



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aoughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.4 (OFL4-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that, with the exception of the week of February 24, 2005, OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildebrand, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Layer No. 4 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005, with the exception of the week of February 24, 2005.

The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Layer No.4.

**B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has

also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 17 weeks, for a total of \$42,500.00 and the potential for escalated enforcement. **\$42,500.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Layer No.4 which ODA construes as the individuals and titles of persons of the OFE Management Team

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Layer No. 4.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$87,500.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



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August 9, 2005

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Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

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Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No. 2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Pullet Site No. 2 (OFP2-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Croton Pullet No. 2 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

With the exception of eight (8) weekly pit inspections conducted by Mark Wargo, Pullets Site Manager, or Stephanie Tudor, Compliance Manager, the records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Pullet No. 2.

**B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04.

In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 10 weeks, for a total of \$25,000.00 and the potential for escalated enforcement. **\$25,000.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. The records show that, with the exception of two inspections by the Compliance Officer, Stephanie Tudor, weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Pullet No. 2.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 16 weeks, for a total of \$40,000.00 and the potential for escalated enforcement. **\$40,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$65,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
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August 9, 2005

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Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No.4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

## **A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Pullet Site No. 4 (OFP4-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Croton Pullet No. 4 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

With the exception of eight (8) weekly pit inspections conducted by Mark Wargo, Pullets Site Manager, or Stephanie Tudor, Compliance Manager, the records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Pullet No. 4.

## **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the

category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 10 weeks for failure to comply with the permit with respect to FEM-5, for a total of \$25,000.00 and the potential for escalated enforcement. **\$25,000.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Pullet No. 4 which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that, with the exception of two inspections by the Compliance Officer, Stephanie Tudor, weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Pullet No. 4.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 16 weeks for failure to comply with the permit with respect to FEM-6, for a total of \$40,000.00 and the potential for escalated enforcement. **\$40,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$65,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

**Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-MAD RIVER FARM**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Mad River Farm. ODA has determined that Daylay Egg Mad River Farm has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10, 901:10-2-08, 901:10-2-10, and 901:10-2-16.

### I. FIRST VIOLATION-BURNING COMPOST -MAD RIVER

#### A. VIOLATION

ODA has determined O.A.C. 901:10-1-10(F) has been violated. The Manure Management Plan contained in the RCC issued to Daylay for Mad River (RCC RIVE-0001.RC001-UNIO) authorizes Daylay to compost manure in compliance with Certificate 80-C3R-0377, a Class III Compost Operation, licensed by the Director of the Ohio Environmental Protection Agency. ODA further finds that Certificate 80-C3R-0377 requires compliance with O.A.C. 3745-27-45(C)(1)(a) and (C)(1)(c), which provide that in daily operations:

(1) The owner or operator of a composting facility shall conduct operations at the composting facility in such a manner that:

(a) Noise, dust, and odors are controlled so as not to cause a

nuisance or a health hazard.

(c) Fires are prevented so as not to cause a nuisance or a health hazard.

Compost stored at the facility as of May 5, 2005 was burning and generating a strong offensive odor. Daylay had been warned by ODA on September 11, 2003 about odor problems caused by burning compost. On May 5, 2005, the odor was very strong throughout the facility and adjacent on State Route 31. The LEPP Inspector visited the facility again on May 31, 2005 and found that the situation had not changed and that compost continued to burn and to generate strong odors.

#### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by putting out the fire in the compost building. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

#### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if Daylay fails to comply with the corrective action required herein, Daylay will be subject to the assessment of a civil penalty in the amount of \$1000.00 for each day after the deadline given, as well as the potential for escalated enforcement.

### **II. SECOND VIOLATION- MANURE STORAGE INSPECTIONS/RECORD KEEPING- MAD RIVER**

#### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-1-10 and O.A.C. 901:10-2-16 have been violated. Specifically, O.A.C. 901:10-1-10(F) provides that no person shall violate the terms and conditions of an RCC. In addition, the facility's Operating Record must include records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the Manure Management Plan. O.A.C. 901:10-2-16(A)(1)(a)(iii).

The RCC issued to Daylay for Mad River (RCC RIVE-0001.RC001-UNIO), includes a chart in the Manure Management Plan that shows manure storage buildings with dry manure are required to be inspected daily.

During an inspection conducted by LEPP on April 12, 2004, the LEPP Inspector informed Daylay that Daylay was required to conduct daily inspections to record the measurements of manure storage capacity remaining. Daylay was also told that the records of the results of these inspections were required to be maintained in the Operating Record. During the inspection conducted on May 5, 2005, the LEPP Inspector found that Daylay does not record any of these inspections. Daylay has not maintained records of inspections as required by the RCC and by the above-cited rules since at least March 11, 2005.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter you must correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation. On or about September 1, 2005 a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

## **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay will be subject to the assessment of a civil penalty in the amount of \$150.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## **III. THIRD VIOLATION- MANURE LAGOON INSPECTIONS/RECORD KEEPING- MAD RIVER**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(f) requires inspections for manure volume and requires that these inspections be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(iii) requires that the owner or operator maintain in the Operating Record, records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.

The RCC issued to Daylay for Mad River (RCC RIVE-0001.RC001-UNIO) includes a chart in the Manure Management Plan that requires that manure storage capacity in three lagoons be inspected weekly and inspected after a rain event.

During an inspection on April 12, 2004, the LEPP Inspector told Daylay to inspect the lagoons weekly for storage capacity and to record the results of these inspections in the Operating Record.

During the inspection conducted on May 5, 2005, the LEPP Inspector found that Daylay does not record weekly storage capacity inspections or post storm event inspections of the egg wash lagoons. Daylay has not maintained records as required by the RCC and by the rules since at least March 11, 2005.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

**C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay will be subject to the assessment of a civil penalty in the amount of \$150.00 for each day after the date of the receipt of this letter, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt – Union SWCD  
Cathy Alexander/Alison Shockley– Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips – Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

### **Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE – FARM 3**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Egg Farm 3. ODA has determined that Daylay Egg Farm 3 has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10, 901:10-2-16, and 901:10-2-19.

### **I. FIRST VIOLATION- INSECT AND RODENT CONTROL PLAN-FARM 3**

#### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-19 and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-19(B)(3)(a) requires that the monitoring and inspection records required by the Insect and Rodent Control Plan (IRCP) be maintained in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vii) requires that the records required by the IRCP be recorded and documented in the Operating Record.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. RCC FAR2-0003.RC001-UNIO lists Operating Record Requirements as part of the Insect and Rodent Control Plan and includes forms for Monitoring of Rodents, Reports

from Ralph E. Williams, Ph.D., Fly Inspection Data Sheets, and a Weekly Fly Activity Evaluation.

During an inspection on May 5, 2005, the LEPP Inspector found that Daylay failed to maintain records of its monitoring and inspection since at least March 11, 2005 in violation of the above-cited rules and of the facility's Insect and Rodent Control Plan in RCC FAR3-0001.RC001.UNIO.

### **B. CORRECTIVE ACTION REQUIRED**

Daylay is required to immediately begin conducting the required IRCP inspections. Daylay is also required to document the inspections in the Operating Record. On or about September 1, 2005 a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Daylay or its owners and/or operators fail to comply with any of the corrective action required herein, Daylay or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2500.00 per week for 8 weeks, for a total of \$20,000.00 and the potential for escalated enforcement.

## **II. SECOND VIOLATION MANURE STORAGE AND INSPECTIONS/RECORD KEEPING-FARM 3**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-1-10 and O.A.C. 901:10-2-16 have been violated. Specifically, pursuant to O.A.C. 901:10-1-10(F) no person shall violate the terms and conditions of a Review Compliance Certificate. In addition, the Operating Record must include records of inspections of structural integrity, based upon inspections conducted at intervals specified in the manure management plan. O.A.C. 901:10-2-16(A)(1)(a)(ii).

The RCC issued to Daylay for Farm 3 (RCC FAR3-0003.RC001-UNIO) lists manure storage capacity at the manure storage building located at the facility as 7,000 tons. The RCC also states, "Frequency of Manure Residuals Removal" for the manure storage building means manure removal is "Continual as sold."

During the inspection conducted on May 5, 2005, the LEPP Inspector found that the manure storage building was completely full and exceeding the authorized building capacity. This was evident from the large amount of manure piled within the building and in front of the building.

The LEPP Inspector also found that Daylay has not maintained records of monthly inspections for manure capacity, had not maintained records of bi-annual inspections of structural integrity, and had not maintained records of manure removal as required by the RCC FAR3-0001.RC001-UNIO and by the above-cited rules since at least March 11, 2005. The RCC requires Daylay to

maintain "records of manure residual removal, ... manure storage capacity remaining and the overall structural integrity of the manure storage and treatment facilities."

### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation. Manure must be removed as soon as possible and either composted or land applied in accordance with the rules and the terms and conditions of the RCC. All manure removal shall be completed no later than September 1, 2005.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as low. Therefore, if Daylay, its owners, or operators fail to comply with the corrective action required herein, Daylay, its owners, or operators will be subject to the assessment of a civil penalty in the amount of \$1,000.00 for each day after September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt - Union SWCD  
Cathy Alexander/Alison Shockley- Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips - Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Frank Zimmerer  
Topaz Real Estate, Inc.  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE -FARM  
2**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. and Topaz Real Estate, Inc. ("Daylay" and "Topaz") are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker and Topaz Real Estate are the owners of Daylay Egg Farm 2. Frank Zimmerer is the owner of Topaz Real Estate. Mark Meyer is the operator of Daylay Egg Farm 2. ODA has determined that the following rules have been violated at Daylay Egg Farm 2: Ohio Administrative Code (O.A.C.) 901:10-2-08, 901:10-1-10, 901:10-2-16, and 901:10-2-19.

### I. FIRST VIOLATION- WATER WELL TESTS-FARM 2

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08, 901:10-2-16, and 901:10-1-10 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(i) requires that the permittee conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record. O.A.C. 901:10-2-16(A)(1)(a)(vi) also requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) FAR2-0001.RC001-UNIO requires annual ground water sampling and analysis in the Manure Management Plan at item 5., Groundwater Sampling and Analysis, at one well location (number 702).

During the May 5, 2005 inspection, the LEPP Inspector determined that Daylay and Topaz failed to conduct sampling and analysis of groundwater and to maintain ground water sampling analysis in the Operating Record in violation of the above-cited rules and Farm 2's RCC FAR2-0001.RC001-UNIO.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by collecting or obtaining the required sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay and Topaz have returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if Daylay, Topaz, their owners and/or operators fail to comply with the corrective action required herein, Daylay, Topaz, their owners and/or operators will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## **II. SECOND VIOLATION- INSECT AND RODENT CONTROL PLAN-FARM 2**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-19, 901:10-2-16, and 901:10-1-10 have been violated.

Specifically, O.A.C. 901:10-2-19(B)(3)(a) requires that the monitoring and inspection records required by the Insect and Rodent Control Plan (IRCP) be maintained in the Operating Record. O.A.C. 901:10-2-16(A)(1)(a)(vii) also requires that the records required by the IRCP be recorded and documented in the Operating Record.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. RCC FAR2-0001.RC001-UNIO lists Operating Record Requirements as part of the Insect and Rodent Control Plan and includes forms for Monitoring of Rodents, Reports from Ralph E. Williams, Ph.D., Fly Inspection Data Sheets, and a Weekly Fly Activity Evaluation.

During an inspection on May 5, 2005, the LEPP Inspector determined that Daylay and Topaz failed to maintain records of monitoring and inspection as required by the IRCP since at least

February 2, 2005 in violation of the above-cited rules and Farm 2's Review Compliance Certificate's Insect and Rodent Control Plan (RCC FAR2-0001.RC001-UNIO).

**B. CORRECTIVE ACTION REQUIRED**

Daylay and Topaz are required to immediately begin conducting the required IRCP monitoring and inspections. Daylay and Topaz are also required to document the inspections in the Operating Record. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Daylay, Topaz, their owners and/or operators fail to comply with any of the corrective action required herein, Daylay, Topaz, their owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2500.00 per week from February 2, 2005 through May 5, 2005, for 13 weeks, for a total of \$32,500.00 and the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt - Union SWCD  
Cathy Alexander/Alison Shockley- Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips - Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-FARM 1**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Egg Farm 1. ODA has determined that Daylay Egg Farm 1 has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10, 901:10-2-08, 901:10-2-10, and 901:10-2-16.

### I. FIRST VIOLATION- WATER WELL TESTS-FARM 1

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(i) requires that the permittee conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vi) requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) FAR1-0001.RC001-UNIO

requires annual ground water sampling and analysis in the Manure Management Plan at item 5., Groundwater Sampling and Analysis, at one well location (number 701).

During an inspection on April 12, 2004, the LEPP Inspector told Daylay to complete annual ground water sampling and analysis for total coliform and nitrates. The LEPP Inspector also informed Daylay that the results of the analysis were required to be maintained in the Operating Record.

On May 5, 2005, ODA conducted another inspection. Daylay had not yet performed the required ground water sampling and analysis although this is a requirement of the above-cited rules and of the RCC FAR1-0001.RC001-UNIO issued on February 7, 2005.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by collecting or obtaining the required ground water sample, having the sample tested for total coliform and nitrates and recording the analytical results in the facility's Operating Record. On or about September 1, 2005 a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay, its owners, and/or operators will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline of September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

## **II. SECOND VIOLATION-UNAUTHORIZED MANURE STORAGE**

ODA has determined the O.A.C. 901:10-1-10(F) has been violated.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) FAR1-0001.RC001-UNIO requires Daylay to transfer manure every four to seven days as provided in the Manure Management Plan (MMP) at item 3., Manure Storage Ponds, Manure Treatment Lagoons, and Fabricated Structures. According to the RCC there is no manure storage at Farm 1: "Raw manure is transported from the belt battery system every 4-7 days routinely, no records [of storage are] kept. Manure is sold from Farm 3 and see Farm 3 MMP for copy of records."

During an inspection on April 12, 2004, the LEPP Inspector discovered that manure is removed from barns 7A and 7B approximately every 17 weeks, concurrent with flock removal. Manure storage in these barns is not authorized by the RCC and is stored in violation of O.A.C. 901:10-1-10(F), which states that no person shall violate the terms and conditions of a Review Compliance Certificate.

RCC FAR1-0001.RC001-UNIO provides that manure shall be removed from barns at Farm 1 every 4-7 days for transport to Daylay Farm 3. ODA concludes that manure stored in the pits of barns 7A and 7B constitutes "manure storage" in a "fabricated structure" as those terms are defined in O.A.C 901:10-1-01.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by moving all manure from Farm 1 to Farm 3 every four to seven days. On or about September 1, 2005, a LEPP Inspector will re-inspect the operation to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as high.

Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$5,000.00 for each day after the deadline of September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

## **III. THIRD VIOLATION- MANURE STORAGE WITHOUT THE REQUIRED TESTS- FARM 1**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-10(C) and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C 901:10-2-10(C) provides:

At a minimum, manure from each manure storage or treatment operation shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids.

In addition, O.A.C. 901:10-2-16(A)(1)(b) requires that the owner or operator maintain manure characterization data, as well as other information required by O.A.C. 901:10-2-10, in the Operating Record.

During the inspection conducted on May 5, 2005, the LEPP Inspector learned that Daylay was using barns 7A and 7B to store manure. Daylay has not analyzed the manure stored in barns 7A and 7B, and has not maintained this analysis in the Operating Record.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, Daylay shall begin manure sampling and analysis immediately at barns 7A and 7B at Farm 1 using the procedures in "Recommended Methods of Manure Analysis" (a3769), University of Wisconsin Extension, 2003 and Daylay shall comply with all requirements in O.A.C. 901:10-2-10. Copies of manure analysis results must be maintained in the facility's Operating Record and must be immediately available to the LEPP Inspector. Daylay shall complete sampling and record keeping no later than September 1, 2005.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline of September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP.

I look forward to your cooperation in this matter.

Sincerely,

  
Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt – Union SWCD  
Cathy Alexander/Alison Shockley– Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips – Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-PULLET FARM**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Pullet Farm. ODA has determined that Daylay Pullet Farm has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10(F), 901:10-2-08, 901:10-2-10, and 901:10-2-16.

### VIOLATION- WATER WELL TESTS-PULLET FARM

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(i) requires that the permittee conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vi) requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) PULL-0001.RC001-LOGA requires annual ground water sampling and analysis in the Manure Management Plan at item 5., Groundwater Sampling and Analysis, at one well location (number 704).

Following an inspection on April 12, 2004, ODA's Livestock Environmental Permitting Program (LEPP) Inspector provided Daylay with an Inspection Report informing Daylay that Daylay needed to complete annual ground water sampling and analysis for total coliform and nitrates. The LEPP Inspector also informed Daylay that groundwater analysis were required to be taken yearly and the results maintained in the Operating Record.

On May 5, 2005, ODA conducted another inspection. Daylay had not performed the required ground water sampling and analysis in violation of the above-cited rules and RCC PULL-0001.RC001-LOGA issued on February 7, 2005.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by collecting or obtaining the required ground water sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay, its owners, and/or operators will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after September 1, 2005, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt - Union SWCD  
Cathy Alexander/Alison Shockley- Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips - Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335  
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## Certified Mail Return Receipt Requested

July 8, 2005

Kurt Lausecker  
Frank Zimmerer  
Topaz Real Estate, Inc.  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: Warning Letter

Gentlemen:

I am writing because I am concerned that Daylay Egg Farm, Inc. ("Daylay") Farm 2 may be planning or may be engaged in conduct that could result in enforcement action and penalties. During the inspection conducted on May 5, 2005, the LEPP Inspector found that concrete walls for a 60-foot by 120-foot manure storage barn had been poured. RCC FAR2-0001.RC001-UNIO does not authorize this new building. Specifically, O.R.C. Section 903.02(A)(2) provides that after August 19, 2002, no person is permitted to modify an existing concentrated animal feeding facility without first obtaining a permit to install from the Director of ODA.

O.A.C. 901:10-2-01 provides:

- (1) No person shall construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director.

I urge you to contact Gary Zwolinski, LEPP Engineer, or Chris Rodabaugh, LEPP Inspector, to discuss any plans that you may have for additional manure storage including manure storage in a new fabricated structure. It is important that any changes comply with the RCC and rules. Please assure that at the next inspection the items noted in this letter have been addressed. If the follow-up inspection indicates any violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Union County SWCD  
Cathy Alexander, Ohio EPA



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## Certified Mail Return Receipt Requested

May 23, 2005

Van Ham Dairy  
22177 Road C  
Continental, OH 45831

Gerald E. Niese  
348 T268  
McComb, OH 45858

Niese Farms & Custom Pumping LLC  
9022 RD-X  
Leipsic, OH 45856

### Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on May 10, 2005 and again on May 12, 2005. On those dates, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

1. Need to maintain the operating record to record and document the following information on observations made of drain outlets when liquid manure is applied and need to document the use of drain outlet plugs or other devices used when applying liquid manure.

Rule 901:10-2-16 provides as follows at (A)(1)(c):

(c) Land application site records. Records for each land application site, including:

(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

(iv) When liquid manure is applied to a land application site with subsurface drain, document the use of drain outlet plugs or other devices in the operating record.

The investigations showed that Niese Farms & Custom Pumping LLC had applied manure to a 60-acre field south of SR 613 and east of Road 22 on May 9, 2005 and on May 10, 2005 at appropriate rates of application. Three tile outlets from this field were located but only one was plugged.

Manure was also applied to another field of 80-acres located on the southwest corner of Road 22 and SR 613. Again, manure was applied at an appropriate rate. In this application, surface drains in the field were blocked with dirt but field tile outlets were not monitored as required by rules. The inspector noted that a plug had been inserted into one of the tile outlets and into a tile outlet entering an inspection/service box. However, the inspector proceeded west along SR613 about a quarter of a mile to investigate the source of the Fishkill reported for this area. Further investigation revealed three more tile outlets, pools of manure-laden water in the adjacent roadside ditch, and dead fish floating in the ditch.

While I appreciate prompt action to remedy the manure spills, these spill incidents could have been prevented by checking all field tile outlets and making field observations during manure application. ODA holds both of you responsible. First, Mr. Van Ham is the owner and operator of the dairy and, regrettably, has had prior experience with manure spills into roadside ditches that previously occurred during application of his manure. Second, Mr. Niese, as a certified livestock manager, has been trained through this Department in applying manure with environmentally sound practices

Please assure that at that the items noted in this letter are prevented in future applications by taking all steps to insure that one of you or both of you are responsible to observe field tile outlets during application of liquid manure. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

CC: Chris Rodabaugh/Jim Young, LEPP Inspectors  
Jason Porinchok/Mark Weihrauch- Wildlife Officer  
Cathy Alexander/Rick Wilson- Ohio EPA  
Mike Nishimura - ODNR  
Albert Maag- Putnam SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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## Certified Mail Return Receipt Requested

May 23, 2005

JP Poultry  
C/o Mr. Jim Fleck  
8704 State Route 274  
New Bremen, Ohio 45869

Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Dear Mr. Fleck:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), JP Poultry is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that JP Poultry has failed to comply with O.R.C. Sections 903.02 and 903.04.

### I. FIRST VIOLATION- MODIFYING A CAFF WITHOUT A PTI

#### A. VIOLATION

ODA has determined that O.R.C. Section 903.02 has been violated. Specifically, you made two modifications to your existing Concentrated Animal Feeding Facility (CAFF) without first obtaining a Permit to Install (PTI) from the Director as required by O.R.C. Section 903.02(A)(2). First, you constructed a new manure storage barn without obtaining a PTI. Second, you modified your Insect and Rodent Control Plan (IRCP) without first obtaining a PTI.

The Review Compliance Certificate issued for your CAFF on April 9, 2004 (JPPO-0001.RC001-MERC) approved your facility to operate with the approximately 646,000 cubic feet of manure storage. During an inspection conducted by the ODA Livestock Environmental Permitting Program (LEPP) on February 9, 2005, ODA discovered that a new and additional manure storage barn had been constructed at your facility. The new manure storage barn has a storage capacity of approximately 96,000 cubic feet. The new

barn increases your manure storage capacity approximately fifteen per cent from approximately 646,000 cubic feet to approximately 742,000 cubic feet.

Any expansion of manure storage capacity of more than ten per cent is considered to be a modification of the CAFF. O.A.C. 901:10-1-01(VV). After August 19, 2002, no person shall modify an existing CAFF without first obtaining a Permit to Install (PTI) issued by ODA. O.R.C. Section 903.02(A)(2). Therefore, prior to building the new manure storage barn, you were obligated to obtain a PTI.

In addition, each RCC is required to contain an IRCP. O.R.C. Section 903.04(E)(2)(d). The IRCP included in your RCC only covers the manure storage facilities that were in existence at the time ODA issued the RCC. By constructing a new manure storage barn, you should have submitted a new IRCP to ODA that included information related to the new manure storage barn. Any changes to the IRCP constitute a modification. O.A.C. 901:10-1-01(VV)(3). Therefore, changing the IRCP to include the new manure storage barn required the submittal of a PTI application. O.R.C. Section 903.02(A)(2).

### **B. CORRECTIVE ACTIONS**

JP Poultry is required to submit an application for a Permit to Install in order to correct violations of O.R.C. Section 903.02. An application shall be submitted within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. Thereafter, JP Poultry shall have 60 days to respond to comments made by LEPP on the permit application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the permit application, JP Poultry shall have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary permit as expeditiously, as possible, subject to the public participation requirements of O.R.C. Section 903.09.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as medium.

Therefore, if you fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, you will be subject to the assessment of a civil penalty in the amount of \$4,800.00 for each day after the new barn was discovered (February 9, 2005) until the date of this Notice of Deficiencies letter (May 17, 2005) for violation of O.R.C. Section 903.02. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

## II. SECOND VIOLATION- VIOLATING THE RCC

### A. VIOLATION

ODA has also determined that O.R.C. Section 903.04 has been violated. You are operating a CAFF in violation of your RCC. The RCC merged and became part of the PTI previously issued by the Ohio Environmental Protection Agency (OEPA). O.R.C. Section 903.04(G). A facility that is issued an RCC, must comply with the OEPA issued PTI as amended by the RCC. O.R.C. Section 903.04(I).

The RCC issued to Jim Fleck and JP Poultry authorized JP Poultry to continue operating based on findings made by the Director that the Facility is "of correct design capacity; that the Facility is in compliance with the PTI issued by the Ohio Environmental Protection Agency; that the Facility's Manure Management Plan, Insect and Rodent Control Plan, and Mortality Management Plan all conform to best management practices; and that the Facility is operated in a manner that protects the waters of the state and minimizes the presence and negative effects on insects and rodents at the facility and in surrounding areas." (See Order 2004-066 at 11)

By constructing the new manure storage barn without authorization from OEPA or ODA, JP Poultry's RCC does not contain information that reflects current operating conditions at JP Poultry, including, but not limited to the following:

- 1) The RCC does not have a Manure Management Plan that specifies the frequency of inspections to be conducted at all manure storage and treatment facilities, including the new manure storage barn at JP Poultry, as required by rule 901:10-2-08 of the O.A.C.
- 2) The RCC has not had an Insect and Rodent Control Plan submitted that specifies management controls for all manure and storage and treatment facilities, including the new manure storage barn, as required by rule 901:10-2-19 of the O.A.C.

### B. CORRECTIVE ACTIONS

JP Poultry is required to submit an application for a Permit to Operate (PTO) in order to correct violations of O.R.C. Section 903.04. An application shall be submitted within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. JP Poultry shall submit the PTI and the PTO applications simultaneously. O.A.C. 901:10-2-01(A)(2). Thereafter, JP Poultry shall have 60 days to respond to comments made by LEPP on the permit application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the permit application, JP Poultry shall have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary permit as expeditiously, as possible, subject to the public participation requirements of O.R.C. Section 903.09.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D). Based upon this review, ODA has determined that the violations cited herein are the first cited violations with the category of seriousness of the violations as Category I, and the gravity of the violations as medium.

Therefore, if you fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, you will be subject to the assessment of a civil penalty in the amount of \$4,800.00 for each day after the new barn was discovered (February 9, 2005) until the date of this Notice of Deficiencies letter (May 17, 2005) for violation of O.R.C. Section 903.04. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
✓ Jennifer Tiell/Kristen Davidson, Legal Counsel  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Mercer SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

May 12, 2005

Mr. Ed Stoll  
Stoll Farms, Inc.  
6818 Coal Bank Road  
Marshallville, Ohio 44645

Mr. Steve Gruskiewicz  
Gruskiewicz Pumping Inc.  
8421 Rt. 193  
Williamsfield, Ohio 44093

### Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on April 23, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

1. Need to maintain distance of 100 feet as setback between the manure application field and a residence.

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides as follows at (B)(4) and Appendix A at number 8:

(B)(4) All land applications of manure shall comply with all restrictions contained in appendix A of this rule.

#### Appendix A of Rule 901:10-2-14

Manure may be applied at the prescribed distance from the edge of the land application site, provided that any such application, including application to the edge of a land application site, shall utilize manure

application as that term is defined by paragraph (OO) of rule 901:10-1-01 of the Administrative Code and manure application shall comply with the application restrictions in this appendix. If a buffer strip is required, the owner or operator shall comply with that term as defined in paragraph (N) of rule 901:10-1-01 of the Administrative Code

#### 8. Neighboring residences Setback

Injection application - 50 feet.

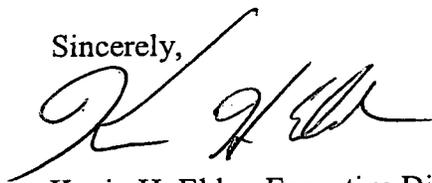
Surface application followed by incorporation within twenty-four hours - 100 feet.

Surface application not followed by incorporation within twenty-four hours - 300 feet.

The investigation showed that manure had been applied to a 14.7-acre field located west of 78129 Black Diamond Road on April 16, 2005 at the rate of 13,000 gallons per acre. Gruskiewicz Pumping, Inc. performed the application with a dragline equipped with a hay bar. The field had previously been chisel plowed and therefore incorporation setback requirements were to be followed. Measurements showed the manure was applied 66 feet and 8 inches from the complainant's residence.

Please assure that at that the items noted in this letter are prevented in future applications. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder, Executive Director

CC: Roy Darr

Eric Ucker – Wildlife Officer

Cathy Alexander – Ohio EPA

Mike Nishimura – ODNR

Duane Wood – Wayne SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
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May 9, 2005

DeVries Dairy  
C/o Hette DeVries  
7138 Sager Road  
LaRue, OH 43332

## Re: Warning Letter

Dear Mr. DeVries:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on April 25, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found numerous violations of Ohio law surrounding your operation. These violations include the following:

1. Need to maintain records on storage capacity or manure volume at the manure storage and treatment facility.

Rule 901:10-2-16(A)(1)(a)(iii) of the Ohio Administrative Code ("OAC") provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility. Records required by rules 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(iii) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.

2. Need evidence in the operating record of regular inspections of the manure storage or treatment facilities for erosion, leakage, animal damage, or discharge.

Rule 901:10-2-08(A)(3)(e) of the OAC provides:

(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(e) Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage or discharge.

3. Need to properly record maintenance inspections and upkeep of any protective vegetative cover in the operating record.

Rule 901:10-2-16(A)(1)(a)(iv) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage treatment facility. Records required by rules 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(iv) Records of inspections of stormwater conveyances and of any protective vegetative cover.

An inspector plans to inspect your operation towards the end of June of this year. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Marion County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

May 9, 2005

Wenning Poultry Farm  
James and Mary Wenning  
1500 Union City Road  
Fort Recovery, Ohio 45846

### Re: Warning Letter

Dear Mr. and Mrs. Wenning:

On January 12, 2005, I sent a Warning Letter to Wenning Poultry Farm regarding violations discovered during the November 5, 2004 inspection. In that Warning Letter I informed you that an inspector would return in mid-March 2005 to assure that violations listed in that letter had been addressed. On April 8, 2005, your operation was re-inspected by my staff. Violation of numerous Ohio Department of Agriculture laws and rules was discovered on that date. These violations include the following:

1. Need to maintain records in the operating record of freeboard measurements in the manure lagoon.

Rule 901:10-2-08(A)(3)(a) of the Ohio Administrative Code ("OAC") provides:

- (3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:
- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four hour storm event, plus an additional one foot of freeboard.

In addition, Rule 901:10-2-16(A)(1)(a)(i) of the OAC provides:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator of the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility.

Records required by rule 901:10-2-08 or 901:10-19 of the Administrative Code, including:

(1) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan. (Emphasis added)

2. Need to maintain the required information in the operating record for land application of manure, including date and quantity of application.

Rule 901:10-2-16(A)(1)(c)(v), (A)(1)(c)(xii), and (A)(1)(C)(xiv) of the OAC provide:

Land application site records. Record for each land application site, including:

(xiv) Date, rate, quantity and method of application of the nutrient, and/or form and source of manure, commercial fertilizer and/or other organic by-products. (Emphasis added)

3. Bird populations must be within 10% of your permitted numbers or a permit modification must be sought. In no case during a five year period shall your operation's capacity be modified to increase by more than 10% in the aggregate.

Rule 901:10-1-01(VV) provides:

(VV) Modification means one or more of the following:

(1) A material and substantial alteration of the facility including an increase of the number of animal units of the design capacity of an existing facility by ten per cent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or operation's capacity be modified to increase by more than ten per cent in the aggregate.

4. Need to inspect the composter building for structural integrity.

Rule 901:10-2-08(A)(3) of the OAC provides:

At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (e) Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage or discharge.

5. For newly acquired land that you plan to apply manure to certain revisions must be made to your manure management plan.

Rule 901:10-2-09(C) of the OAC provides:

The manure management plan shall include the total summary of acres of land to be used for land application sites. This summary includes the land that is available for the duration of the permit and the land that is available for manure that is generated by the facility. The total summary shall be further characterized as follows:

- (1) The total nutrient budget requirements on land application sites under the control of the owner or operator;
- (2) The quantity of commercial fertilizer nutrients to be applied on land application sites under the control of the owner or operator; and
- (3) The quantity of nutrients to be managed by the owner or operator through distribution and utilization methods utilized in accordance with rule 901:10-2-11 of the Administrative Code.

6. You must specifically list the sections of the Pax farm that are applied with manure.

Rule 901:10-2-16(1)(c)(ii) of the OAC provides:

- (1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:
  - (c) Land application site records. Record for each land application site including:
    - (ii) The owner or operator shall list or otherwise describe those acres of land in the operating record for land application of manure.

7. You must maintain records of equipment maintenance.

Rule 901:10-2-16(1)(c)(i) of the OAC provides:

- (1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or

operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(i) The owner operator shall maintain or have access to adequate application equipment and record this in the operating record.

8. You must record tile observation when land applying liquid manure.

Rule 901:10-2-16(A)(1)(c)(iii) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

9. You must record soil conditions when land applying.

901:10-2-16(A)(1)(c)(xv) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(xv) Condition of soil at the time of application including, but not limited to, available water capacity and evidence of soil cracks and related information on soil conditions.

10. Your operating record must record the setbacks from waterways, wells, homes, etc. that you maintained during land application.

901:10-2-14(B)(4) of the OAC provides:

This rule establishes best management practices that govern land application of manure on land application sites. The land application of manure at each land application site shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

(B) Manure application rate-general criteria:

(4) All land applications of manure shall comply with all restrictions contained in appendix A of this rule. (Appendix A provides setback requirements and is included with this letter for your reference.)

11. You must record weather conditions at the time of application.

901:10-2-16(A)(1)(c)(xvi) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(xvi) Temperature, including general weather conditions at time of application.

12. You must provide, if available, your actual crop yields.

901:10-2-16(A)(1)(c)(xi) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site, including:

(xi) Actual yields if available.

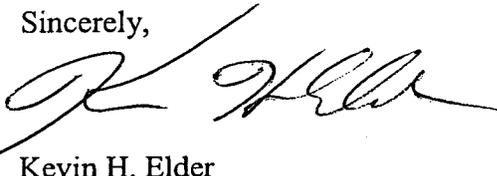
13. Need to follow your Insect and Rodent Control Plan as it is part of your Review Compliance Certificate.

901:10-1-10(F) of the OAC provides:

(F) No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.

You corrected three (3) of five (5) violations noted in the January 12, 2005 Warning Letter, but the re-inspection shows two remaining violations and ten additional, new violations. An inspector plans to re-inspect your operation in late October or early November of this year. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt corrections of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations after two Warning Letters have been issued, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mercer County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
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May 6, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: Director's Notice of Hearing**

Gentlemen:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department" or "ODA"), under the authority of Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Ohio Fresh Eggs, LLC ("OFE") imposing a civil penalty of \$212,000.00 because of ODA's determination that OFE has failed to return certain Croton Layer facilities to compliance with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756 ("Consent Order").

OFE has not returned to compliance with paragraph 8 of the Consent Order which enjoins OFE to comply with, inter alia, the terms and conditions of all permits issued by the Director of Agriculture pursuant to Chapter 903 of the ORC. Specifically, OFE has not returned to compliance with the Insect and Rodent Control Plan ("IRCP") contained

in the Permits to Operate ("PTO") issued to Croton Layer Site No. 2 (PTO OFL2-0001.PO0001.LICK) and Croton Layer Site No. 3 (PTO OFL2-0001.PO0001.LICK).

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

#### **October 15, 2004 Notice of Deficiency**

1. During an inspection of the Croton Layer facilities on September 14, 2004, inspectors discovered that OFE had failed to have effective daily water leak inspections, a good maintenance program, and proper barn ventilation in order to maintain 30% manure moisture or less.

2. On October 15, 2004, ODA issued a Notice of Deficiencies Resulting in Noncompliance ("NOD") due to OFE's failure to "maintain the moisture content in the manure . . . at/or below 30%" as required by OFE's IRCP. The NOD proposed a penalty of \$2,500.00 for the thirty days the manure moisture exceeded 30%. Manure exceeded 30% in the following barns:

- At Layer No. 1, barn 5
- At Layer No. 2, barns 15-20, 22, 26, 27, 27A, and 28B
- At Layer No. 3, barns 31, 34, 36, 37, and 41
- At Layer No. 4, barns 43, 47, 49, 50, 51, and 56

3. The October 15, 2004 NOD also cited the following barns for not only exceeding the 30% manure moisture, but also increasing the manure moisture levels in the barns from the first quarter to second quarter of 2004. The NOD proposed a penalty of \$4,500.00 for each week the manure moisture exceeded 30%. Manure moisture levels increased in the following barns:

- At Layer No. 1, barns 3, 7, 10, and 13
- At Layer No. 2, barns 21, 23-25, and 28
- At Layer No. 3, barns 30, 32, 35, 40, and 42
- At Layer No. 4, barns 45, 53, and 55

4. The NOD issued on October 15, 2004 required OFE to correct the deficiencies by submitting and complying with a schedule that did all of the following:

- 1) List each barn that exceeds the manure moisture rate of 30%.

- 2) List each barn that exceeds 50% manure moisture or those barns where the manure cannot be properly contained within the walls of the barn or those barns where manure cannot be prevented from flowing out of pit doors or barn clean out doors or those barns with no coning.
- 3) Prioritize barns for manure removal beginning with the barns described here at item 2), so that manure is removed from each listed barn as soon as feasible, given current winter restrictions for land application of manure.
- 4) Provided, however, that the schedule submitted for all of the barns described here at item 2) shall not exceed March 31, 2005 by which time OFE will complete manure removal and distribution and utilization for all of those barns.
- 5) List the dates for manure removal for all other barns.

5. By letter dated November 24, 2004, OFE provided ODA with a schedule for manure removal in response to the NOD. The schedule provided by OFE listed barns exceeding the 30% manure moisture rate; listed barns exceeding the 50% manure moisture rate; and prioritized barns for manure removal. The schedule set forth in this letter prioritized barns at Layer No. 2 and Layer No. 3 to be cleaned by the fall of 2004 or early spring 2004 before the March 31, 2005 deadline. Manure from all the barns at the Croton Layer facilities that exceeded 30% manure moisture listed in the October 15, 2004 NOD would be removed by March 31, 2005.

#### **January 24, 2005 Notice of Deficiency**

6. On December 6, 2004, ODA conducted an inspection at OFE Layer No.3 and determined that the manure moisture in Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 exceeded 30%.

7. On January 24, 2005, ODA issued an NOD to OFE based on ODA's determination that for 48 weeks, from January 1, 2004 through December 5, 2004, the terms and conditions of paragraph 8 of the Consent Order and of OFE's IRCP had been violated. OFE's IRCP requires that OFE "keep manure as dry as possible in order to maintain 30% moisture or less . . . ."

8. The NOD issued on January 24, 2005 required OFE to correct the deficiencies by submitting a schedule within ten days indicating the dates OFE intended to remove the manure from Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40. OFE was required to complete manure removal and distribution and utilization for the barns by March 31, 2005 or OFE would be subject to the assessment of a civil penalty.

9. By letter dated February 14, 2005, OFE submitted a schedule for manure to be removed from Barn Nos. 29-40 by March 31, 2005. In addition, OFE requested both of the following:

- To modify the operating permits to reflect that the 30% manure moisture requirement only applies to certain barns at the Croton Facilities prior to conversion of these barns to belt battery manure management.
- To change the deadline for manure removal to May 31, 2005.

During an inspection conducted by ODA, the LEPP Inspector informed OFE that the deadline would not be changed. During a telephone conversation, the LEPP Executive Director also informed OFE by that the deadline would not be changed.

#### **April 4, 2005 Re-Inspection**

10. On April 4, 2005, ODA re-inspected OFE Croton Facilities to determine whether OFE had complied with the corrective action requirements contained in the October 15, 2004 and January 24, 2005 NODs by removing manure from the barns listed in the NODs by March 31, 2005.

11. ODA has determined that OFE has not fully complied with corrective actions contained in the NODs. OFE failed to completely remove manure by March 31, 2005 from the following barns:

- At Layer No. 2, barns 15-28, 27A, and 28B.
- At Layer No. 3, barns 29-41.

#### **Penalty Assessment**

12. Section 903.16 of the ORC provides at paragraph (A):

The Director of Agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the Director or the Director's authorized representative determines that the owner or operator is not in compliance with . . .the terms and conditions of a . . . permit to operate, or . . . rules adopted under division (A) of section 903.10 of the Revised Code. However, the Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(2) After the time period specified in the notice has elapsed, the Director or the Director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the Director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

13. Based on OFE's failure to completely correct the deficiencies and return to compliance, ODA is now issuing this Notice of Hearing and proposing the imposition of a \$212,000.00 penalty.

14. Manure was not cleaned out of the following barns by March 31, 2005 as required by the October 15, 2004 NOD:

- At Layer No. 2, barns 15-20, 22, 26, 27, 27A, and 28B a 30 day exceedance of the 30% moisture limit at \$ 2,500.00 per week for a total of \$10,000.00.
- At Layer No. 3, barns 31, 34, 36, 37, and 41, a 30 day exceedance of the 30% moisture limit at \$ 2,500.00 per week for a total of \$10,000.00.
- At Layer No. 2, barns 21, 23-25, and 28, a 60 day exceedance of the 30% moisture limit at \$ 4,500.00 per week for a total of \$36,000.00.
- At Layer No. 3, barns 30, 32, 35, 40, and 42, a 60 day exceedance of the 30% moisture limit at \$ 4,500.00 per week for a total of \$36,000

15. Manure was not cleaned out of the following barns by March 31, 2005 as required by the January 24, 2005 NOD:

- At Layer No. 3, barns 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40, a 48 week exceedance of the manure moisture limit at \$2,500.00 per week for a total of \$120,000.00

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on May 6, 2005.

Please note that if your company is a limited liability company or a corporation, only an attorney at law admitted to practice in the State of Ohio may request the hearing and represent the company at the hearing. A court reporter will be present at the hearing to make a record of the proceedings and to swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. Following the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within 30 days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
William A. Hopper, Chief Counsel, ODA  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Kristen Davidson, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Jim Young, LEPP Inspector  
Licking SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
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May 6, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Breeder/Hatchery Facility. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F), OAC 901:10-2-16, and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

**I. FIRST VIOLATION-FAILURE TO COMPLY WITH THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the

terms and conditions in the Permit to Operate (PTO) issued to OFE for the Croton Breeder/Hatchery Facility (OFHB1-0001.PI001.LICK) have been violated. Specifically, the Moisture Management section of the OFE's Insect and Rodent Control Plan provides that: "Every day an inspector walks each pit to. . . record, . . . water leaks immediately. Water leaks are repaired immediately."

During an inspection conducted by ODA on April 11, 2005, the LEPP Inspector determined that the Insect and Rodent Control Plan records were lacking three items. First, the Water Loss and Water Repair Logs (FEM-2 forms) were not completed and on file in the Operating Record. Water Loss and Water Repair Logs (FEM-2) are required pursuant to the IRCP Maintenance Activities, Watering System at item 1.a. Water Leaks.

Second, the Pit Insect Inspection Reports (FEM-5 forms) were not completed and on file. Pit Insect Inspection Reports (FEM-5) are required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records.

Third, the Fly Control Logs (FEM-4 forms) with the required actions recorded were not completed and on file. Fly Control Logs (FEM-4) are required pursuant to the IRCP Use of Fly Speck Cards to Monitor Fly Levels and Action Level Used to Trigger Fly Control.

ODA has determined that for 14 weeks from January 1, 2005 to at least April 11, 2005, OFE failed to complete any Water Loss and Water Repair Logs, Pit Inspection Reports, or Fly Control Logs at the Croton Breeder/Hatchery Facility.

#### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to provide employee training for daily barn inspections for OFE Breeder/Hatchery Operation. OFE is required to provide employee training within thirty (30) days of receipt of this letter. OFE shall train employees and training shall be complete no later than July 15, 2005. OFE shall submit an affidavit to ODA documenting that each production employee, whether a full-time, part-time, or temporary employee, has been trained. In the event that employees have been trained previously as reported and documented by OFE in affidavits submitted to ODA on February 14, 2005, then OFE shall provide re-training or additional training to the employees of the Breeder/Hatchery Operation and, as appropriate, to the Site Manager by July 15, 2005. Thereafter, OFE shall submit the affidavits to Kevin Elder, Executive Director, Livestock Environmental Permitting Program (LEPP), no later than August 15, 2005. OFE shall retain records on file of employee training, including training of any new employees, for periodic inspection by ODA.

OFE is required to submit a written report to LEPP within ten days of the date of this letter explaining in detail the duties and responsibilities of Site Production Managers at the Breeder/Hatchery, as this term is used in all permits issued to OFE. OFE shall provide a Table of Organization for the Breeder/Hatchery Operation and identify by name each Site Production Manager within the context of the Table of Organization for the Breeder/Hatchery Operation.

Finally, OFE is required to immediately establish all necessary policies, practices, and procedures to insure that the Breeder/Hatchery Facility is being inspected, with all inspections properly recorded in accordance with OFE's permit. OFE shall submit to ODA within 30 days of the date of this letter a report explaining the policies, practices, and procedures placed into operation and their effectiveness.

## C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2500.00 per week for 14 weeks, for a total of \$35,000.00 and the potential for escalated enforcement.

## II. SECOND VIOLATION-FAILURE TO COMPLY WITH DISTRIBUTION AND UTILIZATION RECORD KEEPING REQUIREMENTS

### A. VIOLATION

ODA has determined that OFE has violated OAC 901:10-2-16, which requires OFE to maintain records of distribution and utilization methods used. OAC 901:10-2-16 provides at paragraph (A)(1)(e):

(e) The records for implementation of distribution and utilization methods, if used, shall include;

(i) Quantity of manure transferred off-site;

(ii) Date of off-site transfer;

(iii) Name of recipient of manure; and

(iv) A statement signed by the recipient acknowledging that the recipient shall follow best management practices for land application, if applicable, required by OAC 901:10-2-14.

During an inspection conducted by ODA on April 11, 2005, the LEPP Inspector determined that the Operating Record lacked records documenting the hatchery waste removed by G.A. Wintzer & Company in 2005. Hatchery waste is "manure" as ORC Section 903.01(O) defines this term.

ODA has determined that for 14 weeks from January 1, 2005 to at least April 11, 2005 OFE failed to maintain the required records.

### B. CORRECTIVE ACTIONS

OFE is required to comply with OAC 901:10-2-16 by immediately instituting procedures to routinely record the information on distribution and utilization of all manure. This includes making arrangements with G.A. Wintzer & Company to provide necessary documentation of distribution and utilization as between OFE and the Company.

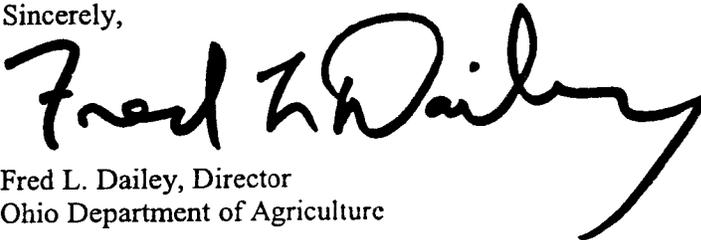
### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (D), (E) and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as low or Category III, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$200.00 per week for 14 weeks, for a total of \$2,800.00 and the potential for escalated enforcement.

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$37,800.00, and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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May 3, 2005

Donald Hershey  
Ohio Fresh Eggs, LLC  
9300 Croton Road  
Croton, OH 43013

**Certified Mail Return Receipt Requested**

Orland Bethel  
Hillandale Farms, Inc.  
3<sup>rd</sup> Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail Return Receipt Requested**

Ronald L. Flory  
Ohio Fresh Eggs, LLC  
11212 Croton Road  
Croton, OH 43013-0173

**Certified Mail Return Receipt Requested**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs, LLC  
11212 Croton Road  
Croton, OH 43013-0173

**Certified Mail Return Receipt Requested**

**Re: Warning Letter**

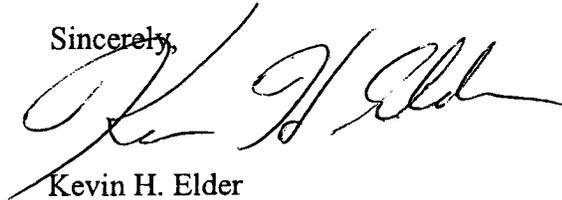
Gentlemen:

Violation of Ohio Fresh Eggs Permit to Operate Insect and Rodent Control Plan was discovered during a complaint investigation by my staff on April 11, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found two manure stockpiles located in a field south of 2711 Finley-Guy Road. There were a moderate number of flies observed on the manure and in the immediate area surrounding the stockpiles. My staff also observed abundant amounts of fly pupae in the manure on the stockpiles and on the ground around the stockpiles. Upon investigation it was discovered that the origin of the manure was Ohio Fresh Eggs Mt. Victory Layer #5.

Your Insect and Rodent Control Plan provides under the heading "Land application management manure loading" at item number one (1) that "all manure will be treated with an appropriate insecticide prior to removal from barn." This was not done with the

aforementioned stockpiles. I understand that you have since sprayed the stockpiles for flies. Henceforth, you must assure that all manure is treated with an appropriate insecticide prior to removal from the barn. We take this violation very seriously and anticipate your prompt correction of your deficient practice. If you are subsequently found in violation of your Insect and Rodent Control Plan this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Jennifer Michaelson, Madison County-London City Health District  
Hardin County SWCD  
Hardin County Health Department  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

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ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

May 3, 2005

Nine Mornings Dairies  
Jetse Theunts Boersma  
6787 Road 144  
Antwerp, Ohio 45813

### Re: Warning Letter

Dear Mr. Boersma:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on April 20, 2005. On that date, the LEPP Inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program noted several violations of Ohio Department of Agriculture laws and rules. These violations include the following:

1. Need to maintain freeboard. The LEPP Inspector measured the freeboard allowance at your facility and found only one foot of freeboard remaining.

Rule 901:10-2-08 of the Ohio Administrative Code (OAC) provides, in pertinent part, at paragraph (A):

(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard."  
(Emphasis added)

At your facility, in order to contain a minimum of a twenty-five year, twenty-four-hour storm event, an uncovered manure storage pond will need to contain 4.4 inches of precipitation plus an additional one-foot of freeboard. In addition, your manure storage ponds collect contaminated stormwater from the silage/compost pad area. The volume of

runoff from this pad, for a 25-year, 24-hour storm event, will need to be accounted for in determining the maximum operating level of these ponds, in addition to the 1 foot of freeboard and the 4.4 inches of rainfall on the surface of the pond. With only one foot of freeboard, the manure storage pond does not have sufficient capacity and manure removal is required.

2. Need to install liquid level indicators in the manure storage pond and the stormwater ponds as soon as the ponds are low enough for installation and install or use a temporary gauge on the banks of each pond to measure and record pond levels.

OAC 901:10-2-06 provides, in part, at paragraph (A)(2):

A liquid level board, staff gauge or other appropriate device, approved by the director, shall be installed within the interior of the liquid storage or treatment volume of the manure storage pond or manure treatment lagoon.

OAC 901:10-2-16 provides at paragraph (A)(1):

The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility. Records required by rule 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(i) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan.

3. Need to maintain information on manure distribution and utilization in the operating record by placing "agreements" in your records.

OAC 901:10-2-11 provides at paragraph (A)(2):

If the owner or operator elects to use distribution and utilization methods, the following is required:

(2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall receive a written agreement signed by the person accepting the manure that states the following: "I have been provided with a copy of analytical results that list the nutrient content of the manure and total quantities of manure. The manure will be distributed and utilized according to best management practices and according to any state laws regulating these uses."

OAC 901:10-2-16 provides at paragraph (A)(1)(e):

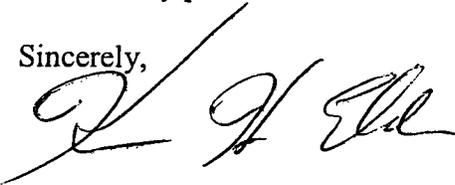
The records for implementation of distribution and utilization methods, if used, shall include:

- (i) Quantity of manure transferred off-site;
- (ii) Date of off-site transfer;
- (iii) Name of recipient of manure; and
- (iv) A statement signed by the recipient acknowledging that the recipient shall follow best management practices for land application, if applicable, required by rule 901:10-2-14 of the Administrative Code.

In order to obtain a Review Compliance Certificate from ODA, which you are required to do, you are expected to comply with the rules listed above for freeboard, staff gauges, and record keeping.

An inspector plans to re-inspect your operation within the next 30 days. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt corrections of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Mr. Lewis Jones, Chief, ODA Division of Dairy  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Paulding SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Secretary Fred L. Dailey

Administrative Offices  
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Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

April 25, 2005

Van Ham Dairy  
22177 Road C  
Continental, OH 45831

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Dear Mr. Van Ham:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Van Ham Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Van Ham Dairy has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-08 and 901:10-2-16.

### I. FIRST VIOLATION- FREEBOARD

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(3)(a) requires the owner or operator as follows, with respect to the operating level of manure treatment lagoons and manure storage ponds: "The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four hour storm event, plus an additional one foot of freeboard."

During an inspection on February 16, 2005, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that the manure-contaminated stormwater pond at the Van Ham Dairy was overtopping its embankments and spilling out to the fields. Although corrective measures were taken to pump the stormwater into a manure pond, your PTI requires that you maintain adequate storage to contain a twenty-five year, twenty-four hour storm event, plus one foot of freeboard. The fact that stormwater was overtopping the embankment on February 16, 2005 demonstrates that Van Ham Dairy failed to maintain adequate storage capacity in the stormwater pond.

### B. CORRECTIVE ACTIONS REQUIRED

You have sixty days from the date on this letter within which you must correct this deficiency by removing stormwater and land applying it correctly or pumping the storm water to the manure storage pond. If you pump the storm water to the manure storage pond, you must maintain freeboard in both the stormwater pond and the manure pond. If the stormwater is land applied,

you must keep all the required application records of this contaminated stormwater in your operating records. You must make these records available to the LEPP inspector.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$1,000.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## II. SECOND VIOLATION-INSPECTIONS/RECORD KEEPING

### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(3) provides, in pertinent part, that the operating level of the manure treatment lagoons and manure storage ponds must be inspected, monitored, maintained, and documented in the operating record. The LEPP inspector noted at the February 16, 2005 inspection that you had no records for storage capacity or manure volume.

ODA has also determined that O.A.C. 901:10-2-16(A)(1)(a)(i) to (A)(1)(a)(v) have been violated. Paragraph (A) of O.A.C. 901:10-2-16 states:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

- (a) The manure storage or treatment facility. Records required by rule 901:10-2-08 of the Administrative Code, including:
  - (i) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan.
  - (ii) Records of inspections of the structural integrity and vegetative management systems of the manure storage or treatment facility taken at intervals specified in the manure management plan.
  - (iii) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.
  - (iv) Records of inspections of stormwater conveyances and of any protective vegetative cover.
  - (v) Implementation dates of those best management practices necessary to operate and maintain settling basins, grass filtration or soil infiltration systems or diverting land surface water and roof water away from the manure storage or treatment facilities.

Review of your operating record provided no evidence of regular inspections of the manure storage facility for erosion, leakage, animal damage, or discharge.

### B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$150.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## III. THIRD VIOLATION- WATER WELL TESTS

### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08(A)(3)(i) and 901:10-2-16 of the O.A.C. have been violated.

O.A.C. 901:10-2-08(A)(3)(i) provides:

“(i) Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraphs (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code . . . Results of sampling and analysis shall be documented in the operating record.”

O.A.C. 901:10-2-16(A)(1)(a)(vi) requires that the owner or operator shall maintain the operating record. “The operating record shall be retained for a minimum period of five years and shall record and document the following information:

- (a) The manure storage or treatment operation. Records required by rules 901:10-2-08 or 901:10-2-19 of the O.A.C., including:

\* \* \* \* \*

- (vi) Records of groundwater sampling and analysis.

Following an inspection conducted on July 28, 2004, ODA issued a Warning Letter informing you that you needed to conduct groundwater analysis for total coliform and nitrates, and maintain records of that analysis in your operating record. During the February 16, 2005 inspection, LEPP inspectors determined that Van Ham Dairy continues to fail to maintain groundwater sampling analysis in the Operating Record. Although you have provided LEPP with well analysis information that you had previously submitted to ODA's Dairy Division, these well samples only test for coliform and do not serve the same purpose as the samples required by the Permit to Operate. In addition, the groundwater analysis results must be maintained in your operating records at the facility and be immediately available for the LEPP inspector.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by collecting or obtaining the required sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Kristen Davidson Legal Counsel  
Mary Beth Ruttan, Assistant Attorney General  
Putnam SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Sherry L. Mowry, Esq.



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

April 6, 2005

Ohio Valley Farms, Inc.  
C/o Christopher Blausner, D.V.M.  
11566 U.S. Route 127  
Versailles, Ohio 45380

Jefferson L. Blausner  
4361 State Route 202  
Tipp City, Ohio 45371

Rebecca Blausner  
4361 State Route 202  
Tipp City, Ohio 45371

WestFin, LLC  
C/o Jefferson L. Blausner and Rebecca Blausner  
4361 State Route 202  
Tipp City, Ohio 45371

### Re: Notice of Deficiencies Resulting in Noncompliance

To All Concerned:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Valley Farms, Inc., Christopher Blausner, D.V.M., Jefferson L. Blausner, and Rebecca Blausner are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Ohio Valley Farms, Inc., Westfin, LLC, Jefferson Blausner, Christopher Blausner, and Rebecca Blausner have failed to comply with Section 903.03 of the ORC.

#### I. VIOLATION

ODA has determined that Section 903.03 of the ORC has been violated. Specifically, you are operating a Concentrated Animal Feeding Facility (CAFF) without authorization by permit.

An animal feeding facility "includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure

originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure." O.R.C. § 903.01(B).

The facility owned and/or operated by you and referred to as Ohio Valley Farms, Inc. (Ohio Valley Farms) has been in operation at 11566 U.S. Route 127, Versailles, Ohio 45380 since at least September 2002. Ohio Valley Farms consists of 14 buildings including seven hog barns. ODA staff of the Livestock Environmental Permitting Program (LEPP) inspected the operation on April 29, 2004 and May 19, 2004 and discovered that Ohio Valley Farm commingled manure during storage, treatment, and handling in a manner that demonstrated that the Ohio Valley Farms was a single animal feeding facility as defined in the statute.

ODA conservatively estimates that the seven hog barns at Ohio Valley Farms have a total design capacity of 10,250 hogs qualifying Ohio Valley Farms as a concentrated animal feeding facility (CAFF). O.R.C. §§ 903.01(F) and 903.01(M)(4). No person may operate a CAFF without a permit to operate (PTO) issued by the Director of ODA. O.R.C. § 903.03(A)(2).

On May 21, 2004 and June 11, 2004, the Director issued Notices of Deficiencies Resulting in Noncompliance based on Ohio Valley Farms operation as a CAFF without a permit issued by the Director. In the Notices of Deficiency, the owners and/or operators of Ohio Valley Farm were instructed to either submit a completed PTO application to ODA, or to submit a closure plan reducing or eliminating the number of swine at the facility.

In a letter dated June 15, 2004, Ohio Valley Farms informed Kevin Elder, Executive Director, LEPP, that Ohio Valley Farms would maintain two separate 2400-swine sites. Each site would have its own roofed manure storage building, as well as its own mortality compost facility.

ODA staff from LEPP inspected Ohio Valley Farms on February 3, 2005 and found that manure, including compost, continues to be commingled during storage, treatment, and handling in a manner that demonstrates that Ohio Valley Farms remains as a single animal feeding facility as defined in the statute. Ohio Valley Farms continues to use only one separate covered manure storage building to store manure at the facility. In addition, compost from all barns is commingled over the site such that there is only one common area of manure disposal. ODA finds that you are operating a CAFF without the required PTO.

## **II. CORRECTIVE ACTION REQUIRED**

Ohio Valley Farms, its owners, and/or operators are required to submit a complete application and permit fee for a PTO to the ODA Livestock Environmental Permitting Program within 15 days of your receipt of the Comprehensive Nutrient Management Plan

(CNMP) completed for you by the Darke Soil and Water Conservation District (Darke SWCD or the District).

All soil and manure test results shall be submitted to Darke SWCD no later than May 15, 2005. You shall have permit application to ODA no later than July 1, 2005.

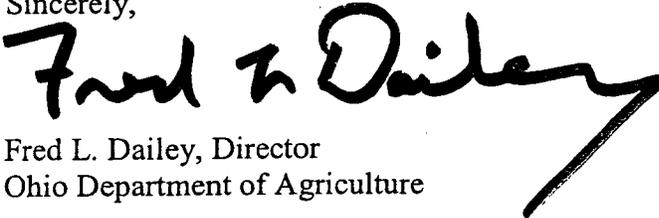
You are advised that the responsibility to comply with Ohio law and this NOD is required notwithstanding the availability of assistance from the District. However, we understand that the District is trying to work with you to complete a CNMP. At this time, the District is waiting for manure spreading agreements and soils samples from Ohio Valley Farms, Inc. Ohio Valley Farms, its owners, and/or operators are required to immediately provide the District with all information the District needs to complete the CNMP.

### III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04(D). In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (G). Based upon this review, ODA has determined that the violations cited herein are repeat violations with the category of seriousness of the violations as high or Category I and the gravity of the violations as low. Therefore, if the owners and/or operators fail to comply with the corrective action required herein, the owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$3,000 and the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Dr. David Glauer, Chief, Division of Animal Industry  
Michelle McKay, LEPP Inspector  
Tim Brunswick, Darke SWCD  
Mike Nishimura, ODNR-SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

March 16, 2005

Banks of the Wabash  
C/o Mr. John Will  
1331 Darke-Mercer County Line Road  
Ft. Recovery, Ohio 45846

### RE: Warning Letter

Dear Mr. Will:

I reviewed and approved the inspection report for the Ohio Department of Agriculture's (ODA's) February 28, 2005 inspection of Banks of the Wabash Farm. I understand that your management practices were mostly acceptable but your record keeping requires improvement. With respect to your record keeping, you need the following records:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.

In addition, Rule 901:10-2-16(A)(1)(b) of the OAC provides:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(b) Manure characterization records. Manure characterization data and other information as required in rule 901:10-2-10 of the Administrative Code.

2. Need for annual water well sample which provides a nitrate analysis of well water should be maintained in your operating record.

Rule 901:10-2-08(A)(3)(i) of the OAC provides:

Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraph (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code. In the event that a well does not already exist at the facility, then the owner or operator shall install a well at the facility that is properly located, protected and operated. The well shall be easily accessible for sampling and have an adequate water quantity for sampling. Results of sampling and analysis shall be documented in the operating record.

In addition, please note the following:

- Actual date of water leaks. This is currently a federal requirement imposed by U.S. EPA and imposed also by Ohio EPA. ODA expects to adopt and enforce a similar requirement. I urge you to begin maintaining these records now.
- Record date when chickens are no longer composted in manure to be hauled (this must be at least 50 days beforehand, so plan ahead)

If you are missing any records, do not try to recreate documents or use old and out-of-date documents as current information. False or misleading records are listed in the Ohio Administrative Code rule 901:10-5-04 (E)(2)(i)(d) as a Category I (major) violation for which a penalty of over \$1,000 could be assessed.

I cannot emphasize enough the importance of routine record keeping for your Operating Record. These are the documents that my staff and I rely upon to assess your management practices. Under the best circumstances we use these records to work with a producer to identify any potential problems and do so as early as possible in order to avoid the unnecessary cost and expense of enforcement. Most producers find that maintaining a good Operating Record is the "key" to making plans for the future of the farm, for business planning, and for good relations with neighbors.

I urge to address this and any other items noted in your most recent inspection as early as possible. If you have any questions, I can be reached at (614) 387-0470.

Sincerely,



Kevin Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Michelle McKay, LEPP Inspector  
Jennifer Tiell/ Kristen Davidson, Legal Counsel  
Cathy Alexander, Ohio EPA  
Ft. Recovery Equity  
Darke County SWCD  
Mike Nishimura, ODNR  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

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March 4, 2005

Mr. Johannes De Groot  
DeGroot Dairy LLC  
8628 West 200 South  
Andrews, In. 46702

**Certified Mail Return Receipt Requested**

Dennis Rieman  
8297 Road 7-D  
Ottawa, Ohio 45875

**Certified Mail Return Receipt Requested**

Re: **Warning Letter**

Gentlemen:

The Ohio Department of Agriculture (ODA) has been made aware that you intend to construct a new manure storage pond in the near future. It is understood that the facility currently has a manure storage pond capable of storing 2.5 million gallons for approximately 525 dairy cattle. A new manure storage pond is planned in the near future that will have a capacity of 12-14 million gallons, giving you a total manure storage volume of 14.5-16.5 million gallons. It appears that this amount of manure storage volume is being constructed for future expansion of this facility for over 700 mature dairy cows, which would require a Permit to Install from ODA. It is understood that additional manure storage is warranted for the existing number of dairy cattle. However, you shall also be cautioned that constructing manure storage for a number of dairy cows over the permitting threshold is against the law without first obtaining a Permit to Install and Permit to Operate from the Department.

On February 24, 2005 the Putnam SWCD was approached by a pond contractor regarding pond size and soils information for a 12 - 14 million-gallon pond at the DeGroot Dairy LLC. The operator has now called the SWCD asking about cost share programs and suggested that you plan to begin construction within two (2) weeks.

ODA requires a permit application for a facility that plans to expand to the size indicated. The Department also requires a thorough review of existing manure storage structures to assure that there are no environmental concerns with these existing structures. A set of "as-built" plans will be requested for existing manure storage structures to provide such documentation. In addition, a background check is required on the owners and operators of the facility to verify that these individuals do not have a significant history of noncompliance with environmental laws in Ohio or in any other State or country. All of these individuals must have a suitable history of compliance before the Director would consider issuing a permit that would allow for such an expansion.

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02 and 903.03 of the ORC.

The following are the sections of law at issue:

Section 903.02 (A)(2): On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.

Section 903.05 of the ORC requires a background check on your record of compliance prior to issuing any permit.

Section 903.01(E): Concentrated animal feeding facility means an animal feeding facility with a total design capacity of more than one thousand units.

Section 903.03 (A)(2): Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the Director under this Section.

I assure you that I will not hesitate to recommend to the Director that an enforcement action be brought against you, together with an assessment of civil penalties, if you violate the law. I urge you to contact me immediately at (614) 387-0470 to discuss any concerns or questions you may have on these issues.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

CC: Chris Rodabaugh, ODA Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Kristen Davidson, Legal Counsel  
Albert Maag, Putnam SWCD  
Cecelia Conway, Karen Miller, Vreba-Hoff LLC



# Ohio Department of Agriculture



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Lieutenant Governor Jennette Bradley  
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8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

March 2, 2005

Mr. Ed Stoll  
Stoll Farms, Inc.  
6818 Coal Bank Road  
Marshallville, Ohio 44645

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Dear Mr. Stoll:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Stoll Farms, Inc. (Stoll Farms) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Stoll Farms has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-14.

### **I. VIOLATION**

ODA has determined that O.A.C. 901:10-2-14(B) of the OAC has been violated. Specifically, O.A.C. 901:10-2-14(B)(3)(a)(iv) requires, in pertinent part, that: "The application rate [of liquid manure] shall not exceed the available water capacity of the soil as described in appendix B of this rule .."

#### **Appendix B Available Water Capacity.**

This table shall be used to determine the available water capacity (AWC) at the time of application of liquid manure. To determine the AWC in the upper twenty-four inches use a soil probe or similar device to evaluate the soil to a depth of twenty-four inches. To evaluate the upper eight inches only the upper eight inches of soil needs to be evaluated.

For land application, liquid manure application may also be calculated by converting acres per inch to gallons per acre. This conversion is based on the following formula: one acre inch = twenty-seven thousand two hundred gallons per acre.

Available Water Capacity (AWC) Practical Soil Moisture Interpretation for Various Soil Textures and Conditions:

*	*	*	*	*
Above Field Capacity		Free water appears when soil is bounced in hand.	Free water is released with kneading.	Puddles; free water forms on surface.

On February 9, 2005, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) received and investigated a complaint regarding land application of manure. The investigation revealed a discharge of manure-laden water discharging into a stream at the very northern end of the application field. The inspector determined that the discharge was caused by the over application of liquid manure, as well as an exceedance of the available water capacity of the soil in the field.

On February 9, 2005, the application field was so saturated that there was standing water in the field and the inspector sunk up to six inches into the field in various locations. Referring to Appendix B of OAC 901:10-2-14, the ODA inspector characterized the field, following the application of the liquid manure, as "Above Field Capacity," a condition where free water appears and puddles form on the land surface. This "Above Field Capacity" condition allowed the manure laden water to be discharged from the field.

## II. CORRECTIVE ACTIONS REQUIRED

You must inspect any site that is owned or leased by you both before and after manure application to insure that application of manure from your facility is done correctly. You must control access to your facilities to insure that you, and not the custom applicators, decide whether field conditions and weather conditions will allow for proper manure application. You must have these corrective actions in place before April 1, 2005, after which time an inspector will visit your facility.

In addition, you are reminded that you must continue to contact this office prior to any land application of manure because of winter conditions as required by OAC 901:10-2-14 Appendix A at 15.

## III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with OAC 901:10-5-04. In addition to OAC 901:10-5-04(D), staff have referred to the penalty matrix in OAC 901:10-5-04(F) to determine that this is a second cited violation of the above-identified

rule, that the category of seriousness of the violations is Moderate Category II and the gravity of the violations is low level. Therefore, if Stoll Farms fails to comply with any of the corrective actions required herein, Stoll Farms would be subject to an assessment of a civil penalty in the amount of \$800.00, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Duane Wood, Wayne SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
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February 22, 2005

## Certified Mail Return Receipt Requested

Van Ham Dairy  
22177 Road C  
Continental, OH 45831

Dear Mr. Van Ham:

Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Van Ham Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance. ODA has determined that Van Ham Dairy has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-01(B)(2).

### I. VIOLATION

ODA has determined that O.A.C. 901:10-2-01(B)(2) of the OAC has been violated. Specifically, O.A.C. 901:10-2-01(B)(2) requires, in pertinent part, that: "Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record."

To date, ODA has not received a copy of the completed and approved as-built plans. On December 16, 2004, ODA informed Van Ham Dairy that Van Ham Dairy needed to submit to ODA a complete set of as-built plans before ODA could authorize Van Ham Dairy to utilize the manure storage pond. Despite failing to provide ODA with a copy of the as-built plans, during an inspection by ODA on December 21, 2004, the inspector noted that Van Ham Dairy is using the manure storage pond.

## **II. CORRECTIVE ACTIONS REQUIRED**

Van Ham shall provide ODA with a copy of completed and approved as-built plans for the manure storage pond. as soon as the manure storage pond is emptied of manure and construction is completed in accordance with the approved design plans, but not later than November 1, 2005.

Van Ham shall notify ODA by telephone and in writing as soon as the manure storage pond is emptied by contacting Andy Ety, Engineer, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068 and 614-387-0470. In this notification letter, Van Ham shall also describe actions to remove the temporary dike and complete the construction of the bottom of the manure storage pond.

The complete and approved set of as-built plans shall identify, but not be limited to, the following:

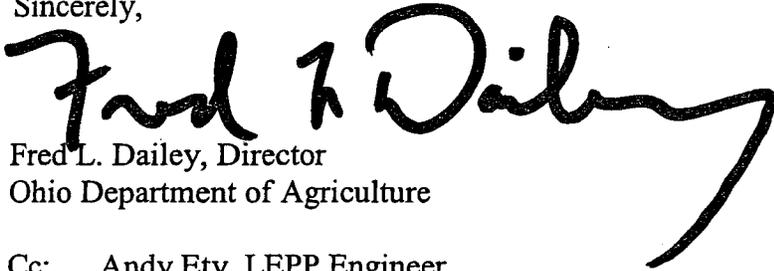
1. Location of exploratory trench, with approximate location of all tile encountered and a brief description of how these tiles were plugged and/or rerouted.
2. Documentation of proof-rolling requirements of all final surfaces of the manure storage pond and confirmation that all material in the bottom of this manure storage pond are as identified in the approved plans.
3. Documentation that the bottom 9-inches of the ponds was disked and recompacted as described in the approved plans.
4. Documentation that all engineered fill was placed as was described in the approved plans.
5. Location and description of liquid level markers as was described in the approved plans.
6. Verification that scour protection was installed as was described on the approved plans.
7. A final survey of the entire manure storage pond, after dike removal, that shows compliance with the approved set of design plans.

## **III. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-4-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if you fail to comply with the corrective action required herein, you will be

subject to the assessment of a civil penalty in the amount of \$800 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Putnam SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Sherry L. Mowry, Esq.



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

February 15, 2005

Certified Mail Return Receipt Requested

Mr. William Cleland, Jr.  
5C Farm  
05191 Thiel  
Hicksville, Ohio 43526

Re: Warning Letter

Dear Mr. Cleland:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on February 4, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operation. These violations include the following:

1. ODA requires notification when manure is being applied to frozen or snow-covered ground; this notification was not obtained. Rule 901:10-2-14(B)(4) of the Ohio Administrative Code (OAC) requires that ODA is notified.
2. All land applications of manure shall comply with all setback restrictions. Rule 901:10-2-14(B)(4) of the OAC and terms and conditions of the Permit to Operate issued to 5C Farm establish best management practices that govern land application of manure on land application sites.

Unincorporated manure application on frozen or snow-covered ground:

All of the following must be met:

- Greater than 90 percent ground cover;
- Slope less than 6 percent;
- Maximum application rate is 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method; and
- Setbacks from drainage ways and waters of the state increased to a minimum of 200 feet.
- Manure shall not be applied on more than 20 contiguous acres. Contiguous areas for application are to be separated by a break of at least 200 feet.

- Manure shall not be applied closer than 300 feet from a private/public well, 300 feet from a Public Surface Drinking Water Intake, 300 feet from a spring or 300 feet from a neighboring residence.

As observed by the LEPP inspector, the setback from the stream at the southwest end of the application field for 5C manure was only 50 feet. As I understand, 5C Farm will take steps to incorporate this manure as soon as weather allows in order to mitigate any potential for water pollution.

An inspector plans to inspect your operation April 1, 2005. Please assure that the items noted in this letter have been addressed. In addition, the most recent inspection of 5C Farm revealed a number of deficiencies with respect to record keeping. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations as noted, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Jeff Ankney, Defiance County SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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February 9, 2005

Mike Grand  
9715 Erwin Road  
Erwin, Ohio 43029

**Certified Mail Return Receipt Requested**

Re: **Warning Letter**

Dear Mr. Grand:

On January 18, 2005, the Ohio Department of Agriculture (ODA) Livestock Environmental Permitting Program received a complaint about the application of manure at the Assen Dairy, LLC and Twin Oak Dairy, LLC farms. Manure was spilled into area streams. Upon investigation, the LEPP Inspector reported that you and your employee were responsible for manure application at Assen Dairy. I am writing to warn you that you are in violation of Section 903.07 of the Ohio Revised Code (ORC) and rule 901:10-1-06 of the Ohio Administrative Code because you are not certified by ODA as a Certified Livestock Manager.

Section 903.07 of the ORC states at (A)(1) and at (B):

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination

Rule 901:10-1-06 of the OAC states at (A)(2):

(2) No person shall transport, buy or sell annually more than four thousand five hundred dry tons of manure unless the person holds a valid livestock manager certification.

I understand that you have attended training courses that should allow you to obtain certification from ODA. However, our records show that you have not submitted an application for certification or the required fee in order to receive a Livestock Manger Certificate.

I recommend that you contact the Livestock Environmental Permitting Program at (614) 387-0470 and contact Ms. Kelly Harvey of my staff in order to complete the steps necessary for certification.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Kelly Harvey, LEPP  
Jennifer Tiell, Legal Counsel  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Madison SWCD  
Pieter and Johannes Assen



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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February 9, 2005

Joe Beam  
359 Jamestown Road  
Wilmington, Ohio 45177

## Certified Mail Return Receipt Requested

Re: Warning Letter

Dear Mr. Beam:

On January 18, 2005, the Ohio Department of Agriculture (ODA) Livestock Environmental Permitting Program received a complaint about the application of manure at the Assen Dairy, LLC and Twin Oak Dairy, LLC farms. Manure was spilled into area streams. Upon investigation, the LEPP Inspector reported that you were responsible for manure application at Twin Oak Dairy. I am writing to warn you that you are in violation of Section 903.07 of the Ohio Revised Code (ORC) and rule 901:10-1-06 of the Ohio Administrative Code because you are not certified by ODA as a Certified Livestock Manager.

Section 903.07 of the ORC states at (A)(1) and at (B):

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination

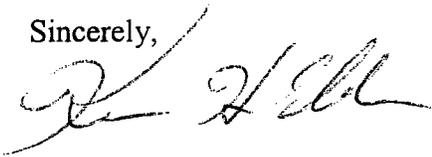
Rule 901:10-1-06 of the OAC states at (A)(2):

(2) No person shall transport, buy or sell annually more than four thousand five hundred dry tons of manure unless the person holds a valid livestock manager certification.

Our records show that you have not submitted an application for certification or the required fee or participated in the required training in order to receive a Livestock Manger Certificate.

I recommend that you contact the Livestock Environmental Permitting Program at (614) 387-0470 and contact Ms. Kelly Harvey of my staff in order to complete the steps necessary for certification.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Kelly Harvey, LEPP  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Jennifer Tiell, Legal Counsel  
Madison SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

February 7, 2005

Mr. Henk Arts  
Arts Dairy LLC  
5624 Elm Sugar Rd.  
Convoy, Ohio 45832

**Re: Final Order**

Dear Mr. Arts:

Enclosed please find the Final Order issued by the Director of the Ohio Department of Agriculture. If you have any questions regarding this Order my office can be reached at (614) 387-0470.

Sincerely,

Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: William J. Hopper, Chief Counsel, ODA  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, ODA Legal Counsel  
Kristen J. Davidson, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Jim Young, LEPP Inspector  
Van Wert SWCD  
File

Ohio Department of Agriculture  
State of Ohio

In the matter of:

Mr. Henk Arts  
Arts Dairy LLC  
5624 Elm Sugar Rd.  
Convoy, Ohio 45832

Respondent

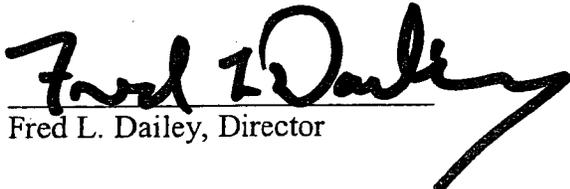
Order

On December 18, 2004, Respondent received, via certified mail, a Director's Notice of Hearing dated December 15, 2004 from the Ohio Department of Agriculture ("ODA"), pursuant to O.R.C. § 903.16. The Notice of Hearing notified Respondent of ODA's intention to impose a \$5,760.00 penalty upon Respondent based on Respondent's failure to return to compliance with O.A.C. 901:10-2-08(A)(3) by October 6, 2004.

The December 15, 2004 Notice of Hearing also notified Respondent that, pursuant to O.R.C. § 903.16(A), Respondent had the right to request a formal adjudication hearing if he did not agree with the imposition of the penalty. Respondent was notified that the request for an adjudication hearing was required to be made within thirty days from December 15, 2004. Respondent did not request an adjudication hearing. Therefore, Respondent has waived his opportunity for a hearing.

It is therefore ORDERED that based on Respondent's failure to return to compliance with O.A.C. 901:10-2-08(A)(3) by October 6, 2004, Respondent shall pay a penalty in the amount of \$5,760.00. This penalty shall be made payable to "Treasurer, State of Ohio, for the Livestock Management Fund 5L8," and sent to: Peggy Jackson, Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068. This penalty check shall be sent within ten days after this ORDER is signed and journalized.

Effective date of this ORDER: Upon journalization.

  
Fred L. Dailey, Director

2-7-05  
Date

Entered, Ohio Department of Agriculture  
Journal this 7th day of Feb., 2005

By: 

**CERTIFICATION**

STATE OF OHIO,  
COUNTY OF LICKING, SS

:  
:

Order No. 2005- 042

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of ORDER 2005- 042, which was entered upon the order journal of the Ohio Department of Agriculture on this 7th day of February, 2005.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 7th day of February, 2005.

Fred L. Dailey  
Fred L. Dailey, Director  
Ohio Department of Agriculture



**NOTICE OF APPEAL RIGHTS**

This ORDER and the assessment of the civil penalty may be appealed. The provisions of Section 119.12 of the ORC govern your appeal. Notice of appeal shall be filed with the Department within fifteen days after the mailing of the notice of this ORDER and shall set forth the ORDER appealed from and the grounds of the party's appeal. A copy of such notice of appeal shall also be filed to the court of common pleas of Franklin County.



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

February 4, 2005

Zylstra Dairy  
Mr. Willem Zylstra  
11753 Road 21  
Antwerp, Ohio 45813

Re: Warning Letter

Dear Mr. Zylstra:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 22, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found a violation of Ohio law surrounding your operation. This violation includes the following:

1. Manure storage pond in use prior to ODA approval.

Rule 901:10-2-01 of the Ohio Administrative Code (OAC) provides at paragraph (B)(2):

(2) The owner or operator may amend the application for a permit to install prior to the conduct of any public meeting that may be held for the draft permit to install and/or while the permit to install application is pending before the director. Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals.

You were informed by ODA during the December 22, 2004 inspection that the pond was not authorized for use. Nevertheless, the pond was clearly in use with a depth of several feet of manure present in the pond. You were told to complete the work required by the above-cited rule by submitting a notarized statement to ODA certifying that the facility was constructed in

accordance with the design plans. In addition you were required to submit completed and approved as-built plans to ODA for the permanent record.

On January 8, 2005, ODA received a copy of the as-built plans. On February 3, 2005, ODA received a notarized statement certifying that the facility was constructed in accordance with the design plans.

This is the second time in the history of your operation that you have disregarded ODA rules for construction completion and authorized pond use. On June 17, 2004, Zylstra Dairy LLC was issued a formal warning letter for use of a silage leachate pond for manure storage prior to submitting the required notarized statement. I trust that you share my concern that these actions contribute to a pattern of noncompliance documented in our records.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc:

Gary Zwolinski, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Paulding SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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January 24, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

## **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance for the Goshen Pullet 5 facility. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

### **I. FIRST VIOLATION- WATER LEAKS**

#### **A. VIOLATION**

ODA has determined that the terms and conditions in the Consent Order and the permit to operate OFGO-0001.PO0001.HARD issued for Goshen Pullet 5 have been violated. Specifically, Paragraph 34 of the Consent Order requires that OFE document daily monitoring of barns. Additionally, OFE'S Insect and Rodent Control Plan (IRCP) provides that "everyday an inspector walks each pit to locate, record, and repair water

leaks immediately." Water Loss Repair Logs, Form FEM-2, should be used to record such activities and be maintained in the operating record.

ODA has determined that for 18 weeks, from August 1, 2004 through December 6, 2004, OFE failed to complete any Water Loss Repair Logs.

## **B. CORRECTIVE ACTION REQUIRED**

OFE is required to revise its employee training for daily barn inspections for OFE Goshen Pullet No. 5. OFE is required to complete the revisions to employee training within thirty (30) days of receipt of this letter. Thereafter, OFE shall train employees and training shall be complete no later than February 15, 2005. OFE shall submit an affidavit to ODA documenting that each production employee, whether a full-time, part-time, or temporary employee, has been trained. OFE shall submit the affidavits to Kevin Elder, Executive Director, Livestock Environmental Permitting Program, no later than February 20, 2005. OFE shall retain records on file of employee training, including training of any new employees, for periodic inspection by ODA.

OFE is required to submit a written report to LEPP within ten (10) days of the date of this letter explaining in detail the duties and responsibilities of Site Production Managers at the Goshen Facilities, as this term is used in all permits issued to OFE. OFE shall identify by name each Site Production Manager within the context of the Table of Organization for the Goshen facilities. This information included in the Table of Organization shall be submitted to ODA.

Finally, OFE is required to immediately establish all necessary policies, practices and procedures to insure that all barns at the Goshen facilities are being inspected daily for water leaks and all inspections are being properly recorded in accordance with OFE's permit. OFE shall submit to ODA within 30 days of the date of this letter a report explaining the policies, practices and procedures placed into operation and their effectiveness.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D), (F), (J) and (K). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00, and the potential for escalated enforcement.

## **II. SECOND VIOLATION- BAIT STATIONS**

### **A. VIOLATION**

ODA has also determined that the terms and conditions of OFE's IRCP have been violated. OFE was required to place bait stations on the outside perimeter of each barn. As noted by an ODA inspector on December 6, 2004, no rodent bait stations or traps were placed at the perimeter of any barns at Goshen Pullet 5 facility in violation of the terms and conditions of the permit.

### **B. CORRECTIVE ACTION REQUIRED**

Bait stations shall immediately be placed around the perimeter of each barn at the Goshen Pullet 5 facility and shall be managed in accordance with the terms and conditions of OFE's permit.

### **C. PENALTY ASSESSMENT**

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for one week, for a total of \$2,500.00, and the potential for escalated enforcement.

## **I. THIRD VIOLATION- MANURE MOISTURE**

### **A. VIOLATION**

ODA has determined that the terms and conditions of OFE's IRCP have been violated. OFE was required to "keep manure as dry as possible in order to maintain 30% moisture or less . . ." As noted by an ODA inspector on December 6, 2004, the manure moisture in Barn No. 6 and Barn No. 10 at Goshen Pullet No. 5 exceeded 30%.

### **B. CORRECTIVE ACTION REQUIRED**

Within 10 days of receipt of this letter, OFE must submit a schedule indicating the dates OFE intends to remove the manure from Barn No. 6 and Barn No. 10. OFE must complete manure removal and distribution and utilization for both barns by March 31, 2005.

### **C. PENALTY ASSESSMENT**

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category I, and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$6,000.00 per week for one week, for a total of \$6,000.00, and the potential for escalated enforcement.

## **IV. FOURTH VIOLATION- ODOR CONTROL**

### **A. VIOLATION**

ODA has determined that the terms and conditions of OFE's permit have been violated. OFE failed to clean and repair the exhaust fans for odor control and minimization. Specifically, OFE's permit requires that on a daily basis OFE personnel shall note any malfunctioning fans, missing louvers or other damage, as well as dirt accumulation that may interfere with proper operation. These will be reported verbally and with the inspection form FEM-3 daily to the Site Production Manager for action. On the date of inspection all exhaust fans at Goshen Pullet No. 5 were dirty and some exhaust fans were in need of repair.

### **B. CORRECTIVE ACTION REQUIRED**

All exhaust fans should be immediately cleaned and repaired if malfunctioning or damaged, with corrective actions complete by March 31, 2005.

### **C. PENALTY ASSESSMENT**

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for one week, for a total of \$2,500.00, and the potential for escalated enforcement.

After 45 days from the date of this letter, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, or its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$56,000.00, and the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Jim Pastore, Jr.  
Robert and Tonya Carrol, Farm Managers  
Big Muddy Acres, Inc.  
10500 Martin Road  
Alliance, Ohio 44601

Re: Warning Letter

Gentlemen and Ms. Carroll:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 29, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection this year indicates the

continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mahoning County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Anthony Pastore  
Mr. Tom Guthrie, Farm Manager  
Beeson East Farm, Inc.  
8881 Beeson East  
Louisville, Ohio 44641

Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 28, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

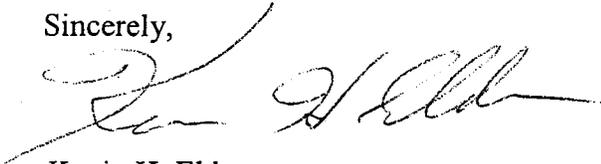
Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the

aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA