

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS;
GRAND TRAVERSE BAY WATERSHED
INITIATIVE, INC.; and ELK-SKEGEMOG
LAKES ASSOCIATION,

Civil Action No. _____

Hon. _____

Plaintiffs,

v.

BURNETTE FOODS, INCORPORATED

Defendant,

EXHIBIT 2

TO COMPLAINT



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
GAYLORD DISTRICT OFFICE



LIESL EICHLER CLARK
DIRECTOR

August 21, 2019

VN No. VN-009839

CERTIFIED MAIL

Mr. Kevin Kalchik
Burnette Foods, Inc.
701 US 31
Elk Rapids, Michigan 49629

Dear Mr. Kalchik:

SUBJECT: Violation Notice VN-009839
Groundwater Discharge Permit Number GW1810211
Site Name: Burnette Foods Inc-Elk Rapids

The Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), inspected Burnette Foods Inc-Elk Rapids, located at 11100 Elk Lake Road, Elk Rapids, Antrim County, Michigan 49629 (Facility), on July 24, 2019, to determine 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.*, and the administrative rules promulgated thereunder being Mich Admin Code, R 323.2101 *et seq.*, and Michigan Administrative Code, R 323.2201 *et seq.*, as amended; and Groundwater Discharge Permit Number GW1810211 (Permit), which was issued on June 1, 2017, effective June 1, 2017.

The inspection was prompted by a complaint the WRD received on July 22, 2019, alleging that the discharge from the spray irrigation system may be impacting the surface water in the creek downstream of monitoring point EQ-2. Specifically, the complaint listed concerns for foam with staining in the creek and *Escherichia coli* (*E. coli*) bacteria in the creek and Elk Lake. During the inspection, I met with you and discussed the Permit and operations related to the wastewater system at the Facility. Later in the inspection, Mr. John Pelizzari with the Facility accompanied us to the spray irrigation site. At the irrigation site I observed runoff from the south center irrigation site entering the wetland area to the north of the irrigation site. After the runoff was identified, you instructed Facility staff to inspect the spray gun to ensure that it was not stuck in one location and was moving correctly and to move the spray gun farther to the south away from the wetland area.

The discharge of wastewater effluent into surface waters (i.e., wetland), observed by WRD staff during the inspection, is a violation of the Permit and Part 31 of the NREPA. Part III, Section 1 of the Permit does not authorize any discharge to surface waters. Further, Section 3112 of Part 31 of the NREPA prohibits any waste effluent into the water of the state without a valid permit from EGLE. The spray irrigation system must be operated in a manner that prevents runoff of wastewater effluent from entering any surface waters of the state.

The WRD has also identified the following effluent, application rate, and groundwater monitoring violations and non-reporting violations occurring from July 2018 through July 2019. These monitoring results and non-reporting of results are violations of your Permit.

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Date	Parameter	Monitor Location	Permit Limitation	Reported Value	Unit Code
7/24/18	Application Rate (Daily)	36 SW	0.34	0.45	in
7/24/18	Application Rate (Daily)	36 SC	0.34	0.45	in
7/26/18	Application Rate (Daily)	36 SE	0.34	0.42	in
7/26/18	Application Rate (Daily)	36 SC	0.34	0.42	in
7/27/18	Application Rate (Daily)	36 SW	0.34	0.51	in
7/27/18	Application Rate (Daily)	36 SC	0.34	0.51	in
7/28/18	Application Rate (Daily)	36 SE	0.34	0.78	in
7/28/18	Application Rate (Daily)	37	0.34	0.52	in
7/31/18	Application Rate (Daily)	36 SW	0.34	0.4	in
7/31/18	Application Rate (Daily)	36 SE	0.34	0.4	in
8/1/18	Application Rate (Daily)	36 SC	0.34	0.44	in
8/1/18	Application Rate (Daily)	36 SW	0.34	0.44	in
8/2/18	Application Rate (Daily)	36 SE	0.34	0.59	in
8/2/18	Application Rate (Daily)	36 SW	0.34	0.59	in
8/3/18	Application Rate (Daily)	37	0.34	0.65	in
8/3/18	Application Rate (Daily)	36 SC	0.34	0.43	in
8/4/18	Application Rate (Daily)	36 SC	0.34	0.49	in
8/4/18	Application Rate (Daily)	36 SW	0.34	0.49	in
8/4/18	Application Rate (Weekly)	36 SW	2.04	2.1	in
8/6/18	Application Rate (Daily)	36 SC	0.34	0.78	in
8/7/18	Application Rate (Daily)	36 SW	0.34	0.57	in
8/9/18	Application Rate (Daily)	36 SC	0.34	0.44	in
8/18/18	Application Rate (Weekly)	36 SW	0.34	0.36	in
8/22/18	pH	MW-10	6.5	6.26	SU
8/22/18	pH	MW-9	6.5	6.43	SU
8/22/18	pH	MW-1	6.5	6.32	SU
8/25/18	Application Rate (Weekly)	36 SE	0.34	0.35	in
8/27/18	Application Rate (Daily)	36 SE	0.34	0.42	in
9/1/18	Application Rate (Weekly)	36 SE	0.34	0.49	in
9/8/18	Application Rate (Weekly)	36 SW	0.34	0.35	in
9/22/18	Application Rate (Weekly)	36 SW	0.34	0.62	in
9/22/18	Application Rate (Weekly)	36 SE	0.34	0.35	in
11/10/18	Application Rate (Weekly)	36 SW	0.34	0.94	in
11/13/18	pH	MW-11	6.5	5.76	SU
11/13/18	pH	MW-1	6.5	5.64	SU
11/13/18	pH	MW-3	6.5	6.23	SU
11/13/18	pH	MW-8	6.5	6.24	SU
11/13/18	pH	MW-7	6.5	6.46	SU

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Date	Parameter	Monitor Location	Permit Limitation	Reported Value	Unit Code
11/13/18	pH	MW-5	6.5	6.3	SU
11/13/18	pH	MW-9	6.5	6.05	SU
11/13/18	pH	MW-4	6.5	6.04	SU
11/13/18	pH	MW-10	6.5	5.58	SU
11/13/18	pH	MW-6	6.5	6.28	SU
11/14/18	Application Rate (Daily)	36 SW	0.34	0.4	in
11/17/18	Application Rate (Weekly)	36 SW	0.34	0.85	in
11/24/18	Application Rate (Weekly)	36 SW	0.34	0.39	in
12/1/18	Application Rate (Weekly)	36 SW	0.34	0.81	in
12/8/18	Application Rate (Weekly)	36 SW	0.34	0.89	in
12/15/18	Application Rate (Weekly)	36 SW	0.34	0.8	in
12/22/18	Application Rate (Weekly)	36 SW	0.34	0.79	in
1/2/19	Application Rate (Daily)	36 SW	0.34	0.62	in
1/5/19	Application Rate (Weekly)	36 SW	0.34	0.75	in
1/12/19	Application Rate (Weekly)	36 SW	0.34	0.45	in
1/19/19	Application Rate (Weekly)	36 SW	0.34	0.37	in
1/19/19	Application Rate (Weekly)	36 SC	0.34	0.37	in
1/23/19	Sodium	EQ-1	400	455	mg/L
1/31/19	Sodium	EQ-1	400	553	mg/L
2/2/19	Application Rate (Weekly)	36 SW	0.34	0.36	in
2/2/19	Application Rate (Weekly)	36 SC	0.34	0.36	in
2/12/19	Chloride (90006)	EQ-1	500	565	mg/L
2/12/19	Sodium	EQ-1	400	506	mg/L
2/26/19	Total Inorganic Nitrogen	MW-9	5	5.27	mg/L
2/26/19	Total Phosphorus	EQ-1	10	10.2	mg/L
3/11/19	Chloride (90006)	EQ-1	500	592	mg/L
3/11/19	Sodium	EQ-1	400	758	mg/L
3/16/19	Application Rate (Weekly)	36 SW	0.34	0.47	in
3/16/19	Application Rate (Weekly)	36 SC	0.34	0.47	in
3/25/19	Chloride	EQ-1	500	510	mg/L
3/25/19	Sodium	EQ-1	400	11900	mg/L
4/6/19	Application Rate (Weekly)	36 SW	0.34	0.43	in
4/6/19	Application Rate (Weekly)	36 SC	0.34	0.43	in
4/9/19	Sodium	EQ-1	400	533	mg/L
4/13/19	Application Rate (Weekly)	36 SW	0.34	0.38	in
4/13/19	Application Rate (Weekly)	36 SC	0.34	0.38	in
4/20/19	Application Rate (Weekly)	36 SW	0.34	0.43	in
4/20/19	Application Rate (Weekly)	36 SC	0.34	0.43	in
4/24/19	Sodium	EQ-1	400	511	mg/L

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Date	Parameter	Monitor Location	Permit Limitation	Reported Value	Unit Code
4/27/19	Application Rate (Weekly)	36 SW	0.34	0.39	in
4/27/19	Application Rate (Weekly)	36 SC	0.34	0.39	in
5/4/19	Application Rate (Weekly)	36 SE	0.34	0.37	in
5/4/19	Application Rate (Weekly)	36 SC	0.34	0.39	in
5/8/19	Sodium	EQ-1	400	567	mg/L
5/11/19	Application Rate (Weekly)	36 SE	0.34	0.55	in
5/18/19	Application Rate (Weekly)	36 SC	0.34	0.41	in
6/1/19	Application Rate (Weekly)	36 SC	0.34	0.4	in
6/1/19	Application Rate (Weekly)	36 SE	0.34	0.39	in
6/8/19	Application Rate (Weekly)	36 SC	0.34	0.37	in
6/8/19	Application Rate (Weekly)	36 SE	0.34	0.39	in
6/10/19	Flow (Measured)	EQ-1	425000	*A	gpd
6/13/19	Sodium	EQ-1	400	415	mg/L
6/15/19	Application Rate (Weekly)	36 SE	0.34	0.4	in
6/22/19	Application Rate (Weekly)	36 SE	0.34	0.51	in
6/27/19	Sodium	EQ-1	400	998	mg/L
6/29/19	Application Rate (Weekly)	36 SC	0.34	0.49	in
7/1/19	Application Rate (Daily)	36 SE	0.34	0.63	in
7/15/19	Dissolved Oxygen	EQ-1	(Report)	*C	mg/L
7/24/19	Application Rate (Daily)	36 SC	0.34	0.53	in
7/25/19	Application Rate (Daily)	36 SE	0.34	0.64	in
7/26/19	Application Rate (Daily)	36 SC	0.34	0.64	in
7/26/19	Application Rate (Daily)	36 SW	0.34	0.64	in
7/28/19	Application Rate (Daily)	36 SW	0.34	0.39	in
7/28/19	Application Rate (Daily)	36 SE	0.34	0.39	in
7/29/19	Application Rate (Daily)	36 SC	0.34	0.58	in
7/29/19	Application Rate (Daily)	36 SE	0.34	0.58	in
7/30/19	Application Rate (Daily)	36 SC	0.34	0.48	in
7/30/19	Application Rate (Daily)	36 SW	0.34	0.48	in
7/31/19	Application Rate (Daily)	36 SW	0.34	0.48	in
7/31/19	Application Rate (Daily)	36 SE	0.34	0.48	in

The Facility is required to develop an Operation and Maintenance (O&M) Manual in accordance with Part I, Section 4 of the Permit. Failure to develop an O&M manual is a violation of your Permit.

There is also a concern for not having the aeration equipment operational in the aeration tank at the plant. The Facility should operate the aeration tank with the aeration equipment as intended for more effective wastewater treatment.

The violations identified in this Violation Notice may be continuing.

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The Facility should take immediate action to achieve and maintain compliance with the terms and conditions of Part 31 of the NREPA, the Permit, and the discharge management plan.

Please submit a written response to this office by September 20, 2019. At a minimum, the response shall include a corrective action plan for actions that have been taken, if applicable, or planned that will:

1. Prevent the recurrence of runoff from the spray irrigation system discharging to surface waters of the state.
2. Evaluate the impact of the discharge from the land-application site to the downgradient wetland and to the creek from monitoring point EQ-2 to Elk Lake. At a minimum, a sampling and analysis plan, with implementation schedule, shall be developed and submitted to the WRD for review and approval. The sampling plan shall include sampling of the wetland between the land-application site and monitoring point EQ-2, and sampling of the creek from EQ-2 to Elk Lake. The sampling plan shall include analysis of the following parameters at a minimum: biochemical oxygen demand, iron, manganese, arsenic, sodium, chloride, ammonia, nitrate, nitrite, dissolved oxygen, pH, phosphorus, and E. coli. The sampling plan shall also be conducted over a minimum period of time (i.e., month) and frequency (i.e., weekly). The purpose of the evaluation and the sampling and analysis plan is to determine if discharges and impacts to downgradient surface waters have occurred or are occurring. Thus, your proposed plan and evaluation must be sufficient for those purposes including assessment of the potential for E. coli, foam and discoloration in the surface waters to be coming from the Facility.
3. Prevent application rate exceedances of the irrigation system at the land-application sites.
4. Develop an operation and maintenance manual.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this Violation Notice or if you would like to arrange a meeting to discuss it, please contact me at WaltersD@Michigan.gov; 517-599-1461; or EGLE, WRD, Gaylord District Office, 2100 West M-32, Gaylord, Michigan 49735-9282.

Sincerely,

David C. Walters, P.E.
Gaylord District Office
Water Resources Division

cc: Mr. John Pelizzari, Burnette Foods, Inc.
Ms. Kristine Rendon, EGLE
Mr. Eric Chatterson, EGLE