# MEMORANDUM OF AGREEMENT
# BY AND BETWEEN
# THE
# COMMONWEALTH OF MASSACHUSETTS,
# DEPARTMENT OF AGRICULTURAL RESOURCES
# AND
# DEPARTMENT OF ENVIRONMENTAL PROTECTION
# REGARDING
# THE MANAGEMENT OF MILKHOUSE WASTEWATER

## PARTIES

The Parties to this Memorandum of Agreement ("MOA") are the Commonwealth of Massachusetts, Department of Agricultural Resources ("DAR"), 251 Causeway Street, Suite 500, Boston, Massachusetts 02114, acting by and through its Commissioner Douglas W. Petersen, and the Commonwealth of Massachusetts, Department of Environmental Protection ("MassDEP"), One Winter Street, Boston, Massachusetts 02108, with its Division of Environmental Analysis located at the Senator W.X. Wall Experiment Station, 37 Shattuck Street, Lawrence, Massachusetts 01843, acting by and through its Commissioner Laurie Burt.

WHEREAS: DAR supports, promotes and enhances the long-term viability of Massachusetts agriculture with the aim of helping the Commonwealth's agricultural businesses become as economically and environmentally sound as possible;

WHEREAS: Enhancing the viability of Dairy Operations is a priority for the Commonwealth, as evidenced by the recently enacted Dairy Farm Preservation Act, Chapter 310 of the Acts of 2008;

WHEREAS: DAR, working independently and through partnerships with other organizations, seeks to provide technical and financial assistance to Dairy Operations for the adoption of conservation practices that will promote both economic and environmental sustainability while at the same time ensuring that the Dairy Operations fully comply with applicable MassDEP groundwater protection regulations;

WHEREAS: DAR and MassDEP seek to facilitate the lawful use of appropriately engineered, cost-effective, and environmentally protective Wastewater Treatment Methods that may constitute an improvement in Dairy Operation practices regarding milkhouse wastewater ("MHW");

WHEREAS: One of MassDEP's responsibilities is to control the discharge of pollutants to the ground waters of the Commonwealth, as well as the outlets for such discharges and any treatment works associated with these discharges;

WHEREAS: MassDEP is responsible for enforcing the Ground Water Discharge Permit Program Regulations codified at 314 CMR 5.00, which currently require Dairy Operations to obtain groundwater discharge permits in order to discharge MHW to the ground;

WHEREAS: MassDEP recognizes that environmental benefits may accrue from Dairy Operations discharging their MHW using appropriately engineered, cost effective, and environmentally protective Wastewater Treatment Methods rather than to the ground surface;

WHEREAS: MassDEP recognizes that compliance with the groundwater discharge permit requirements imposes a burden on Dairy Operations that may not be commensurate with the potential environmental risks associated with discharging MHW using appropriately engineered, cost effective, and environmentally protective Wastewater Treatment Methods;

NOW, THEREFORE, WITNESSETH in consideration of mutual covenants herein contained, the Parties agree as follows:

## PURPOSE

The purpose of this MOA is to allow for the establishment of a pilot program in which DAR will work cooperatively with Dairy Operations in Massachusetts to evaluate the potential for reducing the environmental impacts of MHW discharges through the use of appropriately engineered, cost effective, and environmentally protective Wastewater Treatment Methods. For purposes of this MOA, the terms "milkhouse wastewater" and MHW refer to wastewater that is generated through the processing of dairy products such as milk, cheese, ice cream, and yogurt and customarily disposed of by Dairy Operations. Currently, the Ground Water Discharge Permit Program Regulations codified at 314 CMR 5.00 do not allow Dairy Operations to dispose of MHW via discharge to the ground without obtaining a groundwater discharge permit and meeting regulatory standards. As part of this MOA, MassDEP will extend enforcement forebearance to pilot program participants in good standing with respect to their discharge of MHW to vegetated treatment areas. MassDEP will also analyze and review the data generated by this pilot program in order to evaluate whether the discharge of MHW to vegetated treatment areas should be allowed under 314 CMR 5.00.

## AUTHORITY

Mass. Gen. Law ch. 132A, rules and regulations promulgated thereunder and all other applicable statutes and authorities, including, without limitation, 304 Code of Mass Regulations.

Mass. Gen. Law ch. 21, §§ 26 through 53, and rules and regulations promulgated thereunder, including 314 CMR 5.00.

TERM

The initial term of this MOA shall be for the period starting on the date of execution of the MOA by both parties and terminating on December 31, 2011.

AGREEMENT

DAR's obligations:

1. DAR, in consultation with MassDEP, shall establish and administer a pilot program to evaluate effluent characteristics of MHW and the efficacy of vegetated treatment areas that are installed and maintained in accordance with the Conservation Practice Standard for Vegetated Treatment Area Code 635 developed by the Natural Resources Conservation Service of the United States Department of Agriculture ("NRCS Code 635", Massachusetts, June 2006). The pilot program shall have two categories of participants: Grantee Farms and Pilot Farms (collectively, the "Pilot Program Participants"). Grantee Farms shall consist of those Dairy Operations that receive financial and/or technical assistance from a state or federal agency such as DAR and/or the NRCS to install and maintain vegetated treatment areas to address their MHW in accordance with NRCS Code 635 and appropriate mitigation measures for potential runoff when ambient temperatures might not allow the percolation of MHW into the ground. Pilot Farms shall consist of two Dairy Operations that receive financial and/or technical assistance from a state or federal agency such as DAR and/or the NRCS to (1) install and maintain vegetated treatment areas to address their MHW in accordance with NRCS Code 635 and appropriate mitigation measures for potential runoff when ambient temperatures might not allow the percolation of MHW into the ground; (2) in accordance with a protocol to be developed by DAR and MassDEP pursuant to this MOA, take samples of MHW effluent at the point source, prior to discharge to the vegetated treatment areas, so that the MHW can be characterized; and (3) in accordance with a protocol to be developed by DAR and MassDEP pursuant to this MOA, install, maintain and sample groundwater monitoring wells to produce data for MassDEP's review regarding the characterization of MHW effluent, to evaluate the impact on groundwater and surface water quality from vegetated treatment areas, and to prevent contamination of groundwater resources.

2. Owners of Grantee Farms shall execute a written agreement with DAR to install and maintain vegetated treatment areas in accordance with all requirements and standards set forth in NRCS Code 635. DAR shall provide MassDEP, upon request, with a copy of each executed written agreement. As appropriate, DAR shall assist MassDEP in gathering qualitative data regarding the performance and

cost-effectiveness of vegetated treatment areas installed and maintained by Grantee Farms.

3. DAR agrees to notify MassDEP immediately if its inspectors determine that a Pilot Program Participant is handling MHW in a manner that does not meet the requirements and standards set forth in NRCS Code 635 and/or appropriate mitigation measures for potential runoff when ambient temperatures might not allow the percolation of MHW into the ground.

4. Prior to December 31, 2011, DAR shall provide MassDEP with an industry profile of Massachusetts Dairy Operations that (1) identifies and describes each appropriately engineered, cost-effective, and environmentally protective Wastewater Treatment Method (including but not limited to vegetated treatment areas) in use by one or more Dairy Operations, and (2) quantifies the number of Dairy Operations that are using each such method (the "Industry Profile").

MassDEP's obligations:

1. Within thirty (30) days of the effective date of this MOA, MassDEP shall provide DAR with a written draft data collection protocol that addresses, at a minimum, the effluent and groundwater sampling parameters, frequencies, and protocols that the pilot program must incorporate in order to generate the research data necessary for MassDEP to evaluate the potential environmental impacts of MHW discharged through vegetated treatment areas.

2. Within thirty (30) days of receiving DAR's written response to the draft data collection protocol, MassDEP shall finalize the data collection protocol to be implemented in the pilot program and shall provide DAR with a written copy.

3. MassDEP, by and through the Division of Environmental Analysis located at the Senator W.X. Wall Experiment Station, shall analyze effluent and groundwater samples collected by DAR inspectors in accordance with the data collection protocol, at its sole expense. MassDEP further agrees to share with DAR all laboratory data and analytical results pertaining to these effluent and groundwater samples.

4. Throughout the duration of this MOA, while MassDEP is gathering data on the potential environmental impacts of MHW discharged through vegetated treatment areas, MassDEP agrees that MHW management through the use of vegetated treatment areas in conformity with NRCS Code 635 at Dairy Operations shall not constitute an inspection priority for MassDEP.

5. MassDEP agrees to extend enforcement forebearance to the Pilot Program Participants with respect to their compliance with 314 CMR 5.00 as it relates to their discharge of MHW, including but not limited to the permit requirements contained therein, provided that (1) the Pilot Program Participants fully comply

with the terms and conditions of the pilot program, including but not limited to the requirement to conform to NRCS Code 635 and implement appropriate mitigation measures for potential runoff when ambient temperatures might not allow the percolation of MHW into the ground, and (2) the discharge of MHW to vegetated treatment areas does not pose a significant and/or immediate risk to public health, safety, or the environment. This enforcement forebearance shall be limited to the Pilot Program Participants and shall not be extended beyond the duration of the pilot program, nor to any other regulations that MassDEP enforces. This paragraph shall not preclude MassDEP from investigating complaints investigating complaints regarding a Pilot Program Participant's management of MHW, nor from responding to specific evidence that the Pilot Program Participant may have violated MassDEP's regulations or otherwise created a significant and/or immediate threat to public health, safety, or the environment.

6. MassDEP agrees to analyze and review the data generated by this pilot program and the Industry Profile prepared by DAR in a timely manner in order to evaluate whether and to what extent the discharge of MHW to vegetated treatment areas should be allowed under 314 CMR 5.00 without an individual discharge permit or coverage under any general discharge permit that MassDEP may issue.

Joint Obligations of DAR and MassDEP:

DAR and MassDEP hereby commit to continue to work together to identify and evaluate additional Wastewater Treatment Methods, such as Bark Bed Systems, for Dairy Operations that are appropriately engineered, cost-effective, and environmentally protective. In particular, DAR and MassDEP agree to identify and evaluate design, operation, and maintenance procedures for additional Wastewater Treatment technologies and to explore additional Memoranda of Agreement and/or appropriate regulatory pathways for Dairy Operations to implement new technologies to manage MHW.

## MODIFICATIONS

The terms of this MOA may only be modified by written agreement or amendment signed by both Parties.

## ASSIGNMENT

The Parties hereto stipulate that there are no third-party beneficiaries to this MOA. Any third-party beneficiary relationship between DAR and another party constitutes a breach of this MOA by DAR and shall be unenforceable.

DAR shall not assign, transfer, or otherwise dispose of its responsibilities covered by this MOA without the prior written approval of the MassDEP Commissioner or her designee. In the event of any such unapproved assignment, transfer, or disposition by DAR, or in

the event of any default of its obligations to persons or entities which are not a party to the MOA, such person or entity shall not be deemed to have acquired a claim or cause of action against MassDEP. Any such assignment, transfer, or disposition without the approval of MassDEP shall constitute a breach of this MOA which shall be cause for immediate termination of the MOA by MassDEP. MassDEP shall not be obligated to recognize any right of any person or entity to any interest in this MOA.

MassDEP shall not assign, transfer, or otherwise dispose of its responsibilities covered by this MOA without the prior written approval of the DAR Commissioner or his designee. In the event of any such unapproved assignment, transfer, or disposition by MassDEP, or in the event of any default of its obligations to persons or entities which are not a party to the MOA, such person or entity shall not be deemed to have acquired a claim or cause of action against DAR. Any such assignment, transfer, or disposition without the approval of DAR shall constitute a breach of this MOA which shall be cause for immediate termination of the MOA by DAR. DAR shall not be obligated to recognize any right of any person or entity to any interest in this MOA.

## TERMINATION

This MOA may be terminated by either Party, with or without cause, upon thirty (30) calendar days written notice to the other Party, except as provided in the "Assignment" section above and in the paragraph immediately below.

If either Party fails to materially comply with any term of this MOA, such failure shall constitute a breach. The non-breaching Party may then terminate the MOA upon five (5) calendar days written notice to the breaching Party.

Upon termination of this MOA for any reason, all Dairy Operations in the Commonwealth, including but not limited to Pilot Farms and Grantee Farms, shall be subject to the wastewater discharge regulations in effect at the time of termination.

## MERGER CLAUSE

The provisions of this MOA shall constitute the agreement between the Parties for the above-described pilot project. Any prior or contemporaneous oral or written statements that alter, contradict, or are in addition to the terms of this MOA, are inadmissible.

In the event of a conflict between any provision of this MOA and any communication or assertion by the Parties, the provisions of this MOA shall govern.

## SEVERABILITY

If any part of this MOA is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of

this MOA, and the remaining parts of this MOA shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

NOTICE

Any notice given pertaining to this MOA shall be sent in writing, by hand delivery or first class mail, to the following representatives of the Parties:

If to DAR:

Douglas W. Petersen, Commissioner
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

And to:
Scott Soares, Assistant Commissioner and Chief of Staff
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

And to:
Gerard Kennedy, Director for the Division of Technical Assistance
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

And to:
Bob Ritchie, General Counsel
Office of the General Counsel
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

If to MassDEP:

Laurie Burt, Commissioner
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

And to:
Steven DeGabriele, Director, Business Compliance Division
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

And to:
John Reinhardt, Branch Chief for Industrial Wastewater Regulation and Policy
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

And to:
Office of the General Counsel
Attention: Anne Berlin Blackman
Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

Either party may change a notice recipient by providing prior written notice of such change to the other party.

SIGNATORIES

The parties herein have read the above terms and conditions and hereby agree and approve same.

| DEPARTMENT OF AGRICULTURAL RESOURCES | DEPARTMENT OF ENVIRONMENTAL PROTECTION |
|---|---|
| ~~Douglas W. Petersen~~ Scott J. Soares<br>Commissioner<br>Department of Agricultural Resources<br>251 Causeway Street, Suite 500<br>Boston, Massachusetts 02114 | Laurie Burt<br>Commissioner<br>Department of Environmental Protection<br>One Winter Street<br>Boston, Massachusetts 02108 |

4/13/09

Date: 04/13/09 Date: 4/1/09