BEFORE THE OREGON DEPARTMENT OF AGRICULTURE

In the Matter of Greg teVelde dba, Lost Valley Farm, Oregon Confined Animal Feeding Operation National Pollutant Discharge Elimination System Individual Permit No.: #OR995129 Master Address No.: 1000184 Greg teVelde, dba Lost Valley Farm *Respondent*.	)))))))))	**NOTICE OF REVOCATION OF INDIVIDUAL PERMIT NO. OR995129 AND NOTICE OF RIGHT TO A CONTESTED CASE HEARING**

AUTHORITIES

A. General Authorities

Oregon's Legislative Assembly has declared that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state. Oregon Revised Statutes (ORS) 468B.200. The waters of the state include surface water and groundwater. ORS 468B.005(10). "Wastes" include any solid or liquid substance which will or may alter the physical, chemical or biological properties of any waters of the state. ORS 468B.005(5) and (9).

The Oregon Department of Agriculture (ODA) and the Oregon Department of Environmental Quality (DEQ) (together "the issuing agencies") jointly administer the State of Oregon's program for the prevention and control of water pollution from confined animal feeding operations. ORS 468B.217. Subject to the terms of a memorandum of understanding between the Oregon Environmental Quality Commission (EQC) and the ODA, the ODA may perform any function of the EQC or the DEQ relating to the administration and enforcement of National Pollution Discharge Elimination System (NPDES) permits issued by the EQC. *Id.*[1]

"Confined animal feeding operation" has the meaning given that term in rules adopted by the ODA and DEQ. ORS 468B.203. Oregon Administrative Rule (OAR) 603-074-0010(3) defines a confined animal feeding operation (CAFO) to mean:

> (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;
>
> (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or

[1] A copy of the Memorandum of Understanding between the ODA and the DEQ is attached to this document as Attachment #1.

(B) That have wastewater treatment works; or

(C) That discharge any wastes into waters of the state; [or]

(b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR § 122.23.

Any person who owns or operates a CAFO is required to obtain coverage under a permit issued by ODA and DEQ and to comply with its terms. ORS 468B.050, ORS 468.065; OAR 603-074-0014.[2] DEQ and ODA issue an Individual NPDES CAFO Permit when the proposed CAFO will be operating in an environmentally sensitive area. OAR 340-045-0033(10)(c). The Individual NDPES Permit allows the issuing agencies to include more robust and particularized requirements in order to protect the environmentally sensitive area.

B. Enforcement of Permit Conditions

ODA is charged with enforcing the terms of the permitted CAFOs so as to protect the public against animal wastes discharged into waters of the state. ORS 468B.217. State law provides that "[n]o person shall violate the conditions of any waste discharge permit issued under ORS 468B.050." ORS 468B.025(2).

ODA has authority to issue a Notice of Noncompliance and Plan of Correction ("NON/POC") to a CAFO owner, operator and/or permittee. The NON/POC informs the owner, operator and/or permittee of a violation, including a reference to a particular statute, administrative rule, order, the location of the violation and the consequences of the violation or future violations. OAR 603-074-0040(1)(a). ODA is also authorized to require a POC that prescribes the specific remedial steps that the CAFO owner, operator and/or permittee must take to bring the CAFO into compliance with the terms of the permit and/or state law. NON/POCs are final orders in other than a contested case and are reviewable in the circuit court. ORS 183.484; OAR 603-074-0040(1)(g) and (2)(e).

The ODA may also assess a civil penalty against the owner or operator of a CAFO for failure to comply with a provision of a permit. ORS 468B.230(1). Prior to assessment of a civil penalty for a violation, the department must provide a notice of noncompliance to the owner or operator. However, advance notice or period to achieve compliance prior to assessment of a civil penalty is not required if the owner or operator has received a previous notice of the same or similar violation. ORS 468B.230(5)(b); OAR 603-074-0070(2)(b).

The ODA's enforcement policy is one of elevated progression wherein the ODA will first assess a NON/POC and if that order fails to correct the problem, the ODA will move to civil penalties. If a permittee continues to consistently violate a permit's terms, is unable to achieve compliance, or if the ODA has information indicating that the permitted operation poses a threat to human health or welfare, the department considers revocation of the permit.

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[2] Note that OAR Chapter 340 Divisions 45 and 51 cover NPDES permits and CAFO permits generally as does OAR Chapter 603 Division 74.

C. Prohibited Activities

ORS 468B.025(2) states that no person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. In addition, state law prohibits any person from placing or causing to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. ORS 468B.025(1)(a).

D. Revocation of Permits

Oregon law is clear that no person may violate the conditions of a permit issued by the ODA. ORS 468B.025(2). The DEQ or the ODA may, at any time, revoke any permit if it finds:

> (a) A material misrepresentation or false statement in the application for the permit.
> (b) *Failure to comply with the conditions of the permit.*
> (c) *Violation of any applicable provisions of ORS 466.605 to 466.680, 466.990 (3) and (4) and 466.995 (2) or ORS chapters 468, 468A and 468B.*
> (d) Violation of any applicable rule, standard or order of the Environmental Quality Commission.

ORS 468.070(1) (Emphasis added).

In addition, Oregon Confined Animal Feeding Operation NPDES Individual Permit #OR995129 (Individual Permit #OR995129 or permit) Permit Condition G7.2 states:

> "After notice * * * this permit may be modified or revoked as it applies to any person for cause as follows:
> (a) *Violation of any terms or conditions of the permit,*
> (b) Failure of the permittee to disclose fully all relevant facts, or misrepresentations of any relevant facts by the permittee during the permit issuance process and during the life of the permit;
> (c) Failure to pay permit fees required by Oregon Administrative Rule when due;
> (d) *Information indicating that the permitted operation poses a threat to human health or welfare;*
> (e) A change in ownership or control of the operation, or
> (f) Other causes listed in 40 CFR 122.62 and 122.63 (additional relevant causes for modification include: alterations or additions to the permitted facility or activity which occurred after permit issuance; information – new information that was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance, including new information about cumulative effects on the environment)

(Emphasis provided on relevant phrases.)

In sum, the issuing agencies may revoke a CAFO permit if the permittee has not complied with any condition of the permit, if the permittee has violated any provision of ORS

468B, or if it has information indicating that the permitted operation poses a threat to human health or welfare. ORS 468.070; NPDES Individual Permit #OR995129. Individual Permit #OR995129 condition S1.E.2, in turn, contains the terms of permit termination.

FINDINGS OF FACT

A. Environmental conditions and permitting process

1. Gregory teVelde is an individual residing in the state of California. Mr. teVelde does business in Oregon under the assumed business name Lost Valley Farm (Oregon Secretary of State Registry Number 128131497). Lost Valley Farm (Lost Valley Farm) is a large confined animal feeding operation (CAFO) located at 73956 Homestead Lane, Boardman, Oregon, in Morrow County and registered to Oregon CAFO NPDES Individual Permit No. OR995129 issued by ODA and the DEQ. The registration is under Master Address No. #100184. Mr. teVelde is responsible for ensuring that the Lost Valley Farm is operated in compliance with the terms of Individual Permit No. OR995129 and with state law.

2. Lost Valley Farm is located in central Oregon, within the Lower Umatilla Basin Groundwater Management Area. Groundwater Management Areas (GWMAs) are designated by DEQ when groundwater in an area has elevated contaminant concentrations. DEQ declared the Lower Umatilla Basin to be a GWMA in 1990 because nitrate-nitrogen concentrations in area groundwater samples exceed safe drinking water standards. The Lower Umatilla Basin GWMA remains an environmentally sensitive area today. Levels of nitrate in the groundwater that exceed state drinking water quality standards create conditions that present serious concerns for water quality and safe drinking water.

3. The waste and wastewater collected in CAFO impoundments can contain numerous pollutants that can threaten human health and safety. Animal waste can contain disease-causing organisms such as bacteria, viruses and protozoa. A new CAFO is also an additional potential source of nitrates that can further contribute to groundwater contamination in the Lower Umatilla Basin GWMA. The risks of harm to human health, safety and the environment are particularly serious where unauthorized discharges occur in an area that already suffers from high contaminant levels in groundwater and soil conditions allow for nitrates and other contaminants to leach into groundwater.

4. The groundwater aquifer in the norther portion of the Lost Valley Farm site is highly vulnerable to contamination from surface sources. Because of the soil conditions at Lost Valley Farm, surface water is more likely to carry contaminants into an aquifer and groundwater. In addition, the aquifer closest to the soil surface in the northern part of Lost Valley Farm is about 33 feet below the surface, a relatively shallow depth. ODA generally treats aquifers of depths less than 100 feet as being vulnerable to surface contaminants. The aquifer is unconfined, with no strata above it that would slow or reduce vertical movement of water. All of these factors combine to make a release of contaminants on the surface of Lost Valley Farm a threat to groundwater below the facility.

5. In 2015, Mr. teVelde, then doing business as Lost Valley Ranch, submitted an application to ODA seeking a CAFO permit for a proposed dairy facility with a maximum of 30,000 animals. Due to the size of the proposed CAFO operation and the location of the CAFO within the Lower Umatilla Basin GWMA, ODA and DEQ engaged in a robust public process in order to review and consider Mr. teVelde' s application.

6. ODA and DEQ prepared a draft Individual NPDES CAFO permit, which they noticed to the public on June 28, 2016. The initial public comment period ran from June 28, 2016 to August 4, 2016. ODA and DEQ held a public hearing in Boardman, Morrow County, on July 28, 2016. Seventy-seven people attended the public hearing. ODA and DEQ met with stakeholder groups—including the State Environmental Justice Task Force and members of the Confederated Tribes of the Umatilla Indian Reservation—and subsequently reopened the public comment from October 3, 2016 to November 4, 2016. In total, ODA and DEQ received 4,147 comments on the proposed CAFO permit. Most of the comments submitted were in opposition to issuing the CAFO permit. Where ODA and DEQ could address commenters' concerns within the scope of their authority, they amended the CAFO permit to do so. Between November 4, 2016 and March 23, 2017, ODA and DEQ reviewed the extensive public comments and amended portions of the CAFO permit to address issues and concerns.

7. ODA and DEQ issued Individual Permit No. OR995129 on March 31, 2017. Lost Valley Farm is a new potential source of nitrate in the Lower Umatilla Basin GWMA, and DEQ statistical analysis demonstrates that the long term and current nitrate concentration trends at some of the GWMA monitoring wells are gradually increasing in the aquifer. Therefore, ODA and DEQ included specific and stringent requirements in Individual Permit No. OR995129 to ensure that surface and groundwater quality are not harmed by the presence and operations of the Lost Valley Farm.

B. Permit Requirements

8. Individual Permit No. OR99159, Section S2.B. contains the **Production Area Limitations**: This section requires:

1. The permittee must not discharge manure, litter, or process wastewater to surface water of the state from the production area, except when:
   (a) Rainfall events cause an overflow of waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and direct precipitation, from a 25-year, 24-hour rainfall event; and
   (b) The production area is operated in accordance with the applicable inspection, maintenance, recordkeeping, and reporting requirements of this permit.

2. The permittee must properly land apply manure, litter, and wastewater from the production area in a manner consistent with S2.C. All other authorized discharges from the production area listed in S2.C, must be managed to minimize impacts on surface water and groundwater of the state and meet the effluent limits in S2.A above.

3. The permittee must not exceed the seepage design rates approved by the agency for waste

storage or animal confinement facilities in the production area and seepage to groundwater from these facilities must not violate state groundwater quality protection standards and groundwater monitoring well concentration limits as described in S5.C. The seepage design rates for the compacted earth prepared surfaces are that of concrete, considered to be essentially impermeable.

9. Individual Permit No. OR99159, Section S2.H. governs the **Proper Operation and Maintenance** of the facility:

> The permittee must at all times properly operate and maintain all facilities and systems used for process wastewater collection, storage and utilization, and correct any deficiencies found as soon as possible.

10. Individual Permit No. OR99159, Section S2.E **Waste Storage Facilities** ensures that waste storage facilities have sufficient capacity to hold all generated waste in impermeable containments without any overflow or leakage. This section requires:

1. All manure, process wastewater and contaminated storm water must be stored on impermeable prepared surfaces. **The permittee must provide adequate storage capacity for solid and liquid wastes at all times** so that land application occurs only during periods when soil and weather conditions allow for agronomic application and are in compliance with the Land Application Limitations S2.C of this permit.

2. The permittee must site, design, construct, operate, and maintain **all waste storage facilities to contain all manure, litter, process wastewater**, and storm water runoff and direct precipitation from a 25-year, 24-hour rainfall event for the storage period established in the ODA-approved [Animal Waste Management Plan]. New and modified construction of waste facilities must be approved in advance and prior to construction by the agency in conformance with ORS 468B.055 and OARs 340-051 and 603-074.

3. **All surface liquid impoundments must be designed and lined to prevent leakage.** The permittee must install and maintain a leak detection system on each and every surface liquid impoundment (for example, lagoons, ponds, tanks). Permittee must maintain and operate depth markers in all surface liquid impoundments. Depth markers must be designed to clearly indicate the:

    (a) Maximum design volume,

    (b) Minimum capacity necessary to contain the 25-year, 24-hour rainfall event, including additional freeboard requirements, and

    (c) Depth of manure and process wastewater

11. Individual Permit No. OR99159, Section S2.G. governs the **Handling of Animal Mortalities**:

The permittee must not dispose of animal mortalities in liquid manure or treatment works. Animal mortality composting is allowed and must be described in the Animal Waste Management Plan. The permittee must handle animal mortalities in such a way as to prevent discharge of pollutants to waters of the state (surface water and groundwater).

12. Individual Permit No. OR99159, Section S2.H. governs the **Proper Operation and Maintenance** of the facility:

The permittee must at all times properly operate and maintain all facilities and systems used for process wastewater collection, storage and utilization, and correct any deficiencies found as soon as possible.

13. Individual Permit No. OR99159, Section S3.A.2 governs **Animal Waste Management Plan (AWMP) Implementation and Compliance**:

1. Upon issuance of this permit, and subject to S3.A.2, **the permittee must implement its current ODA-approved AWMP developed for the facility**.

2. Within 45 days after permit issuance, the permittee must submit to ODA for approval, a revised AWMP which incorporates the elements in S3.C. or elements as otherwise specified in this permit. Upon approval of the revised AWMP, the permittee must implement the approved revised AWMP.

3. **ODA's approved AWMP is incorporated into this permit by reference.** The permittee must comply with all terms and conditions of its ODA-approved AWMP. Failure to comply with the ODA-approved AWMP constitutes a violation of the terms and conditions of this permit.

14. Individual Permit No. OR99159, Section S3.D.1 governs requirements for **AWMP Updates and Changes**:

4. AWMP Changes

(a) *Substantial changes.* **The permittee must submit any proposal to make substantial changes to its AWMP to ODA for approval at least 60 days in advance of the proposed changes.** The agency will provide public notice on the proposal as described in S1.F. The agency will notify the permittee of its final decision concerning the proposed changes after the public notice period ends. The permittee must not implement a proposed change until the agency has approved it. The following types of changes to an AWMP are considered substantial and major modification as described in OAR 340-045-0055:

(i) Addition of new land application areas not previously included in the AWMP, unless the land application area is covered by an existing AWMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process wastewater on the newly added land application area is in accordance with that existing NPDES permit.

(ii) Any changes to the field-specific maximum annual rates for land application.

(iii) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.
(iv) Addition of any crop or other uses not included in the AWMP and corresponding field-specific rates of application.
(v) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
(vi) Any changes that are likely to increase the risk of pollutant transport to surface water or groundwater.

(b) *Non-substantial changes.* The permittee must submit any proposal to make non-substantial changes to its AWMP to the agency for approval at least 60 days in advance of the proposed changes unless a different timeframe is allowed by the agency. A proposal for a non-substantial change is not subject to public notice. The agency will notify the permittee of its final decision concerning the proposed changes after reviewing the proposal. The permittee must not implement a proposed change until the agency has approved it. The following types of changes to an AWMP are considered non-substantial provided they do not result in a substantial modification listed in paragraph (a) above:
(i) An increase in animal numbers greater than 10% of the registrant's maximum allowed animal numbers.
(ii) When facility expansions, production increases, or process modifications will result in new or increased generation of waste, litter, or process wastewater beyond the scope of the current AWMP.

15. Individual Permit No. OR99159, Section S4.B. governs **Facility Inspection Requirements:**

1. The permittee must monitor the operation and efficiency of all treatment, handling, and disposal facilities in accordance with its ODA-approved AWMP.

2. The permittee must conduct the following inspections:

Area	Minimum Frequency	Type of Sample
Land application areas	Daily when operating	Visual inspection: record date and condition.
Production area, including: • Storm water diversion devices • Runoff diversion structures • Manure and wastewater conveyances • Waste storage structures • Treatment systems	Weekly	Visual inspection: record date and condition.
Water lines, including drinking water or	Daily	Visual inspection: record

cooling water lines		date and condition.
Equipment used for land application of manure, litter and/or wastewater	Daily, when equipment is in use	Visual inspection: record date and condition.
Liquid impoundments for manure and wastewater.	Weekly	Visual inspection: record date. Condition, and depth of wastewater according to depth marker.

3. The permittee must correct any deficiencies found as a result of these inspections as soon as possible. The permittee must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

16. Individual Permit No. OR99159, Section S4.C governs **Recordkeeping and Availability Requirements**:

1. The permittee must maintain all information required by this permit at the facility for at least five years and make this information available to the agency upon request.
2. The permittee must record the following information:
   (a) Actual crop yields;
   (b) Date, amount, and nutrient loading of manure or process wastewater and any other supplemental nitrogen fertilizer applied to each field;
   (c) Weather conditions at the time of application and 24 hours before and after application;
   (d) Calculations showing the total nitrogen and phosphorus to be applied annually to each field, including sources other than manure or process wastewater;
   (e) Total amount of nitrogen and phosphorus actually applied annually to each field from all sources, including documentation of calculations of the total amount applied;
   (f) Method(s) used to apply the manure or process wastewater; and
   (g) Total amount of manure or wastewater transferred or exported to other persons including the date and amount of each transfer or export, the name and address of each recipient, and copy of the manure nutrient analysis conducted provided to the recipient. (see S2.K.3)
   (h) Animal mortalities management and practices used to meet the requirements of S2.G.1
   (i) Water level and water quality data in accordance with agency-approved Groundwater Monitoring Plan

17. Individual Permit No. OR99159, Section S4.D.3 governs **Reporting Requirements**:

1. Reporting to ODA and Oregon Emergency Response System (OERS)
   (a) If a discharge to surface water or groundwater occurs that is not allowed by S2.B and S2.C, the permittee must notify ODA within 24 hours of the discharge. The permittee

must submit a written report within five (5) days to ODA. The information to be submitted is listed in the monitoring requirements (see S4.A) of this permit.

(b) The permittee must notify ODA within 24 hours of becoming aware of any significant physical failure at any time of treatment works required under this permit.

(c) The permittee must notify ODA within 24 hours of any permit noncompliance that may endanger health or the environment as described in G13.6.

(d) In addition to complying with [1.(c)] above, the permittee must notify Oregon Emergency Response System (OERS) of any unauthorized discharge that may come in contact with a surface water or groundwater drinking water system intake within 24 hours. Notification must be made by calling OERS at 1-800-452-0311.

2. Reporting of Monitoring Results of a Prohibited Effluent Discharge

The permittee must submit monitoring information for an effluent grab sample no later than one month from the date the sample was taken unless a different schedule is established by an administrative order as described in S4.E.

3. Annual Report

(a) The permittee must submit an annual report to ODA by March 15 of each year. The annual report must include the following for the previous calendar year:

(i) Maximum number and type of animals approved by the agency in the permittee's ODA-approved AWMP, whether in open confinement or housed under roof (for example, beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other).

(ii) Actual number of animals by type averaged over the year.

(iii) Amount of total manure, bedding, process wastewater and other material that comes in contact with manure generated.

(iv) Amount of total manure, bedding, process wastewater and other material that comes in contact with manure transferred to other persons by the permittee.

(v) Amount of manure, bedding, process wastewater, and other material that comes in contact with manure applied to land by the permittee.

(vi) Total number of acres for land application covered by the AWMP developed in accordance with the terms of this permit.

(vii) Total number of acres under control of the permittee that were used for land application of manure and process wastewater in the previous 12 months.

(viii) Summary of all manure and process wastewater discharges from the production area that have occurred, including date, time and approximate volume.

(ix) A statement indicating whether the AWMP was developed or approved by a certified waste management planner.

(x) Any Concentrated Animal Feeding Operation that discharges to surface waters must also report the following items (xi) through (xvi). (40 CFR 122.42(e)(4)(viii)

(xi) Actual crop(s) planted and actual yield(s) for each field.

(xii) Actual nitrogen and phosphorus content of the manure and process wastewater.

(xiii) Data used and results of calculations based on protocol in the ODA-approved AWMP.

(xiv) Amount of manure and process wastewater applied to each field during the previous 12 months.

(xv) Results of soil testing for nitrogen and phosphorus.

(xvi) Amount of any supplemental fertilizer applied.

(xvii)Water level and water quality data collected as part of the Groundwater Monitoring Plan
(xviii) Magnitude, frequency, dates and description of instances of prohibited discharges
(xix) All lysimeter data
(xx) All groundwater data

(b)The annual report must be signed and certified by the permittee or permittee's authorized representative with the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

Note: Any permit conditions not cited in these findings of fact are provided in the CAFO NPDES Individual Permit No. OR9915129 which is attached as Attachment #2 which is herein incorporated by reference.

C. Animal Waste Management Plan (AWMP) and Wastewater at Lost Valley Farm

18. Lost Valley Farm has an approved AWMP that allows for a livestock herd of 15,000 mature dairy cows and 15,000 heifers and calves. On May 11, 2017, Mr. teVelde signed the AWMP, and certified that, as owner and operator of Lost Valley Farm, he would "manage in accordance with the practices and operation and maintenance described in this Animal Waste Management Plan." He further certified that he understands that he is "responsible for keeping all necessary records associated with implementation of this plan."

19. Lost Valley Farm's approved AWMP provides specific requirements for, among other things, how wastewater at Lost Valley Farm must be managed.[3] The AWMP-approved process and requirements are as follows.

a) The milking cows are to be housed in free stall barns.
b) Manure from the free stall barns is to be collected by flushing the free stall barns with water or using vacuum tanks. Once this water combines with manure, it becomes wastewater.
c) The wastewater then drains through pipes at either end of the free stall barns to a sand lane. In the sand lane, sand used for bedding is separated from the wastewater.
d) The wastewater is then collected in a vault and pumped in underground pipes to screen separators.
e) The wastewater from the screen separators must then be filtered. Once it is filtered, it may be re-used as flush water. In order to be filtered, the wastewater is

[3] The ODA-approved AWMP is attached as Attachment #3.

directed to either (i) the Bio Link tank or (ii) the settling cells and lagoons complex.

(i) The Bio Link tank is a proprietary system designed to manage flush water by separating solid waste from liquid waste, and then filtering the liquid waste.

(ii) Settling cells are used to allow solid waste to settle into a cell that can be cleaned out using drivable equipment. They have concrete bottoms and are accessible from one side. The settling cells are required to be double-lined with synthetic material to prevent leakage. Water from the settling cells is then transferred through a system of lagoons. The lagoons are also required to be double-lined with synthetic material to prevent leakage. The lagoons are designed such that the water gets cleaner as it works its way from the sixth lagoon to the first (finishing) lagoon.

f) Silage is to be stored on slabs with collection vaults that direct leachate and runoff to the sand lane and into the liquid handling system.

g) The AWMP allows Permittee to export liquid or solid manures off the farm for authorized use or disposal.

h) The AWMP also allows Permittee to apply generated liquids and solids to owned or managed cropland at agronomic rates, subject to application limits and guidelines set forth in Individual Permit No. OR995129.

20. The AWMP requires Permittee to construct three settling cells, six lagoons, and one digester cell (similar to a lagoon). The lagoons and settling cells must be double-lined with synthetic material to prevent leakage. In addition, all lagoons and settling cells must maintain at least 12 inches of freeboard (i.e., height between the wastewater storage line and the top edge of the lagoon or settling cell) and the ability to store one, 25-year/24-hour storm event volume from the entire facility which is 40 acre-feet (AF) of volume.

21. To date, Permittee has constructed two settling cells, three lagoons, and zero digester cells. Permittee has completed the excavation for three additional lagoons and one additional settling cell. However, two of the additional lagoons and the additional settling cell are not double lined, as required by Individual Permit # OR995129, and one additional lagoon currently being double lined is not completed and therefore none of them are approved for wastewater storage.

D. Violations of Individual Permit #OR995129

22. On **June 28, 2017**, ODA issued NON/POC #1727377 to the Lost Valley Farm for violations of the permit including violations governing the proper storage of waste including operating the storage lagoons to maintain sufficient freeboard to prevent overtopping of liquid waste onto unrepaired areas. The June 28, 2017, NON/POC required that Lost Valley Farm take the following steps to correct the violations: "Maintain designed freeboard and repair any issues preventing the ability to maintain freeboard immediately. Complete additional waste storage areas and limit all inputs until capacity is increased to allow for normal operation." Lost Valley Farm failed to complete the required corrective actions set forth in the June 28, 2017 NON/POC. This order was not challenged and became final by operation of law on August 28, 2017.

Table 1. NON/POC #1727377

Permit Condition	Description of Violation
S2.E.1 Waste storage facilities.	Improper storage of solid waste (insufficient capacity) and overfill of lagoons.
S2.H. Proper Operation and Maintenance.	No staff gage, leak detection caps, air gas vents.

23. On **October 6, 2017**, ODA issued NON/POC #172775 to Lost Valley Farm for several permit violations, including: overflow of wastewater onto permeable surfaces not designated for wastewater storage, failure to properly maintain and operate wastewater lagoons, and failure to report permit violations to ODA within 24 hours of the event. Significantly, the ODA observed that the lagoon complex did not have a functional electrical panel or power and no pump was installed to facilitate land application or export of the stored water, the lagoons did not have depth markers installed, and there were several large, wet sand bedding piles stored in areas that are not designed or designated as manure storage areas. The ODA ordered the Lost Valley Farm to limit the number of mature animals to 9,750 and the number of heifers and calves to 8,000. The ODA ordered the Lost Valley Farm to take corrective action and report all violations to ODA within 24 hours, but Lost Valley Farm failed to comply with this directive. The October 6, 2017 NON/POC was not challenged and became final by operation of law on December 5, 2017.

Table 2. NON/POC # 1727775

Permit Condition	Description of Violation
S2.E.1 Waste storage facilities (storage of waste on impermeable surface).	Improper storage of solid waste.
S2.E.3 Waste Storage Facilities (Maintain and operate depth markers in liquid impoundments).	Failure to implement depth markers and monitor leak detection.
S2.H. Proper Operation and Maintenance (Permittee must at all times properly operate and maintain all facilities and correct deficiencies).	Permittee is in danger of running out of capacity for liquid waste storage with no current means for exporting or land applying waste.
S3.A.2 AWMP implementation and compliance (Permittee must comply with all terms of AWMP).	Permittee failed to amend the approved AWMP and receive written approvals for additional activities (storage of unpermitted food waste).
S3.D.1 Requirements for AWMP update and changes (Permittee must update waste management plan when facility expansion, production increases).	Permittee failed to amend the approved AWMP and receive written approval for additional activities (storage of unpermitted food waste).
S4.B.1(a) Inspection requirements (Permittee must inspect stormwater and runoff diversion	No records available of required inspections.

devices, manure and wastewater conveyances and etc.)	
S4D.3 Reporting requirements (Permittee must notify ODA within 24 hours of any noncompliance that may endanger public health or the environment).	Failure to report discharges from sand lane collection vaults.

The Lost Valley Farm failed to take some of the required actions within the timelines specified in the NON/POC #1727775 namely:

a) Install depth markers in all lagoons and record depths weekly;
b) Limit the number of mature animals to 9,750 and the number of heifers and calves to 8,000;
c) Cease all activities not authorized by the AWMP and update the AWMP to accurate describe how Lost Valley Farm will operate the facility;
d) Inspect daily, maintain, and repair any faulty equipment that causes waste to be deposited outside of designated, approved waste storage facilities;
e) Report permit noncompliance within 24 hours to ODA.

24. On **October 31, 2017**, the ODA conducted a routine inspection at Lost Valley Farm and observed:

a) In the mortality management area, the trailer used for mortality storage and transport was full and leaking liquid onto an unprepared surface, in violation of permit condition S2.G, Handling of Animal Mortalities.
b) Ponded water had accumulated in a swale adjacent to the silage storage pad in an area not approved for wastewater storage, in violation of permit conditions S2.E.1 Waste Storage Facilities and S3A.2 Animal Waste Management Plan (AWMP) Implementation and Compliance. Mr. Love, the farm manager, informed the ODA inspector that blockage on the silage pad had caused water to runoff into the swale during a rain event approximately ten days prior to the inspection. Lost Valley Farm failed to notify ODA of the system failure within 24 hours of the event, in violation of permit condition S4.D Reporting Requirements.
c) Ponded water from a recent rain event had accumulated in the manure solids composting area. The storm water was not draining into the approved collection point, in violation of permit conditions S2.E.1 Waste Storage Facilities and S3A.2 Animal Waste Management Plan (AWMP) Implementation and Compliance. The Lost Valley Farm failed to notify ODA of the system failure within 24 hours of the event, in violation of permit condition S4.D Reporting Requirements.

25. On **November 1, 2017**, ODA was on site at Lost Valley Farm and observed that one of the storage lagoons was overflowing into an open construction ditch, an unprepared surface. This overflow was caused by elevated wastewater levels combined with high winds. The wastewater overflow violated permit conditions S2.E.1 Waste Storage Facilities, S2.E.2 Waste Storage Facilities, S2.H, Proper Operation and Maintenance and S3A.2 Animal Waste

Management Plan (AWMP) Implementation and Compliance. The Lost Valley Farm failed to notify ODA of the system failure within 24 hours of the event, in violation of permit condition S4.D Reporting Requirements.

26. On **November 17, 2017,** ODA issued a NON/POC #1727781 to Lost Valley Farm for the violations noted during the October 31, 2017 and November 1, 2017 inspections. The Lost Valley Farm had failed to report significant discharges from the silage pad, compost area and lagoon within 24 hours of the discharge event.

The NON/POC issued on November 17, 2018 was not challenged and became final by operation of law on January 16, 2018.

Table 3. NON/POC #1727781

Permit Condition	Description of Violation
S2.E.1 Waste storage facilities (4 violations).	(1) Failure to properly operate and maintain waste collection and transfer structures at silage pad and associated collection vaults and transfer pipes. (2) Leachate from stored silage and feed materials and contaminated stormwater collected in a swale adjacent to the storage pad. The swale is not prepared to hold liquid waste. (3) Ponding in compost storage area. (4) Lagoon overflow due to wind into a construction ditch below land surface where a manure transfer line was being installed on the center lagoon berm. Not sufficient capacity in lagoons to accommodate all waste plus 25-year/24-hour storm event.
S2.G. Handling of animal mortalities.	Storage of animal mortalities in a manner that resulted in leaking onto unprepared surfaces.
S2.H. Proper Operation and Maintenance.	Permittee failed to follow the operation and maintenance portion of the approved AWMP for the compost area to ensure that stormwater flow was not diverted from the approved collection point. Resulted in ponding in the compost area.
S4.B.1(a) Inspection requirements.	Permittee failed to inspect portions of the wastewater storage and conveyance system and maintain and repair faulty equipment and conveyances.
S4D.3 Reporting requirements.	Permittee failed to report an unauthorized discharge from the silage pad and failure to report discharge from lagoon into ditch.

Lost Valley Farm failed to take some of the required actions specified in #1727781, namely:

a) Notify ODA within 24 hours in the event of a further system failure;
b) By November 30, 2017, submit a plan of correction for lagoon system design to prevent wind from causing system failure and overflow. Ensure that all lagoons have available capacity to store all wastewater and contaminated storm water as required by the Individual Permit No. OR995129 and the AWMP.

27. On **December 5, 2017**, the ODA conducted a routine inspection of Lost Valley Farm and observed the following:

a) An earthen pit in the northwest corner of the BioLink area was filled with wastewater. This area is not approved for wastewater storage. The cause of the wastewater overflow into the earthen pit was a blockage in the wastewater conveyance line. This blockage had caused wastewater to overflow from an area approved for wastewater storage to an area unapproved for wastewater storage, in violation of permit conditions S2.E.1 Waste Storage Facilities and S3A.2 Animal Waste Management Plan (AWMP) Implementation and Compliance.
b) Farm employees informed ODA that the overflow occurred approximately seven days prior to the inspection. Permittee failed to notify ODA of the system failure within 24 hours of the event, in violation of permit condition S4.D Reporting Requirements.
c) ODA further observed that all three wastewater lagoons were at capacity with no additional room for storage of manure and process wastewater, in violation of permit condition S2.E.2 Waste Storage Facilities.
d) ODA informed Lost Valley Farm that it was not permissible to remove the large cover plate on the BioLink tank to allow discharge into unauthorized areas.

28. On **December 6, 2017**, ODA conducted a follow up inspection of the Lost Valley Farm and was informed that the Lost Valley Farm was hiring a third party to clean out the BioLink tank. During the inspection, ODA informed Lost Valley Farm's farm manager it was not permissible to remove the large cover plate on the BioLink tank because this would allow waste from the BioLink tank to discharge into unauthorized areas. Lost Valley Farm assured ODA that it would not remove the large cover plate from the BioLink tank. Nonetheless, on December 15, 2017, contrary to ODA's express instructions, the ODA observed that the Lost Valley Farm had removed the large cover plate from the BioLink tank and that this had resulted in liquid and solid manure discharging onto unprepared soil, and had flowed into the partially constructed, inooperable maternity barn and pooled in areas that are not approved for manure storage in violation of permit condition S2.E.1.and S3.A.2 and the AWMP. Contrary to express instruction and permit requirements to report, the Lost Valley Farm failed to report this violation.

On **December 28, 2017**, the ODA received the results of the samples collected during the December 5 and December 28, 2017 inspections. The sample results showed that the discharged materials contained *E.coli* bacteria greater than 24,000 MPN/100ml and substantial amounts of nutrients. The test results confirmed that the sampled material was highly contaminated wastewater as opposed to sand used for bedding, or freshwater.

29. On **January 25, 2018**, ODA issued a Notice of Assessment of Civil Penalty (NCP) in the amount of $10,640.00 to Lost Valley Farm assessing civil penalties for the violations noted in NON/POC #1727377, NON/POC #1727775, and NON/POC #1727781.

In addition, the NCP assessed civil penalties for the violations observed at the December 5 and December 15 inspections. The Lost Valley Farm did not challenge the NCP which became final by operation of law on April 5, 2018. The civil penalty has not been paid.

Table 4. New violations asserted in NCP #1727782

Permit Condition	Description of Violation
S2.E. Waste storage facilities: 1. All manure, process wastewater and contaminated storm water must be stored on impermeable prepared surfaces and permittee must provide adequate storage capacity for solid and liquid waste at all times. 2. The permittee must maintain sufficient storage capacity to contain all manure, process wastewater, and storm water runoff and direct precipitation from a 25-year/24-hour storm event.	(1) Failure to properly operate and maintain waste collection and transfer structures at the BioLink flush water treatment system resulting in an unauthorized discharge from the production area. (12/5/17) (2) In the area of the BioLink system, ODA found that liquid and solid manure had discharged from the BioLink tank out onto unprepared soil and had flowed into the maternity barn and pooled in areas that were not approved for manure storage. The Lost Valley Farm operator had removed the cover plate from the BioLink tank and caused the discharge despite express instruction from ODA not to do so. (12/15/17 observation of discharge). (3) All three lagoons were at capacity with no additional room for storage of manure and process wastewater generated on a daily basis or for a 25-year/24-hour storm event.
S4D.3 Reporting requirements:	Failure to report discharges from the system failure in the BioLink tank.
S2.H. Proper operation and maintenance.	Failure to properly operate and maintain waste collection and transfer structures at the BioLink flush water treatment system.

30. On **February 15, 2018**, performed an inspection of the facility and ODA observed that both settling cells were overflowing into areas not authorized for wastewater storage. In addition, the three lagoons were all violating freeboard and discharging wastewater over the top of the liners. The overflow was caused by elevated wastewater levels combined with high winds. The extent of the overflow was so severe that the wastewater was overflowing onto gas vents that are designed to allow gas generated by the earth below the lagoon to escape to the atmosphere so that the lagoon liners do not float or get gas bubbles trapped between the lagoon liner layers. The gas vents are direct conduits to soil beneath the lagoon liners. Wastewater overflow also entered into unlined lagoons that were not approved for waste storage.

The ODA issued a NON/POC #1827832 directing the Lost Valley Farm to immediately take all legal steps to bring the lagoon levels back into compliance below the required freeboard and to immediately take all legal steps to reduce waste inputs causing excessive fill of the lagoons above the required freeboard. This order was not challenged and became final by operation of law on April 16, 2018.

Table 5. NON/POC #1827832

Permit Condition	Description of Violation
S2.E. Waste storage facilities	Two settling cells and all three lagoons violated freeboard and were observed discharging over the tops of the liners onto unprepared ground.

31. On **February 16, 2018**, the ODA again performed an inspection of the facility and observed that settling cell #1 was actively overflowing and that lagoons #3 and #5 were overtopping from the north and east ends due to overfill of the lagoons and wind. In addition, the ODA observed leaks from the above-ground soft hoses transporting waste from the lagoons to land application areas and also observed drag hose applications of manure to fields to which excessive manure had already been applied.

32. On **February 23, 2018,** the ODA filed a complaint in the Multnomah Circuit Court seeking a temporary restraining order enjoining the Lost Valley Farm from producing liquid wastewater. After hearing oral argument, the Court granted ODA's motion for the TRO in part. The judge ordered that Lost Valley Farm immediately be enjoined to comply with all terms of the Individual CAFO permit No. OR 995129 and the AWMP.

33. On **February 28, 2018**, the ODA conducted a follow up inspection and observed the following permit violations.

Table 6. Final Inspection Report (FIR) #1827834

Permit Condition	Description of Violation
S2.E. Waste storage facilities (4 violations).	(1) Contaminated storm water and processed wastewater accumulated in solids handling and storage areas not designed or approved for liquid waste storage. (2) Potato pulp liquid storage overtopping and discharging to an unprepared surface. (3) Settling cells number 1 and 2 violating freeboard requirements. (4) Berms and containment grading with native materials and no compaction.
S2.H. Proper operation and maintenance (2 violations).	(1) Openings around collection grates that allow process wastewater to discharge from the waste collection to an unprepared surface. (2) Sand lane discharges of processed wastewater to unprepared earthen surface north of lane 1.
S4.D.1 Reporting requirements.	Failure to report unauthorized discharge.
S3.A.2 AWMP implementation and compliance.	Facility is unable to apply liquid manure due to the pumps not being plumbed to the circles; Lost Valley Farm has been using drag hoses to transport liquid waste from the lagoons to the application areas.

34. On **March 1, 2018**, the ODA conducted a follow up inspection and observed the following violations.

Table 7. FIR #1827835

Permit Condition	Description of Violation
S4.C. Recordkeeping and availability requirements.	Manure application records did not include weather data.
S4.A. Monitoring requirements (2 violations).	(1) Manure was not applied in accordance to the department approved AWMP. (2) Application records did not include soil moisture or current lysimeter data.

35. On **March 7, 2018**, the ODA conducted a follow up inspection and observed the following permit violations.

Table 8. FIR #1827836

Permit Condition	Description of Violation
S2.E. Waste storage facilities (2 violations).	(1) Mortality compost at the southeast end of the production area was not stored on prepared surface. (2) An aboveground unprotected soft drag hose was used as a waste conveyance through the production area without department approval.
S2.B. Production area limitations (2 violations).	(1) Unauthorized discharge of silage, by-product feed, and contaminated storm water to adjacent swale. (2) Unauthorized discharge of processed wastewater from Loafing Barn 2 to unprepared surface.
S2.H. Proper operation and maintenance.	Unauthorized discharge of processed wastewater from the northern sand lane to an unprepared surface.
S4.A. Monitoring requirements.	No soil moisture probes or lysimeters are installed in fields where irrigation was applied.
S4.D. Reporting requirements.	Failure to report unauthorized discharge.

On **March 8, 2018**, the ODA conducted a follow up inspection with the operator and discussed the Annual Report requirements. At this inspection, the ODA requested application records to verify the volumes of manure applied to the fields. ODA received some, but not all of the records that were requested. These records are required by the permit.

36. On **March 14, 2018**, the ODA conducted a follow up inspection and ODA observed the following violations.

Table 9. FIR #1827839

Permit Condition	Description of Violation
S2.E. Waste storage facilities (4 violations).	(1) Solid waste was observed on unprepared, unapproved surfaces downslope of the old mortality area. (2) Solid waste was stored on unprepared, unapproved surfaces in the groundwater recharge area. (3) Solid waste and processed wastewater were stored on the west end of the unbuilt loafing barns. (4) Ponded, contaminated storm water was observed in unlined settling cell 3.
S2.B. Production area limitations (3 violations).	(1) The north sand lane had evidence of ongoing overflow of processed wastewater and flooding on the north bank. (2) Operator cut out the retaining wall in the loafing barn 4 causing

	processed wastewater to enter an unprepared surface. (Samples collected). (3) Unauthorized discharge of contaminated storm water on the north side of the silage slab west of the loafing barns.
S2.H. Proper operation and maintenance.	A wet spot was observed between the heifer sand land and settling cell and holes and erosion were observed.
S4.D. Reporting requirements.	Failure to report unauthorized discharge.

37. On **March 16, 2018**, the ODA entered into a Stipulated Judgment with the Lost Valley Farm which terms:

a) Limited the process wastewater created by any means at the Lost Valley Farm to 65,000 gallons/day.
b) Required that by April 12, 2018 (20 days after entry of judgment on March 23, 2018) the Lost Valley Farm remove 38 AF of the existing total volume of liquid manure and process wastewater stored in the settling cells and lagoons. The ODA agreed that it would consider the 38 AF of existing volume is removed if it observed one foot of freeboard in each of the settling cells and lagoons and the capacity available the lagoon system to store 38 AF of manure and process wastewater.
c) By June 1, 2018, the Lost Valley Farm is to remove an additional 37 AF of additional liquid manure and process wastewater to assure sufficient operating capacity without further discharge from the settling cells or lagoons. In addition, the Lost Valley Farm must continue to maintain 38 AF of storage to accommodate a 25-year 24-hour storm event.
d) Upon achieving necessary storage capacity, the Lost Valley Farm must continue to maintain the ability to store all wastewater and storm water generated by the facility without violation of the lagoon and settling cell freeboard.
e) The Lost Valley Farm must report all discharges resulting from the failure of any solid or liquid waste storage or collection system in the production or application areas.

38. On **March 22, 2018**, the ODA conducted a follow up inspection and observed the following permit violations.

Table 10. FIR #1827841

Permit Condition	Description of Violation
S2.E. Waste storage facilities (3 violations).	(1) Solid manure was piled along the north wall outside loafing barn 2 and in the unbuilt loafing barn area. (2) Settling cell 2 was observed violating freeboard and had overflowed in the north and south corners of the west end. (3) Lagoon 5 overflowed at the east end because of wind caused waves overtopping the lagoon liner.
S2.H. Proper operation and maintenance (3 violations).	(1) Food waste and manure collection vaults were blocked by plywood causing storm water to commingle with manure and to discharge onto unprepared surfaces.

	(2) Lagoon 5 overflowed at the east end because of wind caused waves overtopping the lagoon liner. (3) Unauthorized discharge from waste conveyance between lagoon complex and the screen separator.
S4.D. Reporting requirements.	Failure to report discharges.

39. On **March 22, 2018**, the Lost Valley Farm self-reported the following violations.

Table 11. Self-reported violations

Description of Violation
(1) Unauthorized discharge of processed wastewater to an unprepared surface from a hose line leak west of the commodity area. No grab sample was collected.
(2) Lane scraping caused flush water to wave and top over the curb onto an unprepared surface. A grab sample was collected.
(3) Wind caused waves to overtop the liner causing processed wastewater onto unprepared surface on the east end of Lagoon 5. A grab sample was collected.
(4) Unauthorized discharge of processed wastewater from settling cell 2 at southwest and northwest corners onto unprepared surface. A grab sample was collected.
(5) Unauthorized discharge of processed wastewater from junction box between the heifer sand lane and settling cells / lagoons to unprepared surface. A grab sample was not collected.
(6) Unauthorized discharge of storm water comingled with manure on unprepared surface east of the commodity area. A grab sample was collected.
(7) Unauthorized discharge of silage, by-product feed, and contaminated storm water to adjacent swale. A grab sample was collected.

Based on the self-reported incident, ODA determined one violation of permit condition S2.B. (Production area limitations).

40. On **March 23, 2018**, the Lost Valley Farm self-reported the following violations.

Table 12. Self-reported violations

Description of Violation
Unauthorized discharge of processed wastewater to an unprepared surface from a hose line leak west of the commodity area. No grab sample was collected.

Based on the self-reported incident, ODA determined one violation of each of the following permit conditions: S2.E. (Waste storage facilities); S2.B. (Production area limitations).

41. On **March 27, 2018**, the Lost Valley Farm self-reported the following violation.

Table 13. Self-reported violation

Description of Violation
Wind-created waves overtopped the liner in Lagoon 5 causing an unauthorized discharge of processed wastewater to an unprepared surface. No grab sample was collected.

Based on the self-reported incident, ODA determined one violation of each of the following permit conditions: S2.E. (Waste storage facilities); S2.B. (Production area limitations).

42. Also, on **March 27, 2018**, the Oregon Department of Justice sent a demand letter to Lost Valley Farm for documents sufficient to enable it to determine whether the Lost Valley Farm was complying with the 65K/day production cap on generation of liquid waste. The Lost Valley Farm did not produce documents that complied with this demand letter.

43. On **March 28, 2018**, ODA conducted a follow up inspection and observed the following violations.

Table 14. FIR #1827842

Permit Condition	Description of Violation
S4.A. Monitoring requirements.	(1) Operator did not provide records for daily and weekly inspections. (2) Lysimeter and soil moisture records were not available.
S3.A. Animal Waste Management Plan	Operator did not complete agronomic rate calculations prior to applying manure.
S2.E. Waste storage facilities	ODA observed a pile of solid waste stored on an unprepared surface at the north end of the commodity area.

44. On **April 2, 2018**, the Lost Valley Farm self-reported the following violation.

Table 15. Self-reported violation

Description of Violation
Unauthorized discharge of processed wastewater from the junction box to an unprepared surface. A grab samples was collected.

Based on the self-reported incident, ODA determined one violation of permit condition S2.B. (Production area limitations).

45. On **April 3, 2018**, the Lost Valley Farm self-reported the following violation.

Table 16. Self-reported violation

Description of Violation
Unauthorized discharge of processed wastewater to an unprepared surface for the east end of Loafing Barn 1. A grab sample was collected.

Based on the self-reported incident, ODA determined one violation of permit condition S2.B. (Production area limitations).

46. On **April 4, 2018**, the ODA conducted a follow up inspection and observed the following permit violations.

Table 17. FIR #1827843

Permit Condition	Description of Violation
S2.H. Proper operation and maintenance.	Unauthorized discharge of processed wastewater from the north sand lane onto an unprepared surface.
S2.E. Waste storage facilities.	Manure piles were observed in the southwest sand lane that caused wastewater to pond on an unprepared surface.
S4.A. Monitoring requirements.	Operator failed to provide lysimeter or soil moisture data.
S4.D. Reporting requirements.	Failure to report unauthorized discharge.

A water sample was collected by ODA staff and sent to the Umpqua Research Company in Myrtle Creek, Oregon. Sample results were received on April 5, 2018 and verified that the liquid leaving the production area was waste.

47. On **April 8, 2018**, Lost Valley Farm self-reported the following violations.

Table 18. Self-reported violation

Description of Violation
(1) Unauthorized discharge of processed wastewater from the junction box to unlined Settling Cell 3. A grab samples was collected.
(2) Unauthorized discharge of processed wastewater to unprepared surface from the heifer sand lane.

ODA determined one violation of permit condition S2.B. (Production area limitations) and violation of S2.E. (Waste storage facilities).

48. On **April 11, 2018,** Lost Valley Farm self-reported the following violations.

Table 19. Self-reported violation

Description of Violation
(1) Unauthorized discharge of processed wastewater to an unprepared surface from the northern sand lane.
(2) Unauthorized discharge of processed wastewater to an unprepared surface from the heifer sand lane.
(3) Unauthorized discharge of processed wastewater ton an unprepared surface from the potato drying pad.
(4) Unauthorized discharge of processed wastewater to an unprepared surface from Lagoon 5 due to waves overtopping the liner. A grab sample was collected.

ODA determined one violation of permit condition S2.B. (Production area limitations) and violation of S2.E. (Waste storage facilities).

49. On **April 13, 2018**, the ODA conducted a follow up inspection and observed the following permit violations.

Table 20. FIR #1827844

Permit Condition	Description of Violation
S2.E. Waste storage facilities.	(1) Due to installation of the liner, settling cell 2 was violating freeboard.
S2.B. Production area limitations.	The potato drying area had ponded water from the reported unauthorized discharge to an unprepared surface.
S2.H. Proper operation and maintenance.	The heifer enclosure had ponded water from the reported unauthorized discharge to an unprepared surface.
S4.A. Monitoring requirements.	Soil moisture records from the land application areas were not complete.
S4.D. Reporting requirements.	Failure to report unauthorized discharge.

50. On **April 18, 2018**, the ODA conducted a follow up inspection and observed the following violations.

Table 21. FIR #1827844

Permit Condition	Description of Violation
S2.H. Proper operation and maintenance.	Unauthorized discharge of processed wastewater from the north sand lane onto an unprepared surface.
S2.E. Waste storage facilities.	Ponded water was observed in the swale between the silage pad and the lagoon complex area on unprepared surface.
S4.A. Monitoring requirements.	No soil moisture data.
S4.D. Reporting requirements.	Failure to report unauthorized discharge.

51. On **March 15, 2018**, the ODA received a 2017 CAFO Annual Report for Lost Valley Farm which was signed and submitted by Travis Love, the Farm Manager for Lost Valley Farm. On March 30, 2018, the ODA completed review of the Annual Report and found the following incomplete or inconsistent information:

a) Permittee failed to provide agronomic rate calculations for all manure and process wastewater applications to all fields as required by S4.D.3(a)(v).

b) Permittee failed to report prohibited discharges as required by S4.D.3(a)(xviii)(reporting discharges from the previous year).

c) The individual circle land application records did not match the Land Application Summary sheet as required in S4.D3(a)(v, xii, xiv). For example, On the CAFO Annual Report pages 31-32, the total Nitrogen applied to Circle 403 is 792 pounds/acre for Nitrogen from all sources and the 2017 Land Application Summary sheet shows Circle 403 received 281.94 pounds/acre of Nitrogen from all sources.

52. On **April 23, 2018**, the ODA issued a NON/POC #1827455 for failure to install crop system monitoring in the application area as directed by the permit and for failure to provide a complete Annual Report.

Table 22. NON/POC #1827455

Permit Condition	Description of Violation
S4.A.3 Crop System Monitoring.	Between June 20, 2017 and December 13, 2017 Lost Valley Farm made land applications of manure and process wastewater to fields included in the ODA-approved AWMP but failed to install the required soil moisture monitoring sensors or failed to monitor and record any soil moisture results.
S4.D.3 Annual Report.	ODA found incomplete and inconsistent information in the Annual Report submitted by Lost Valley Farm.

It is important that applications only be made when soil moisture meters are installed because the meters provide information regarding whether irrigation will result in waste being driven down below the root zone and into groundwater.

53. Review of the Annual Report resulted in ODA finding that every land application that had been made by Lost Valley Farm between July 5, 2017 and December 21, 2017 (a total of 106 applications) was in violation of the crop system monitoring condition S4.A.3.

54. On **May 2, 2018**, the ODA inspected the facility and observed a discharge that had occurred at the east end of the loafing barn. While this discharge had been reported, the ODA inspector observed that other areas had the appearance of discharges including the north sand land and the farm waste conveyance vault. These discharges had not been reported. The ODA also observed that it appeared that lagoons #3 and 5 had overtopped on the east end due to overfill and wind action.

55. **On May 9, 2018**, the ODA observed windblown liquids on the bank of cell #3 and on **May 16, 2018**, the ODA observed that the facility was not maintaining sufficient capacity in the lagoons for the 25-year, 24-hour storm event.

56. On **June 20, 2018**, the ODA issued NON/POC #1828184 noting the following permit violations:

Table 23. NON/POC #1828184

Permit Condition	Description of Violation
S2.A.2. Waste storage facilities.	(1) The north sand lane had evidence of ongoing overflow of processed wastewater and flooding on the north bank. (2) Lagoon cells #3, and #5 discharging due to wind-blown waves causing lagoon liquids to overtop the east end of the lagoons and discharge onto unprepared soil.
S3.A.1 and S3.A.3	Over application of irrigation water with pivot on circle #503 and #507 which are currently both planted in potatoes but which lands were previously used for land application of waste.

The ODA's concerns centered around continued wind-driven overtopping of the lagoons onto unprepared soils and with over irrigation of fields now planted in crops that were previously used as land application areas for waste. Over irrigation of lands previously used for land application

of waste can lead to wastes migrating below the root zone and into groundwater. To address these concerns, ODA ordered the following actions to correct the violations observed.

a) All irrigation water and process wastewater land applications must not exceed soil intake rate, cause any runoff or cause the soil to become saturated beyond water holding capacity.
b) Before making any applications of irrigation water or process wastewater to any fields on Lost Valley Farm, determine and record the soil intake rate in inches and the soil water holding capacity in the root zone for all fields and crops.

57. Since permit issuance, the ODA has observed that permittee has not operated consistent with the terms of the ODA-approved AWMP that govern acreage available as land application areas. Specifically, the AWMP specifies that there are 5,200 acres of land available for land application of waste. In practice, however, 2,369 of those acres are still planted in poplar trees or in cut over fields not yet cleared for farming. The fields that are now planted in poplars are leased back to the tree farm that sold the land now occupied by the Lost Valley Farm. Because the 2,369 acres are still planted in trees or have not been cleared for farming, these acres are unavailable as land application area in violation of Permit condistion S2.C.1 (permittee must apply manure or process wastewater to land application areas at agronomic rates in acordance with permittee's ODA-approved AWMP), S3.A.1 (permittee must implement its current ODA-approved AWMP developed for the facility), and S3.A.3 (ODA's approved AWMP is incorporated into the permit by reference).

58. Since permit issuance, the ODA has observed that permittee has not operated consistent with the terms of the ODA-approved AWMP that govern acreage available as land application ares in another instance. Specifically, the ODA has observed that permittee has leased 1,320 acres of land that are described as land application area in the ODA-approved AWMP to a potato farmer who has planted those lands in potatoes. Waste from the Lost Valley Farm may not be applied to those lands planted in potatoes. Because 1,320 acres of land are unsuited for land application area despite being represented as available land application area in the AWMP, the permittee is in violation of permit condition S2.C.1 (permittee must apply manure or process wastewater to land application areas at agronomic rates in accordance with permittee's ODA-approved AWMP), S3.A.1 (permittee must implement its current ODA-approved AWMP developed for the facility), and S3.A. (ODA's approved AWMP is incorporated into the permit by reference).

ULTIMATE FINDINGS OF FACT

1. Violations of permit condition S2.E (Waste storage facilities). Between June 28, 2017, and May 9, 2018, the Lost Valley Farm has violated condition S2.E. at least 32 times. Several of these violations resulted in significant discharge of liquid wastewater onto unprepared surfaces as follows:

a) Overtopping of the settling cells and lagoons: Permittee has consistently over-filled settling cells and lagoons such that they over top and flood surrounding unprepared surfaces whenever the wind blows. Overfill has resulted in a significant volume of wastewater discharging onto the unprepared soils around

the settling cells and the waste storage lagoons in addition to flowing into air vents that provide direct access to the soils underneath the lagoon liners.

b) Improper operation of the sand lane which consistently results in flooding of wastewater onto unprepared soil surfaces.

c) Leaking soft hoses used to transfer liquid waste from the lagoon area to the application area. The permittee utilizes soft (or drag) hoses to transport liquid waste to the application area. These hoses consistently leak or discharge onto unprepared surfaces with the result being significant puddling of wastewater throughout the production area.

d) Potato pulp liquid storage overtopping and discharging to an unprepared surface. The permittee has consistently allowed for storage of potato pulp on a concrete pad that does not contain the liquid that discharges from the pulp. The result is that significant quantities of wastewater discharge off of the concrete pad onto unprepared soil surfaces adjacent to the pad.

e) Contaminated stormwater discharging from the silage area into an adjacent swale that is not prepared. The permittee has consistently allowed wastewater to drain off of the silage pad and into an unprepared swale that is adjacent to the silage pad. The discharges are significant and result in consistent and large quantities of standing water in the swale.

Permittee has consistently violated the permit's condition prohibiting discharge of liquid wastewater onto unprepared earthen surfaces. The resulting discharges have been significant, consistent, and ongoing.

2. Violations of permit condition S2.E. (Waste storage facilities) that resulted in significant amounts of solid waste being discharged onto or stored on unprepared surfaces.

a) Permittee experienced a significant discharge of solid and liquid waste from the BioLink tank which immersed the partially constructed maternity barn in solid and liquid waste.

b) Solid waste is consistently stored on unprepared, unapproved surfaces.

d) Soiled bedding is consistently stored on unprepared surfaces adjacent to the sand lanes and discharges of wastewater outside of the sand lanes has resulted in the liquid and solid waste being further discharged onto unprepared surfaces.

e) Improper storage of mortalities resulting in discharges to unprepared surfaces.

Permittee has consistently and repeatedly violated the permit's condition requiring that manure must be stored on impermeable prepared surfaces. In addition, permittee has violated S2.E.2's requirement that the waste storage facilities contain all stormwater runoff. The resulting failure to adequately store manure and solid waste has resulted in repeated overflows of liquid storage facilities and discharges in the production area.

3. Violations of permit condition S2.H (Proper operation and maintenance). By failing to properly operate and maintain the facility, Permittee has incurred the following violations.

a) Permittee has consistently run out of capacity for liquid waste storage without a means for exporting or land applying the liquid waste. This has resulted in continual and persistent overfill of the settling cells and waste storage lagoons.

b) Permittee has failed to install and monitor staff gages, leak detection systems, and air vent caps on the liquid waste storage lagoons despite being ordered to do so since June 2017 and despite this being a term in the Individual Permit and the AWMP.

c) Permittee has consistently failed to maintain the compost area to ensure that stormwater flow was not diverted from the approved collection point. Storm water flowing through the compost area has resulted in the formation of liquid waste pools in the compost area, an area not designed to store liquid waste that would allow the liquids in the pools to seep into the ground.

d) The permittee has failed to properly operate and maintain waste collection and transfer structures at the BioLink flush water treatment system with at least one catastrophic failure that resulted in flooding the surrounding area with solid and liquid waste.

e) Permittee has consistently failed to keep openings around collection grates clear so as to prevent process wastewater from discharging from waste collection facilities onto unprepared earthen surfaces.

f) Permittee has consistently failed to operate or manage the sand lanes so that they do not discharge onto unprepared earthen surfaces.

g) Permittee has consistently failed to address wind caused waves that cause over-topping of the liquid waste storage lagoons despite being ordered on numerous occasions to do so.

h) Permittee has consistently failed to properly manage liquid waste and manure collection and transfer vaults and those failures caused repeated discharges of liquid and solid waste onto unprepared earthen surfaces.

The inability to properly measure lagoon capacity, or properly operate or maintain the facility has resulted in consistent, significant, and persistent discharges of liquid and solid waste onto unprepared earthen surfaces in the production area.

4. Violation of permit condition S3.A.2 (Implementation and compliance with AWMP) and S3.D.1 (Failure to operate in accordance with the approved AWMP.

a) Permittee has failed to install lagoon measuring devices: Permittee has never installed the lagoon depth markers and has also consistently over filled the lagoons. Significant unauthorized discharges from the lagoons have subsequently resulted.

b) Failure to install piping, pumps and related waste transfer system infrastructure from the lagoon area to the application area. By failing to install piping, pumps and related waste transfer system infrastructure as described in the AWMP, the permittee has been unable to transport liquid waste from the waste storage lagoons to the application areas without temporary, soft hoses used for that purpose. The soft hoses used to transfer liquid waste and the drag hoses used in the application fields consistently leak or discharge onto unprepared surfaces which has resulted in pooling of wastewater throughout the production area and in the application fields where drag hose application of liquid waste was attempted.

c) Failure to build out all of the waste storage facilities as represented in the AWMP. The AWMP requires the construction of three settling cells, six lagoons and one

digester cell (similar to a lagoon). At full build out, the facility was to have the capacity to store liquid waste so as to maintain at least 12 inches of freeboard (height between the top of the wastewater storage liner and the highest liquid level in the lagoon or settling cell) and the capacity to store one, 25yr/24hr storm event volume or 40 AF. To date Lost Valley Farm has only constructed two settling cells, three lagoons, and zero digester cells. Despite operating with fewer animals than the 30,000 permitted, the operator is still producing more waste than can be stored in the existing facilities. Over fill of the existing lagoons and high winds have caused continual and significant discharges from these facilities.

d) Storage of potato waste and resulting discharges. Individual Permit OR995129 and the AWMP do not authorize permittee to rent out concrete pads on the facility that should otherwise be used to store feed grown or solid manure produced by Lost Valley Farm. Nonetheless permittee has leased out one silage storage pad for the storage of significant quantities (516.44 tons/day average for the week of 4-23-18 through 4-30-18) of potato pulp. The pulp is full of liquid when it is unloaded onto the pad, and the potato pulp and pulp liquid waste sloughs or drains off of the pad onto surrounding unprepared surfaces. In addition, to being inconsistent with the permit and the AWMP the Lost Valley Farm is not accessing solid and liquid waste storage facilities and feed storage facilities it requires to stay in compliance with the permit.

e) Failure to apply waste in fields consistent with the terms of the AWMP. Permittee failed to complete agronomic rate calculations before applying manure.

The Lost Valley Farm has failed to operate the facility consistently with the ODA-approved AWMP and so violates the permit's terms. The result of not managing the facility consistent with the ODA-approved AWMP is consistent, significant discharges of waste onto unprepared surfaces in the production area and excessive nutrient applications to fields in the land application area.

5. Violation of permit condition S4.A. (Monitoring requirements). Permittee has consistently violated the permit's requirement that animal waste holding ponds and crop systems be monitored.

a) Permittee failed to adequately monitor soil moisture data in the application area and violated this permit term with every application since application of waste began at the facility. Between June 20, 2017 and December 13, 2017 Lost Valley Farm made land applications of manure and process wastewater to fields included in the ODA-approved AWMP but failed to install the required soil moisture monitoring sensors or failed to monitor and record any soil moisture results. Between July 5, 2017 and December 21, 2017 at least 106 applications of waste occurred without the proper monitoring of soil moisture data. Absent this information the Lost Valley Farm is incapable of monitoring hydraulic loading (inches applied) from all wastewater and all irrigation applications.

b) Lost Valley Farm failed to install lysimeters or installed lysimeters but did not monitor lysimeters. Lysimeters detect the presence of water, concentrations of TKN, nitrate + nitrite nitrogen and *E.coli* in the shallow vadose zone below rooting zone as required.

Absent proper crop system monitoring the Lost Valley Farm has significantly increased the likelihood that wastewater has discharged into the groundwater underlying the application area.

6. Violation of permit condition S4.D (Failure to report discharges). With the exception of those self-reported violations on March 22, 23, 27, and April 2, 3, 4, and 11, 2018, permittee has consistently and repeatedly failed to report system failures within 24 hours of the discharge resulting from such failures.

a) Permittee failed to report the failure of the BioLink system to ODA within 24 hours of the failure and the resulting discharge.

b) Permittee consistently failed to report discharges from the lagoons resulting from failure of the system to contain the wastes stored within them when the wind blows.

c) Permittee consistently failed to report discharges resulting from failed operation of the collection vaults and the sand lanes.

d) In other instances where permittee did self-report, such reports did not include all instances of discharges resulting from system failures and did not provide the quantity of the discharge(s).

7. Violation of permit condition G9 (Duty to provide information). On March 28, 2018, after several repeated requests for information, the ODA sent Lost Valley Farm a demand letter requesting information sufficient for it to determine whether the Lost Valley Farm was operating consistent with the terms of the Stipulated Judgment's requirement that production of wastewater be capped at 65,000 gallons/day. The ODA also requested information sufficient for it to determine whether the lagoons had the capacity to hold the 25-yr/24-hr storm event. The Lost Valley Farm did not provide this information to the ODA in violation of condition G9's requirement that the permittee furnish, upon request, any information to determine compliance with the permit.

8. Violations of permit condition S2.C.1 (permittee must apply manure or process wastewater to land application areas at agronomic rates in accordance with permittee's ODA-approved AWMP). Subtracting out those lands that are planted in poplars or cut over fields unprepared for farming and those lands planted in potatoes and unavailable as land application area, the permittee only has 1,520.8 acres farmed in dairy feed crops to which permittee may apply manure, inconsistent with the provisions of the ODA-approved AWMP.

9. Violation of permit condition G2 (Duty to comply). The permittee must comply with all terms of the permit but as provided, the permittee has failed to comply with the terms of the permit since the permit was issued.

CONCLUSIONS OF LAW

1. The terms of Oregon CAFO NPDES Individual Permit # OR995129 have been violated in violation of ORS 468B.025(2) and so the permit may be revoked. ORS 468.070; CAFO NPDES Individual Permit No. OR995129.

2. The ODA has information indicating that the permitted operation poses a threat to human health or welfare and so the permit may be revoked. CAFO NPDES Individual Permit No. OR995129.

3. Permittee has caused wastes to be placed in a location where such wastes are likely to be carried into groundwater, waters of the state, in violation of ORS 468B, and so the permit may be revoked. ORS 468B.025(1); OAR 340-045-0060(2)(a).

DISCUSSION

1. Lost Valley Farm has repeatedly violated the terms of CAFO NPDES Individual Permit #OR9915129 and caused waste to be placed where it is likely to be carried into groundwater

ODA and DEQ issued Individual Permit #OR 995129 to permittee on March 31, 2017. Since that time, ODA has issued seven NON/POCs and one Notice of Assessment of Civil Penalty noticing permittee of repeated violations of the permit. ODA staff has also made exhaustive efforts to bring permittee into compliance with the terms of the permit through routine and follow-up site visits and inspections, and numerous discussions with permittee and his farm manager. Despite ODA's efforts, Lost Valley Farm has continued to violate the permit's terms including continued unauthorized discharges of liquid and solid waste onto unprepared surfaces – namely the sandy porous soils of the Lower Umatilla Basin GWMA in an area where the aquifer is on average approximately 33 feet below land surface. The agencies conclude that Lost Valley Farm's permit violations have also caused waste to be placed where it is likely to be carried into groundwater, a water of the state in violation of ORS 468B.025.

2. The agencies have information indicating that the continued operation of the Lost Valley Farm endangers human health

Lost Valley Farm is located in the Lower Umatilla Basin GWMA, a sensitive environmental area that has an aquifer with known elevated nitrate levels and permeable soil. Levels of nitrate in the Lower Umatilla Basin GWMA already exceed state drinking water standards. The upper aquifer in the northern part of the Lost Valley Farm is about 33 feet below the surface, and the ODA generally treats aquifers of depths less than 100 feet as being vulnerable to surface contaminants. Lost Valley Farm is up gradient of a large part of the GWMA, and any groundwater pollutants emanating from the dairy could potentially impact a broad area of the shallow aquifer within the GWMA. There are 81 public water supply systems in the GWMA, and five of those are within ten miles of the Lost Valley Farm. Three of those systems are located within a six-mile radius of the dairy. In addition to these public systems, there are many more private drinking water systems located in the GWMA.

The conditions in Individual Permit #OR995129 are in place to ensure that wastewater is properly stored on impermeable surfaces so as to avoid leaching into groundwater. The waste and wastewater collected in CAFO impoundments contain numerous pollutants that can threaten human health and safety. Animal waste contains *E. coli*, salmonellosis, shigellosis, typhoid, cholera, bacterial dysentery, viral hepatitis, and gastroenteritis, in addition to nitrates.

Permittee's numerous, repeated, and serious permit violations have allowed wastewater and manure to be placed directly on the soil and land surfaces where they are likely to leach into groundwater. The permit's terms are preventive; that is, they are in place to ensure the public health. The ODA has information that leads it to conclude that violation of the permit's terms even absent an indication that nitrate levels in the groundwater have increased, poses a threat to human health or welfare.

3. The permittee has not constructed the necessary infrastructure to operate in compliance with the permit's terms

The permittee never constructed the facility consistent with the terms of the ODA-approved AWMP. At full build out, the facility was to have the capacity to store liquid waste so as to maintain at least 12 inches of freeboard and the capacity to store one 25-year/24-hour storm event volume of 38 AF. To date, Lost Valley Farm has only constructed two settling cells, three lagoons and no digester cells. Despite operating with fewer animals than the 30,000 permitted, the permittee is still producing more waste than can be stored in the existing facilities. The lack of adequate infrastructure has led to consistent overfill of the settling cells and the lagoons, which in turn, has led to nearly continuous discharges of wastewater onto the soil.

In addition, the permittee never installed the pipes and related infrastructure according to the construction designs in the AWMP that would transport waste from the lagoons to the application areas. By failing to install piping and infrastructure as described in the AWMP, the permittee has been unable to transport liquid waste from the waste storage lagoons to the application areas without using single-walled soft hoses (drag hoses). The hoses continually leak or discharge onto the soil, leaving puddles of waste throughout the production area.

Other infrastructure problems have included the failure of the BioLink flush water treatment system that has resulted in permittee being unable to manage solid and liquid waste as provided in the AWMP and in one instance led to a catastrophic discharge that flooded the nearby maternity barn and covered the soil in waste. In addition, the inadequate design of the "sand lanes" and collection vaults has resulted in clogging, which in turn, has resulted in back up and overflow of solid and liquid waste on a nearly constant basis.

Proper infrastructure for the facility also includes maintaining sufficient land application area for waste application. The ODA would not have permitted the facility for 30,000 animals had it known that the permittee would not develop and maintain the full 5,200 acres that is necessary to assure application of waste at an agronomic rate. As it stands, applicant has access to only 1,510.3 acres of land for land application of waste. Absent exportation of waste, this number of acres is only sufficient to accommodate 8,700 animals.

In sum, without the adequate infrastructure as was described in the ODA-approved AWMP, the permittee is unable to operate in accordance with the ODA-approved AWMP which is incorporated by reference into the permit's terms and is also unable to comply with those permit terms governing proper waste storage, proper disposal of storm water, proper transport of wastewater to settling cells and storage lagoons, and proper agronomic application of land-applied waste.

4. The ODA cannot administer the permit because of permittee's failure to properly inspect, monitor and report or keep accurate records.

CAFO NPDES Individual Permit No. 9915129 condition G2 requires the permittee to comply with all conditions of the permit. That is, the permit is only effective if the holder complies with its terms. In addition, proper administration of the permit requires that the permittee comply with monitoring, record keeping, and reporting requirements as are provided in conditions S4.A (monitoring requirements), S4.C (record keeping and availability of record requirements), and S4.D (reporting requirements). Absent permittee complying with these terms, the ODA cannot administer the permit to assure compliance with its terms.

a) Permittee fails to inspect and monitor the facility as necessary to ensure compliance with the permit's terms and with the AWMP.

Condition S4.A.2 requires the permittee to monitor animal waste holding ponds weekly to determine wastewater and freshwater flow volumes into waste lagoons. This is to be accomplished using estimates from depth records collected from staff gages installed in the wastewater lagoons, and from gage and meter readings. Permittee has not installed depth markers in the lagoons and as a result there have never been records available for weekly lagoon depth measurements. In addition, permittee has never installed gages or meters required to determine wastewater and freshwater volumes into waste storage lagoons. The result is that permittee has consistently over-filled waste storage lagoons such that they discharge onto unprepared surfaces in significant volumes.

Permit condition S3 requires crop system monitoring including flow volume, hydraulic loading from all wastewater and all irrigation systems, wastewater monitoring when applying wastewater, soil moisture monitoring, weekly, when irrigating, and monitoring of the presence of water and concentrations of TKN, nitrate + nitrite nitrogen and *E. coli* below the shallow vadose zone below rooting depth, using a lysimeter. Careful monitoring of the amount of wastewater applied and the amount of irrigation water applied is necessary to assure that wastes are utilized by crops rather than discharging into the groundwater. Absent an ability to properly monitor wastes and irrigation water applications, the permittee is unable to assure that wastes are utilized by crops rather than discharging into the groundwater. Absent an ability to properly monitor wastes and irrigation water applications, the permittee is unable to assure that wastes that are applied are not migrating below the root zone into the groundwater. In this case, permittee never installed the necessary moisture meters or lysimeters in the application areas identified in the ODA-approved AWMP. Nonetheless, permittee applied wastes almost daily between June 20, 2017 and December 31, 2017, not only violating the permit's monitoring conditions, but also significantly increasing the likelihood that wastes containing nitrates and *E. coli* have been applied to the application area in a manner that has resulted in migration of these pollutants to the groundwater.

b) Permittee fails to keep records necessary to determine compliance with the permit's terms

Permit condition S4.C requires the permittee to record the information regarding the application of waste to approved application areas, the total amount of manure or wastewater transferred or exported, the management and practices of handling animal mortalities, and water level and water quality data in accordance with the Groundwater Monitoring Plan. Notwithstanding these record keeping requirements, permittee has consistently failed to provide to ODA records of required inspections. Additionally, the permittee has failed to provide information to the ODA even when it was repeatedly requested, as was the case in March 2018, which noncompliance resulted in a demand letter from the Department of Justice which letter Lost Valley Farm was unable or unwilling to comply with.

c) Permittee consistently fails to report discharges

The Lost Valley Farm has also shown that it is unable or unwilling to consistently or accurately report system failures to ODA as illustrated by the numerous NON/POCs issued noticing permittee of this problem and ordering correction of it. In several instances, the discharges that were not reported were significant; for example, the catastrophic BioLink discharge and the significant discharges from the settling cells and lagoons.

In sum, the permittee has demonstrated an inability or an unwillingness to comply with the permit's terms and has done so in a manner that has eroded the trust of the ODA and undermined the effective administration of a permit that relies on permittee's voluntary compliance and self-reporting.

d) Permittee cannot or will not comply with directives to remedy violations

The ODA has issued seven NON/POCs, and one Notice of Civil Penalty to the Lost Valley Farm, noticing the facility of its permit violations and ordering compliance according to specific terms. The Lost Valley Farm has failed to comply with the terms of the ODA's corrective orders to such extent that the ODA sought injunctive relief in the circuit court to prevent further discharges and so protect the public health. In addition to the formal enforcement actions that ODA has taken, it has noted continued violation of the permit's terms at every weekly inspection as has occurred since ODA entered into the Stipulated Judgment with Lost Valley Farms. The Lost Valley Farm has shown that it cannot or will not operate in compliance with the permit's terms, and that ODA's administrative and injunctive remedies are ineffective.

Because the permit may not be properly administered, because the ODA's administrative remedies have failed to bring compliance, and most importantly, because the issuing agencies have information indicating that the permitted operation poses a threat to human health or welfare, the issuing agencies conclude that permit termination is the only effective means to address the violations that ODA has noted and that permittee has failed to correct.

ORDER

Oregon CAFO NPDES Individual Permit #OR995129 is REVOKED and is of no further force and effect. **Permittee has 60 days in which to conduct an orderly shut-down of the facility as follows:**

1. All animals must be moved off of the CAFO facility.

2. All waste storage and control facilities must be cleaned and re-purposed in accordance with the following requirements:

a) Cleaning/Re-purposing Requirements

i) All liquid and solid manure and process wastewater must be removed from the structures and either land applied according to the ODA-approved AWMP or exported as provided in permit condition S2.K.

ii) All liquid storage facilities that could fill with rainwater must be flushed with clean water, the flush water land applied or exported and the remaining liquid in the structure tested to confirm that the *E. coli* level is at or below the water quality standard of 406 CFU/100 ml of sample.

iii) All liquid transfer systems must be cleaned or modified so that they would not be a conduit for any pollutant to enter surface or groundwater.

NOTICE OF RIGHT TO A CONTESTED CASE HEARING

You have the right to a contested case hearing as provided by the Administrative Procedures Act, Oregon Revised Statutes (ORS) Chapter 183 and Oregon Administrative Rule (OAR) Chapter 137 Division 003 on the matters asserted in this Notice of Revocation. ORS 183.415; OAR 340-045-0060(2). **The request for a hearing must be filed with the Oregon Department of Agriculture within 60 days from the date of service of this notice.** OAR 340-045-0060(2)(b). A request for hearing must be in writing and directed to the attention of:

Stephanie Page
Natural Resources and Pesticides Section Director
Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97301-2532

If you make a timely request for a hearing, you will be notified of the time and date of the hearing. The rights and procedures in a contested case will be provided to you upon receipt of a request for a contested case hearing. An administrative law judge from the Office of Administrative Hearings will preside at any hearing. The directors of the signatory agencies have the authority to issue the final order.

You may be represented by legal counsel. Corporations, partnerships, limited liability companies, trusts, government bodies and unincorporated associations must be represented by an attorney unless otherwise authorized by law. OAR 137-003-0550(3). Legal aid organizations may be able to assist you if you have limited financial resources.

FINAL ORDER

If you do not make a timely request for a hearing, you will waive your right to request a hearing and this order will become final and effective 61 days after it was served on you. OAR 137-003-0672. If you request a hearing but later fail to appear at the hearing, withdraw the request for a hearing, or notify the agency or the administrative law judge that you will not appear at the hearing and it is not rescheduled, you will waive your right to a hearing and this order will become final. The signatory agencies designate the relevant portions of its files on the subject of this matter, including all materials that you have submitted relating to this matter, as the record in this case for the purpose of proving a *prima facie* case upon default.

DATED this 27th day of June, 2018.

ALEXIS TAYLOR, Director
Oregon Department of Agriculture

RICHARD WHITMAN, Director
Oregon Department of Environmental Quality

NOTICE TO ACTIVE DUTY SERVICE MEMBERS: Active duty Service members have a right to stay these proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil.