

# Concentrated Animal Feeding Operation (CAFO) Guidance Document 2

## MANIFESTING OF LARGE CAFO WASTE PURSUANT TO RULE 323.2196

Michigan's administrative rules governing National Pollutant Discharge Elimination System (NPDES) permit coverage for CAFOs, specifically Rule 323.2196, promulgated in April 2005, allow for the manifesting of waste to third parties. Due to the large number of questions on this issue posed by the regulated community and other interested persons, the Department of Environmental Quality (DEQ), Water Bureau (WB), has developed this Fact Sheet to guide affected producers and interested citizens on the implementation of the Manifesting Rule (2005 ACS R 323.2196(5)(e)) applicable to large CAFOs with NPDES permits.

The Manifesting Rule for CAFOs states:

(e) Unless the department determines otherwise, in cases where production area waste or CAFO process wastewater is sold, given away, or otherwise transferred to other persons (recipient) and the land application of that production area waste or CAFO process wastewater is not under the operational control of the CAFO owner or operator that generates the production area waste or CAFO process wastewater (generator), a manifest shall be used to track the transfer and use of the production area waste or CAFO process wastewater.

The following are the three commonly asked, general questions on the Manifesting Rule:

1. *What does "otherwise transferred" mean?*

The DEQ has determined that "otherwise transferred" may include the transfer of CAFO waste to a third party that is compensated for the disposal of the CAFO waste (commonly referred to in the livestock industry as a "custom applicator") when the land application of the waste is not under the operational control of the permitted CAFO.

2. *What conditions have to be met to manifest large CAFO waste to a custom applicator?*

The DEQ has determined that a CAFO permittee may lawfully manifest CAFO waste “otherwise transferred” only if all of the following conditions have been met:

- (a) The custom applicator or other third party is a legal entity wholly-separate from the permitted CAFO.
- (b) Land receiving the large CAFO waste via application by a custom applicator or other third party is not owned, leased, or otherwise under the control of the permitted CAFO, nor does the land appear in the permitted CAFO’s current Comprehensive Nutrient Management Plan.
- (c) The permitted CAFO maintains a written contract with the custom applicator or other third party specifying that, once large CAFO waste is transferred from the permitted CAFO’s production area to land application equipment or storage facilities owned or controlled by the custom applicator or other third party, the permitted CAFO owner or operator in no way exerts control over the land disposal of the large CAFO waste.

3. *What would prevent a permitted large CAFO from manifesting waste to a custom applicator or other third party?*

In accordance with subrule (e)(v) of the Manifesting Ruling (2005 ACS R 323.2196(5)(e)(v)), a permitted CAFO shall not sell, give away, or otherwise transfer large CAFO waste if any of the following occurs:

- (a) The recipient has previously not returned a copy of the completed manifest to the permitted CAFO.
- (b) The returned manifest indicates improper land application, use, or disposal.
- (c) The large CAFO has been advised by the DEQ that the DEQ or a court of appropriate jurisdiction has determined that the recipient has improperly land-applied, used, or disposed of a large CAFO waste.
- (d) The recipient fails or refuses to provide accurate information on the manifest in a timely manner.