

# SENATE BILL No. 1065

February 23, 2006, Introduced by Senators BRATER, JACOBS, THOMAS, LELAND and SCHAUER  
and referred to the Committee on Agriculture, Forestry and Tourism.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by adding sections 8609, 8611, 8613,  
8615, 8617, 8619, and 8621.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 8609. (1) AN INDIVIDUAL SHALL NOT SUPERVISE, CONTROL, OR  
2        OPERATE A CAFO UNLESS THE INDIVIDUAL HAS OBTAINED CERTIFICATION BY  
3        THE DEPARTMENT OF AGRICULTURE. THE CERTIFICATION PROGRAM SHALL BE  
4        DESIGNED TO PROPERLY QUALIFY INDIVIDUALS TO OPERATE 1 OR MORE TYPES  
5        OF CAFOS. AS PART OF THE CERTIFICATION PROGRAM, THE DEPARTMENT OF  
6        AGRICULTURE SHALL CONSIDER THE EXPERIENCE OF APPLICANTS. THE  
7        DEPARTMENT OF AGRICULTURE SHALL ALSO EXAMINE THE BACKGROUND OF THE  
8        APPLICANTS TO DETERMINE ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE

1 VIOLATIONS OF THIS ACT OR THE ENVIRONMENTAL LAWS OF OTHER STATES,  
2 THE UNITED STATES, OR OTHER COUNTRIES. THE DEPARTMENT OF  
3 AGRICULTURE SHALL ISSUE A CERTIFICATION TO VERIFY THE SUCCESSFUL  
4 COMPLETION OF THE CERTIFICATION PROGRAM.

5 (2) IF A PERSON OTHER THAN AN INDIVIDUAL OWNS OR OPERATES A  
6 CAFO, THAT PERSON SHALL DESIGNATE AN INDIVIDUAL AS A RESPONSIBLE  
7 AGENT TO BE IN CHARGE OF THE SUPERVISION, CONTROL, OR OPERATION OF  
8 THE CAFO. THE RESPONSIBLE AGENT SHALL FULFILL THE CERTIFICATION  
9 REQUIREMENTS OF THIS SECTION. THE RESPONSIBLE AGENT'S NAME SHALL  
10 APPEAR ON ANY PERMIT REQUIRED UNDER THIS PART OR PART 31.

11 (3) THE DEPARTMENT OF AGRICULTURE SHALL ESTABLISH A SCHEDULE  
12 TO PHASE IN THE REQUIREMENTS OF SUBSECTION (1) FOR CAFOS EXISTING  
13 WHEN RULES IMPLEMENTING SUBSECTION (1) ARE PROMULGATED.

14 (4) THE DEPARTMENT OF AGRICULTURE MAY CONDUCT A PROGRAM FOR  
15 TRAINING PERSONS SEEKING CERTIFICATION UNDER SUBSECTION (1). THE  
16 DEPARTMENT OF AGRICULTURE MAY CHARGE A FEE BASED ON THE COSTS TO  
17 THE DEPARTMENT OF OPERATING THE TRAINING PROGRAM. THE FEES SHALL BE  
18 DEPOSITED IN THE CAFO CERTIFICATION AND TRAINING FUND CREATED IN  
19 SUBSECTION (8).

20 (5) BEFORE OFFERING OR CONDUCTING A COURSE OF TRAINING  
21 REPRESENTED TO HELP AN INDIVIDUAL TO MEET THE CERTIFICATION  
22 REQUIREMENTS OF SUBSECTION (1), A PERSON SHALL OBTAIN APPROVAL FROM  
23 THE DEPARTMENT OF AGRICULTURE.

24 (6) THE DEPARTMENT OF AGRICULTURE MAY RECOGNIZE AND APPROVE  
25 TRAINING PROGRAMS CONDUCTED OR APPROVED BY OTHER STATES OR THE  
26 FEDERAL GOVERNMENT.

27 (7) AFTER PROVIDING AN OPPORTUNITY FOR AN ADMINISTRATIVE

1 HEARING UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA  
2 306, MCL 24.201 TO 24.328, THE DEPARTMENT OF AGRICULTURE MAY DENY,  
3 SUSPEND, LIMIT, OR REVOKE A PERSON'S CERTIFICATION ISSUED UNDER  
4 SUBSECTION (1) OR THE APPROVAL OF A TRAINING PROGRAM UNDER  
5 SUBSECTION (5) FOR FAILURE TO MEET THE REQUIREMENTS OF RULES  
6 PROMULGATED UNDER SUBSECTION (11) TO IMPLEMENT SUBSECTION (1) OR  
7 (5), AS APPLICABLE.

8 (8) THE CAFO CERTIFICATION AND TRAINING FUND IS CREATED WITHIN  
9 THE STATE TREASURY.

10 (9) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM  
11 ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL  
12 DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT  
13 TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS. MONEY IN  
14 THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND  
15 AND SHALL NOT LAPSE TO THE GENERAL FUND.

16 (10) THE DEPARTMENT OF AGRICULTURE SHALL EXPEND MONEY FROM THE  
17 FUND, UPON APPROPRIATION, ONLY FOR THE PURPOSE OF EXERCISING ITS  
18 POWERS AND PERFORMING ITS DUTIES UNDER SUBSECTIONS (1) TO (5).

19 (11) THE DEPARTMENT OF AGRICULTURE MAY PROMULGATE RULES TO  
20 IMPLEMENT THIS SECTION.

21 SEC. 8611. (1) BEFORE CONSTRUCTING A LARGE CAFO OR MEDIUM  
22 CAFO, EXPANDING A LARGE CAFO OR MEDIUM CAFO THAT WAS IN OPERATION  
23 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
24 SECTION, OR EXPANDING A SMALL CAFO INTO A LARGE CAFO OR MEDIUM  
25 CAFO, THE OWNER OR OPERATOR OF THE CAFO OR PROPOSED CAFO SHALL  
26 OBTAIN ALL PERMITS REQUIRED UNDER THIS ACT AND REGISTER WITH THE  
27 DEPARTMENT. THE REGISTRATION SHALL INCLUDE ALL OF THE FOLLOWING:

1 (A) THE LOCATION OF THE CAFO.

2 (B) THE SIZE OF THE CAFO, IN ACRES.

3 (C) WHETHER THE CAFO WILL BE A LARGE CAFO OR MEDIUM CAFO.

4 (D) THE TYPE OF ANIMALS THAT WILL BE STABLED OR CONFINED AT  
5 THE CAFO.

6 (E) A SITE PLAN FOR THE CAFO.

7 (F) DOCUMENTATION ESTABLISHING THAT THE CAFO MEETS SITING  
8 CRITERIA ESTABLISHED AS GENERALLY ACCEPTED AGRICULTURAL AND  
9 MANAGEMENT PRACTICES AS DEFINED IN SECTION 2 OF THE MICHIGAN RIGHT  
10 TO FARM ACT, 1981 PA 93, MCL 286.472.

11 (G) ANY OTHER RELEVANT INFORMATION REQUIRED BY THE DEPARTMENT.

12 (2) UPON RECEIPT OF A REGISTRATION UNDER SUBSECTION (1), THE  
13 DEPARTMENT SHALL PROVIDE A COPY OF THE REGISTRATION TO THE TOWNSHIP  
14 AND, IF APPLICABLE, THE VILLAGE, OR TO THE CITY, WHERE THE CAFO  
15 WILL BE LOCATED AND TO THE COUNTY WHERE THE CAFO WILL BE LOCATED.  
16 THE DEPARTMENT SHALL ALSO MAKE THE REGISTRATION AVAILABLE ON THE  
17 DEPARTMENT'S WEBSITE.

18 (3) UPON THE REQUEST OF 1 OR MORE PERSONS, THE DEPARTMENT  
19 SHALL HOLD AN INFORMATIONAL HEARING ON THE NATURE OF THE PROPOSED  
20 NEW OR EXPANDED CAFO AND THE REGULATION OF THE CAFO UNDER THIS  
21 PART.

22 SEC. 8613. (1) THE DEPARTMENT MAY DESIGNATE ANY AFO AS A CAFO  
23 UPON DETERMINING THAT IT IS A SIGNIFICANT CONTRIBUTOR OF POLLUTANTS  
24 TO WATERS OF THE STATE. IN MAKING THIS DESIGNATION, THE DEPARTMENT  
25 SHALL CONSIDER ALL OF THE FOLLOWING:

26 (A) THE SIZE OF THE AFO AND THE AMOUNT OF PRODUCTION AREA  
27 WASTE AND PROCESS WASTEWATER FROM THE AFO BEING DIRECTLY OR

1 INDIRECTLY DISCHARGED INTO WATERS OF THE STATE.

2 (B) THE LOCATION OF THE AFO RELATIVE TO WATERS OF THE STATE.

3 (C) THE MEANS OF CONVEYANCE OF PRODUCTION AREA WASTE AND  
4 PROCESS WASTEWATER INTO WATERS OF THE STATE.

5 (D) SLOPE, VEGETATION, RAINFALL, AND OTHER FACTORS AFFECTING  
6 THE LIKELIHOOD OR FREQUENCY OF DISCHARGE OF PRODUCTION AREA WASTE  
7 AND PROCESS WASTEWATER INTO WATERS OF THE STATE.

8 (E) OTHER RELEVANT FACTORS.

9 (2) AN AFO SHALL NOT BE DESIGNATED UNDER THIS SUBSECTION  
10 UNLESS THE DEPARTMENT HAS CONDUCTED AN INSPECTION OF THE OPERATION  
11 AS AUTHORIZED UNDER SECTION 3105.

12 (3) AN AFO WITH NUMBERS OF ANIMALS BELOW THOSE ESTABLISHED IN  
13 THE DEFINITION OF MEDIUM CAFO IN SECTION 8603 SHALL NOT BE  
14 DESIGNATED AS A CAFO UNDER SUBSECTION (1) UNLESS EITHER OF THE  
15 FOLLOWING OCCURS:

16 (A) POLLUTANTS ARE DISCHARGED FROM THE PRODUCTION AREA INTO  
17 WATERS OF THE STATE THROUGH A MANMADE DITCH, PIPE, TILE, SWALE,  
18 FLUSHING SYSTEM, OR OTHER SIMILAR MANMADE CONVEYANCE.

19 (B) POLLUTANTS ARE DISCHARGED FROM THE PRODUCTION AREA  
20 DIRECTLY INTO WATERS OF THE STATE THAT ORIGINATE OUTSIDE OF THE  
21 FACILITY AND PASS OVER, ACROSS, OR THROUGH THE FACILITY OR  
22 OTHERWISE COME INTO DIRECT CONTACT WITH THE ANIMALS CONFINED IN THE  
23 OPERATION.

24 (4) THE DESIGNATION OF A PERSON AS A CAFO SHALL BE MADE IN  
25 WRITING AND PROVIDE FOR AN OPPORTUNITY FOR AN ADMINISTRATIVE  
26 HEARING BEFORE THE DEPARTMENT REGARDING THAT DESIGNATION.

27 SEC. 8615. (1) CAFOS ARE POINT SOURCES THAT REQUIRE NPDES

1 PERMITS FOR DISCHARGES. EXCEPT AS OTHERWISE PROVIDED IN THIS PART,  
2 A PERSON SHALL NOT OWN OR OPERATE A CAFO EXCEPT PURSUANT TO AN  
3 NPDES PERMIT, AN APPROVED COMPREHENSIVE NUTRIENT MANAGEMENT PLAN,  
4 AND AN APPROVED AIR EMISSIONS PLAN. IF AN OPERATION BECOMES A CAFO,  
5 THEN THE NPDES REQUIREMENTS FOR CAFOS APPLY TO ALL ANIMALS IN  
6 CONFINEMENT AT THE OPERATION AND ALL PRODUCTION AREA WASTE AND  
7 PROCESS WASTEWATER GENERATED BY THOSE ANIMALS OR THE PRODUCTION OF  
8 THOSE ANIMALS, REGARDLESS OF THE TYPE OF ANIMAL. A CAFO OWNER OR  
9 OPERATOR SHALL APPLY FOR EITHER AN INDIVIDUAL NPDES PERMIT OR A  
10 CERTIFICATE OF COVERAGE UNDER AN NPDES GENERAL PERMIT, UNLESS THE  
11 OWNER OR OPERATOR HAS RECEIVED A DETERMINATION FROM THE DEPARTMENT,  
12 MADE AFTER PROVIDING NOTICE AND OPPORTUNITY FOR PUBLIC COMMENT,  
13 THAT THE CAFO HAS "NO POTENTIAL TO DISCHARGE" PURSUANT TO SECTION  
14 8617. THE DISCHARGE TO WATERS OF THE STATE FROM LAND APPLICATION  
15 AREAS IS A DISCHARGE FROM THE CAFO SUBJECT TO NPDES PERMIT  
16 REQUIREMENTS.

17 (2) THE OWNER OR OPERATOR OF A CAFO SHALL APPLY FOR AN NPDES  
18 PERMIT NOT LATER THAN OCTOBER 29, 2005, EXCEPT AS FOLLOWS:

19 (A) AN EXISTING CAFO, OR AN EXISTING AFO THAT BECOMES A CAFO,  
20 THAT HAS NOT HAD A REGULATED DISCHARGE SINCE JANUARY 14, 2000 SHALL  
21 APPLY FOR COVERAGE UNDER NPDES GENERAL PERMIT NO. MIG440000  
22 (EFFECTIVE JANUARY 1, 2003), OR AN EQUIVALENT DOCUMENT APPROVED BY  
23 THE DEPARTMENT, NOT LATER THAN 90 DAYS AFTER NOTIFICATION BY THE  
24 DEPARTMENT OR BY SEPTEMBER 1, 2005, WHICHEVER IS SOONER. BEFORE  
25 JULY 1, 2006, ALL CAFOS THAT ARE OPERATING UNDER AN EQUIVALENT  
26 DOCUMENT APPROVED BY THE DEPARTMENT SHALL APPLY FOR AN NPDES  
27 PERMIT. AN EXISTING CAFO OR EXISTING AFO IS ANY CAFO OR AFO THAT IS

1 CONSTRUCTED AND POPULATED BEFORE JANUARY 30, 2004. FOR THE PURPOSES  
2 OF THIS SUBDIVISION, A REGULATED DISCHARGE IS ANY OF THE FOLLOWING:

3 (i) A DISCHARGE THAT CAUSES OR CONTRIBUTES TO A VIOLATION OF  
4 THE WATER QUALITY STANDARDS IN PART 4 OF THE WATER RESOURCE  
5 PROTECTION RULES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, R  
6 323.1041 TO R 323.1117 OF THE MICHIGAN ADMINISTRATIVE CODE.

7 (ii) A DISCHARGE FROM THE PROCESS OR PRODUCTION AREA DUE TO  
8 PRECIPITATION EVENTS, EITHER BY RUNOFF, DRAINAGE TILES, OR OTHER  
9 MECHANISMS, EXCEPT THE DISCHARGE OF UNCONTAMINATED RUNOFF THAT DOES  
10 NOT COME INTO CONTACT WITH ANY ANIMALS, ANIMAL WASTE, OR PRODUCTION  
11 AREA WASTE.

12 (iii) A DRY-WEATHER DISCHARGE, INCLUDING AN ACCIDENTAL RELEASE.

13 (B) NEWLY CONSTRUCTED CAFOS SHALL OBTAIN AN NPDES PERMIT  
14 BEFORE COMMENCING OPERATION.

15 (C) AN AFO SHALL APPLY FOR AN NPDES PERMIT AT LEAST 180 DAYS  
16 BEFORE BECOMING A CAFO.

17 (3) NOT LATER THAN 180 DAYS BEFORE THE EXPIRATION OF THE  
18 PERMIT OR EQUIVALENT DOCUMENT APPROVED BY THE DEPARTMENT, THE  
19 PERMITTEE SHALL SUBMIT AN APPLICATION TO RENEW ITS PERMIT. HOWEVER,  
20 THE PERMITTEE NEED NOT CONTINUE TO SEEK CONTINUED PERMIT COVERAGE  
21 OR REAPPLY FOR A PERMIT IF BOTH OF THE FOLLOWING CONDITIONS ARE  
22 MET:

23 (A) THE FACILITY HAS CEASED OPERATION OR IS NO LONGER A CAFO.

24 (B) THE PERMITTEE HAS DEMONSTRATED TO THE SATISFACTION OF THE  
25 DEPARTMENT THAT THERE IS NO REMAINING POTENTIAL FOR A DISCHARGE.

26 SEC. 8617. (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
27 SECTION, A LARGE CAFO THAT HAS RECEIVED A NO-POTENTIAL-TO-DISCHARGE

1 DETERMINATION FROM THE DEPARTMENT IS NOT REQUIRED TO OBTAIN AN  
2 NPDES PERMIT UNDER SECTION 8615.

3 (2) THE DEPARTMENT, UPON REQUEST, MAY MAKE A DETERMINATION  
4 THAT A SPECIFIC LARGE CAFO HAS NO POTENTIAL TO DISCHARGE, SUBJECT  
5 TO ALL OF THE FOLLOWING REQUIREMENTS:

6 (A) IN MAKING A NO-POTENTIAL-TO-DISCHARGE DETERMINATION, THE  
7 DEPARTMENT SHALL CONSIDER THE POTENTIAL FOR DISCHARGES FROM BOTH  
8 THE PRODUCTION AREA AND ANY LAND APPLICATION AREAS. THE DEPARTMENT  
9 SHALL ALSO CONSIDER ANY RECORD OF PRIOR DISCHARGES BY THE CAFO. THE  
10 DEPARTMENT SHALL NOT MAKE A NO-POTENTIAL-TO-DISCHARGE DETERMINATION  
11 IF THE CAFO HAS HAD A DISCHARGE WITHIN 5 YEARS BEFORE THE DATE OF  
12 THE REQUEST. A NO-POTENTIAL-TO-DISCHARGE DETERMINATION ONLY RELATES  
13 TO DISCHARGES OF PRODUCTION AREA WASTE AND PROCESS WASTEWATER  
14 COVERED BY THIS PART.

15 (B) IN REQUESTING A NO-POTENTIAL-TO-DISCHARGE DETERMINATION,  
16 THE CAFO OWNER OR OPERATOR SHALL SUBMIT ANY INFORMATION THAT WILL  
17 SUPPORT THE DETERMINATION. THE INFORMATION SHALL INCLUDE A COPY OF  
18 AN APPROVED CNMP, ALL OF THE INFORMATION SPECIFIED IN 40 CFR  
19 122.21(F) AND (I) (1) (i) TO (ix), AND DOCUMENTATION SHOWING THAT THE  
20 CAFO HAS BEEN VERIFIED UNDER THE LIVESTOCK SYSTEM OF THE MICHIGAN  
21 AGRICULTURE ENVIRONMENTAL ASSURANCE PROGRAM, OR SUCCESSOR PROGRAM,  
22 IF SUCH A PROGRAM IS AVAILABLE. THE DEPARTMENT MAY REQUIRE  
23 ADDITIONAL INFORMATION TO SUPPLEMENT THE REQUEST AND MAY ALSO  
24 GATHER ADDITIONAL INFORMATION THROUGH PHYSICAL INSPECTION OF THE  
25 CAFO.

26 (C) BEFORE MAKING A NO-POTENTIAL-TO-DISCHARGE DETERMINATION,  
27 THE DEPARTMENT SHALL ISSUE A NOTICE TO THE PUBLIC STATING THAT A



1 REQUEST FOR A NO-POTENTIAL-TO-DISCHARGE DETERMINATION HAS BEEN  
2 RECEIVED. THE NOTICE SHALL INDICATE THAT COPIES OF THE APPROVED  
3 CNMP ARE AVAILABLE FROM THE DEPARTMENT AND ADVISE HOW A PERSON CAN  
4 OBTAIN OR REVIEW A COPY OF THE CNMP. THE NOTICE SHALL ALSO BE  
5 ACCOMPANIED BY A FACT SHEET WHICH INCLUDES THE FOLLOWING, IF  
6 APPLICABLE:

7 (i) A BRIEF DESCRIPTION OF THE TYPE OF FACILITY OR ACTIVITY  
8 THAT IS THE SUBJECT OF THE REQUEST FOR THE NO-POTENTIAL-TO-  
9 DISCHARGE DETERMINATION.

10 (ii) A BRIEF SUMMARY OF THE FACTUAL BASIS, SET FORTH IN THE  
11 REQUEST, FOR GRANTING THE NO-POTENTIAL-TO-DISCHARGE DETERMINATION.

12 (iii) A DESCRIPTION OF THE PROCEDURES FOR REACHING A FINAL  
13 DECISION ON THE NO-POTENTIAL-TO-DISCHARGE DETERMINATION.

14 (D) THE DEPARTMENT SHALL BASE THE DECISION TO MAKE OR DENY A  
15 NO-POTENTIAL-TO-DISCHARGE DETERMINATION ON THE ADMINISTRATIVE  
16 RECORD, WHICH INCLUDES ALL INFORMATION SUBMITTED IN SUPPORT OF OR  
17 AGAINST A NO-POTENTIAL-TO-DISCHARGE DETERMINATION AND ANY OTHER  
18 DATA GATHERED BY THE DEPARTMENT. THE DEPARTMENT SHALL NOTIFY A CAFO  
19 OWNER OR OPERATOR SEEKING A NO-POTENTIAL-TO-DISCHARGE DETERMINATION  
20 OF ITS FINAL DECISION WITHIN 180 DAYS OF RECEIVING THE REQUEST.

21 (E) THE OWNER OR OPERATOR SHALL REQUEST A NO-POTENTIAL-TO-  
22 DISCHARGE DETERMINATION BY THE APPLICABLE PERMIT APPLICATION DATES.  
23 IF THE DEPARTMENT'S FINAL DECISION IS TO DENY THE NO-POTENTIAL-TO-  
24 DISCHARGE DETERMINATION, THEN THE OWNER OR OPERATOR SHALL SEEK  
25 COVERAGE UNDER A PERMIT WITHIN 30 DAYS AFTER NOTICE OF THE DENIAL.

26 (3) THE NO-POTENTIAL-TO-DISCHARGE DETERMINATION DOES NOT  
27 RELIEVE THE CAFO FROM THE CONSEQUENCES OF AN ACTUAL DISCHARGE. ANY

1 UNPERMITTED CAFO THAT DISCHARGES POLLUTANTS INTO THE WATERS OF THIS  
2 STATE IS IN VIOLATION OF PART 31 AND RULES PROMULGATED UNDER PART  
3 31 EVEN IF IT HAS RECEIVED A NO-POTENTIAL-TO-DISCHARGE  
4 DETERMINATION FROM THE DEPARTMENT. IF A CAFO HAS RECEIVED A NO-  
5 POTENTIAL-TO-DISCHARGE DETERMINATION, BUT THE OWNER OR OPERATOR  
6 ANTICIPATES CHANGES IN CIRCUMSTANCES THAT COULD CREATE THE  
7 POTENTIAL FOR A DISCHARGE, THE OWNER OR OPERATOR SHALL CONTACT THE  
8 DEPARTMENT AND APPLY FOR AND OBTAIN NPDES PERMIT AUTHORIZATION  
9 BEFORE THE CHANGE OF CIRCUMSTANCES. IF A CAFO THAT HAS RECEIVED A  
10 NO-POTENTIAL-TO-DISCHARGE DETERMINATION HAS UNANTICIPATED CHANGES  
11 IN CIRCUMSTANCES THAT COULD CREATE THE POTENTIAL FOR A DISCHARGE,  
12 THEN THE OWNER OR OPERATOR SHALL IMMEDIATELY NOTIFY THE DEPARTMENT  
13 AND SUBMIT A COMPLETE APPLICATION FOR COVERAGE UNDER AN NPDES  
14 PERMIT WITHIN 30 DAYS AFTER THE CHANGE IN CIRCUMSTANCES.

15 (4) IF THE DEPARTMENT HAS MADE A NO-POTENTIAL-TO-DISCHARGE  
16 DETERMINATION, THE DEPARTMENT MAY SUBSEQUENTLY REQUIRE NPDES PERMIT  
17 COVERAGE IF ANY OF THE FOLLOWING APPLY:

18 (A) CIRCUMSTANCES AT THE FACILITY CHANGE.

19 (B) NEW INFORMATION BECOMES AVAILABLE.

20 (C) THERE IS ANOTHER REASON FOR THE DEPARTMENT TO DETERMINE  
21 THAT THE CAFO HAS A POTENTIAL TO DISCHARGE.

22 SEC. 8619. CAFO NPDES PERMITS SHALL INCLUDE ALL OF THE  
23 FOLLOWING:

24 (A) AN APPROVED COMPREHENSIVE NUTRIENT MANAGEMENT PLAN AND A  
25 REQUIREMENT TO MAINTAIN AND IMPLEMENT THE PLAN.

26 (B) A REQUIREMENT THAT THE OWNER OR OPERATOR OF THE CAFO  
27 MAINTAIN A COPY OF THE CAFO'S CNMP AT THE CAFO AND MAKE IT

1 AVAILABLE TO THE DEPARTMENT ON REQUEST.

2 (C) A PROHIBITION ON DRY WEATHER DISCHARGES FROM THE CAFO  
3 EXCEPT IN ACCORDANCE WITH 40 CFR 412.31(A)(2) OR 40 CFR 412.46(D).  
4 STORM WATER DISCHARGES FROM LAND AREAS UNDER THE CONTROL OF A CAFO  
5 ARE NOT PROHIBITED IF SUCH DISCHARGES ARE AUTHORIZED BY AN NPDES  
6 PERMIT, PRODUCTION AREA WASTE OR PROCESS WASTEWATER HAS BEEN  
7 APPLIED IN COMPLIANCE WITH FIELD-SPECIFIC NUTRIENT MANAGEMENT  
8 PRACTICES DEVELOPED UNDER R 323.2196(5)(A) OF THE MICHIGAN  
9 ADMINISTRATIVE CODE, AND SUCH DISCHARGES DO NOT CAUSE OR CONTRIBUTE  
10 TO A VIOLATION OF WATER QUALITY STANDARDS.

11 (D) REQUIREMENTS FOR A MANIFEST SYSTEM, AS DESCRIBED IN  
12 SECTION 8625, IF APPLICABLE.

13 (E) FOR A NEW OR EXPANDED CAFO, A PROHIBITION ON LAND  
14 APPLICATION OF MANURE, PROCESS WASTEWATER, OR PRODUCTION AREA  
15 WASTE.

16 (F) AN APPROVED AIR EMISSIONS PLAN AND A REQUIREMENT TO  
17 MAINTAIN AND IMPLEMENT THE PLAN.

18 (G) A REQUIREMENT TO MAINTAIN FINANCIAL SECURITY UNDER SECTION  
19 8633.

20 (H) A REQUIREMENT THAT THE CAFO OWNER OR OPERATOR SUBMIT  
21 ANNUAL REPORTS TO THE DEPARTMENT. AN ANNUAL REPORT SHALL INCLUDE,  
22 BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING:

23 (i) THE TYPE OF ANIMALS (BEEF CATTLE, BROILERS, LAYERS, SWINE  
24 WEIGHING 55 POUNDS OR MORE, SWINE WEIGHING LESS THAN 55 POUNDS,  
25 MATURE DAIRY COWS, DAIRY HEIFERS, VEAL CALVES, SHEEP AND LAMBS,  
26 HORSES, DUCKS, AND TURKEYS) AND NUMBER OF ANIMALS, WHETHER IN OPEN  
27 CONFINEMENT OR HOUSED UNDER ROOF, OF EACH TYPE.

1           (ii) THE ESTIMATED AMOUNT OF TOTAL PRODUCTION AREA WASTE AND  
2 CAFO PROCESS WASTEWATER GENERATED BY THE CAFO IN THE PREVIOUS 12  
3 MONTHS, EXPRESSED IN TONS OR GALLONS.

4           (iii) THE ESTIMATED AMOUNT OF TOTAL PRODUCTION AREA WASTE AND  
5 CAFO PROCESS WASTEWATER TRANSFERRED TO ANOTHER PERSON BY THE CAFO  
6 IN THE PREVIOUS 12 MONTHS, EXPRESSED IN TONS OR GALLONS.

7           (iv) THE TOTAL NUMBER OF ACRES FOR LAND APPLICATION COVERED BY  
8 THE CNMP.

9           (v) THE TOTAL NUMBER OF ACRES UNDER CONTROL OF THE CAFO THAT  
10 WERE USED FOR LAND APPLICATION OF PRODUCTION AREA WASTE AND PROCESS  
11 WASTEWATER IN THE PREVIOUS 12 MONTHS.

12           (vi) A SUMMARY OF ALL PRODUCTION AREA WASTE AND PROCESS  
13 WASTEWATER DISCHARGES FROM THE PRODUCTION AREA THAT HAVE OCCURRED  
14 IN THE PREVIOUS 12 MONTHS, INCLUDING DATE, TIME, AND APPROXIMATE  
15 VOLUME.

16           (vii) DOCUMENTATION ESTABLISHING THAT THE CURRENT VERSION OF  
17 THE CAFO'S CNMP WAS DEVELOPED OR APPROVED BY A CERTIFIED CNMP  
18 PROVIDER AS REQUIRED UNDER SECTION 8621.

19           SEC. 8621. (1) AN NPDES PERMIT FOR A CAFO SHALL INCLUDE A  
20 COMPREHENSIVE NUTRIENT MANAGEMENT PLAN SUBMITTED BY THE APPLICANT  
21 AND DEVELOPED OR APPROVED BY A CNMP PROVIDER AND THE DEPARTMENT. A  
22 CNMP SHALL INCLUDE BEST MANAGEMENT PRACTICES AND PROCEDURES  
23 NECESSARY TO IMPLEMENT APPLICABLE EFFLUENT LIMITATIONS AND  
24 TECHNICAL STANDARDS ESTABLISHED BY THE DEPARTMENT, INCLUDING  
25 PRACTICES AND PROCEDURES TO DO ALL OF THE FOLLOWING:

26           (A) ENSURE ADEQUATE STORAGE OF PRODUCTION AREA WASTE AND  
27 PROCESS WASTEWATER, INCLUDING PROCEDURES TO ENSURE PROPER OPERATION

1 AND MAINTENANCE OF THE STORAGE FACILITIES.

2 (B) ENSURE PROPER MANAGEMENT OF MORTALITIES AND ENSURE THAT  
3 THEY ARE NOT DISPOSED OF IN A LIQUID MANURE, STORM WATER, OR  
4 PROCESS WASTEWATER STORAGE OR TREATMENT SYSTEM.

5 (C) ENSURE CLEAN WATER IS DIVERTED FROM THE PRODUCTION AREA.

6 (D) PREVENT DIRECT CONTACT OF CONFINED ANIMALS WITH WATERS OF  
7 THE STATE.

8 (E) ENSURE CHEMICALS AND OTHER CONTAMINANTS HANDLED AT THE  
9 CAFO THAT ARE NOT PART OF THE NORMAL AGRICULTURAL PRACTICE AT THE  
10 PRODUCTION AREA ARE NOT DISPOSED OF IN ANY PRODUCTION AREA WASTE,  
11 PROCESS WASTEWATER, OR STORM WATER STORAGE OR TREATMENT SYSTEM.

12 (F) IDENTIFY SPECIFIC CONSERVATION PRACTICES TO CONTROL RUNOFF  
13 OF POLLUTANTS TO WATERS OF THE STATE.

14 (G) IDENTIFY PROTOCOLS FOR TESTING OF PRODUCTION AREA WASTE,  
15 PROCESS WASTEWATER, AND SOIL.

16 (H) CONDUCT A FIELD-BY-FIELD ASSESSMENT OF LAND APPLICATION  
17 AREAS AND ADDRESS THE FORM, SOURCE, AMOUNT, TIMING, RATE, AND  
18 METHOD OF APPLICATION OF NUTRIENTS TO DEMONSTRATE THAT LAND  
19 APPLICATION OF PRODUCTION AREA WASTE OR PROCESS WASTEWATER IS IN  
20 ACCORDANCE WITH FIELD-SPECIFIC NUTRIENT MANAGEMENT PRACTICES THAT  
21 ENSURE PROPER AGRICULTURAL UTILIZATION OF THE NUTRIENTS IN THE  
22 PRODUCTION AREA WASTE OR PROCESS WASTEWATER. THE ASSESSMENT SHALL  
23 TAKE INTO ACCOUNT FIELD-SPECIFIC CONDITIONS, INCLUDING LOCATIONS OF  
24 TILE OUTLETS, TILE RISERS, AND TILE DEPTH, BEFORE LAND APPLICATION  
25 TO DETERMINE SUITABILITY OF LAND APPLICATION AND TO PREVENT  
26 DISCHARGE OF ANY POTENTIAL POLLUTING MATERIAL.

27 (I) ENSURE PROPER LAND APPLICATION BY COMPLYING WITH ALL OF

1 THE FOLLOWING CONDITIONS:

2 (i) PRODUCTION AREA WASTE AND PROCESS WASTEWATER SHALL NOT BE  
3 LAND-APPLIED ON GROUND THAT IS FLOODED, SATURATED WITH WATER,  
4 FROZEN, OR SNOW-COVERED IF THE PRODUCTION AREA WASTE AND PROCESS  
5 WASTEWATER COULD ENTER WATERS OF THE STATE.

6 (ii) PRODUCTION AREA WASTE AND PROCESS WASTEWATER SHALL NOT BE  
7 APPLIED TO FROZEN OR SNOW-COVERED GROUND UNLESS 1 OF THE FOLLOWING  
8 REQUIREMENTS IS MET:

9 (A) IT IS SUBSURFACE INJECTED AND THERE IS SUBSTANTIAL SOIL  
10 COVERAGE OF THE APPLIED PRODUCTION AREA WASTE.

11 (B) IT IS SURFACE-APPLIED AND INCORPORATED WITHIN 24 HOURS.

12 (C) IT IS SURFACE-APPLIED AND THERE IS A FIELD-BY-FIELD  
13 DEMONSTRATION IN THE CNMP SHOWING THAT THE APPLICATION WILL NOT  
14 CREATE THE POSSIBILITY OF PRODUCTION AREA WASTE AND PROCESS  
15 WASTEWATER ENTERING WATERS OF THE STATE.

16 (iii) PRODUCTION AREA WASTE AND PROCESS WASTEWATER SHALL NOT BE  
17 APPLIED WHEN PRECIPITATION EXCEEDING 1/2 INCH IS FORECAST WITHIN 24  
18 HOURS OR IF PRECIPITATION IS FORECAST THAT COULD CAUSE THE  
19 PRODUCTION AREA WASTE AND PROCESS WASTEWATER TO ENTER WATERS OF THE  
20 STATE.

21 (iv) PRODUCTION AREA WASTE AND PROCESS WASTEWATER, IF NOT  
22 SUBSURFACE-INJECTED, SHALL BE INCORPORATED INTO THE SOIL WITHIN 24  
23 HOURS OF APPLICATION EXCEPT ON NO-TILL FIELDS OR AS PROVIDED IN  
24 SUBPARAGRAPH (ii) (C) .

25 (J) IDENTIFY SPECIFIC RECORDS, INCLUDING, BUT NOT LIMITED TO,  
26 MANIFESTS UNDER SECTION 8625, THAT WILL BE MAINTAINED TO DOCUMENT  
27 THE IMPLEMENTATION AND MANAGEMENT OF THE CNMP.

1 (2) UPON RECEIPT OF A PROPOSED NEW OR RENEWAL CNMP OR AN  
2 AMENDMENT TO A CNMP, THE DEPARTMENT SHALL DO BOTH OF THE FOLLOWING:

3 (A) FORWARD THE PROPOSED CNMP OR AMENDMENT TO THE CITY,  
4 VILLAGE, TOWNSHIP, AND COUNTY IN WHICH THE CAFO IS LOCATED.

5 (B) POST A SUMMARY OF THE PROPOSED CNMP OR AMENDMENT ON ITS  
6 WEBSITE. THE SUMMARY FOR AN AMENDMENT TO OR RENEWAL OF A CNMP SHALL  
7 CLEARLY INDICATE ANY CHANGES FROM THE EXISTING CNMP.

8 (C) MAKE COPIES OF THE PROPOSED CNMP AVAILABLE TO THE PUBLIC.

9 (3) UPON REQUEST OF ANY PERSON, THE DEPARTMENT SHALL HOLD A  
10 PUBLIC HEARING AND TAKE TESTIMONY FROM THE PUBLIC ON THE CONTENT OF  
11 A PROPOSED CNMP.

12 (4) INFORMATION REQUIRED TO BE MAINTAINED UNDER A CNMP SHALL  
13 BE MADE AVAILABLE TO THE DEPARTMENT AND THE DEPARTMENT OF  
14 AGRICULTURE UPON REQUEST.

15 Enacting section 1. This amendatory act does not take effect  
16 unless all of the following bills of the 93rd Legislature are  
17 enacted into law:

18 (a) Senate Bill No. 1072.

19  
20 (b) Senate Bill No. 1069.

21  
22 (c) Senate Bill No. 1066.

23  
24 (d) Senate Bill No. 1063.

25  
26 (e) Senate Bill No. 1068.

1 (f) Senate Bill No. 1067.

2

3 (g) Senate Bill No. 1071.

4

5 (h) Senate Bill No. 1070.

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