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,

Plaintiffs,

v.

BURNETTE FOODS, INCORPORATED

Defendant,

Civil Action No. _____

Hon. _____

EXHIBIT 4

TO COMPLAINT

GRETCHEN WHITMER
GOVERNOR

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

LIESL EICHLER CLARK
DIRECTOR

November 15, 2021

VN No. VN-012414

VIA EMAIL

Mr. William Sherman
Burnette Foods, Incorporated
701 US Highway 31 South
Elk Rapids, Michigan 49629

Dear Mr. Sherman:

SUBJECT: Violation Notice
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, Michigan (Facility), on July 27, 2021, to determine compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 31), MCL 324.3101 *et seq*., and the administrative rules promulgated thereunder being 2006 AACS R 323.2101 *et seq*., as amended; and Groundwater Discharge Permit Number GW1810211 (Permit), which was issued on June 1, 2017, effective June 1, 2017.

Mr. Kevin Kalchik, Plant Engineer and Certified Operator of the Facility, participated with me in the inspection, which included an interview, records review, sampling, and site inspection. As part of the inspection, a one-time sample event was conducted by Ms. Ashley McElmurry with EGLE. EGLE collected extra sample bottles at all sampling locations which were provided to the Facility to run their own analysis.

Please find enclosed a copy of the sampling results from the inspection. A one-time grab sample was obtained for analysis at monitoring point EQ-1 (final effluent), monitoring point EQ-2 (surface water), and two locations in the wetlands (surface water) at the spray irrigation site. As you will note, sample results from EGLE's laboratory indicate compliance with limits in the Facility's Permit for the final effluent (EQ-1) for total inorganic nitrogen, sodium, chloride, and phosphorus. Other notable sample results are discussed below. In addition, a comparison of the sampling results from EGLE's laboratory/contract laboratory and the Facility's contract laboratory is shown in the enclosed report.

As part of the record keeping and reporting evaluation portion of the inspection, randomly selected effluent, and groundwater data from the Discharge Monitoring Reports were compared to the data on the laboratory analytical reports. These analytical results were determined to be consistent with the data reported to EGLE.

The following violations were identified and/or discussed during our inspection:

1. Wastewater effluent from the spray irrigation system was observed running along the surface of the ground and ponding along the northern edge of spray field 36 leading up to the wetland area that is located north of field 36, which is a violation of the Permit and Part 31. Excess runoff and ponding are an indication that application rates are exceeding the hydraulic capacity of the soils. The monitoring data also show that application rate limits in the Permit were exceeded 23 times during the month of July 2021. Application rates need to be reduced when there is not adequate hydraulic capacity in the soils to accept the discharge. The spray irrigation system also needs to be operated at an appropriate loading and resting cycle to allow soils to become unsaturated and aerobic.

2. The WRD has identified the following effluent, and application rate violations that occurred from October 2020 through October 2021. These monitoring results are violations of the Permit and Part 31. It was also noted that the cumulative annual flow on the October 2021 DMR appears incorrect and should be revised.

Date	Parameter	Monitor Location	Permit Limitation	Reported Value	Unit Code
10/1/20	Flow (Calculated)	EQ-1	15,000,000	19,185,530	gal/yr
10/12/20	Sodium	EQ-1	400	516	mg/l
10/21/20	Sodium	EQ-1	400	469	mg/l
11/1/20	Flow (Calculated)	EQ-1	15,000,000	20,229,770	gal/yr
11/19/20	Sodium	EQ-1	400	507	mg/l
11/24/20	Sodium	EQ-1	400	845	mg/l
12/1/20	Flow (Calculated)	EQ-1	15,000,000	20,943,310	gal/yr
12/10/20	Sodium	EQ-1	400	735	mg/l
12/16/20	Sodium	EQ-1	400	538	mg/l
1/12/21	Sodium	EQ-1	400	838	mg/l
2/2/21	Sodium	EQ-1	400	623	mg/l
2/23/21	Sodium	EQ-1	400	921	mg/l
2/23/21	Chloride	EQ-1	500	545	mg/l
3/12/21	Sodium	EQ-1	400	890	mg/l
3/30/21	Sodium	EQ-1	400	981	mg/l
4/7/21	Sodium	EQ-1	400	452	mg/l
4/27/21	Sodium	EQ-1	400	816	mg/l
5/5/21	Sodium	EQ-1	400	647	mg/l

Date	Parameter	Monitor Location	Permit Limitation	Reported Value	Unit Code
5/18/21	Sodium	EQ-1	400	754	mg/l
6/17/21	Sodium	EQ-1	400	480	mg/l
6/28/21	Sodium	EQ-1	400	488	mg/l
7/3/21	Application Rate (Daily)	37	0.34	0.80	in
7/7/21	Application Rate (Daily)	37	0.34	0.67	in
7/8/21	Application Rate (Daily)	37	0.34	0.62	in
7/10/21	Application Rate (Daily)	36 SC	0.34	0.39	in
7/10/21	Application Rate (Daily)	36 SE	0.34	0.39	in
7/10/21	Application Rate (Daily)	36 SW	0.34	0.39	in
7/11/21	Application Rate (Daily)	38	0.68	0.80	in
7/12/21	Application Rate (Daily)	37	0.34	0.96	in
7/12/21	Application Rate (Daily)	38	0.68	0.80	in
7/13/21	Application Rate (Daily)	37	0.34	0.78	in
7/16/21	Application Rate (Daily)	37	0.34	0.98	in
7/16/21	Application Rate (Daily)	38	0.68	0.82	in
7/17/21	Application Rate (Weekly)	37	2.72	0.80	in
7/19/21	Application Rate (Daily)	37	0.34	0.84	in
7/22/21	Application Rate (Daily)	37	0.34	0.80	in
7/24/21	Application Rate (Daily)	38	0.68	1.04	in
7/24/21	Flow (Measured)	EQ-1	425,000	452,800	gal/day
7/25/21	Application Rate (Daily)	36 SC	0.34	0.37	in
7/25/21	Application Rate (Daily)	36 SE	0.34	0.37	in
7/25/21	Application Rate (Daily)	36 SW	0.34	0.37	in
7/26/21	Application Rate (Daily)	38	0.68	0.84	in
7/27/21	Application Rate (Daily)	38	0.68	0.78	in
7/30/21	Application Rate (Daily)	38	0.68	0.76	in
7/31/21	Application Rate (Daily)	37	0.34	1.00	in
8/1/21	Flow (Calculated)	EQ-1	15,000,000	15,336.838	gal/yr
8/3/21	Application Rate (Daily)	36 SC	0.34	0.42	in
8/3/21	Application Rate (Daily)	36 SE	0.34	0.42	in
8/3/21	Application Rate (Daily)	36 SW	0.34	0.42	in
8/4/21	Application Rate (Daily)	38	0.68	0.73	in
8/5/21	Application Rate (Daily)	37	0.34	0.65	in
9/1/21	Flow (Calculated)	EQ-1	15,000,000	16,548,884	gal/yr
9/11/21	Application Rate (Daily)	36 SW	0.34	0.38	in
9/11/21	Application Rate (Daily)	36 SW	0.34	0.38	in
9/11/21	Application Rate (Daily)	36 SW	0.34	0.38	in
10/7/21	Sodium	EQ-1	400	422	mg/l

3. Sample results in the enclosed report indicate that total arsenic was 17 ug/l in the inner wetland. The concentration of arsenic is above the generic groundwater surface water interface (GSI) and the surface water standard (10 ug/l) for arsenic. The exceedance for arsenic constitutes an injurious condition and is a violation of Rule 2204 (a) of the Part 22 Groundwater Rules. Overapplication of high strength wastewater (i.e., BOD) at the discharge site appears to have mobilized arsenic in the groundwater and has resulted in venting of impacted groundwater to the nearby wetland resulting in an exceedance of arsenic in surface waters.

4. There was a lack of an adequate cover crop on field 38, especially around the spray heads, with darkened soils in violation of the Permit and the discharge management plan. There were also signs of erosion and channelization with exposed soils on the upper slope in the southeast section of field 36. Rule 2234 of the Part 22 Groundwater Rules requires that a crop be established as part of a land treatment system. An appropriate vegetative cover crop needs to be established for these unvegetated areas.

The following area of concerns were identified and/or discussed as part of our inspection:

5. Based on the runoff and ponding observed at the north end of field 36 in conjunction with what appeared to be dark brown effluent in the outer wetland adjacent to field 36, it is likely that the discharge of wastewater to surface waters may be continuing as identified in Violation Notice VN-009839 issued August 21, 2019. In addition, the sample result from the outer wetland had an unnaturally high BOD concentration of 1,910 mg/l. Please be advised that any discharge of wastewater effluent from the irrigation site to surface waters (i.e., wetland) is prohibited by the Permit and would be a violation of the Permit and Part 31. It was noted that a small berm was installed since the last inspection between the spray field and the outer wetland. The berm does not appear to be effective at eliminating all wastewater discharges to the wetland and does not address the long term issue of overapplication, ponding and saturated soils during high discharge periods as noted in Item 1 above.

6. The sample result in the enclosed report indicates that Escherichia coli (E. Coli) bacteria was 1,000 CFU/100 ml in the effluent (EQ-1). Per prior correspondence from the Facility dated September 20, 2019, the Facility stated there is no potential for E. coli from spray irrigation practices. As cited in Item 5 above and in other earlier correspondence, the WRD has concerns with effluent having reached surface waters. As noted in VN-009839, a complaint received by EGLE in 2019 raised concerns for E. coli levels in Gretel's Creek and Elk Lake which are downstream of the Facility's discharge area. Additional sampling should be conducted to verify if the presence of E. coli is continuing in the effluent and to what extent. Please provide a sampling plan with implementation schedule for review and approval to sample for E. coli in the effluent. The sampling plan will

need to be conducted over a minimum period of time (i.e., monthly) and frequency (i.e., weekly). Depending on the results of the verification sampling, the Facility may need to evaluate the potential sources of E. Coli in the effluent.

7. It has come to our attention that there is another residential drinking water well along Elk Lake Road in addition to the one previously identified on Lyn's Court in response to Item 4 in Second Violation Notice SVN-00984 issued November 6, 2020, that appears to be less than 300 feet from the discharge area on fields 37 and 38. You are reminded that the minimum setback distance for the discharge from residential drinking water wells is 300 feet, as noted in Rule 2204 of the Part 22 Groundwater Rules.

8. A complaint was received by the WRD on August 2, 2021, that the discharge from the Facility's spray irrigation site was adversely impacting the downstream creek between Elk Lake Road and Elk Lake and also Elk Lake during the weekend of July 31-August 1. It was reported that the creek and lake had signs of red tart cherry pulp with foam and red staining in the bottom. WRD staff investigating the complaint on August 3, 2021, did not see any visual evidence of a discharge of effluent in the surface waters at that specific time, however, the WRD did observe excessive ponding and lack of adequate cover crop at the irrigation site. There has also been a history of similar complaints during the high discharge period of cherry harvest processing at the Facility. It was also noted that on July 31, 2021, the application rate on field 37 was exceeded by a factor of approximately three times the Permit limit as noted in Item 2 above.

9. Sample results in the enclosed report indicate that the dissolved oxygen (DO) was 1.87 mg/l in the downstream creek (monitoring point EQ-2). The downstream creek is considered a warmwater stream. The DO concentration is below the minimum standard of 5 mg/l for warmwater streams in the Part 4 Water Quality Standards under Part 31.

10. Sample results in the enclosed report indicate that the pH was 10.4 in the effluent (EQ-1). Although there is not an effluent limit for pH in the Permit it is above the normal range for pH. Any water treatment additive that is being used for pH adjustment should be evaluated to ensure that it is not being overfed to cause a high pH level noted during the inspection.

11. The bench sheets for recording the results for pH and DO were missing the date, time, and location of the sample collection, the name of the person performing the sampling and analysis, and the analytical method or technique. Please include this information on the bench sheets.

The violations identified in this Violation Notice may be continuing.

Burnette Foods, Incorporated should take immediate action to achieve and maintain compliance with the terms and conditions of the Permit and Part 31.

Please submit a response to address Items 1 through 6 above to this office by January 14, 2022. At a minimum, the response shall indicate how Items 1 through 6 have been or are planned to be addressed. For any items not addressed by the due date please provide a corrective action plan with an implementation schedule.

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.

As documented in the Enforcement Notice issued to the Facility on December 15, 2020, these matters have been referred for escalated enforcement.

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 517-599-1461; WaltersD@Michigan.gov; or EGLE, WRD, Gaylord District Office, 2100 West M-32, Gaylord, Michigan 49735-9282.

Sincerely,

David C. Walters, P.E.

Digitally signed by: David C. Walters, P.E.
DN: CN = David C. Walters, P.E. email = WaltersD@Michigan.gov C = US O = EGLE OU = WRD
Date: 2021.11.15 14:19:39 -05'00'

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

Enclosure
cc: Mr. Kevin Kalchik, Burnette Foods, Inc.
Ms. Kristine Rendon, EGLE
Ms. Laura Mathews, EGLE
Mr. Eric Chatterson, EGLE

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, and ENERGY
WATER RESOURCES DIVISION
POINT SOURCE MONITORING

Report of a
Industrial Wastewater Survey
Conducted at
Burnette Foods, Inc. - Elk Rapids
NPDES No. GW1810211
COUNTY: Antrim
Elk Rapids, MI 49629
Start Date: July 27, 2021

SURVEY SUMMARY

Wastewater monitoring was performed during one sampling event starting on July 27, 2021 at 8:45 AM.

The results of the water quality analyses are presented in Table 1.

The results of EGLE monitoring are compared to the results reported by the facility in Table 2.

Samples were preserved according to Table 3. Letter codes for laboratory results are defined in Table 3.

SURVEY PROCEDURE

The flow and samples were obtained as follows:

Sample Location	Flow Measurement	Sampling Methods
EQ1 - Grab samples collected from Basin/ wet well at plant prior to discharge. Used facility bailer to collect sample	---	Individual grab samples
EQ2 - Grab samples collected from Grettel's Creek at Elk Lake Rd	---	Individual grab samples
Inner Wetland samples collected from adjacent wetland to spray irrigation field on backside of berm. 44.870732,-85.411875	---	Individual grab samples
Outer Wetland samples collected from adjacent wetland to spray irrigation field in front of berm.	---	Individual grab samples

An individual grab is a single instantaneous sample.

Samples were analyzed by the EGLE Laboratory located in Lansing, MI and Merit Laboratories, Inc. in East Lansing, MI.

Observations/ Notes:

EGLE collected extra sample bottles at Inner Wetland, Outer Wetland, EQ2 and EQ1 for the facility to run their own analysis.

EQ1- 30 drops of H_2SO_4 was used to preserve sample and bring to a pH <2.

Compare to previous survey table was not completed. The previous survey was from June 1987. That survey outfalls do not match the description of the current outfalls for a direct comparison in this report.

Facility results were reported in mg/L and were converted to ug/L when necessary to compare to EGLE results

Table 1 - Grab Samples

		EGLE		
Monitoring Point	EQ1	EQ2	Inner Wetland	Outer Wetland
Date Collected	7/27/2021	7/27/2021	7/27/2021	7/27/2021
Time Collected	10:44	10:06	9:27	9:17
		Results		
Temperature (F)	65.9	71.8	69.3	73.7
pH (S.U.)	10.4	7.26	7.1	5.24
Dissolved Oxygen (mg/L)	8.42	1.87	1.31	0.81
E. Coli (CFU/100 ml)	1000	---	---	---
Hardness (Calculated)	250	170	510	410
		mg/L		
BOD-5	2780	<3 ND	260	1910
NO2	<0.10 ND, I	<0.01 ND	<0.01 ND	0.019
NO3	---	---	---	---
NO3 + NO2	0.18, I	<0.01 ND	0.01	0.034
NH3	1.7, I	<0.1 ND, I	<0.1 ND, I	<0.1 ND, I
Total Phosphorus	1.7	0.099	0.69	0.22
Calcium	66	50	150	120
Sodium	190	10	120	160
Magnesium	20	11	30	27
Chloride	<40 ND, I	7.4	30	30
		µg/L		
Total Arsenic (As)	<1 ND	1.2	17	6.4
Total Iron (Fe)	930	1100	22000	17000
Total Manganese (Mn)	30	62	4000	2000
Dissolved Arsenic	---	---	---	---
Dissolved Iron	---	---	---	---
Dissolved Manganese	---	---	---	---

Table 1 - Grab Samples

	Facility			
Monitoring Point	EQ1	EQ2	Inner Wetland	Outer Wetland
Date Collected	7/27/2021	7/27/2021	7/27/2021	7/27/2021
Time Collected	10:44	10:06	9:27	9:17
	Results			
Temperature (F)	---	---	---	---
pH (S.U.)	---	---	---	---
Dissolved Oxygen (mg/L)	7.19 *	3.57 *	1.35*	0.89*
E. Coli (CFU/100 ml)	---	---	---	---
Hardness (Calculated)	---	---	---	---
	mg/L			
BOD-5	2580	<67	214	>1500
NO2	<0.05 ND	<0.05 ND	<0.05 ND	<0.05 ND
NO3	0.25	<0.10 ND	<0.10 ND	<0.10 ND
NO3 + NO2	---	---	---	---
NH3	1.19	0.06	0.09	0.09
Total Phosphorus	1.8	0.11	0.78	0.25
Calcium	---	---	---	---
Sodium	161	13.6	103	138
Magnesium	---	---	---	---
Chloride	26	6	34	32
	mg/L			
Total Arsenic (As)	<0.002 ND	<0.002 ND	0.016	0.008
Total Iron (Fe)	0.73	1.35	18.8	16.2
Total Manganese (Mn)	<0.05 ND	0.07	2.55	1.7
Dissolved Arsenic	<0.002 ND	<0.002 ND	0.01	0.006
Dissolved Iron	0.34	0.86	3.2	14.2
Dissolved Manganese	<0.05 ND	<0.05 ND	0.55	1.54

*Facility Dissolved Oxygen was run on 7/28/21

Table 2 - Outfall Splits

Monitoring Point	EQ-1		EQ-2	
Date Collected	7/27/2021		7/27/2021	
Time Collected	10:44		10:06	
	EGLE Results mg/L	**Facility Results mg/L**	**EGLE Results mg/L**	**Facility Results mg/L**
BOD-5	2780	2580	<3 ND	<67
NO2	<0.10 ND, I	<0.05 ND	<0.01 ND	<0.05 ND
NO3 + NO2	0.18, I	---	<0.01 ND	---
NO3	---	0.25	---	<0.10 ND
NH3	1.7, I	1.19	<0.1 ND, I	0.06
Total Phosphorus	1.7	1.8	0.099	0.11
Calcium	66	---	50	---
Sodium	190	161	10	13.6
Magnesium	20	---	11	---
Chloride	<40 ND, I	26	7.4	6
	EGLE Results µg/L	**Facility Results ug/L**	**EGLE Results µg/L**	**Facility Results ug/L**
Total Arsenic	<1 ND	<2 ND	1.2	<2 ND
Total Iron	930	730	1100	1350
Total Manganese	30	<50 ND	62	70
Dissolved Arsenic	---	<2 ND	---	<2 ND
Dissolved Iron	---	340	---	860
Dissolved Manganese	---	<50 ND	---	<50 ND

Table 2 - Outfall Splits

Monitoring Point	Inner Wetland		Outer Wetland	
Date Collected	7/27/2021		7/27/2021	
Time Collected	9:27		9:17	
	EGLE Results mg/L	**Facility Results mg/L**	**EGLE Results mg/L**	**Facility Results mg/L**
BOD-5	260	214	1910	>1500
NO2	<0.01 ND	<0.05 ND	0.019	<0.05 ND
NO3 + NO2	0.01	---	0.034	---
NO3	---	<0.10 ND	---	<0.10 ND
NH3	<0.1 ND, I	0.09	<0.1 ND, I	0.09
Total Phosphorus	0.69	0.78	0.22	0.25
Calcium	150	---	120	---
Sodium	120	103	160	138
Magnesium	30	---	27	---
Chloride	30	34	30	32
	EGLE Results µg/L	**Facility Results ug/L**	**EGLE Results µg/L**	**Facility Results ug/L**
Total Arsenic	17	16	6.4	8
Total Iron	22000	18800	17000	16200
Total Manganese	4000	2550	2000	1700
Dissolved Arsenic	---	10	---	6
Dissolved Iron	---	3200	---	14200
Dissolved Manganese	---	550	---	1540

Table 3 - Sample Preservation and Lab Letter Codes

Parameter	Preservative
COD/TOC/Phenol/Nutrients (Chlorine Absent)	10 drops H2SO4/500 mL (to pH <2)
pH & Dissolved Oxygen (D.O.)	Meter reading
Total Metals	5 mL 1:1 HNO3/500 mL (to pH <2)
Microbiology	1 sodium thiosulfate tablet/100 mL

Samples preserved as required, cooled to 6 degrees Celsius with chain of custody maintained

Lab Letter Codes

I - Dilution required due to matrix interference;reporting limit (RL) raised.

ND - Indicates compound analyzed for but not detected

Survey by: Ashley McElmurry, Environmental Quality Analyst

Contact with Management: Kevin Kalchik

Laboratory Analyses by: Michigan Department of Environment, Great Lakes, and Energy
Laboratory, Lansing, Michigan
Merit Laboratories, Inc., East Lansing, Michigan

Report by: Ashley McElmurry, Environmental Quality Analyst
Field Operations Section
Water Resources Division

Publish Date: 30-Aug-21