STATE OF MICHIGAN
THIRTIETH JUDICIAL CIRCUIT COURT INGHAM COUNTY

MICHIGAN FARM BUREAU, et al,

Appellants,

v

MICHIGAN DEPARTMENT OF ENVIRONMENTAL, GREAT LAKES, AND ENERGY

Appellee,

and

THE ENVIRONMENTAL LAW & POLICY CENTER, et al,

Intervening Appellees.
_____/

Case No. 25-006752-AA

HON. RICHARD J GARCIA

OPINION AND ORDER

Appellants seek judicial review of Appellee's Michigan Department of Environmental, Great Lakes, and Energy (EGLE) Director's decision, which adopted a CAFO general permit as of October 29, 2025. Appellants challenge the Director's involvement in rendering the final order and question parts of the Administrative Law Judge (ALJ)'s decision, in particular, on the issue of allowing restrictions in January and February to the applications or transfer of waste. Appellants claim that these restrictions are unnecessary to achieve part 4 water-quality standards or to comply with applicable laws and regulations. It similarly challenges the reduction of the soil test phosphorus levels from 150 PPM to 135 PPM or 68 PPM.

This Court must determine whether the final decision of the agency is authorized by law and whether it is supported by competent, material, and substantial evidence on the whole record. Michigan Constitution, 1963, Article VI, § 28; MCL 24.306(1)(d) A reviewing court must set aside a decision that is in violation of the Constitution or a statute, in excess of the agency's authority or jurisdiction, made upon unlawful procedure, unsupported by competent and substantiated evidence, arbitrary or capricious, or otherwise affected by a substantial material error of law. *Nat'l Wildlife Federation v. Dept. of Environmental Quality (No. 2),* 306 Mich App 369, 373, 856 NW2d 394 (2014).

DUE PROCESS

When this matter was initiated, the final decision was to be made by the ALJ after an extensive evidentiary contested hearing.[1] However, on July 18, 2024, the Governor issued Executive Order 2024-5: Executive Reorganization. This executive order, in part, reorganized EGLE by transferring and then abolishing the Environmental Permit Review Commission[2]. It then provided that permit application review petitions submitted under MCL 324.1315, pending on or submitted after the effective date of the order, shall be decided by the Chief Deputy Director of EGLE or her or his designee. It also provided that the authority to hear permit appeals filed under MCL 324.1317 was to be transferred to the Director of EGLE or her or his designee. The court finds that application of this new procedure is unlawful because it violates due process.

This executive order resulted in the agency director resolving appeals from contested matters heard by the ALJ. As applied to this case, this executive order violates the due process clause of both the Michigan and U.S. Constitution by denying the Appellants' right to an impartial decisionmaker. It is well settled that due process requires "a fair trial in a fair tribunal." *Stivers v. Pierce*, 71 F.3d 732, 741 (9th Cir. 1995), quoting In Re *Murdison*, 349 U.S. 133, 136; 75 SCt 623; 99 CEd 942 (1955), *Grimes v. Van Hook-Williams*, 302 Mich App 521, 530; 839 NW2d 237 (2013). "When an administrative agency conducts adjudicative proceedings, the Constitutional guarantee of due process of law requires a fair tribunal." *Morongo Band of Mission Indians v. State Water Resources Control Board,* 45 Cal. 4th 731, 737; 88 Cal.Rptr.3d., 610; 199 P3d 1142 (2009), *Crampton v. Dept of State*, 395 Mich 347, 351; 235 N.W.2d 352 (1975).

While the executive branch has discretion to organize itself pursuant to executive orders, it cannot unilaterally ignore statutory due process. The legislature and the governor agreed to enact MCL 324.1317(a)(1), which requires final agency decisions to be decided by either an unbiased ALJ or an independent expert panel;

> "In a contested case regarding a permit, an administrative law judge shall preside, make the final decision, and issue the final decision and order for the department. Any party to the contested case, including the department, may, within 21 days after receiving the final decision and order, seek review of the final decision and order by an environmental permit

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[1] EGLE issued its CAFO general permit on March 27, 2020. A petition for a contested hearing was filed by Appellants on May 26, 2020. A contested case hearing was held in December 2021 and February 2022. The record was open until July 2022 for submission of closing arguments. A stay was issued pending the Michigan Supreme Court's decision in *Michigan Farm Bureaus v EGLE* cited by ALJ as (*"Michigan Farm Bureau II"*) 515 Mich 481; 28NW3d 629 (2024).

[2] The Supreme Court in *Michigan Farm Bureau II* held a declaratory action in the Court of Claims was not required because Appellants had available a meaningful contested hearing before an ALJ or the now eliminated Independent Environmental Permit Review Commission and judicial review.

> panel by submitting a request to the director and a notice to the hearing officer."

MCL 324.1314(2) allows a final decision by the ALJ to be reviewed by an Environmental Permit Commission which shall issue a final decision of the department subject to judicial review. The executive order substitutes the EGLE director for the independent expert permit panel. Appellee suggests such an arrangement does not violate due process as many executive departments have prosecutorial and adjudicatory offices under the same organization. However, in order to preserve fairness and impartiality a member or employee of an agency must abide by MCL 24.282 which provides in part that:

> "Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate."

The executive order was applied retroactively to this matter two years after the administrative record was closed and during the pendency of *Michigan Farm Bureau II*. Even if having the director making final determinations in a contested case could withstand due process scrutiny, it certainly would require strict adherence to MCL 24.282.

These general permits are of great concern to the industry and affect farming operations statewide. It is a matter of great public concern for the administration, the industry and the public. Since the director was not expecting to serve as a decision maker after appeal, it is doubtful MCL 24.282 was followed. In fact, Appellant, Michigan Farm Bureau submitted public comment as early as December 16, 2019. They actually met with the director on January 29, 2020. The director was clearly intimately involved early in the process. Appellee asserts that disqualifying the director of EGLE would disrupt other administrative matters statewide. The court's ruling today is limited in that it finds that the executive orders application retroactively to a pending contested hearing gives the appearance of impropriety and bias. The public interest is not served where, as here, it appears the government has changed the rules midstream in response to litigation without confidence MCL 24.282 was followed.

Further, the court agrees with Appellants that the director's opinion violates due process because it added significant conditions to the final permit which were not part of the 2019 noticed draft permit, nor of the initial permit in 2020. The director went beyond the scope of the contested case. This violated due process by failing to provide sufficient notice. *Mullane v Central Hanover Banks and Trust,* 339 U.S. 306, 314 (1950). For example, the director, for the first time, required groundwork monitoring wells for each waste storage structure, 24-hour notice for land applications and expanded jurisdictional

reach to non-CAFOs. These additions were never litigated before the ALJ. EGLE must give public notice of the draft permit and any proposed discretionary conditions. *Mich Farm Bureau II*, 515 Mich at 498. For these two reasons the court reverses the opinion of the director because it denies Appellants due process.

ALJ OPINION

The Appellants challenge the decision of the ALJ in two (2) important respects. First, it is asserted that EGLE did not carry its burden to justify a winter ban on land application or manifesting waste in January, February, and March. The ALJ permitted restrictions, but not a total ban and lifted any such restrictions in March. Second, Appellants challenge the reduction of soil test phosphorus levels.

The Appellants noted the ALJ relied on "solid science" when striking down the March restrictions. The court agrees. The ALJ came to a different conclusion when considering reasonable restrictions in January and February finding "the 2020 permit's restrictions in applications of manure in January and February is a discretionary condition of the permit that is necessary." The court finds this was also based on solid science given the increased risk of runoff during winter conditions. This factual finding was supported by competent, material and substantial evidence in the whole record. *Detroit Public Schools v Connecticut*, 308 Mich App 234, 245 (2014). In this instance, the court should not substitute its judgment for that of the agency. *VanZandt v State Emp. Ret. Systems*, 266 Mich App 579, 588 (2005).[3]

Similarly, the ALJ had reason to adjust soil test phosphorus standards. When too much phosphorus is applied to fields, it can enter surface water as runoff. The ALJ summarized the record and concluded that the lowered phosphorus levels were necessary to achieve water quality standards. The ALJ found EGLE is required to reduce discharge limits in CAFO permits "Because EGLE is required to reduce pollutant limits within NPDES permits in a TMDL watershed in order to attain [water quality standards.] The reduction of such pollutant limits must be considered a "mandatory condition of the permit." CR-0309N80.

Because the ALJ concluded the old 150 PPM limit was not supported by the evidence presented, EGLE's efforts to decrease phosphorus levels were adopted by the ALJ to reduce the risk of phosphorus runoff on saturated fields affecting surface and groundwater. This was not arbitrary or capricious, but based on sufficient evidence on the entire record.

It is also important to note that the reductions were a byproduct of, in part, a political process based on positions taken during public comment. These positions represented a compromise toward a common goal of water quality. While not "contractual negotiations," they were achieved in an effort to address the contamination in Michigan waterbodies.

[3] This court's statement of deference is not to imply it would reach a different conclusion. The ALJ's long but skillful opinion carefully outlines and resolves the issues citing to the record. It is well supported by competent and substantial evidence and not affected by any substantial material error of law.

The ALJ had sufficient evidence to conclude Michigan's farmland is infused with a substantial amount of phosphorous:

> Exhibit P-88 contains a map of agricultural soils analyzed by state soil test laboratories in the year 2000, indicating regional buildups of soil test P (STP) in the continental United States. (Exhibit P-88, p 14). According to this report, Michigan's STP levels are second only to Wisconsin in the Great Lakes region and is one of the highest in the nation. (*Id.*) Michigan's STP level is almost twenty points higher than the states of Illinois and Indiana, and over twenty points higher than the state of Ohio.

The ALJ recognized that according to the EPA, agricultural runoff is the major source of stream and lake contamination that prevent attainment of legislatively mandated water quality goals. The ALJ easily had sufficient evidence to conclude that CAFOs contribute to phosphorus pollution in Michigan's rivers and lakes, including the Great Lakes, justifying a reduction of phosphorus limits in the 2020 Permit. The adjustment of STP standards downward by 20% of phosphorous in TMDL watersheds, and a 10% reduction in all other watersheds is not arbitrary nor capricious, and supported by the record, consistent with the goals of both state and federal law.[4]

Accordingly, the Court upholds the findings of the ALJ in its entirety.

IT IS SO ORDERED.

This resolves all pending claims and closes the case pursuant to MCR 2.602(A)(3).

June 8, 2026

Hon. Richard J. Garcia
Circuit and Probate Court Judge

[4] It should be noted the court agrees with the ALJ in regards to "a party to the public comment process should not be entitled to recommend revisions to the permit, and then later claim they were not authorized to send the public comment in the first place." It is rather disingenuous for Appellants to assert levels adopted based on their own member's suggestions during public comment are not sufficient evidence.