

**STATE OF MICHIGAN
DEPARTMENT OF Environmental Quality
WATER RESOURCES DIVISION**

In the matter of:

WRD-2011-001

Date Entered: 3/29/11

Southern Michigan Dairies, LLC
6919 Chancellor Drive
P.O. Box 668
Cedar Falls, Iowa 50613

ADMINISTRATIVE CONSENT ORDER

This agreement results from the transfer of ownership of certain real property located in the counties of Lenawee and Hillsdale from Vreba-Hoff Dairy, LLC (Vreba-Hoff) and Waldron Dairy, LLC (Waldron) to Southern Michigan Dairies, LLC (SMD). Vreba-Hoff and its successor, SMD, are subject to the terms of a 2004 Consent Judgment and 2007 Interim Order entered by the Department of Environmental Quality (DEQ), Water Resources Division (WRD) and Vreba-Hoff applicable to certain properties now owned by SMD. In the interest of assuring future compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 et seq., the DEQ and SMD agree to the entry of this Administrative Consent Order (Consent Order) to provide an extension of time for SMD to comply with certain provisions of the Consent Judgment/Interim Order and National Pollutant Discharge Elimination System (NPDES) permits applicable to the properties which SMD now owns and controls. The time extensions for compliance with certain provisions in the Consent Judgment, Interim Order, and NPDES permits are specifically set forth below. SMD is a person, as defined by Section 301 of the NREPA, formed as a limited liability company under the laws of the state of Delaware and is a wholly-owned subsidiary of Rabo AgriFinance, Inc., registered with the Michigan Department of Energy, Labor, and Economic Growth as able to conduct business in the State of Michigan under identification number 624916. SMD and the DEQ agree to resolve existing and potential violations set forth herein through entry of this Consent Order.

I. STIPULATIONS

SMD and the DEQ stipulate as follows:

1.1 The NREPA MCL 324.101 et seq., is an act that controls pollution to protect the

environment and natural resources in the state.

- 1.2 Pollution Control, Part 31, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 et seq., and the rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state.
- 1.3 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.4 SMD consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31. SMD agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.5 SMD and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by SMD that the law has been violated.
- 1.6 The signatory to this Consent Order on behalf of SMD agrees and attests that he/she is fully authorized to assure that SMD will comply with all requirements under this Consent Order.
- 1.7 SMD shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

II. FINDINGS

- 2.1 On November 12, 2010, Rabo Agrifinance and its wholly-owned subsidiary, SMD, informed the DEQ that as of that date, SMD obtained title to properties formerly owned

and controlled by Vreba-Hoff, known as Vreba-Hoff Dairy I (7601 Dillon Highway, Hudson, Michigan), Vreba-Hoff Dairy II (8502 S. Meridian Road, Hudson, Michigan), and Waldron Dairy (11774 Meridian Road, Waldron, Michigan). Each of the three properties include buildings and appurtenances allowing for the operation of dairy operations classified under state and federal law as large, concentrated animal feeding operations at each location. This transfer of title occurred through a privately-negotiated settlement of a lawsuit filed by Rabo Agrifinance against Vreba-Hoff arising from Vreba-Hoff's default on loans extended by Rabo Agrifinance. Vreba-Hoff and Waldron are both subsidiaries of Vreba-Hoff Holdings, LLC.

- 2.2 Vreba-Hoff Dairy I and Vreba-Hoff Dairy II have been the subject of extensive litigation brought by the DEQ which resulted in the 2004 Consent Judgment (Judgment) and the 2007 Interim Order modifying the Judgment. On August 1, 2008, the DEQ issued an NPDES permit covering both Vreba-Hoff dairies, later modified as a result of a contested case brought by Vreba-Hoff. That permit remains in existence, but for the minor modification supplanting Vreba-Hoff as the authorized permittee with the new owner, SMD.
- 2.3 A separate NPDES permit was issued to Waldron Dairy LLC (a Vreba-Hoff business enterprise) for Waldron Dairy on March 10, 2009. That permit also remains in existence, but for the minor modification supplanting Waldron Dairy as the authorized permittee with the new owner, SMD.
- 2.4 Both permits require that waste storage structures meet or exceed physical design and construction requirements as set forth in Part I.A.4a.2 of each permit. Specific to Waldron Dairy, "[a]ll existing storage structures shall be removed or rebuilt to be constructed in accordance with Natural Resource Conservation Service (NRCS) standards, set forth in Conservation Practice Standard No. 313, Waste Storage Facility, dated November, 2005." The Vreba-Hoff permit (Exhibit A) establishes a May 1, 2011, deadline by which all storage structures not meeting NRCS 313 must be closed. The Parties agree that SMD, as the new owner of the three dairy operations, will not meet the deadlines set forth in the permits.

- 2.5 In addition, Vreba-Hoff failed to provide the DEQ with "as-built" drawings demonstrating the certain waste storage structures installed at Vreba-Hoff Dairy I and II meet or exceed NRCS 313 standards. The submittal of this documentation was required by Paragraph IX.B.2 c, d, & I of the Interim Order. The DEQ understands that the as-built drawings are in existence at the offices of Wilcox Engineering, but have been held due to a failure by Vreba-Hoff to pay fees associated with the creation of the drawings and documentation. Vreba-Hoff did supply the DEQ with acceptable as-built drawings for the "slurry structures" at Vreba-Hoff Dairy I and II, constructed in 2007.
- 2.6 Vreba-Hoff also failed to empty and close a satellite waste storage structure located on Packard Road by March 8, 2010, as required by Paragraph XXI.C of the Interim Order. The DEQ approved a work plan for the closure of this structure (submitted by Vreba-Hoff on April 2, 2010), consistent with NRCS Standard 360, by letter dated April 13, 2010.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT SMD shall take the following actions to prevent further violations of Part 31:

- 3.1 With respect to the former Vreba-Hoff Dairy I, now referred to by SMD as "Dairy I," SMD agrees to undertake the following actions within the deadlines specified herein:
- A. Provide acceptable as-built drawings of waste storage structures known as the "EMS Treatment Cell" and "EMS Irrigation Cell" demonstrating compliance with NRCS Standards, set forth in Conservation Practice Standard No. 313, dated November 2005 (NRCS 313), not later than May 15, 2011.
 - B. Empty and close the "Concrete Structure" consistent with NRCS Conservation Practice Standard No. 360 (NRCS 360) with written certification of such closure submitted to the DEQ, not later than **October 1, 2011**. In the event SMD wishes to retain this structure for the purpose of storing waste solids, then a demonstration of

equivalency with NRCS 313 as it relates to solids storage and design shall be provided to the DEQ not later than **August 1, 2011**.

- C. Demonstrate equivalency with NRCS 313 in accordance with NPDES Permit Condition Part I.A.4a.2 for waste storage structures known as: "North Earthen Structure," "Silage Leachate Structure," "Underbarn Structure" and "Old Press Treatment System Structure," not later than **April 1, 2012**.

3.2 With respect to the former Vreba-Hoff Dairy II, now referred to by SMD as "Dairy II," SMD agrees to undertake the following actions within the deadlines specified herein:

- A. Provide acceptable as-built drawings of waste storage structures known as the "EMS Treatment Cell" and "EMS Irrigation Cell" demonstrating compliance with NRCS 313, not later than May 15, 2011.
- B. Demonstrate equivalency with NRCS 313 in accordance with NPDES Permit Condition Part I.A.4a.2 for waste storage structures known as: "North Concrete Structure," "South Concrete Structure," "Small Concrete Leachate Structure," and "Earthen Leachate Structure," not later than **April 1, 2012**.

3.3 With respect to the former Waldron Dairy, now referred to by SMD as "Dairy III," SMD agrees to undertake the following actions within the deadlines specified herein:

- A. Demonstrate equivalency with NRCS 313 in accordance with NPDES Permit Condition Part I.A.4a.2 for waste storage structures known as: "Concrete Structure" and "Earthen Storage Structure," not later than **April 1, 2012**.

3.4 SMD shall empty and close the Packard Road satellite storage structure in accordance with NRCS 360, not later than **September 30, 2011**. Subsequent to the removal of all waste from the storage structure and prior to any backfilling, SMD shall provide notice and opportunity to inspect to the DEQ. The Parties agree that SMD may only land-apply waste currently contained in this storage structure upon a demonstration that the waste

meets the requirements for semi-solids set forth in the June 6, 2007, Interim Order at Paragraph IX.B.8.

- 3.5 In the event that the evaluation of any storage structure reveals that the structure does not meet or exceed NRCS 313, SMD shall remove all waste from the structure within 30 days of SMD's awareness of the deficiency. Unless otherwise specified in the paragraphs above, structures failing to meet NRCS 313 requirements shall be closed in accordance with NRCS 360 or repaired such that SMD may demonstrate equivalency with NRCS 313, not later than **July 1, 2012**.
- 3.6 SMD shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Jackson District Supervisor, WRD, DEQ, 301 East Louis Glick Highway, Jackson, Michigan 49201-1556. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

IV. EXTENSIONS

- 4.1 SMD and the DEQ agree that the DEQ may grant SMD a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WRD, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the Jackson District Supervisor at the address in paragraph 3.6, not later than ten business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
 - b. A detailed description of the circumstances that will prevent SMD from meeting the deadline(s).
 - c. A description of the measures SMD has taken and/or intends to take to meet the required deadline.
 - d. The length of the extension requested and the specific date on which the obligation will be met.

The district supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. Any decision to grant or deny a requested extension shall be within the sole discretion of the DEQ. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

V. REPORTING

- 5.1 SMD shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Jackson District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). SMD shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

VI. RETENTION OF RECORDS

- 6.1 Upon request by an authorized representative of the DEQ, SMD shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 31 or its rules. All such documents shall be retained by SMD for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

VII. RIGHT OF ENTRY

- 7.1 SMD shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests

and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

VIII. PENALTIES

- 8.1 SMD agrees to pay \$100,000 as partial payment toward potential monetary liability to the state of Michigan, as accrued by Vreba-Hoff and recorded by the DEQ as Judgment Liens against certain property now owned by SMD. A first installment of \$50,000 shall be paid in accordance with Paragraph 8.4 within 7 days of the Effective Date of this Consent Order. A second \$50,000 installment shall be paid within 7 days of SMD providing notice of a sale or potential sale of all or part of the real property owned by SMD to the DEQ as required by paragraph 9.6. Upon receipt of the second installment, the DEQ agrees to file necessary addendums to the Judgment Liens currently recorded with the Lenawee and Hillsdale County Registers of Deeds releasing the real property only from the Judgment Liens.
- 8.2 To assure compliance with the terms of this Consent Order, for each failure to comply with a provision of Section III, SMD shall pay stipulated penalties of **\$200** per violation per day for 1 to 7 days of violation, **\$300** per violation per day for 8 to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter. Payment shall be made in full within 30 days of SMD's receipt of a written demand for stipulated penalties from the DEQ, in accordance with Paragraph 8.4, below.
- 8.3 To ensure timely payment of any stipulated penalties, SMD shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 8.4 SMD agrees to pay any funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to

this Consent Order must include the **Payment Identification No. WTR-3124**.

- 8.5 SMD agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 8.2 or 8.3, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

IX. GENERAL PROVISIONS

- 9.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of SMD to comply with the requirements of the NREPA and its rules.
- 9.2 The DEQ and SMD consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 et seq.; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 et seq.
- 9.3 This Consent Order in no way affects SMD's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 9.4 The DEQ reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the DEQ is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 9.5 Nothing in this Consent Order is or shall be considered to affect any liability SMD may have for natural resource damages caused by SMD's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

- 9.6 In the event SMD sells or transfers Dairies I, II, or III in whole or part, it shall notify the WRD Jackson District Supervisor, in writing, of every such sale or transfer and identify the name, address, and other contact information pertinent to the purchaser or transferee. For business entities, SMD shall identify each individual person with ownership interest in the business entity. SMD further agrees to provide immediate notice to the DEQ of any knowledge SMD has after reasonable inquiry that a potential purchaser is related to or otherwise involved with Wilhelmus van Bakel personally or any of his business entities, including, but not limited to: Vreba-Hoff Dairy, LLC; Vreba-Hoff Holding, LLC; Vreba-Hoff Dairy Development; the Van Bakel Group, or Nova Lait, LLC. The DEQ reserves the right to leave whole the Judgment Liens discussed in Paragraph 8.1, should SMD transfer Dairies I, II, or III in whole or in part to a van Bakel or Vreba-Hoff affiliated entity. In addition, in the event of such a transfer, any payments made to the DEQ in exchange for the release of the Judgment Liens on the real property shall be forfeited.
- 9.7 The provisions of this Consent Order shall apply to and be binding upon SMD and only SMD. Successors shall be bound to the terms of the NPDES permits and existing court orders applicable to the properties unless separate agreements specific to new owners or operators are negotiated with the DEQ.
- 9.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations and potential violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

X. TERMINATION

- 10.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, SMD shall submit a request consisting of a written certification that SMD has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:

- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

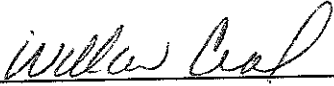
10.2 In the event SMD sells or transfers any property to which this Consent Order applies prior to completion of activities required by Section III, outstanding terms of this Consent Order applicable to that property shall be null and void. The obligations set forth under the original requirements of the NPDES permit or existing court orders shall be made applicable to and enforceable upon any transferee upon SMD's notice of the transfer of property pursuant to paragraph 9.6, above.

10.3 The DEQ may request additional relevant information upon the receipt of a termination request from SMD. The DEQ shall not unreasonably withhold issuance of a TN.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

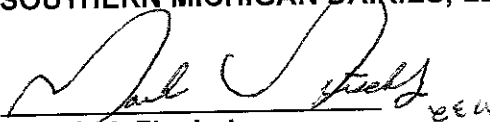
DEPARTMENT OF ENVIRONMENTAL QUALITY



William Creal, Chief
Water Resources Division

3/29/2011
Date

SOUTHERN MICHIGAN DAIRIES, LLC

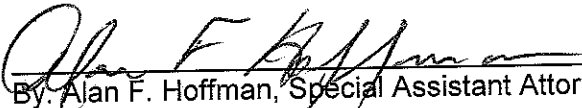


By: Mark Fischels

Title: President

3-29-11
Date

APPROVED AS TO FORM:



By: Alan F. Hoffman, Special Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

3/29/2011
Date