

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

WALNUTDALE FAMILY FARMS, LLC,

and

KEVIN LETTINGA,

*Defendants.*

Civil Action No. \_\_\_\_\_

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, and at the request of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action brought by the United States (“Plaintiff”) seeking injunctive relief and civil penalties under Section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), against Walnutdale Family Farms, LLC (“Walnutdale”) and Kevin Lettinga (“Defendants”) for failure to comply with the conditions of two National Pollutant Discharge Elimination System (“NPDES”) permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

**JURISDICTION, AUTHORITY, VENUE AND NOTICE**

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, and 1355.

3. Authority to bring this action is vested in the United States Department of Justice, on behalf of the EPA, pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Western District of Michigan pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as this is the judicial district within which the Defendants are located or reside, and are doing business.

5. Notice of the commencement of this action has been given to the State of Michigan pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

**DEFENDANTS**

6. Defendant Walnutdale Family Farms, LLC is a limited liability company organized and existing under the laws of Michigan. Its place of business is located at 4309 14th Street in Wayland, Michigan.

7. Defendant Walnutdale Family Farms, LLC is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. Defendant Kevin Lettinga is an owner and the operator of Walnutdale Family Farms, LLC, and owns and operates, and otherwise exercises control over, the Walnutdale Family Farms, LLC dairy farm located at 4309 14th Street in Wayland, Michigan (the “Walnutdale Facility” or the “Facility”).

9. Kevin Lettinga is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

## RELEVANT LEGAL AUTHORITIES

### A. The Clean Water Act

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by a person from a point source to waters of the United States except as authorized by, and in compliance with, certain enumerated Sections of the CWA, including permits issued pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

11. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.”

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” as “any discernible, confined and discrete conveyance, including but not limited to any . . . concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

13. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” as, *inter alia*, “biological materials . . . and agricultural waste discharged into water.”

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, *inter alia*, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter “Traditional Navigable Waters”) and tributaries of such waters. 40 C.F.R. § 122.2 (1993).

15. Section 402 of the CWA, 33 U.S.C. § 1342, established the National Pollutant Discharge Elimination System permit program under which EPA, or states authorized by EPA, issue permits specifying the conditions under which discharges of pollutants may occur in compliance with Section 301(a) of the CWA. Under the regulations promulgated pursuant to

Section 402, EPA or authorized states may issue individual NPDES permits to each discharger or may issue a general NPDES permit for a specific category of discharge within a geographic area.

*See* 40 C.F.R. § 122.28.

16. In 2003, EPA promulgated revised rules regulating the discharge of pollutants from Concentrated Animal Feeding Operations (“CAFOs”). *See* 68 Fed. Reg. 7176 (Feb. 12, 2003). Under the rules, a CAFO is defined as an animal feeding operation (“AFO”) that can be classified as either “large” or “medium” based on the number and type of animals confined. 40 C.F.R. § 122.23(b)(2).

17. 40 C.F.R. § 122.23(b)(1) defines an AFO as a lot or facility (other than an aquatic animal production facility) where: (1) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

18. An AFO will be classified as a “Large CAFO” if it stables or confines more than 700 mature dairy cows, whether milked or dry. 40 C.F.R. § 122.23(b)(4).

19. 40 C.F.R. § 122.23(b)(7) defines process wastewater as “water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”

20. The State of Michigan has been authorized by EPA to administer its NPDES program since October 17, 1973. *See* M.C.L.A. Ch. 324, Art. II, Ch. 1, Pt. 31. The Michigan

Department of Natural Resources and Environment (“MDNR”) and the Michigan Department of Environmental Quality (“MDEQ”) administered the NPDES permitting program in Michigan at the times relevant to this Complaint. Michigan issues a general permit for CAFOs and requires individual entities to obtain a Certificate of Coverage, by which they are covered by the general permit.

21. When a state is authorized to administer a NPDES permit program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA retains the authority, concurrent with the authorized state, to enforce state-issued NPDES permits and to take enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319. 33 U.S.C. § 1342(i).

22. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes EPA to issue a compliance order or bring a civil action when EPA finds that any person is in violation of any permit condition or limitation of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

23. Section 309(b) of the CWA, 33 U.S.C. § 1319(b) authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which EPA is authorized to issue a compliance order under Section 309(a).

24. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, Defendants are liable for civil penalties not to exceed \$37,500 per day for each violation that occurred after January 12, 2009 through November 2, 2015; and \$55,800 per day for each violation that occurred after November 2, 2015.

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