
October 22, 2025

Via email: michiganegle@govqa.us, EGLE-FOIA@Michigan.gov

Senior Deputy Director, EGLE
P.O. Box 30473
Lansing, Michigan 48909-7973

Michigan Department of Environment, Great Lakes, and Energy
ATTN: FOIA Coordinator
P.O. Box 30457
Lansing, MI 48909-7957

Re: Appeal of FOIAs E513483-070125, E513484-070125, E513485-070125,
E513486-070125, E513487-070125, E513489-070125, E513490-070125,
E513491-070125, E513492-070125, E513493-070125, E513494-070125,
E513495-070125, E513496-070125, E513497-070125, E513498-070125.

Dear FOIA Appeals Committee,

Flow Water Advocates (FLOW) respectfully appeals the Department's determination that it is not obligated to obtain and disclose Land Application Logs for the NPDES permittees named in the above-referenced FOIA requests, identical requests for fourteen (14) separate CAFO operations.

The grounds for this appeal are:

1. The Department has failed to comply with the plain language of the NPDES Permits (General and Individual) currently in force, designating Land Application Logs public records that must be created, maintained, and disclosed to the agency and the public by permittees.
2. By failing to honor public record definitions in its own permits and the Michigan Freedom of Information Act, EGLE has violated FLOW's and the public's rights to access to any document "prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." MCL 15.232.
3. The requested documents are not subject to any relevant exemption from disclosure.
4. If the documents in fact do not exist, the failure to maintain required records by all 14 CAFOs is an egregious pattern of NPDES permit violations that demands immediate enforcement action by EGLE.

Background

As Great Lakes water quality and access advocates, FLOW has a long-standing interest in Michigan's surface waters, which are severely degraded by CAFO pollution, including leachate, drainage, and runoff from land application of CAFO waste. On July 2, 2025, we filed the above-referenced FOIA requests regarding Land Application Logs for CAFOs in the heavily impacted Pine River watershed of central Michigan. These logs, required by the CAFOs' NPDES permits, contain results of land application inspections, monitoring, testing, and recordkeeping. Specifically, they include Daily Land Application Records stating the time, date, quantity, method, location, and application rate for each location where CAFO waste is land applied. This information is critical to any serious analysis of the impact of CAFO waste land application upon surface waters.

The denial of these requests is unacceptable. The records requested are not exempt from disclosure under any exemption set forth in FOIA or other applicable law, and EGLE claimed no exemptions in their denial. EGLE responded with the same language to each request:

The purpose of the FOIA is to provide the public with access to existing, nonexempt public records of public bodies. After a search, to the best of this public body's knowledge, information, and belief, the public record(s) do not exist as described by you, or by another name or description reasonably known to the public body; therefore, your request to examine or receive a copy of the documents described above is denied. WRD does not require Land Application Logs to be provided and therefore, EGLE does not hold your requested log. You may wish to reach out to the farm directly for your requested information.

The only variation was in the response to the request regarding Chapin Family Farms, which operates under an Individual NPDES Permit. EGLE did not direct FLOW to request records directly from Chapin.

Although FOIA directs the agency to provide such records, in a good faith effort to obtain them, FLOW sent letters to each CAFO, citing EGLE's response and applicable law and requesting disclosure. Only one CAFO responded, refusing to disclose the records. Thirteen did not respond.

The NPDES Permits' and FOIA's plain language

First, the terms of the NPDES permits currently in force require creation, maintenance, and disclosure of Land Application Logs: As part of NPDES permit compliance, CAFOs are required to maintain Land Application Logs documenting their compliance with permit terms regarding land application of CAFO waste. General Permit at 13, Sec. I.B.3(d):

Land Application Log

The results of land application inspections, monitoring, testing, and recordkeeping shall be recorded in a "Land Application Log" which shall be kept up-to-date and kept with the CNMP. Log records shall be kept for a minimum of five years. The

permittee shall document in the log in writing, at a minimum, records required by Part I.B.3. and all of the following information and inspection results in the specified document:

1) Daily Land Application Record

- a) The time, date, quantity, method, location, and application rate for each location at which CAFO wastes are land applied
- b) A written description of weather conditions at the time of application and for 24 hours prior to and following application based on visual observation
- c) a statement whether the land was frozen or snow-covered at the time of application

2) Annual Report Form

- a) The crop, the realistic yield goal, and actual yield for each location at which CAFO wastes are land applied
- b) Methodology and calculations showing the total nitrogen and phosphorus to be applied to each field receiving CAFO waste, identifying all sources of nutrients, including sources other than CAFO waste
- c) The total amount of nitrogen and phosphorus actually applied to each field receiving CAFO waste, irrespective of source, including documentation of calculations for the total amount applied

3) Printouts of weather forecasts from the time of land application. Weather forecasts may also be saved as electronic files, in which case the files do not need to be physically located in the Land Application Log, but the log shall reference the location where the files are stored.

This information must be publicly available: “Except for data determined to be confidential under Section 308 of the (Clean Water) Act and Rule 2128 (R 323.2128 of the Michigan Administrative Code), all reports prepared in accordance with the terms of this permit, shall be available for public inspection at the offices of the Department and the Regional Administrator. As required by the Federal Act, effluent data shall not be considered confidential.” General Permit II.D.8.

The Michigan Administrative Code defines “effluent” to mean “wastewater discharge from a point source to the surface waters of the state.” Mich. Admin. Code R 323.1043(cc). The Code and the Clean Water Act also define CAFOs as a point source for purposes of wastewater discharge permitting. Mich Admin Code, R 323.2104(c)(ix), 33 U.S.C. § 1362(14).

State and federal regulations demand full disclosure of CAFO records to regulatory agencies: “The permittee shall allow any authorized department representative to enter upon the permittee's premises at any reasonable time, upon presentation of credentials, to have access to and copy any applicable records, to inspect process facilities, treatment works, monitoring methods or equipment therefore, or to sample any effluent of a discharge authorized by a permit.” Mich. Admin. Code, R 323.2149, 40 CFR 122.41(i).

Michigan’s FOIA provides that “all persons ... are entitled to full and complete information regarding the affairs of government” MCL 15.231(2). The Act mandates disclosure for the

purpose of ensuring that “(t)he people shall be informed so that they may fully participate in the democratic process.” *Id.* FOIA insists that the public be allowed to “examine and review the workings of government and its executive officials” and to thereby “hold public officials accountable for the manner in which they discharge their duties.” *Messenger v Ingham Cnty Prosecutor*, 232 MichApp 633, 641.

Relief Requested

We respectfully ask that EGLE produce the documents within two weeks.

Sincerely,

Carrie La Seur
Legal Director
Flow Water Advocates