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Re: Comments and Request for Public Hearing on Draft Permit MI0060380, KB Farm LLC-CAFO

Dear Ms. Alexander:

The undersigned Michigan residents and state and regional organizations submit the following comments and concerns regarding the proposed NPDES-CAFO Individual Permit (“Draft Permit”) for the 3,450 head dairy CAFO expansion proposed by KB Dairy LLC, contiguous with and using the same address as De Saegher Dairy on West Buchanan Road in rural Middleton, Michigan.¹ FLOW (Flow Water Advocates), a Michigan nonprofit organization working to protect the waters of the Great Lakes basin, submits these comments on behalf of its thousands of members, including Gratiot County residents, as well as Great Lakes Environmental Law Center, lifelong Gratiot County resident and farmer Dennis Kellogg, Michigan Farmers Union, Michigan Lakes and Streams Association, Michigan Organic Food & Farm Alliance, Michiganders for a Just Farming System, Progress Michigan, physician Cheryl Ruble, M.D., and Socially Responsible Agriculture Project (hereinafter the “Commenters”).

We object to the issuance of the Draft Permit for expansion of the De Saegher Dairy CAFO (“De Saegher CAFO”) under the name KB Farm LLC-CAFO (“KB CAFO”). The proposed expansion fails to incorporate necessary controls, monitoring requirements, and comprehensive analysis required by the Michigan Environmental Protection Act. The Draft Permit does not adequately protect human health, public waters, or the economic and quality of life interests of neighboring agricultural stakeholders and local residents.

In light of the large numbers of concerned organizations and individuals, we also request a public hearing in proximity to the site, possibly at the county seat in Ithaca, to enhance public access and awareness, with video participation available, and a video recording of the hearing posted afterward by EGLE. For the reasons set forth herein, the Commenters respectfully request that EGLE deny the permit application and, in coordination with the Office of the Environmental Justice Public Advocate, initiate a more comprehensive evaluation of measures needed to restore the full health of local watersheds. To aid EGLE staff in navigating these detailed comments, we include a table of contents:

¹ “kb farms animal numbers”, MiEnviro public notice file (Dec. 4, 2024).

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I. A Neighbor’s Story

Gratiot County is home to some of the largest dairy operations in Michigan, with 24 dairy, cattle, or hog CAFOs, and over 400 million gallons of liquid CAFO waste spread untreated on saturated farm fields annually – the equivalent of Los Angeles County’s daily sewage. If permitted, this expansion would make De Saegher CAFO, already the county’s largest CAFO, the largest single dairy CAFO in Michigan. De Saeghers’ proposed industrial scale expansion would create an imminent and substantial endangerment to the health and well-being of the watershed, local soil ecology, the surrounding community, and all those dependent upon land, water, and air quality in the area.

We begin with a personal narrative, to help representatives of De Saegher CAFO and EGGLE understand what living near the Facility, its waste pits, and application fields is like for local residents. Dennis Kellogg writes:

I'm the sixth generation on our family farm, where I was born and raised. We're five miles south of Ithaca, in Gratiot County, with some fields in Montcalm County. My son is the seventh generation, and his daughter is getting involved as the next caretaker. I hope to keep our operation in the family for a long time. My family established themselves in Gratiot County in 1852. This year will be my 62nd harvest, as I started farming after my dad was injured when I was 14. I feel an obligation to those generations that came before me to continue to respect and care for the land. I'm here for a short time as the caretaker, while I'm here I want to improve our lands and make it better so other generations can enjoy it.

Over the years, our farm was a dairy farm, with generally less than 30 head of milking cattle and around 20-25 younger cattle. We would raise a few hogs, my father called them the mortgage lifters. We had just about everything, chickens, turkeys, ponies, horses, the children would raise rabbits. All these animals were well cared for, we really enjoyed and truly loved to be with them. Now we're strictly cash crop row farmers. In the last ten years, we've updated our drainage system and been strategic about fertilizer placement to improve our soil quality. As a result, our yields continue to improve, which tells me we're helping build our soil structure. We try to be good environmentalists, we practice proper setbacks and participate in a program that allows beneficial insects to thrive. We've kept our woodlots because we believe those are beneficial to the wildlife.

I have been, for the past 76 years now, a front row observer of American agriculture. It's been interesting to see how it's changed, but not all of these changes are for the best. CAFOs are industrial operations, plain and simple, they go far beyond what we see as a family farm unit.

With these CAFOs, far more waste is created and then applied to the cropland than what is necessary to support good, healthy soil. There must be balance and correct nutrients for growing healthy crops. When this line gets crossed, I can no longer support this type of manure use, whether it's from a CAFO or a smaller family farm. However, a family farm unit generally does not have the number of livestock to create that amount of waste. In Gratiot County, we have a population of around 40,000 people, yet there's waste coming from the animals that would equate to well over 1 million people living in our county.

When the CAFOs spread their manure, there is required to be a reasonable setback distance from the edge of the field. I've noticed they apply right up to the lot lines of residences, businesses, schools, and other public use areas. There are people who are writing and reading the permits, regulations, and recommendations, and there are people who are doing the applying. The applicators are hired off the street to drive the equipment, and get as much in the ground as you possibly can. There is no environmental training involved for these

applicators. How are they to know if they are breaking the rule if there is no proper training involved?

With more CAFOs comes more heavy, repeated traffic at high speeds. As the CAFOs have moved in, one of the biggest changes I've seen in the community is how the road commission has catered to the heavy traffic, including the amount of chloride they put on these gravel roads to hold them together. When the Right to Farm Act came into effect, it sounded like a great thing to protect the way people have farmed for centuries. This intended to protect against people moving in and complaining about the seasonal dust and activities involved with planting and harvest seasons. As we have more CAFOs, these activities are no longer seasonal, they're happening year round, and no one can tell them not to. The end result is, with all the changes in the agricultural landscape, it's been more difficult for a small unit to operate versus the large facilities with lots of financial resources behind them. I've begun to see the same issues happening in Montcalm County that we've been facing in Gratiot County. It's quite troubling.

There must be extensive monitoring of these industrial operations, including appropriation of funds to fully implement the Clean Water Act. We feel that CAFOs should be required to post appropriate bonds to cover the potential costs associated with cleaning up contaminated land and water they contributed to. These facilities are polluting our local communities with excessive amounts of manure, and are not being held accountable for it. Who pays the price for this?

In considering further regulation of CAFOs, I do oppose efforts to restrict the property rights of family farmers and rural residents. Their abilities to regain compensation in court against neighboring CAFO nuisance cases caused by negligence or poor management have been suppressed. The local residents and family farmers who want to continue to protect our lands should be able to regain their voices against these facilities.

The Commenters offer this statement to represent the experiences of many De Saegher CAFO neighbors who feel unable to speak publicly, and to emphasize that this permitting process is not just a battle of experts or a paperwork exercise. For many local residents, dealing with the CAFO's impacts, together with the cumulative impacts of the many other large CAFOs in the area, has been an exhausting, expensive, years-long ordeal. This permitting process will have serious effects on real people's lives.

II. The Draft Permit – Unreasonable Impacts

Permit applicant KB Dairy LLC is a Michigan limited liability company authorized to do business in Michigan since November 25, 2024. The registered agent is Bram De Saegher, eldest son of De Saegher CAFO owner Bart De Saegher. The De Saeghers propose construction of KB CAFO, a 3,480 head dairy located on approximately 16 acres, and two 10 million gallon storage pits on an approximately 80 acre parcel. Adjacent De Saegher CAFO reports housing 3,400 mature dairy cows, 3,000 calves, and 2,000 heifers (a young female cow that has not borne a calf). The combined waste production of animals already on-site is 37 million gallons per year of raw sewage and other solid and liquid waste products –

8.6% of *all* liquid manure produced in Gratiot County. De Saegher CAFO also recently constructed four industrial scale anaerobic digesters and related infrastructure, with a potential fifth unit in development. Disposal of digestate, a concentrated form of CAFO waste, contributes to the nutrient load on the watershed.

The Commenters request EGLE's further analysis of the following issues with the Draft Permit:

A. Improper Separate Permitting of a Contiguous CAFO Facility

Mich Admin Code, R 323.2210(f) allows exemptions from Part 31 groundwater discharge permit requirements for facilities that meet the following conditions:

A discharge from an animal feeding operation that has less than 5,000 animal units if the discharge is determined by the director of the department of agriculture or his or her designated representative, to be in accordance with generally accepted agricultural and management practices, as defined in Act No.93 of the Public Acts of 1981, as amended, being §§286.471 to 286.474 of the Michigan Compiled Laws, and known as the Michigan right to farm act. For purposes of this rule, 5,000 animal units is equal to 5,000 head of slaughter or feeder cattle, 3,500 mature dairy cattle.... An animal feeding operation is a lot or facility, or series of lots or facilities under 1 ownership which are adjacent to one another or which use a common area or system for the disposal of wastes, that meets both of the following conditions:

- (i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12-month period.
- (ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over the portion of the lot or facility where animals are confined.

KB CAFO is not only adjacent but fully contiguous with the existing De Saegher CAFO, which houses up to 3,400 dairy cows, according to its permit documents, and thousands of non-milking cattle, well over the 5,000 animal limit. Recent 2025 aerial images show a single, massive operation constructed essentially in a wetland. The disturbed ground outlined in red on the right, with one waste pit already constructed and a direct waste channel to the shared digesters at the bottom of the photo, is the proposed "separate" KB CAFO site.



The legal sleight of hand of creating a separate LLC does not change the fact that this is one facility owned and operated by members of the same immediate family. The entire facility, when operational, will house 6,000 to 7,000 dairy cows, plus thousands of additional cattle, and does not qualify for exemption from groundwater discharge permit requirements pursuant to the Michigan Administrative Code. Further evidence of common ownership and operation of these two CAFOs (among others) is a Future Advance Mortgage recorded in Gratiot County, Michigan, on April 16, 2025, in which Barthel and Elisabeth De Saegher, acting as signatories for De Saegher Investments and EB Ridge Dairy, LLC, committed De Saegher Dairy, Inc.; De Saegher Cattle, LLC; KB Dairy, LLC; and De Saegher Energy, LLC as borrowers. In a mortgage amendment recorded April 23, 2025 in Gratiot County, Barthel and Elisabeth De Saegher, acting through De Saegher Investments LLC, added DeSaegher Dairy, Inc.; DeSaegher Cattle, LLC; EB Ridge Dairy, LLC; and KB Dairy, LLC as borrowers on a mortgage from GreenStone Farm Credit Services, in exchange for construction funds.

EGLE acknowledges that all a CAFO operator needs to do to evade the law requiring a single permit for an animal feeding operation – necessary to address cumulative impacts – is to create a separate legal entity with a separate registered agent. If the rule had been intended to allow this, the language regarding “adjacent” facilities with “common” waste disposal would be redundant, but rules of statutory construction employed by Michigan courts do not allow an interpretation of the law that renders parts of it “nugatory or mere surplusage,” as this interpretation does. *Apsey v Memorial Hosp*, 477 Mich 120, 127 (2007) (internal citations omitted) (“[W]e will enforce the statute as written because the Legislature is presumed to have intended the meaning expressed. Whenever possible, every word of a statute should be given meaning. And no word should be treated as surplusage or made nugatory.”)

Michigan courts have also made clear that they can and will ignore the legal fiction of corporate personhood when parties attempt to use it to avoid legal obligations.

However, when this fiction is invoked to subvert justice, it may be ignored by the courts. Allstate Ins Co v Citizens Ins Co of America, 118 Mich. App. 594, 600; 325 N.W.2d 505 (1982), citing Paul v Univ Motor Sales Co, 283 Mich. 587, 602; 278 N.W. 714 (1938). See also Wells v Firestone Tire & Rubber Co, 421 Mich. 641, 650, 651; 364 N.W.2d 670 (1984). The traditional basis for piercing the corporate veil has been to protect a corporation's creditors *where there is a unity of interest of the stockholders and the corporation and where the stockholders have used the corporate structure in an attempt to avoid legal obligations*. Allstate, *supra* at 600.

Foodland Distrib v Al-Naimi, 220 Mich App 453, 456; 559 NW2d 379 (1996)(emphasis added). Using the corporate structure of separate LLCs to avoid the legal obligation of obtaining a groundwater discharge permit is exactly what De Saeghers (like many other CAFO owners) are doing. EGLE is wrong on the law to allow it.

B. Insufficient Analysis and Regulation of Groundwater Contamination Risk

The required submissions for a groundwater discharge permit application are a significant part of the permit's importance. The application requires extensive analysis and supporting documentation, all of which are missing from KB CAFO and De Saegher CAFO's MiEnviro filings, creating an imminent threat to public health from this vast operation. Pursuant to Michigan law, "(i)t is the responsibility of the applicant to provide the information described in these rules as required or necessary for the department to make a decision."² Rule 2218 requires detailed, mandatory submissions by the applicant, including:

1. a basis of design for waste treatment;³
2. an evaluation of the feasibility of alternatives to discharge to the groundwater;⁴
3. characterization of waste or wastewater to be discharged;⁵
4. a hydrogeological report;⁶
5. information necessary to determine whether certain hazardous substances may be part of the waste stream;⁷

and if applicable, as it is here:

6. a monitoring plan;⁸
7. a description of the discharge methods and information that demonstrate that standards for land treatment of wastewater will be met;⁹ and

² Mich Admin Code, R 323.2206.

³ R. 323.2218(2) and (3)(a)(i).

⁴ R. 323.2218(3)(a)(ii).

⁵ R. 323.2218(3)(a)(iii).

⁶ R. 323.2218(3)(a)(iv).

⁷ R. 323.2218(3)(a)(v).

⁸ R. 323.2218(3)(a)(vi).

⁹ R. 323.2218(3)(a)(vii).

8. information demonstrating that standards for wastewater treatment or storage lagoons will be met.¹⁰

The information made available to the agency and the public by such analysis is critical to a full understanding of the impact of the proposed permit. Failure to enforce these clear requirements would represent a total waiver by EGLE of applicable legal standards.

1. Failure by De Saegher CAFO to obtain a groundwater discharge permit

The De Saegher CAFO has failed to obtain a Groundwater Discharge Permit, despite housing far more than the maximum number of animals beyond which a permit is required. Mich Admin Code, R 323.2210(f). Despite 2021 and 2022 correspondence and identification of groundwater monitoring sites for De Saegher CAFO, there is no Groundwater Discharge Permit in the MiEnviro file and no results from groundwater monitoring. Until this permit has been fully processed, it is impossible to know what effect the existing facility may be having on groundwater and how great a risk the expansion poses. Pursuant to Part 22, which allows discharges to groundwater conditioned on compliance with Michigan law, any discharge “shall not be, or not be likely to become, injurious” and “... shall not cause runoff to, ponding on, or flooding of adjacent property, shall not cause erosion, and shall not cause nuisance conditions.”¹¹ Without more data, De Saegher CAFO cannot demonstrate existing compliance with these mandatory conditions.

2. The public health threat of groundwater nitrate contamination

Nutrient contamination of groundwater is a serious and largely unmonitored threat in Michigan. Despite growing evidence that nitrate exposure poses health risks even at concentrations well below the current federal standard of 10 mg/L, the state lacks consistent data collection and reporting systems. Public water systems are required to test for nitrates, but those results are not always linked to broader exposure data or made easily accessible to the public. More concerning is the absence of statewide requirements for testing private wells – many of which draw from shallow aquifers that are particularly vulnerable to contamination from fertilizers, manure, and septic systems. County health departments collect data inconsistently, and EGLE maintains no comprehensive database to track nitrate levels in private wells or assess long-term trends. Without a coordinated monitoring network, Michigan cannot accurately identify hotspots, evaluate the effectiveness of pollution controls, or assess population-level health risks.

In combination with lax groundwater discharge permitting, as in the case of De Saegher CAFO, this lack of data and monitoring poses significant public health and equity concerns. Nitrate contamination is often invisible – undetectable by taste or smell – yet can cause serious health problems, including infant methemoglobinemia, thyroid disease, certain cancers, and adverse birth outcomes. Research indicates that these risks may occur at levels well below Michigan’s Natural Resources and Environmental Protection Act (NREPA) informal “watch threshold” of 5 mg/L, which is neither consistently enforced nor uniformly applied. Rural and low-income households, which rely most heavily on private wells, bear the highest exposure risk and often lack the resources to test or treat their water. Meanwhile, the agricultural practices that drive much of the contamination, such as CAFO waste storage structures in hydrological contact with the water table, remain largely unregulated and under-enforced. Building a

¹⁰ R. 323.2218(3)(a)(viii).

¹¹ Mich Admin Code R. 323.2204(2).

stronger, transparent, and risk-based monitoring system is essential to protecting public health, guiding policy reform, and ensuring that every Michigander has access to safe drinking water. In light of this state of affairs, great caution is necessary when permitting expanded CAFO waste disposal.

C. Deficiencies in the Comprehensive Nutrient Management Plan (CNMP)

The proposed CNMP raises numerous concerns. EGLE proposes to waive the more stringent 2017 NRCS 313 Standard for two new waste storage structures built in 2024 and 2025 to meet the 2014 NRCS 313 Standard. There is no justification for this waiver of the current standard when the facility was fully on notice of the 2017 standard at the time of construction. EGLE should not ratify this deliberate non-compliance.

Although conservation practices are mandatory, KB CAFO proposes no conservation practices. Numerous appendices referenced in the proposed CNMP to demonstrate compliance with such mandatory practices are not attached to the document and appear not to exist. Draft CNMP at 12, 14. Other mandatory practices, such as diversion of clean water, are omitted with the notation “will be updated upon construction completion.” This unconfirmed compliance is inadequate in final permit documents.

Returning to the groundwater risk, the Draft Permit fails to provide a scientifically defensible analysis of the increased risk of groundwater contamination from the proposed expansion of an already massive CAFO operating atop an existing drainage network with a high water table, including waste storage structures likely to interact hydrologically with groundwater. Local well records indicate a standing water table as shallow as 10 feet below grade¹² (potentially shallower during seasonal high water) in the immediate vicinity, with waste storage facilities built and proposed at depths up to 20 feet below grade. The proposed CNMP claims that the seasonal high-water table is over 2 feet below the bottom elevation of all waste storage structures but provides no supporting evidence.

Finally, the land application portions of the CNMP appear largely hypothetical in light of KB CAFO’s declared intent to manifest all CAFO waste (see Sec. IV.C below regarding waste management). Permit requirements for soil testing, setbacks, and other protective practices are meaningless boilerplate when all a CAFO operator has to do to avoid them is create a separate waste-handling entity that operates outside the permit compliance structure, its records hidden from public view. The same level of reporting detail should apply to the records produced by third parties who manage CAFO waste, as a condition of the NPDES-CAFO permit. The Permit should also require ongoing identification of the location and depth of drain tiles within waste application fields, and prohibit CAFO waste land application on fields with drain tiles.¹³

D. Exemption from Anti-Degradation Demonstration

Federal and state law require a showing that new discharge permits will not contribute to degradation of surface water quality. Pursuant to Mich. Admin. Code, R 323.1098,

¹² See Well ID: 29000006421.

¹³ See Part II: Section 1; General Prohibitions, (e), at 24, proposed EGLE Permit No. GW1810296.

(1) This rule applies to any action or activity pursuant to part 31 of Act No. 451 of the Public Acts of 1994, as amended, being 324.3101 et seq. of the Michigan Compiled Laws, that is anticipated to result in a new or increased loading of pollutants by any source to surface waters of the state and for which independent regulatory authority exists requiring compliance with water quality standards.

(2) For all waters, the level of water quality necessary to protect existing uses shall be maintained and protected. Where designated uses of the water body are not attained, there shall be no lowering of the water quality with respect to the pollutant or pollutants that are causing the nonattainment.

KB CAFO has requested and EGLE proposes to allow an exemption from this regulatory requirement. The proposed exemption under Mich Admin Code, R 323.1098(8)(f) covers “(i)ntermittent increased loading related to wet-weather conditions.” However, decades of water quality tracking in the watershed show that nutrient and E. coli levels commonly violate water quality standards at all times, regardless of the weather. CAFO practices do not prevent discharges and are the direct cause of water quality standard violations. The River Styx (MI040500050205-03) is a 303(d) impaired stream that begins and runs right through the De Saegher Dairy production area and will run through the proposed KB Dairy. EGLE’s 2024 Integrated Report (Appendix C) confirms the River Styx does not support several designated uses, including partial or total body contact recreation, indigenous aquatic life, or fish consumption.

The claim that KB CAFO will only discharge in wet-weather conditions is inaccurate and unproven, so the anti-degradation demonstration must be made.

E. NPDES Permit, Water Quality, and Air Quality Violations by De Saegher CAFO and De Saegher Energy

The owners of the existing De Saegher CAFO and anaerobic digesters have a history of NPDES permit and water quality standard violations and reporting failures. Expansion of their facility should not be the reward for noncompliance, particularly when the permit application involves an attempt to dodge regulation by splitting ownership of a single facility among immediate family members and a requested waiver of current engineering standards and antidegradation analysis.

De Saegher CAFO and De Saegher Energy’s violation history from the last 5 years includes:

1. An “egregious violation”, including CAFO waste dumped directly into a stream, documented by EGLE in a December 8, 2020 Violation Notice, which noted failure to report a discharge, inadequate setbacks, and failure to keep required land application records.
2. Inadequate documentation and sampling documented in a February 8, 2021 notice.
3. A June 27, 2023 report by EGLE of stream sampling immediately downstream of De Saegher CAFO where:

water here was brown, smelly, and the DO was less than 1.4mg/l. Turbidity was 42NTU. plenty of flow in the small tributary. We collected E. coli samples. For comparison... A “reference” site elsewhere in the subwatershed was 5.7 mg/l DO (was clear, turbidity of 3.2NTU). ... Low DO continued to be measured as we went downstream at pendell road, ely hwy, and Ennis rd.

4. May 4, 2023 notification of failure to submit air quality monitoring reports for the De Saegher anaerobic digester.
5. A December 26, 2023 EGLE notification of failure to maintain an updated CNMP, including failure to report current animal numbers, waste storage structures, anaerobic digester information, and mapping details such as clean and contaminated stormwater inlets, water flow paths, and structures in the production area.
6. October 15, 2024 notification of monitoring failures at the anaerobic digesters.

De Saegher CAFO's receiving waters include the Maple and Pine Rivers, both impaired for nutrients, algal growth, low dissolved oxygen, and *E. coli* along significant stretches, including tributaries where EGLE has documented pollution traceable to De Saegher CAFO, as described in the list above. According to water sampling performed by EGLE in dry conditions on July 19, 2023, *E. coli* increased by roughly 50% from a sampling point upstream of De Saegher CAFO to a sampling point immediately downstream along the Myra and Coly Drain, which traverses the CAFO site.¹⁴ Issuing the Draft Permit as written would further damage the dynamic processes of the Pine Creek, River Styx-Pine Creek, Butternut Creek, and Village of Sumner-Pine River watersheds, already severely impaired by nutrient pollution linked to massive livestock operations.

III. Site-Specific Impacts and Recommendations

In addition to recommendations noted above, such as the urgent need for groundwater discharge permitting for the entire De Saegher CAFO site, the Commenters urge the following:

A. Odor Compliance and Good Neighbor Agreement

The Permit should require a valid and reliable third-party agreement, funded by the permittee, to ensure prompt, effective response to citizen odor complaints, odor compliance activities, and follow-up/reporting to the public within Gratiot County.¹⁵ See the Appendix for a model of such a third-party odor complaint "good neighbor" agreement.

B. A Revised Approach to Waste Management

Current standards for reporting field conditions for manifested waste are inadequate and lead to discharges that violate permit conditions and cause violations of water quality standards. Proper CAFO waste management must adequately identify all off-site waste disposal locations and application fields, and provide detailed information on soil types, depth to saturation/near surface groundwater, crop management plan, site slopes, hydrology, the location, depth and hydrologic features of drain tiles (if present), proximity to neighboring properties, homes and wells, and the presence, structure, and width of existing vegetative buffers, etc. Site-specific agronomic rates should be required, to adequately manage/remove waste nutrients with planted crops. Because nitrogen and phosphorus-containing compounds in digester waste are more plant-available than in raw manure or in chemical fertilizer, they have higher potential to move with water. Agronomic application rates for digestate should be further

¹⁴ ResultsCombinedWetandDry.pdf, EGLE MiEnviro record (July 19, 2023).

¹⁵ *Id.*

adjusted downward.¹⁶ Waste over-application, land application on saturated, frozen, or snow-covered soils, and application immediately before or during storm events all aggravate problems associated with CAFO waste disposal on application fields and should be banned.

The waste stream is typically applied untreated to the land. Unlike any other regulated industry, for CAFOs, untreated process wastes (i.e., solid, liquid and/or sludge), waste water, and other wastes high in nutrient, bacteria, and other pollutants and pathogens are directly applied to farm fields by design. A central purpose of EGLE groundwater discharge permits for larger CAFOs is to prevent discharges to groundwater from land application sites – a common problem documented in states that monitor groundwater quality more comprehensively than Michigan does. The Draft Permit as written will not achieve this goal.

Field application of agricultural waste is a major contributor to failure to meet Michigan water quality standards. In practice, Michigan's Phosphorous Risk Assessment tool is a good start, but little is known regarding the effectiveness of vegetative buffers in effectively protecting surface water quality near Facility application fields. Michigan's Soil Test Phosphorus soil concentration (i.e., determined via the Bray P1 soil test method) threshold should be decreased from 150 ppm to no higher than 75 ppm as a precondition to permitting any CAFO waste field application site. By comparison, EGLE's Remediation and Redevelopment Division limits allowable Total Phosphorus soil concentrations to less than 130 ppm (which equates to 6.5 ppm in groundwater used for drinking water wells), and 1.0 ppm (20 ppm in soils) at the groundwater/surface water interface to protect aquatic resources in receiving waterways.

Not all vegetative buffers are the same in terms of efficiency in reducing site runoff. Buffer strips primarily function by intercepting and slowing surface runoff, making them more effective at preventing particulate phosphorus than dissolved phosphorus runoff. Particulate phosphorus is phosphorus attached to soil particles or organic matter. Buffer strips are effective at trapping these particles as they move with surface runoff. Vegetation slows down the water flow, allowing sediments and attached phosphorus to settle out of the water before reaching waterways. Dissolved phosphorus is in a soluble form, moving with water that infiltrates through the soil. Buffer strips are less effective at capturing dissolved phosphorus because it can move through the soil with infiltrating water and bypass physical filtration provided by vegetation. To control dissolved phosphorus runoff, additional management practices, such as improved fertilizer management or the use of buffer strips with plants that can uptake more dissolved phosphorus, are needed.

¹⁶ See [NRCS, NHCP October 2017 Conservation Practice Standard](#), Anaerobic Digester, Code 366 (366-CPS-1).

Buffer widths reported in select scientific literature

Buffer Width (ft) Recommendations

Pollutant Removal/Uptake	University of Rhode Island (Desbonnet et al.) ³²	University of Georgia (S. Wegner) ³³	Wisconsin DNR (T.W. Bernthal) ³⁴
Sediment	82	30	35 ft no-cutting buffer, and 75 ft from structures for water quality protection
TSS	197	not addressed	
Nitrogen	197	50	
Phosphorus	279	50 ft – 100 ft for short term control; long-term control not provided by buffers	
Habitat	50 (wider is better)	50 (wider is better)	35 ft minimum for protecting physical habitat of water body, terrestrial habitat dependent on quality of buffer

Scientific studies on vegetated buffer performance provide detail on the effectiveness of varying widths in removing pollutants.¹⁷ Quantitative relationships between buffer width and nitrogen and phosphorus removal at various buffer widths are summarized below. As the table shows, the relationship between width and percent removal is not linear.¹⁸

¹⁷ Alan Desbonnet, Pamela Pogue, Virginia Lee, and Nicholas Wolff, “Vegetated Buffers in the Coastal Zone A Summary Review and Bibliography”, Coastal Resource Center, Rhode Island Sea Grant, University of Rhode Island, 1994; Seth Wegner, “A Review of the Scientific Literature on Riparian Buffer Width, Extent, and Vegetation”, University of Georgia, 1999; Thomas W. Bernthal, “Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications”, Wisconsin Department of Natural Resources, 1997; and Thomas R. Schueler, “Mitigating the Adverse Impacts of Urbanization on Streams: A Comprehensive Strategy for Local Government”, Metropolitan Council of Governments, 1992.

¹⁸ *Id.*, Desbonnet.

**Percent removal as
function of buffer width**

Buffer Width		Percent Removal	
(ft)	(m)	Total Nitrogen	Total Phosphorus
0	0.0	0%	0%
2	0.6	32%	29%
5	1.5	42%	38%
8	2.4	47%	43%
10	3.0	49%	46%
15	4.6	53%	50%
20	6.1	56%	53%
25	7.6	59%	55%
30	9.1	61%	57%
40	12.2	64%	60%
50	15.2	66%	62%
60	18.3	68%	64%
70	21.3	70%	66%
80	24.4	71%	67%
100	30.5	73%	69%
300	91.5	85%	81%

For these reasons, source control and waste pretreatment, as with other Michigan waste management programs such as septage and biosolids management, should be required as a part of an EGLE groundwater discharge permit. As shown above, vegetative buffers and associated setbacks/buffer widths vary greatly in nutrient management effectiveness. Testing and monitoring of near surface groundwater quality (including drain tile monitoring) should be undertaken to determine groundwater quality as it vents to surface waters. This enhanced approach recognizes the scientific certainty that surface and near surface groundwater in glaciated portions of the U.S., including Michigan, are indeed a single hydrologic resource.

C. Other Recommended Improvements to the KB/De Saegher Dairy Permit

In addition to other measures necessary to prevent runoff, the following are recommended changes to EGLE permitting to move more meaningfully toward achieving Michigan Part 31 and federal Clean Water Act (“CWA”) goals and requirements.

1. Setbacks

Relying on the research cited above at footnote 18, the Commenters recommend the following minimum setbacks for CAFO waste field application:

Setbacks	2020 General Permit	Issued Individual NPDES-CAFO Permits	Recommended
Ditch conduits to surface water except for upgradient surface waters, open tile intakes, sinkholes, and ag wells	100 ft (or substitute with 35 ft vegetative buffer)	100 ft (or substitute with 35-65 ft vegetative buffer)	200 ft (or substitute with 65 ft vegetative buffer)
Public wells (Type I, IIA, IIB, III)	_____	200 ft - 2,000 ft	2,000 ft
Residential property lines		100 ft - 500 ft	500 ft
Domestic water wells		50 ft - 300 ft	300 ft
No land application on grassed waterways, swales, or ephemeral drains/streams		Required occasionally	Required for all digestate field application

2. Self-reporting

EGLE’s self-reporting requirement for waste application to farmland has so far proven inadequate to protect downstream waters. At minimum, baseline water quality studies should be performed upstream and downstream of proposed land application fields and waste storage facilities. Such baseline analyses should also include identification of sensitive ecological features and high water quality areas in the vicinity of a proposed land application. Enhanced EGLE permit limits should be required in such areas.

Discrete monthly water sampling by a third-party water quality/environmental professional, and the monthly submittal of Discharge Monitoring Reports to EGLE, as is customary at all other industry point sources regulated by the federal CWA and Michigan Part 31, should be required. Water quality parameters required by EGLE for monthly analysis and reporting should comply with regularly updated EGLE guidance. Surface and groundwater discharges should be under the control of third-party certified wastewater operators, as required by Section 3110 of the CWA.

3. EGLE Permit Compliance and Enforcement

EGLE needs additional personnel and other resources to adequately regulate CAFO waste management. Specifically, an enhanced, prioritized, and independent EGLE water quality monitoring program, with public reporting of findings as close to real-time as possible, is greatly needed. DNA sampling, analysis, and reporting to identify sources should accompany EGLE water quality monitoring of waterways and water bodies designated as recreation impaired waters and sampling/monitoring locations exceeding bacteria water quality standards. State-funded groundwater/drinking water nitrate monitoring and reporting of findings should be available to the public. Facility owners and operators should be required to publicly disclose the results of valid and reliable hydrogeological studies to determine the horizontal and vertical extent, sources, and remediation requirements of related contamination of groundwater in excess of groundwater/drinking water standards. Such requirements should not be waived.

4. Final Recommendations

EGLE should enhance waste manifest tracking, annual CAFO waste management reporting requirements, and the availability of this information to the public. Finally, enhanced opportunities should be provided for public awareness and meaningful public participation, beyond minimum public notice and hearing, regarding EGLE CAFO permitting decisions.

IV. Application of the Public Trust Doctrine and Michigan Law

Long-established common law and statutes protect Michigan's natural resources, with direct application to CAFO permitting and operations. Although the Draft Permit addresses only the proposed expansion, under the law, EGLE must keep its eye on the north star of Michigan's broader natural resource protections. Given its impacts, the proposed expansion is unquestionably incongruous with the interests of nearby property owners and all who live downstream. In addition to the enormous operation already located at the site, the KB CAFO expansion of De Saegher CAFO disregards the public's fundamental right to uncontaminated land and water.

A. *Public Trust Doctrine*

The public trust doctrine is the set of jurisprudential principles that establish the public's ownership and rights to use and enjoy the state's navigable waters. Under the public trust doctrine as applied in Michigan, all state waters from tributary rivers and streams to the Great Lakes constitute a legally enforceable "public trust." Michigan citizens are the beneficiaries of the trust, and the government, as the fiduciary, has the legal responsibility to protect the trust from impairment. The state's fiduciary obligation to protect public trust resources from impairment is, in the words of the Michigan Supreme Court, a "high, solemn, and perpetual" duty.¹⁹ The state must honor the public trust in decision-making regarding proposed uses of state surface and groundwater. Citizens are also empowered to use the doctrine to invalidate governmental and private actions that violate it.²⁰

Dating back to Roman law, the public trust is a foundation underpinning all modern environmental protections. The Great Law of the Haudenosaunee Confederacy, a source of many principles of

¹⁹ [Collins v. Gerhardt](#), 211 N.W. 115 (Mich. 1926).

²⁰ See, Kilbert, K., "The Public Trust Doctrine and the Great Lakes Shores", *Cleveland State L. Rev.*, 2010 <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1065&context=clevstlrev>.

American democracy, articulates similar concepts. Oren Lyons, Faithkeeper of the Turtle Clan of the Onondaga Nation, one of the six nations of the Confederacy, summarized Haudenosaunee traditional thinking in a 1991 interview: “What Indians are about, I think, first of all is community. They’re about mutual support, they’re about sharing, they’re about understanding what’s common land, common air, common water, common and for all.”²¹ These ancient principles guide decisionmaking that serves the people as a whole.

B. Michigan Constitution and the Michigan Environmental Protection Act

Article IV, Section 52 of the Michigan Constitution creates a magisterial, administrative, and legislative mandate for the state to protect our natural resources:

The conservation and development of the natural resources of the state are hereby declared to be *of paramount public concern* in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.²²

The Michigan Supreme Court has opined that Art. IV, § 52, “*does* create a mandatory legislative duty to act to protect Michigan’s natural resources, but, we further hold that the Legislature has in fact acted pursuant to that duty in the EPA...,” referencing the Michigan Environmental Protection Act (“MEPA”).²³ Art. IV, Section 52 also supports and informs the application of the public trust doctrine to this proposed project.

MEPA makes the legislative mandate explicit:

In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.²⁴

The application neither determines impacts nor analyzes alternatives. In fact, the Applicant denies that the antidegradation determination required by the Clean Water Act applies to its operation. This is a direct violation of both CWA and MEPA, which bars EGLE from issuing a permit for an activity that is likely to result in pollution, impairment, or destruction of the air, water or other natural resources, or the public trust in those resources, if a feasible and prudent alternative exists consistent with the reasonable requirements of public health, safety, and welfare.

The Draft Permit does not contain or reference an analysis of potential pollution, impairment, or destruction of air, water, or other natural resources that may result from operating KB CAFO under the

²¹ Jennifer Davis, “[The Haudenosaunee Confederacy and the Constitution](#)”, Library of Congress Blog, Sep. 21, 2023.

²² Emphasis added.

²³ State Hwy Comm v Vanderkloot, 392 Mich 159, 178-79; 220 NW2d 416 (1974), emphasis in original.

²⁴ MCL 324.1705(2).

terms of the Draft Permit, despite the fact that the Draft Permit contemplates spills and other accidental discharges that the Applicant would be obligated to self-report. Feasible and prudent alternatives clearly exist that interfere less than the Draft Permit's terms with the rights of neighboring property owners and the public trust rights for protection of land, groundwater, and surface water resources. For example, the no-action alternative – simply not expanding an already massive CAFO – is feasible and prudent. Other options include reducing the size of the proposed expansion.

Neither the applicant nor EGLE has performed the required separate analysis of the Draft Permit's compliance with MEPA. EGLE has not reached the required determinations. These are MEPA violations, inconsistent with the agency's representations that MEPA compliance takes place at the level of specific facility permitting. "This act shall be *supplementary* to existing administrative and regulatory procedures provided by law,"²⁵ according to the Michigan Supreme Court, which has held that MEPA creates "substantive environmental duties" such that failure "to reasonably comply with those duties may be the basis for a finding of fraud or abuse of discretion."²⁶

C. *Applicability of Michigan Right to Farm Act*

Although the Michigan Right to Farm Act provides certain safe harbors for agricultural activities, it does not exempt CAFO operations from the Michigan Environmental Protection Act, the Michigan Constitution, the Freedom of Information Act, or common law protections such as the public trust doctrine and tort law. The Right to Farm Act has been abused in situations where it was never intended to apply, such as vast factory farm operations that render large rural areas unlivable for residents who were there long before the industry arrived.

D. *Solid Waste Regulation*

Analysis of the need for regulation under the Solid Waste rules must accompany a comprehensive permitting approach.²⁷ De Saegher CAFO and the proposed expansion are subject to federal regulations governing Maximum Contaminant Levels for Solid Waste Disposal Facilities.²⁸ The Commenters request a thorough review of the Facility's profile as a solid waste disposal facility, in light of its history of disposing of CAFO waste in excess of the agronomic needs of application fields. Contracts with application field owners and parties receiving manifested waste also require review to ensure compliance with applicable law.

E. *Air Quality Regulation*

NREPA Part 55, Air Pollution Control, governs the Facility's air emissions.²⁹ Rule 901 states:

Notwithstanding the provisions of any other rule, a person shall not cause or permit the emission of an air contaminant or water vapor in quantities that cause, alone or in reaction with other air contaminants, either of the following:

²⁵ *Vanderkloot, supra* n. 22 at 189 (citing MCLA 691.1206; MSA 14.528(206))(emphasis added by court).

²⁶ *Id.* at 190-91.

²⁷ Mich Admin Code, R 299.4101 et seq.

²⁸ 40 CFR Appendix I to Part 257 - Appendix I to Part 257—Maximum Contaminant Levels (MCLs).

²⁹ MCL 324.5501 et seq.

- (a) Injurious effects to human health or safety, animal life, plant life of significant economic value, or property.
- (b) Unreasonable interference with the comfortable enjoyment of life and property.³⁰

De Saegher CAFO and De Saegher Energy are significant sources of ammonia (NH₃) emissions. Although EPA has not yet implemented nationwide ammonia air quality standards, the Natural Resource Conservation Service, an agency of the US Department of Agriculture, issued an official white paper in 2014 on ammonia emissions. Among NRCS's findings and recommendations:

- Ammonia is a precursor to PM_{2.5} (fine particulate matter) pollution, with demonstrable effects on human and animal health;³¹
- Consideration of NH₃ as an air pollutant will require the EPA to acknowledge and address the role of NH₃ in the full nitrogen (N) cycle and specifically address emission reduction measures that do not merely transfer NH₃ from one environmental medium to another;³²
- Because nitrogen is a “critical component of a natural biological cycle”, the challenge is “to determine ‘excess reactive N’ as a pollutant of concern rather than ‘reactive nitrogen’”.³³

Results of a 2024 study from the National Institutes of Health suggested:

possible exposure of CAFO workers to multidrug-resistant *Staphylococcus aureus* (MDRSA), campylobacteriosis, and cryptosporidiosis. Communities near CAFOs experienced higher rates of adverse health impacts compared to those in non-CAFO areas, with patterns suggesting that proximity may correlate with increased odds of detrimental health effects. Implicit global health threats include methicillin-resistant *Staphylococcus aureus* (MRSA), MDRSA, campylobacteriosis, tuberculosis, and cryptosporidiosis. These studies provide foundational insights into CAFO proximity, density patterns, and adverse public health effects, indicating a need for evidence-informed environmental health policies to minimize local and global risks.³⁴

The growing body of evidence regarding health risks to CAFO workers and the surrounding community is very much relevant to the regulator's responsibility when permitting a CAFO.

Although air permitting is beyond the scope of the Draft Permit, to comply with MEPA, EGLE must consider the full scope of all of the Facility's activities “likely to result in pollution, impairment or destruction of the air, water or other natural resources, or the public trust in those resources, if there is a

³⁰ Mich Admin Code, R 336.1901.

³¹ Ammonia Emissions: What to Know Before You Regulate, Official White Paper of the USDA Agricultural Air Quality Task Force, October 1, 2014, at 1.

³² *Id.*

³³ *Id.* at 1, 7.

³⁴ Pohl E, Lee SR. Local and Global Public Health and Emissions from Concentrated Animal Feeding Operations in the USA: A Scoping Review. *Int J Environ Res Public Health*. 2024 Jul 13;21(7):916. doi: 10.3390/ijerph21070916. PMID: 39063493; PMCID: PMC11276819.

feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.”³⁵ We look forward to reviewing that comprehensive analysis.

V. Conclusion

EGLE has a non-discretionary legal duty to address all potential emissions and discharges to land, air, and water in its permitting actions. The need to regulate the proposed expansion as a complex wastewater treatment plant *and* air emissions source is not sufficiently addressed by the current Draft Permit. A more comprehensive approach to water and air quality regulation is needed where CAFOs have been overbuilt to the degree they are in this watershed.

The Commenters recommend reliance on the Precautionary Principle, embodied in MEPA, as a guideline for CAFO regulation, to avoid serious health and environmental damage, followed by costly cleanup. In the words of the University of Michigan School of Public Health:

The precautionary principle suggests that, when we do not know for certain that there will not be damaging effects of substances, especially those that are persistent and toxic in the environment, it is best to err on the side of precaution – that is to prevent exposure, rather than try to clean up or cure the negative health effects of an environmental exposure after it has occurred.³⁶

CAFO regulation has thus far failed abysmally to protect watersheds across the US and abroad. As these comments point out, further review is needed to arrive at an appropriately protective regulatory code for Michigan. Even if this were not the case, the existing De Saegher CAFO has not proven a safe and reliable neighbor, hardly justifying an expansion. The Draft Permit application is incomplete and inadequate, and the Draft Permit as written needs significant revision to provide De Saegher and KB CAFOs’ neighbors with the peace of mind they deserve from EGLE.

The Commenters therefore respectfully requests that EGLE deny the permit application in favor of expanded analysis of this site’s potential impacts, its feasible and prudent alternatives, and Michigan’s regulation of CAFOs as a whole. A moratorium on permitting new CAFOs until this analysis is complete would be prudent. We also request the involvement of the Office of the Environmental Justice Public Advocate, to ensure that risks to neighbors are fully considered.

VI. Signatories

The following organizations and individuals request a response to these comments at the email or mailing addresses provided below.

Sincerely yours,

³⁵ [MCL 324.1705\(2\)](#).

³⁶ [Environmental Health Fact Sheet](#), Lifestage Environmental Exposures and Disease Center, School of Public Health, University of Michigan, August 2012.

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APPENDIX - Independent Odor Evaluator Agreement

THIS AGREEMENT is made between KB Dairy LLC, herein referred to collectively as “KB Dairy,” with a principal place of business at 8068 W. Buchanan Rd., Middleton, MI 48856, and the Mid-Michigan District Health Department, 151 Commerce Drive, Ithaca, MI 48847, referred to herein as “Independent Odor Evaluator”.

1. **Term of Agreement.** This Agreement will become effective when signed by all parties and shall continue until terminated as set forth herein. All provisions of this Agreement shall apply to all services and all periods of time in which the Independent Odor Evaluator renders services for KB Dairy and Mid-Michigan District Health Department.
2. **Terminating the Agreement.** The Parties agree that this Agreement shall remain in place for so long as any groundwater discharge permit issued by Michigan’s EGLE, Water Resources Division references this Agreement as a condition of such Permit. The Independent Odor Evaluator may terminate their participation under this Agreement for any cause; however, the Independent Odor Evaluator shall continue to discharge services as defined in this Agreement until such time as a replacement Independent Odor Evaluator is obtained. KB Dairy and the Mid-Michigan District Health Department shall use their best efforts to find a replacement Independent Odor Evaluator upon notice from the Independent Odor Evaluator terminating his/her participation.
3. **Services to be Performed.** Independent Odor Evaluator agrees to perform the following services:

A. Investigation of Odor Complaints.

Pursuant to this Independent Odor Evaluator Agreement, the Independent Odor Evaluator shall act as an impartial third party and independent contractor to investigate residents’ claims of any potentially nuisance Odors detected at or surrounding the boundaries of the KB Dairy property, permitted CAFO waste land application fields, CAFO waste transportation routes, or on residents’ property that the resident believes originate from the property of KB Dairy.

Upon notification by the Mid-Michigan District Health Department or resident, the Independent Odor Evaluator shall travel to the subject location of the odor allegation to verify whether a nuisance Odor exists, whether the Odor is emanating from KB Dairy. The Independent Odor Evaluator shall use best efforts to respond promptly to Odor complaints and to travel to the site indicated where the Odor was detected. The Independent Odor Evaluator will attempt to coordinate with another qualified Independent Odor Evaluator if they are unable to respond to a Odor complaint.

Once the Independent Odor Evaluator arrives at the location of an alleged nuisance odor, the Independent Odor Evaluator shall conduct an investigation of the Odor independently and without assistance or accompaniment by complainant(s), or by representatives of KB Dairy. As part of the investigation of the Odor complaint, the Independent Odor Evaluator shall determine whether there is in fact a Nuisance Odor, defined as the unreasonable interference with the comfortable use and enjoyment of another’s property, and will utilize a prepared

form to record the nature, duration, and severity of the Odor. In addition, the Independent Odor Evaluator will determine whether the Odor is emanating from the KB Dairy facility, defined as the facility's buildings and grounds, land application fields, and transportation routes as identified in this Agreement. This investigation may require travel to determine the source of the Odor, and the Independent Odor Evaluator is permitted entry onto the KB Dairy property, land application fields, and transportation routes as provided above, for this purpose only.

Once the Independent Odor Evaluator makes the determination as to whether a potential nuisance Odor exists and whether it appears to be emanating from the KB Dairy facility, land application fields and other operations, the Independent Odor Evaluator shall forward their findings (i.e., copies of the completed form) to Mid-Michigan District Health Department and counsel for both the Health Department and KB Dairy, and to the party that filed the complaint, if different, within three (3) business days.

B. Odor Monitoring.

The Independent Odor Evaluator shall not inform KB Dairy of an Odor complaint until their Odor investigation is complete.

4. **Payment.** In consideration for the services to be performed by the Independent Odor Evaluator, KB Dairy agrees to pay the Independent Odor Evaluator the sum of at least \$55.00/hour for services rendered between the weekday hours of 7:00 a.m. and 9:00 p.m., and the sum of at least \$85.00/hour for services rendered between the weekday hours of 9:00 p.m. and 7:00 a.m., and on weekends or holidays. Anytime required by the Independent Odor Evaluator for training, familiarizing themselves with the KB Dairy facility. Invoices may be sent directly to KB Dairy. The parties understand and agree that copies of invoices may be shared with all parties, and that the Independent Odor Evaluator shall provide copies of invoices upon written request from the Mid-Michigan District Health Department or their counsel. If KB Dairy pays the Independent Odor Evaluator the retainer fee in advance, and if the Independent Odor Evaluator terminates this Agreement, the Independent Odor Evaluator shall refund any pre-paid, prorated retainer fee to KB Dairy.

5. **Terms of Payment.** A deposit in the amount of \$25,000.00 shall be delivered to the Mid-Michigan District Health Department upon the issuance of an EGLE, Groundwater Discharge Permit to secure the prompt payment of invoices rendered by the Independent Odor Evaluator. The Independent Odor Evaluator shall invoice KB Dairy on a monthly basis for each time that the Independent Odor Evaluator is called upon to investigate a claim of a potentially nuisance Odor. Payment shall be made to the Independent Odor Evaluator for services rendered upon receipt of the invoice. If payment is not made within ten (10) business days of issuance of an invoice, the Mid-Michigan District Health Department shall withdraw the amount necessary to satisfy such invoice from the deposit and thereafter, KB Dairy shall have not more than five (5) business days within which to restore the deposit to the original balance of \$25,000.00 as a condition on the continued operation under the EGLE groundwater discharge permit issued to KB Dairy.

6. **Expenses.** The Independent Odor Evaluator shall be responsible for all expenses incurred while performing services under this Agreement. This includes automobile and other travel expenses at the standard State of Michigan mileage rate; insurance premiums; phone expenses, and postage, but shall not include expenses associated with specialized training for purposes of carrying out the duties of this Agreement.

7. **Materials and Training.** KB Dairy will furnish all materials, training, and supplies to be used in determining whether a nuisance Odor exists. This material shall include forms and maps to be used in characterizing any reported Odors. The materials furnished and training provided to the Independent Odor Evaluator shall be reviewed and approved by all parties prior to use, and may be modified as necessary and with approval of all parties. It is expected that training shall include specialized Odor measurement and evaluation training if the same is available at a reasonable cost and can be coordinated with the time available to the Independent Odor Evaluator. Any cost associated with securing such training, including but not limited to tuition or fees, travel and lodging expense, and compensation of the Independent Odor Evaluator shall be paid by KB Dairy.

8. **Independent Contractor Status.** The parties agree that the Independent Odor Evaluator is an independent contractor, and that the Independent Odor Evaluator shall not be deemed to be an employee of KB Dairy or the Mid-Michigan District Health Department.

9. **State and Federal Taxes.** KB Dairy will not withhold FICA (Social Security and Medicare taxes) from the Independent Odor Evaluator's payments or make FICA payments on the Independent Odor Evaluator's behalf, or make state or federal unemployment compensation contributions on the Independent Odor Evaluator's behalf, or withhold state or federal income tax from the Independent Odor Evaluator's payments. The Independent Odor Evaluator shall pay all taxes incurred while performing services under this Agreement, including all applicable income taxes.

10. **Workers' Compensation/Benefits.** KB Dairy shall not obtain workers' compensation insurance on behalf of the Independent Odor Evaluator. The Independent Odor Evaluator understands that he is not eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of KB Dairy.

11. **Unemployment Compensation.** KB Dairy shall make no state or federal unemployment compensation payments on behalf of the Independent Odor Evaluator. The Independent Odor Evaluator will not be entitled to these benefits in connection with work performed under this Agreement.

12. **Indemnity.** KB Dairy and the Mid-Michigan District Health Department agree not to bring an action against the Independent Odor Evaluator for performing the duties specified in this Agreement, and agrees to indemnify, defend, and hold harmless Independent Odor Evaluator from any and all liability arising out of or in any way related to Independent Odor Evaluator's performance of these services during the term of this Agreement.

13. **District Health Department Duties.** The Mid-Michigan District Health Department agrees to the following duties:

A. To accumulate and retain the results of Odor monitoring described in this agreement or as may be required under any groundwater discharge permit issued by EGLE with respect to the activities of KB Dairy. Such retention shall be for a minimum of three (3) years.

B. To monitor the frequency and bases for Odor complaints which result in an investigation conducted by the Independent Odor Evaluator and to monitor compliance with the EGLE groundwater discharge permit, the Mid-Michigan District Health Department shall obtain and review all Odor reports. Should KB Dairy, the Independent Odor Evaluator, or the Mid-Michigan District Health Department come to the belief that the complaint system is being abused, the Mid-Michigan District Health Department will issue a notice to the other parties to this agreement that one or more complainants may be issuing unsubstantiated complaints. The Mid-Michigan District Health Department will convene a meeting at which time the results of all relevant data will be reviewed by all parties to this agreement and if two of the three parties are in agreement that false complaints are being filed, the Mid-Michigan District Health Department may take action as it deems necessary to prevent such action from occurring. Such action may be in the form of a formal written notice to the resident seeking cooperation with the intent of this agreement, and instructing the Independent Odor Evaluator of this occurrence. Nothing in this procedure, however, shall be interpreted to prevent KB Dairy from pursuing any legal remedies that may be available to it to prevent township residents' misuse of the complaint procedures provided for and contemplated by this agreement.

14. **Exclusive Agreement.** This is the entire Agreement between Independent Odor Evaluator KB Dairy and the Mid-Michigan District Health Department.

15. **Modifying the Agreement.** This Agreement may be modified by the parties as needed. Any amendments shall be in writing and agreed to by all parties.

16. **Confidentiality.** The Independent Odor Evaluator will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of KB Dairy without KB Dairy' prior written permission except to the extent necessary to perform the services specified herein.

17. **Notices.** All notices or other communications required or permitted to be given to a party to this Agreement shall be in writing and shall be sent by first class mail to counsel for KB Dairy and for the Mid-Michigan District Health Department at the following addresses:

Counsel for the Mid-Michigan District Health Department:

(City), Michigan (zip)

Phone:

Fax:

Counsel for KB Dairy:

(City), Michigan (zip)

Phone:

Fax:

17. Necessity of Independence and Openness: All parties to this agreement understand the importance of the Independent Odor Evaluator remaining independent throughout the term of their service under this agreement. The Independent Odor Evaluator may not be nor become biased towards the position of the Mid-Michigan District Health Department or KB Dairy. To that end, all parties agree to work together in a cooperative spirit to meet the terms and intent of this agreement, including maintaining an open line of communication and keeping all parties informed about concerns and problems related to this agreement.

Signatures:

For the Mid-Michigan District Health Department (insert name):

Dated: _____, 2025

By: _____
(insert title)

For KB Dairy:

Dated: _____, 2025

(insert name)

Independent Odor Evaluator:

Dated: _____, 2025

(insert name)