Owner sells or transfers the Facility or anaerobic digester(s), they shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days of a proposed sale or transfer, the Permittee and/or the Digester Owner shall also notify the appropriate WRD district office supervisor, in writing, of such impending sale or transfer, provide the identity and address of the prospective purchaser and/or transferee, and confirm the fact that notice of this Consent Order has been given to the prospective purchaser and/or transferee. The purchaser and/or transferee of the Facility or anaerobic digester(s) must agree, in writing, to assume all of the obligations of this Consent Order. A copy of the purchase agreement or other documents verifying the conveyance, along with the purchaser's and/or transferee's written acceptance of this Consent Order, shall be forwarded to the appropriate WRD district office supervisor within 30 calendar days of the purchaser and/or transferee assuming the obligations of the Consent Order.
- 6.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this action and their successors and assigns.
- 6.9 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein. This Consent Order does not resolve any criminal action that may result from these same violations.

VII. TERMINATION

- 7.1 This Consent Order shall remain in full force and effect until the date EGLE issues a final decision on the Permittee's application for a 2020 General Permit for CAFOs. The WRD

shall not issue a decision on the application for a 2020 General Permit for CAFOs until the Permittee and/or the Digester Owner pays any stipulated penalties and interest due in accordance with Paragraphs 5.1, 5.2, and 5.3 of this Consent Order.

Signatories

The undersigned CERTIFIES he is fully authorized by EGLE to enter into this Consent Order and to EXECUTE and LEGALLY BIND EGLE to it.

DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

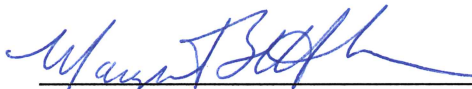


Teresa Seidel, Director
Water Resources Division

4/13/23

Date

APPROVED AS TO FORM:



By: Margaret A. Bettenhausen, Assistant Attorney General
For: Polly A. Synk, Division Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

4-11-23

Date