

HOUSE BILL No. 5803

March 1, 2006, Introduced by Reps. Miller, Farrah, Meisner, Kathleen Law, Alma Smith, David Law, Condino, Bieda, Accavitti, Anderson, Kolb, Leland, Brandenburg, Stewart, Wojno, Zelenko, Donigan, Polidori, Hopgood, Lemmons, Jr., Vagnozzi, Virgil Smith, Gonzales, Lipsey, Plakas, Clack, Tobocman and Lemmons, III and referred to the Committee on Agriculture.

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
6 SHALL CONSIDER THE EXPERIENCE OF APPLICANTS. THE DEPARTMENT SHALL
7 ALSO EXAMINE THE BACKGROUND OF THE APPLICANTS TO DETERMINE ANY
8 CRIMINAL, CIVIL, OR ADMINISTRATIVE VIOLATIONS OF THIS ACT OR THE

1 ENVIRONMENTAL LAWS OF OTHER STATES, THE UNITED STATES, OR OTHER
2 COUNTRIES. THE DEPARTMENT OF AGRICULTURE SHALL ISSUE A
3 CERTIFICATION TO VERIFY THE SUCCESSFUL COMPLETION OF THE
4 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 SHALL ESTABLISH A SCHEDULE TO PHASE IN THE
12 REQUIREMENTS OF SUBSECTION (1) FOR CAFOS EXISTING WHEN RULES
13 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 MAY PROMULGATE RULES TO IMPLEMENT THIS
20 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.____ or House Bill No. 5802(request no.
19 01075'05).

20 (b) Senate Bill No.____ or House Bill No. 5801(request no.
21 01066'05).

22 (c) Senate Bill No.____ or House Bill No. 5804(request no.
23 02011'05).

24 (d) Senate Bill No.____ or House Bill No. 5805(request no.
25 02032'05).

26 (e) Senate Bill No.____ or House Bill No. 5806(request no.
27 02010'05).

1 (f) Senate Bill No.____ or House Bill No. 5807(request no.
2 02008'05).

3 (g) Senate Bill No.____ or House Bill No. 5808(request no.
4 02009'05).

5 (h) Senate Bill No.____ or House Bill No. 5809(request no.
6 01081'05).