

BEFORE THE OREGON DEPARTMENT OF AGRICULTURE

In the Matter of Cole Easterday	)	NOTICE OF NONCOMPLIANCE
Dbas Easterday Dairy LLC	)	AND PLAN OF CORRECTION
Registrant to OREGON CAFO NPDES	)	#2331041
Individual Permit No. OR995129	)	
Master Address No. 1000257	)	<u>Sent via certified and regular mail.</u>

**I. BACKGROUND**

Pursuant to its authority, the Oregon Department of Agriculture (“ODA” or “department”) has adopted General Permit No.1 for Confined Animal Feeding Operations (“CAFOs”) and can adopt Individual NPDES Permits for CAFOs. Oregon Revised Statute (ORS) 468B.035. ORS 468B.217. Oregon Administrative Rule (OAR) 603-074-0014. Any person owning or operating a CAFO must seek coverage under the Oregon CAFO National Pollutant Discharge Elimination System (NPDES) General Permit No. 01-2016, the Oregon CAFO Water Pollution Control Facilities (WPCF) General Permit No. 01-2015 or an Individual NPDES or WPCF CAFO Permit and must comply with the permits terms, ORS 468B.050. OAR 603-074-0014. ODA, as the administering agency, is charged with enforcing the terms of permitted operations so as to protect the public against animal wastes discharged into the waters of the state. ORS 468B.217. No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050. ORS 468B.025. A Notice of Noncompliance (NON) informs the owner or operator of a violation, including a reference to a particular statute, administrative rule, or order involved, the location of the violation and the consequences of the violation or future violations. OAR 603-074-0040(1)(a).

The department herein finds that Cole Easterday ("registrant" or "permittee"), dba Easterday Dairy, LLC, is in violation of the Oregon CAFO NPDES Individual Permit No. OR995129 for not following irrigation limitations as stated in department approved Animal Waste Management Plan (AWMP), not properly operating and maintaining the irrigation system, and not completing monitoring requirements.

Permit holder is in violation of the permit's special conditions S3.A.1, Animal Waste Management Plan (AWMP) Implementation and Compliance, S4.A.1, Monitoring Requirements, and G6., Proper Operation and Maintenance.

## NOTICE OF NONCOMPLIANCE ("NON")

### a. Findings of Fact

1. Cole Easterday operates an Individual Tier 1 Concentrated CAFO at 73956 Homestead Lane, in Boardman, Oregon in Morrow County, under the Oregon CAFO NPDES Individual Permit No. OR995129 (transferred on April 6, 2020, expired on February 28, 2022, and administratively extended by renewal on October 13, 2021). The permit registration of Cole Easterday, dba Easterday Dairy, LLC, is under Master Address No.1000257.

2. The CAFO NPDES Permit No. 995129 contains the following special and general conditions:

#### **S3.A.1-3, Animal Waste Management Plan (AWMP) Implementation and Compliance which reads:**

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.

#### **S4.A.1, Monitoring Requirements which reads, in part:**

1. Prohibited Discharges

If a discharge to surface water or ground water that is prohibited by S2.B or S2.C occurs, the permittee must record the following information and notify the ODA within 24 hours (see S4.D for written reporting requirements.)

- (a) A description and cause of the discharge;
- (b) The period of discharge including exact date(s), time(s), and duration of discharge;
- (c) An estimate of the discharge volume;
- (d) Name or location of receiving water;
- (e) If a grab sample was taken of the discharge;
- (f) Corrective steps taken, if appropriate, to reduce, eliminate or prevent reoccurrence of the discharge;
- (g) For any unauthorized discharge that may have come in contact with a drinking water intake, confirmation that Oregon Emergency Response System (OERS) was notified.

Item or Parameter	Minimum Frequency	Type of Sample
<i>E. Coli</i> , Nitrate plus Nitrite Nitrogen (NO <sub>3</sub> +NO <sub>2</sub> ), Total Phosphorus (P), TKN	Upon Occurrence, see S2.A.2	Grab sample of effluent discharge from production or land application area, analyzed using test methods in 40 CFR Part 136.

**G6. Proper Operation and Maintenance [40 CFR § 122.41(e)] which reads, in part:**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

3. On **July 7, 2022**, the department received a phone call from Easterday Dairy, LLC to self-report irrigation water runoff occurring on lands (pivots) included in ODA-approved, Easterday Dairy, LLC Animal Waste Management Plan (AWMP). ODA directed Easterday Dairy, LLC to provide a written report on the runoff event(s) within five days as specified in CAFO Permit condition S4.D.

4. On **July 15, 2022**, the department received an email from Easterday Dairy LLC requesting an extension for the submission of the written report for self-reporting irrigation runoff from pivot 606.

5. On **July 19, 2022**, the department received a written self-report via email from Easterday Dairy, LLC for irrigation runoff from pivot 606. The report states the activity started on July 4, 2022, and continued on through at least July 12, 2022. The report included soil and water sample results and soil moisture meter data.

6. On **August 11, 2022**, the department conducted a Follow-Up Inspection (FIR #2230935). During the inspection, pivot 606 was viewed and no irrigation water was viewed leaving the pivot at the time of the inspection. The department representative did note that evidence of past irrigation water runoff events were visible and included green, actively growing vegetation in the non-crop circle corners. The department representative also viewed two separate liquid fertilizer storage tanks that were leaking, located at irrigation system plumbing cluster 501 and at irrigation system plumbing cluster 606. The irrigation system plumbing cluster 606 fertilizer storage tank leak had not been previously reported to the department. The leaks from both fertilizer tank locations soaked into the soil in non-crop areas with no nutrient utilization capacity. The outcome of the inspection was, Final Inspection Results Pending (FIRP), pending soil sample results from fertilizer storage tank leaks found at two different locations on the farm.

7. On **August 19, 2022**, the department received the soil sample results from sampling activities conducted by department staff on August 11, 2022. Sample results for nitrogen were highly elevated from non-affected area sample results and indicated that nitrogen was applied to non-crop areas, not included in the ODA-approved AWMP, at rates not considered in the ODA-approved AWMP. (Results attached)

8. On **August 21, 2022**, Easterday Dairy, LLC emailed the department requesting permission to apply nitrogen fertilizer to pivot 501. The department approved a nitrogen application of 53 pounds per acre for planting an earless corn silage crop.

9. On **August 26, 2022**, the department received a written self-report via email from Easterday Dairy, LLC for over irrigation causing runoff occurring on pivots 505, 506, and 512. The date of the runoff taking place was not mentioned in the report, but one of the pictures is dated August 26, 2022. The report includes pictures of irrigation water leaving pivots 505 and 506, soil and water sample locations from pivots 505 and 506, and soil moisture data.

10. On **August 29, 2022**, the department received soil moisture data via email from Easterday Dairy, LLC from soil moisture sensors in pivots: 407, 505, 506, 512, and 617. The soil moisture data from pivot 505 indicated an over application of irrigation water had occurred between August 22, 2022, and August 26, 2022. Soil moisture data from pivots 407, 506, 512, and 617 were from the months of April and May.

11. On **September 7, 2022**, the department received a written self-report via email from Easterday Dairy, LLC for irrigation water runoff from pivots 407, 505, 506, 512, and 617. The report states the activity took place on August 26, 2022. The report included soil and water sample results and soil moisture meter data.

12. On **September 7, 2022**, the department received a written self-report via email from Easterday Dairy, LLC for irrigation water runoff from pivots 606 and 607. The report states the activity took place on August 29, 2022, and August 31, 2022. The self-report did not include sample results.

13. On **September 8, 2022**, the department received a written self-report via email from Easterday Dairy, LLC, of pivots 102, 103, 104, 407, 505, 506, 509, 606, 607, 612, 613, 615, and 616. The self-report included aerial pictures taken by Easterday Dairy, LLC on September 4, 2022. The self-report indicates irrigation water runoff and standing water that may cause nutrient leaching in the above listed pivots. The self-report did not include sample results.

14. On **September 9, 2022**, department representatives met with Easterday Dairy, LLC representatives via phone conference to discuss the pictures of pivots emailed to the department on September 8, 2022 (FOF #12).

15. On **September 12, 2022**, the department conducted a Follow-Up Inspection (FIR #2231703). The following pivots: 102, 103, 104, 407, 505, 506, 509, 606, 607, 612, 613, 615, and 616 were viewed. Soil samples were collected for an apparent fertilizer over application that took place on pivot 509 and resulted in crop death. Irrigation runoff water that had ponded outside the field in a non-crop area was sampled at pivot 606. A discussion with the permittee revealed that the fertilizer discharge in pivot 509 was likely the result of the liquid fertilizer metering system, likely malfunctioning and pumping liquid, 32% nitrogen solution, into the pivot when the pivot was not operating and was not applying irrigation water. The pivot plumbing was filled with undiluted 32% nitrogen solution that dripped on to the ground at a rate high enough to kill the corn plants in part of the pivot. The application of 32% nitrogen solution in this situation was at a rate not allowed in the ODA-approved AWMP. The discharge activity that caused crop death in pivot 509 was not reported to ODA as required in Permit Special Condition S4. The outcome of the inspection was Final Inspection Results Pending (FIRP) sample results and receiving the written report from Easterday Dairy, LLC.

16. On **September 13, 2022**, the department received a written self-report via email from Easterday Dairy, LLC describing irrigation water over application and runoff from several pivots. Each pivot number and description are listed below:

a. Irrigation runoff from pivot 102. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.

b. Irrigation runoff from pivot 103. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.

c. Irrigation runoff from pivot 505. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.

- d. Irrigation runoff from pivot 506. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.
- e. Irrigation runoff from pivot 600. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.
- f. Irrigation runoff from pivot 606. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.
- g. Irrigation runoff from pivot 607. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.
- h. Irrigation runoff from pivot 611. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.
- i. Irrigation runoff from pivot 613. The report states the activity has been ongoing and repeated. The aerial photo was taken on September 4, 2022. The report included pictures and soil moisture meter data. The self-report did not include sample results.

17. On **September 14, 2022**, the department received soil moisture probe readings via email for all of the pivots listed in Easterday Dairy, LLC's AWMP.

18. On **September 17, 2022**, the department received a written self-report via email from Easterday Dairy, LLC for irrigation runoff from pivot 606. The report states the activity took place on September 14, 2022. No samples were collected.

19. On **September 17, 2022**, the department received lysimeter readings via email from Easterday Dairy, LLC for pivot's 403, 414, and 619. The lysimeters in pivots 414 and 619 are not functioning.

20. On **September 20, 2022**, the department received the results from samples taken by ODA staff on September 12, 2022. The results from the soil sample indicated very high nitrogen levels as a result of a fertilizer spill. (Sample results attached)

**b. Ultimate Findings of Fact**

1. Permittee, Cole Easterday operates an Individual Tier 1 Concentrated CAFO, Easterday Dairy, LLC, registered to the Oregon CAFO NPDES Individual Permit No. OR995129, under Master Address No. 1000257.
2. Between July 4, 2022, and September 14, 2022, ODA determined that the permittee, Easterday Dairy, LLC, violated S3.A.1-3, Animal Waste Management Plan (AWMP) Implementation and Compliance, by over irrigating numerous circles causing irrigation water runoff and standing water that may cause nutrient leaching on the following dates:

July 4	Circle 606
July 12	Circle 606
August 22	Circle 505
August 26	Circles 407, 505, 506, 512, and 617
August 29	Circles 606 and 607
August 31	Circles 606 and 607
September 4	Circles 102, 103, 104, 407, 506, 509, 606, 607, 613, 613, 616 and 617
September 13	Circles 102, 103, 505, 506, 600, 606, 607, 611, and 613
September 14	Circle 606
3. On August 11, 2022, ODA determined that the permittee, Easterday Dairy, LLC, violated S4.A.1, Monitoring Requirements by failing to report fertilizer discharges from damaged or leaking fertilizer storage tanks, where undiluted 32% nitrogen solution discharged directly to soil in non-crop areas and placed a pollutant where it may enter ground water.
4. On September 12, 2022, ODA determined that the permittee, Easterday Dairy, LLC, violated S4.A.1, Monitoring Requirements by failing to report an unauthorized fertilizer discharge from a malfunctioning fertilizer storage tank metering and



application system, where undiluted 32% nitrogen solution was land applied at a rate not authorized by the ODA-approved AWMP, which resulted in crop death and direct discharge to soil in the crop area and placed a pollutant where it may enter ground water.

5. Between July 4, 2022, and September 20, 2022, ODA determined that the permittee, Easterday Dairy, LLC, violated CAFO NPDES Individual Permit General Condition, G6., Proper Operation and Maintenance, 36 times, by failing to maintain control of and properly operate irrigation water and fertilizer land application systems to maintain CAFO Permit compliance. The dates and number of violations that occurred on the specified date are listed here:

II.	July 19, 2022	1 violation
III.	August 17, 2022	2 violations
IV.	August 26, 2022	3 violations
V.	September 7, 2022	5 violations
VI.	September 8, 2022	13 violations
VII.	September 12, 2022	1 violation
VIII.	September 13, 2022	9 violations
IX.	September 17, 2022	2 violations
X.	Total =	36 violations

#### **a. Conclusions of Law**

1. Between July 4, 2022, and September 20, 2022, permittee, Cole Easterday, violated Special Permit condition S3.A.1, Animal Waste Management Plan (AWMP) Implementation and Compliance, in violation of ORS 468B.025(2) and Individual Permit No. OR995129.
2. Between July 4, 2022, and September 20, 2022, permittee, Cole Easterday, violated Special Permit condition S4.A.1, Monitoring Requirements, in violation of ORS 468B.025(2) and Individual Permit No. OR995129.
3. Between July 4, 2022, and September 20, 2022, permittee, Cole Easterday, violated General condition G6, Proper Operation and Maintenance, in violation of ORS 468B.025(2) and Individual Permit No. OR995129.
4. Between July 4, 2022, and September 20, 2022, permittee, Cole Easterday,

violated Special Permit condition S2.C, Land Application Limitation Requirements, in violation of ORS 468B.025(2) and Individual Permit No. OR995129.

### III. PLAN OF CORRECTION (POC)

The actions and timetable required to bring Cole Easterday into compliance with special conditions **S3.A.1-3, Animal Waste Management Plan (AWMP) Implementation and Compliance, S4.A.1, Monitoring Requirements and General Condition G6., Proper Operation and Maintenance**, are as follows:

#### Required Action (RA)#1:

**RA#1:** Upon receipt of this Notice and until CAFO Individual NPDES Permit coverage is terminated, all irrigation water, process wastewater and liquid manure applications made to lands included in the ODA-approved AWMP, cannot exceed the available water holding capacity of the soil(s) described in the ODA-approved AWMP. Easterday Dairy, LLC must retain a qualified consultant (agronomist, agricultural engineer, or irrigation engineer) to oversee all types of applications listed above and ensure that those applications are fully compliant with all applicable CAFO Permit requirements. Consultant will, on a weekly basis:

- Calculate all nutrient loading from any source made to the circle numbers listed in RA#3 and described in the ODA-approved AWMP. Calculations must be approved by ODA prior to application(s).
- Oversee all nutrient loading from any source made to the circle numbers listed in RA#3 and described in the ODA-approved AWMP.
- Provide a monthly report of all nutrient loading from any source made to the circle numbers listed in RA#3 and described in the ODA-approved AWMP, within five days of the end of the month in which the applications were made.
- Calculate all hydraulic loading from any source made to the circle numbers listed in RA#3 and described in the ODA-approved AWMP. Calculations must be approved by ODA prior to application(s).
- Oversee all hydraulic loading from any source made to the circle numbers listed in RA#3 and described in the ODA-approved AWMP.

- Provide a monthly report of all hydraulic loading from any source made to the circle numbers listed in RA#3 and described in the ODA-approved AWMP, within five days of the end of the month in which the applications were made.

**RA#2:** Upon receipt of this Notice and until CAFO Individual NPDES Permit coverage is terminated, Permittee will implement pivot track runoff protection in circle numbers listed in RA#3, consisting of straw or other fibrous material, crimped into each pivot track after any harvesting, tillage or planting operation that incorporates any previous crimped straw, fibrous material or crop residue into the soil in and adjacent to the pivot tracks.

**RA#3:** Upon receipt of this Notice and until CAFO Individual NPDES Permit coverage is terminated, Permittee will install and operate designed field runoff control filter strips in non-crop areas adjacent to circles numbered:

102, 103, 104

403, 407, 414, 417

501, 505, 506, 509, 512

600, 606, 607, 612, 613, 615, 616, 617, 619

The field runoff control filter strips must be sized and designed by an Oregon-licensed engineer. The designs and Operation and Maintenance documents for the field runoff control filter strips must be stamped by an Oregon-licensed engineer. The Operation and Maintenance documents for the field runoff control filter strips must include effectiveness monitoring components that ensures groundwater discharge does not occur. ODA will review the designs and construction approval request and must approve the designs before the field runoff control filter strips can be installed.

**RA#4:** Upon receipt of this Notice and until CAFO Individual NPDES Permit coverage is terminated, Easterday Dairy, LLC must retain a qualified consultant (agronomist, agricultural engineer, or irrigation engineer) to obtain, install, monitor and report results of monitoring for five, wicking lysimeters. Five wicking lysimeters must be located in field numbers 103, 407, 505, 606 and 616 and monitored/sampled monthly. Monthly lysimeter monitoring reports must be submitted to ODA within 20 days after the end of each month.

#### IV. CONCLUSION

ODA may issue a Notice of Assessment of Civil Penalty (NACP) for violations noted in this NON/POC. If permittee, Cole Easterday dba Easterday Dairy, LLC, fails to timely comply with any part of the POC described above, ODA may issue a NACP regarding new violations. ORS 468B.230. OAR 603-074-0040. In addition, failure to timely comply with this NON/POC may lead ODA to take additional enforcement actions, including but not limited to revocation of Oregon CAFO Individual Permit No. OR995129.

DATED this 13th day of April, 2023.



Isaak Stapleton, Director

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**NOTICE OF APPEAL RIGHTS:** This is an order in other than a contested case. This order is subject to judicial review under Oregon Revised Statutes (ORS) 183.484. A petition for judicial review must be filed within 60 days of the date this order is served, as specified by ORS 183.484(2). You may also request reconsideration of this order by filing a petition for reconsideration with the department within 60 calendar days after the date of the order, OAR 137-004-0080. A petition for reconsideration must set out the specific grounds for reconsideration and may be supported by a written argument.

**NOTICE TO ACTIVE DUTY SERVICEMEMBERS:** Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-

free telephone number.

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Attachments: See attached list

cc: Wym Matthews, ODA CAFO Program Manager  
Isaak Stapleton, ODA Director of Natural Resources & Pesticide Program  
Renee Moulun, Senior Assistant Attorney General  
Elizabeth Howard, Schwabe Williamson & Wyatt

### **Easterday NON/POC Attachment List**

**July 19, 2022** – Written Self-Report irrigation runoff pivot 606 – July 4, 2022-July 12, 2022 – soil and water samples included.

**August 11, 2022** – Inspection Report #2230935 –

**August 19, 2022** - Soil Samples taken August 11, 2022

**August 21, 2022** – Approval to apply nitrogen fertilizer to pivot 501.

**August 26, 2022** – Written Self-Report – over irrigation pivots 505, 506 and 512. Pictures of irrigation water leaving pivots 505 and 506, soil and water samples from pivots 505 and 506 and soil moisture data.

**August 29, 2022** – Soil and moisture data from soil moisture sensors in pivots: 407, 505, 506, 512 and 617 for April and May. Occurred between August 22, 2022, and August 26, 2022.

**September 7, 2022** – Written Self-Report irrigation runoff from pivots 407, 505, 506, 512, and 617. Occurred August 26, 2022. Includes soil samples and moister meter data.

**September 7, 2022** – Written Self-Report irrigation runoff from pivots 606 and 607. Occurred on August 29, 2022, and August 31, 2022.

**September 8, 2022** - Written Self-Report for pivots 102, 103, 104, 407, 505, 506, 509, 606, 607, 612, 613, 615 and 616. Aerial pictures taken by Easterday, LLC. No sample results.

**September 12, 2022** – Follow Up Inspection Report # 2231703. Soil samples for pivots 509 and 606.

**September 13, 2022** – Written Self-Report irrigation water over application pivots 102, 103, 505, 506, 600, 606, 607, 611 and 613. Ariel photos. No sample results.

**September 14, 2022** – Soil moisture probe readings

**September 17, 2022** – Written Self-Report irrigation runoff pivot 606. No sample results.

**September 17, 2022** - Lysimeter readings for pivots 403, 414, and 619.

**September 20, 2022** – Sample results taken by ODA Staff September 12, 2022.