



DEC 06 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**United States
Environmental Protection
Agency**

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

PUBLIC NOTICE

LaOtto Farm Supplies, Inc.
Dexter and Cynthia Lutter, Shareholders
4488 South 1000 East
LaOtto, Indiana 46763

Case Docket No. CWA-05-2013-0002

The U.S. Environmental Protection Agency (U.S. EPA), Region 5, is providing this notice of its intent to file a combination Complaint and Proposed Consent Agreement and Proposed Final Order (Proposed CAFO) against LaOtto Farm Supplies, Inc. and its shareholders, Dexter and Cynthia Lutter (Respondents) for violations of Sections 301 and 404 of the Clean Water Act. This Proposed CAFO will settle civil violations alleging that the Respondents, acting under the direction of the Noble County Drainage Board, discharged fill material into approximately 3,300 feet of the Simon Drain between County Road East 200 South and Black Creek (aka Bilger Ditch) without a Section 404 permit in December 2007. The surface waters of Simon Drain were replaced with a subsurface tile drain. The alleged violations are of environmental significance because surface water habitat, flood storage and nitrogen uptake have been lost. The U.S. EPA and Respondents have agreed in principle that Respondents will pay a civil penalty of \$11,000 to resolve this violation.

A copy of the Proposed CAFO may be viewed on-line at:

<http://www.epa.gov/region5/publicnotices/index.htm> by clicking on the "complaint (PDF)" link at the Public Notices home page for the docket number identified above. Alternatively, the complaint may be received by contacting the Regional Hearing Clerk at the address listed below.

OPPORTUNITY FOR COMMENT: Section 309(g) of the CWA, 33 U.S.C. §1319(g) requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment on it.

Any person who wishes to comment on this proposed CAFO may submit written comments, may attend or present evidence at any hearing scheduled on this matter, or both, by following the procedures in Title 40 of the Code of Federal Regulations, Part 22, Section 45 (40 C.F.R. 22.45), particularly subpart (C) *Comment by a person who is not a party*. This portion of the code of federal regulations may be accessed at <http://www.gpoaccess.gov/cfr/retrieve.html>. A link to this site is also available at <http://www.epa.gov/region5/publicnotices/index.htm>, which is the site at which this notice and the associated complaint are also posted. The link is entitled "View 40 CFR Part 22.45". You may also wish to review 40 C.F.R. Part 22 to learn more about the

procedures and rules of practice governing the administrative assessment of civil penalties.
Comments should be made in writing to the Regional Hearing Clerk at:

Case Docket No. CWA-05-2013-0002
Regional Hearing Clerk
Mail Code E-19J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Written comments may be submitted to the Regional Hearing Clerk electronically, by mail, or by delivery to the Clerk's address above. Your comments should include the case name, docket number, and your complete mailing address. If you plan to use FAX or a messenger service to deliver your comments or other documents, please call the Regional Hearing Clerk at (312) 886-3617 for further instructions to insure delivery.

To submit comments electronically, go to the website: <http://epa.gov/region5/publicnotices/>, click the "Submit a Comment Online" phrase in the first paragraph, and complete the blanks. Note that the Agency requires your regular mailing address, since we must use the U.S. Postal Service should we need to reply, request additional information or notify you of a hearing. If you wish to include any kind of attachments with your comment, please mail them instead to the Regional Hearing Clerk in hard copy (with a copy of the e-mail), so that we are certain to receive your documents in an unaltered, complete, and readable form.

Regardless of how you submit them **all written comments must be received in the Regional Hearing Clerk's Office no later than 4:30 p.m., Central Time, of the "Comment Period End Date" shown on the Public Notices home page for this docket number:**
<http://www.epa.gov/region5/publicnotices/index.htm>.

Comments and documents sent to any U.S. EPA employee other than the Regional Hearing Clerk are not assured of consideration in this matter.

All documents filed in this proceeding (including documents submitted by the Respondent or by public commenters) are available for public inspection by appointment only between 9 a.m. and 4:30 p.m. Monday through Friday at the U.S. EPA Regional Office. An appointment for such an inspection may be made by calling (312) 886-3617 or by writing the Regional Hearing Clerk at the address above.

If this Proposed CAFO is filed in its present form, no hearing will be held in this matter. If a hearing is held, we will advise commenters who (during the public comment period) submitted a written request to participate in a hearing of the date, time, and place of the hearing, which they may attend and present evidence on the appropriateness of the proposed penalty assessment by following the instructions in 40 C.F.R. 22.45(c)(1).

The U.S. EPA will send a copy of the Consent Agreement and Proposed Final Order assessing a penalty to any persons who submitted written comments or attended a hearing, provided they

give us their current mailing address.

Only persons who during the comment period submit written comments or ask to participate in any hearing held in this matter preserve a right to petition the Regional Administrator to set aside the Consent Agreement and Proposed Final Order on the basis that material evidence was not considered, as described in 40 C.F.R. 22.45(c)(4).