



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/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

January 14, 2005

Mr. Mike Pastore
Mr. Earl Long, Farm Manager
General Poultry, Inc.
22501 Courtney Road
Alliance, Ohio 44601

Re: Warning Letter

Gentlemen:

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:

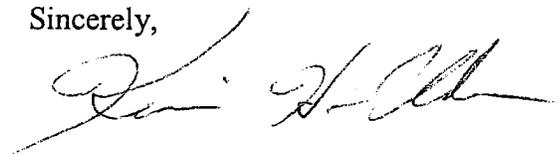
1. Need for annual manure analysis.

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



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Certified Mail Return Receipt Requested

January 14, 2005

Mr. Jim Pastore, Jr. and Mr. Mike Pastore
Ms. Anna Carroll, Farm Manager
J and M Poultry, Inc.
10450 Oyster 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:

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Executive Director
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.
Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
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January 14, 2005

Mr. Ted Hawk and Ms. Diana Hawk
Mr. Devlan Carroll, Farm Manager
LK Poultry, Inc.
6135 Union Ave. N.E.
Alliance, Ohio 44601

Re: Warning Letter

Gentleman and Ms. Hawk:

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.

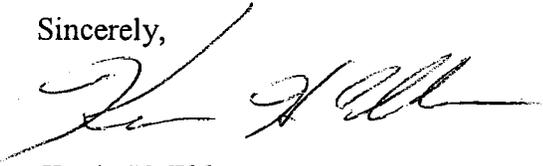
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Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

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
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Certified Mail Return Receipt Requested

January 14, 2005

Mr. James Pastore, Sr.
Steve and Vickie Lynn Erich, Farm Managers
North Preston Farm, Inc.
9635 Ravenna Road
Louisville, Ohio 44641

Re: Warning Letter

Mr. Pastore and Mr. and Mrs. Erich:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

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Executive Director
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.
Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
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Stark County SWCD
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January 14, 2005

Mr. Jim Pastore, Jr.
Laura Cameron, Farm Manager
Pine Tree Farms
21425 North Benton West
North Benton, Ohio 44449

Re: Warning Letter

Dear Mr. Pastore and Ms. Cameron:

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:

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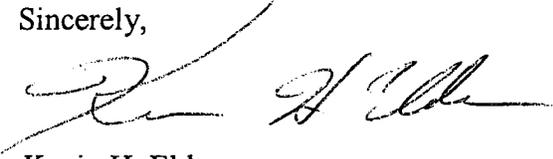
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Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

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



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January 14, 2005

Mr. Jim Pastore, Jr.
Mr. Jay Blake, Farm Manager
Red Rose Farm, Inc.
21620 Courtney Road
Alliance, Ohio 44601

Re: Warning Letter

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Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.
Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
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January 14, 2005

Mr. Anthony Pastore
Jay Braid, Farm Manager
Reeder Road Farm, Inc.
11480 Reeder Road
Alliance, Ohio 44601

Re: Warning Letter

Gentleman and Ms. Hughes:

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:

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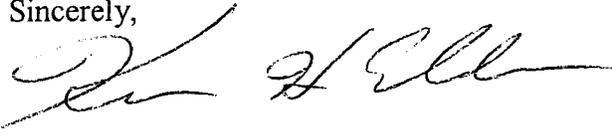
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Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.
Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
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Stark County SWCD
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January 14, 2005

Mr. Tony Pastore
Kevin and Brenda Klingensmith, Farm Managers
St. Peters Church Farm, Inc.
8110 St. Peters Church Road
Louisville, Ohio 44641

Re: Warning Letter

Gentlemen and Ms. Klingensmith:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

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Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke at the end.

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



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January 14, 2005

Tim and Joyce Vizzuro
V.I.Z. Poultry, Inc.
4129 Bandy Road
Homeworth, Ohio 44634

Re: Warning Letter

Dear Mr. and Mrs. Vizzuro:

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:

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Sincerely,

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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
Columbiana County SWCD
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January 14, 2005

Mr. Ted Hawk
Mark and Charlene Hughes, Farm Manager
Willow Creek Farm, Inc.
6135 Union Ave., N.E.
Alliance, Ohio 44601

Re: Warning Letter

Gentleman and Ms. Hughes:

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Executive Director
Livestock Environmental Permitting Program

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January 14, 2005

Mr. James Pastore, Sr.
Pauline Guthrie, Farm Manager
Alberta Beach Farm, Inc.
8276 Alberta Beach Rd. N.E.
Louisville, Ohio 44641

Re: Warning Letter

Dear Mr. Pastore and Ms. Guthrie:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

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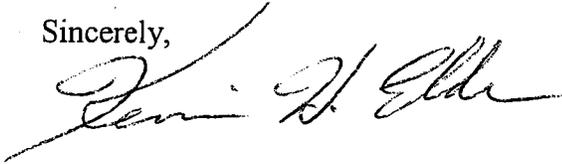
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January 14, 2005

Mr. James Pastore, Sr.
Larry and Shelly Furbee, Farm Managers
Beeson West Farm, Inc.
8187 Beeson West
Louisville, Ohio 44641

Re: Warning Letter

Gentleman and Ms. Furbee:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

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Certified Mail Return Receipt Requested

January 12, 2005

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

Re: Warning Letter

Dear Mr. and Mrs. Wenning:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on November 5, 2004. 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 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 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.

3. Need to provide copies of the annual manure analysis to those who receive manure from you and need to maintain records of these transactions with recipients.

Rule 901:10-2-11(A)(2) and (A)(3) of the OAC provides:

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."

(3) All of the information in paragraphs (A)(1) to (A)(2) of this rule shall be recorded in the operating record as described in rule 901:10-2-16 of the Administrative Code.

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

(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.

4. 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 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 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.

5. Need to maintain the required information in the operating record for land application of manure, including date, rate, amounts of commercial fertilizer applied and method of commercial fertilizer application, a soil survey map, and nitrogen leaching index test results.

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. Records for each land application site, including:

(v) Land application sites as described on a soil survey map.

(xii) Results of the nitrogen leaching risk assessment procedure and the phosphorus soil test assessment procedure or phosphorous index risk assessment procedure.

(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)

An inspector plans to inspect your operation in late February to mid-March, 2005. 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
Michelle McKay, LEPP Inspector
Jennifer Tiell, Legal Counsel
Kristen Davidson, Legal Counsel
Mercer County SWCD
Cathy Alexander, Ohio EPA



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

Administrative Offices
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-466-2732 • Fax 614-466-6124
ODA home page: www.state.oh.us/agr/ • e-mail: wwwagri@ohio.gov

January 10, 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 (NOD). 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 paragraphs 8 and 34 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. VIOLATIONS

ODA has determined that the Consent Order and terms and conditions in permit to operate OFL1-0001.PO0001.LICK issued for OFE Croton Layer No.1 have been violated. Specifically, Paragraph 34 of the Consent Order requires that OFE perform "daily monitoring of all barns which is reliable, verifiable and documented" by OFE. Additionally, the Moisture Management section of 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."

ODA has determined that for 18 weeks from June 1, 2004 through October 8, 2004, OFE failed to accurately complete Pit Inspection Reports, FEM-3. According to OFE's quarterly manure analysis, manure moisture levels in four barns at Croton Layer No. 1 exceeded 30%. Despite the information contained in the quarterly manure moisture analysis, Pit Inspection Reports, FEM-3, completed from June 1, 2004 through October 8, 2004 consistently reported manure moisture as "dry."

II. CORRECTIVE ACTIONS REQUIRED

OFE is required to revise its employee training for daily barn inspections for OFE Croton Layer No. 1. 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 Croton Layer No. 1, 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 Croton Layer No. 1 facility. 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 Croton Layer No. 1 facility 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.

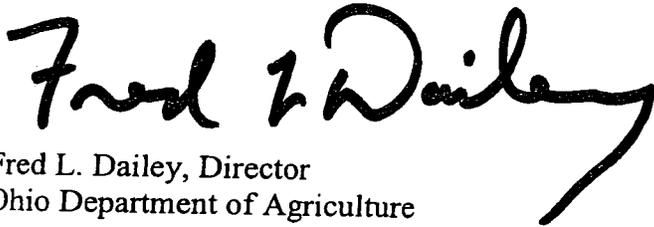
III. PENALTY ASSESSMENT

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. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (D), (F) 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 major or Category II and the gravity of the violations as

high. 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 civil penalty in the amount of \$6,000.00 per week for 18 weeks, for a total of \$108,000.00, 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,



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

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Phone: 614-466-2732 • Fax 614-466-6124
ODA home page: www.state.oh.us/agr/ • e-mail: wwwagri@ohio.gov

January 10, 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**

Gentleman:

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 (NOD). 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 paragraphs 8 and 34 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. VIOLATIONS

ODA has determined that the terms and conditions in the Consent Order and the permit to operate OFMA-0001.PO0001.WYAN issued for OFE Marseilles Layer No. 6 have been violated. Specifically, Paragraph 34 of the Consent Order requires that OFE document daily monitoring of barns. Additionally, 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."

ODA has determined that for 18 weeks from July 1, 2004 to November 8, 2004 OFE failed to complete any Water Loss Repair Logs (FEM-2) at Marseilles Layer No. 6 to record water losses and leaks as required by the terms and conditions of Permit OFMA-0001.PO0001.WYAN.

II. CORRECTIVE ACTION REQUIRED

OFE is required to revise its employee training for daily barn inspections for OFE Marseilles Layer No. 6. 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 Marseilles, 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 Marseilles 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 Marseilles 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.

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. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (D), (F) 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 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.

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 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
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture

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Director Fred L. Dailey

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

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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

January 3, 2005

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

Re: Warning Letter

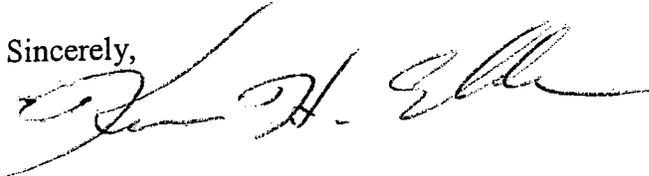
Gentlemen:

My staff discovered violation of Ohio Department of Agriculture laws and rules on December 8, 2004. On that date three violations of Ohio law surrounding your operation's surface manure application to the field located east of 6848 Dalton-Fox Lake Road were discovered. The land application set back requirements are provided in Appendix A of Table 2 of Ohio Administrative Code (OAC) Rule 901:10-2-14 and Ohio EPA Permit Number 08-047-NW. The three violations are as follows:

1. Setback from neighboring residence when surface application not followed by incorporation within twenty-four hours is 300 feet. (Source: Appendix A of Table 2 of OAC 901:10-2-14) December 8, 2004 manure application was in violation at forty-three feet from the property line and one hundred and twenty-three feet from the neighboring home.
2. Setback from private water well when surface application not followed by incorporation within twenty-four hours is 300 feet from the edge of the field. (Source: Appendix A of Table 2 of OAC 901:10-2-14) December 8, 2004 manure application was one hundred and three feet from the private water well.
3. Setback from road ditch for liquid manure application shall be fifty feet as provided in OEPA Permit to Operate Number 08-047-NW on page 41. December 8, 2004 manure application was in violation at twenty-seven feet from the road ditch.

Please review and familiarize yourself with these restrictions. We take these violations seriously. In the event there are future violations enforcement actions may be recommended against you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Mary Beth Ruttan, Assistant Attorney General
Duane Wood, Wayne SWCD
Jennifer Tiell, Kristen Davidson, LEPP Legal Counsel
Mike Nishimura – ODNR-DSWC
Rick Wilson – Ohio EPA



Ohio Department of Agriculture



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

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December 20, 2004

Certified Mail Return Receipt Requested

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

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

As operators of Daylay Egg Farm #3 and Mad River Egg Farm, the Ohio Department of Agriculture (ODA) is issuing this Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the

director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

* * * * *
*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating

conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

Facts in Support of Findings of Deficiencies

1. Daylay Egg Farm #3 and Mad River Egg Farm are existing concentrated animal feeding facilities. Daylay Egg Farm #3 is located at 27,400 Coder Holloway Road, West Mansfield, Ohio 43358-0005. Mad River Egg Farm is located at 27322 SR 739, Raymond, Ohio 43067. Daylay Egg Farm #3 and Mad River Egg Farm are located in Union County and are referred to as "the Facilities."
2. Margaret Zimmerer is the owner and Kurt Lauseker and Mark Meyer are operators of Daylay Egg Farm #3 and Mad River Egg Farm.
3. Daylay Egg Farm #3 has the design capacity to raise or maintain approximately 820,000 layers or 8,200 animal units. Mad River Egg Farm has the design capacity raise or maintain approximately 1.6 million layers or 16,000 animal units, which constitutes more than one thousand animal units at each of the Facilities.
4. The Facilities were issued Ohio EPA Permits to Install No. EPA 01-224-PW, and 08-022-CD on March 13, 1991 and September 21, 1999 respectively by the Ohio Environmental Protection Agency. PTI No. 08-022-CD authorized installation, Livestock Waste Management Plan and Revised Manure Management applicable to Daylay Egg Farm #3. PTI No. 08-022-CD also authorized Revised Manure Management for Daylay Egg Farm #2 and Mad River Egg Farm. PTI No. 01-224-PW authorized manure management at all of the Facilities.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed

responsibility to enforce permits to install previously issued by the Ohio EPA.

6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facilities were required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Mark Meyer of the Facilities' obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated April 14, 2003, April 23, 2003, June 3, 2004, July 8, 2004, August 9, 2004, and September 7, 2004.
8. As of December 1, 2004, the Department received and reviewed the application for an RCC submitted by Mark Meyer and found that each of the Facilities fails to provide the following document required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of a RCC for the Facility:
 - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facilities are being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.

You have twenty-one (21) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the twenty-one (21) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the

category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,


Fred L. Dailey
Director
Ohio Department of Agriculture

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



Ohio Department of Agriculture



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Certified Mail Return Receipt Requested

December 20, 2004

Jan and Anja Van Ham
22177 Road C
Continental, Ohio 45831

Van Ham Dairy
7089 Road 22
Continental, Ohio 45831

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. and Mrs. Van Ham:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code Van Ham Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (Notice). ODA has determined that Van Ham Dairy has failed to maintain adequate freeboard as required by Ohio Administrative Code Section 901:10-2-08(A)(3). At a November 19, 2004 visit, no freeboard remained in your manure storage pond. As of December 15, 2004, you continued to have no freeboard available in your manure storage pond.

Corrective Actions

You have twenty-one (21) days from the date on this letter within which you must correct these deficiencies by removing the manure and handling it correctly. You must keep records of the manure amounts and the final application or use of the manure in your operating records. You must make these records available to the ODA Livestock Environmental Permitting Program inspector.

After the twenty-one (21) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, I will consider proceeding with other enforcement options, including assessing a civil penalty of \$5,200.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is low and the gravity of the violations is low level. The appropriate penalty in this matter will be \$200.00 per day for 26 days (November 19, 2004 to December 15, 2004) for a total of \$5,200 unless the deficiencies are corrected.

ODA reminds you of the need to comply with the land application rules if you decide to land apply to reduce the manure level in the pond.

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
Jim Young, LEPP Inspector
Mary Beth Ruttan, Assistant Attorney General
Robert Karl, Esquire
Cathy Alexander, Ohio EPA
Putnam County SWCD



Ohio Department of Agriculture



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Certified Mail Return Receipt Requested

December 15, 2004

Henk Arts
5624 Elm Sugar Rd.
Convoy, OH 45832

Re: Director's Notice of Hearing

Dear Mr. Arts:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority of Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Arts Dairy imposing a civil penalty of \$5,760.00 because of ODA's determination that you have failed to comply with rule 901:10-2-08 of the Ohio Administrative Code (OAC).

Rule 901:10-2-08(A)(3) of the OAC provides, in pertinent part:

"(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)

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

On January 27, 2004, ODA's LEPP issued Arts Dairy a warning letter due to the lack of freeboard in the manure storage pond, a violation of rule 901:10-2-08 of the OAC. In

February inspectors discovered that Arts Dairy applied manure on frozen or snow-covered ground, which was attributed to your failure to properly maintain manure storage capacity. On March 19, 2004, Kevin Elder, Executive Director, LEPP wrote to you with recommended steps to take to improve manure management in order to manage manure storage capacity. On July 28, 2004, LEPP Instructor, Jim Young, from the Livestock Environmental Permitting Program visited Arts Dairy to inspect the freeboard and found continuing failure to comply with the freeboard requirements in rule 901:10-2-08 of the OAC.

On August 6, 2004, ODA issued a Notice of Deficiencies Resulting in Noncompliance (Notice) based on Arts Dairy's failure to maintain freeboard as required by rule 901:10-2-08 of the OAC. Arts Dairy was required to correct the deficiencies within sixty (60) days by removing the manure from the manure storage pond and land applying it correctly. The Dairy was required to maintain Operating Records containing the manure amounts distributed or land applied and the manner in which the manure was applied or used. The Dairy was required to make these records available to the LEPP inspector. In addition to removing and applying manure to obtain the required freeboard, Arts Dairy was required to remove and apply enough additional manure to create sufficient storage space for the manure this winter and to prevent having to apply manure on frozen or snow covered ground.

On November 19, 2004, a LEPP inspector re-inspected the Dairy to determine whether the Dairy had complied with the requirements included in the August 6, 2004 Notice. The LEPP inspector determined that Arts Dairy had not complied with the Notice and that there was an imminent threat that the manure storage pond would overflow. Based on your failure to correct the deficiencies noted in the August 6, 2004 Notice and return to compliance, ODA is now issuing this Notice of Hearing and proposing the imposition of the \$5,760.00 penalty.

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: Peter C. Esselburne, 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 December 15, 2004.

Please note that if your company is a corporation, only an attorney at law admitted to practice in the State of Ohio may represent a corporation at the hearing. A court reporter will be present to make a record of the proceedings and 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. At the conclusion of 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 thirty (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, 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

William J. 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

Van Wert SWCD

File



Ohio Department of Agriculture

OHIO
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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/ • e-mail: agri@odant.agri.state.oh.us

December 15, 2004

David Worden
Albright Farms
4017 Lower Leesville Road
Bucyrus, Ohio 44820

Certified Mail Return Receipt Requested

Re: Warning Letter

Dear Mr. Worden:

I am writing to you as a result of an inspection conducted by my staff on December 1, 2004. The Inspector from the Livestock Environmental Permitting Program (LEPP) found that your farm does not have a staff gauge or depth marker or other device to measure the liquid levels in your manure lagoon. You are required to install a staff gauge as soon as possible but no later than February 15, 2004.

Not only does Rule 901:10-2-06 of the Ohio Administrative Code (OAC) require you to install a staff gauge in the lagoon, but other ODA rules require you to use the gauge to monitor the liquid levels of the lagoon and to record the levels in your Operating Record. These requirements are in Rules 901:10-2-08 and 901:10-2-16.

Finally, I advise you that these requirements for an installed staff gauge, periodic monitoring, and records of liquid levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,

Kevin H. Elder
Executive Director, Livestock Environmental Permitting Program

Cc: Chris Rodabaugh/Jim Young, LEPP Inspectors
Cathy Alexander, Ohio EPA
Crawford SWCD
File



Ohio Department of Agriculture

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Director Fred L. Dailey

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December 15, 2004

Sheldon Farms
C/o Kurt Sheldon
10736 State Route 701
Kenton, Ohio 43226

Certified Mail Return Receipt Requested

Re: **Warning Letter**

Dear Mr. Sheldon:

In a letter dated November 30, 2004, the Livestock Environmental Permitting Program Inspector summarized the findings of an inspection conducted on November 12, 2004. The Inspector noted freeboard conditions at your facility that were deficient and that needed improvement to meet Ohio Department of Agriculture requirements and to prevent violations and possible enforcement actions. Further, the Inspector noted that corrections, if any, would be verified in the next inspection.

Rule 901:10-2-05 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than six inches above the liquid level of the total storage volume.” (Emphasis added)

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(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:

(b) 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 six inches of freeboard.” (Emphasis added) Please review your Permit to Install for the maximum operating level of your structures.

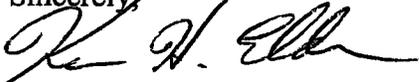
ODA requires notification when manure is being applied to frozen or snow-covered ground.

As reported, some manure from the barn located on the northwest side of the Sheldon Farms had run out from the pit fans. This manure is contained along the sides of the barn and needs to be cleaned up and either land applied or put back into a pit under the barn, depending on both soil conditions and weather conditions. Sheldon Farms is required to maintain all barns at the freeboard levels required by ODA rules.

You are reminded that you must notify ODA prior to any winter applications of manure and you are required to plan for manure storage through the winter in order to comply with the new and very strict limitations on manure applications to frozen or snow covered ground.

Please contact your Inspector or this office if you have any questions.

Sincerely,



Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Jim Young, LEPP Inspector
Chris Rodabaugh, LEPP Inspector
Cathy Alexander, Ohio EPA
Hardin SWCD
File



Ohio Department of Agriculture



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

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November 16, 2004

Jan and Anja Van Ham
22177 Road C
Continental, Ohio 45831

Certified Mail Return Receipt Requested

Van Ham Dairy
7089 Road 22
Continental, Ohio 45831

Re: Warning Letter

Dear Mr. and Mrs. Van Ham:

Violation of Ohio Department of Agriculture laws and rules were discovered during my inspection on July 28, 2004. On that date I found four violations of Ohio law surrounding your operation. Below I have set out each violation and the accompanying guiding legal authority. The violations include the following:

1. Staff gauges, or another appropriate device approved by the director, need to be installed in the manure holding pond and stormwater pond.

The Ohio Administrative Code (OAC) provides at 901:10-2-06(A)(2):

“(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. The liquid level board or staff gauge or other appropriate device shall include the elevation at the liquid level corresponding to the summation of the residual manure volume and minimum storage or treatment design volume and shall be designated as the stop pumping elevation. The liquid level board or staff gauge shall also indicate the elevation at the liquid level elevation corresponding to the summation of the volumes of: residual solids, minimum storage volume, runoff and wash down volumes and manure volume, and shall be designated as the start pumping elevation.”

2. Must have an executed Manure Sales Agreement when another is accepting facility manure.

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

“(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.”

3. Must have water well test results in your operating record.

OAC 901:10-2-8(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. 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.”

4. The cropping record yields for those fields owned by Van Ham Dairy must be recorded in the operating record.

OAC 901:10-2-16(A)(1)(c)(viii) provides:

“(A)(1) An operating record shall be considered as part of the permit to operate. 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)(viii) Records of the cropping schedule for each land application site for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year.”

I plan to reinspect you facility on or about December 15, 2004. 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,

A handwritten signature in black ink, appearing to read 'Jim Young', with a long horizontal flourish extending to the right.

Jim Young
Inspector, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Jennifer Tiell, LEPP Legal Counsel
Cathy Alexander, Ohio EPA



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

Administrative Offices
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-466-2732 • Fax 614-466-6124
ODA home page: www.state.oh.us/agr/ • e-mail: wwwagri@ohio.gov

November 15, 2004

Donald Hershey
Ohio Fresh Eggs LLC **Certified Mail**
9300 Croton Road
Croton, Ohio 43013

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

Ronald L. Flory **Certified Mail**
Ohio Fresh Eggs LLC
11212 Croton Road
Croton, Ohio 43013-0173

Mohamed Mousa Aboughazala
Ohio Fresh Eggs LLC
11212 Croton Road **Certified Mail**
Croton, Ohio 43013-0173

Re: Director's Notice of Deficiencies Resulting in Noncompliance
Medical Waste Disposal

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. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and with Paragraph 33 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

ODA has determined that the following conditions in Permit to Operate OFP4-0001.PO0001.LICK issued for OFE have been violated:

Land Application. The following describes the procedures to be used in the Manure Management Plan for land application as required by rule 901:10-2-14 of the OAC.

* * * *

Solid manure will use Distribution and Utilization.

Rule 901:10-2-11 of the OAC governs Distribution and Utilization and provides, in pertinent part:

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

(1) The owner or operator may submit distribution and utilization methods for the beneficial use of manure as part of the manure management plan. (Emphasis added)

* * * *

Facts in Support of Findings of Deficiencies

On October 27, 2004, ODA received an anonymous complaint regarding manure discarded at the Davisson farm located on Martin Road near the Middleburg-Plain City Road in an area adjacent to the county boundary lines of Union and Champaign Counties. Upon investigation, ODA discovered two manure piles. One of the manure piles had many vaccine vials labeled "Avian Encephalomyelitis-Fowl Pox Vaccine Live Virus" in the manure. Other trash was also discovered in the manure including broken light bulbs, hoses, cardboard, containers marked "hister houses," and other trash.

The manure was discarded on a farm owned by the Davisson family and the person who hauled the manure to the Davisson Farm is John Davisson according to Robin Sweeny, Union County NRCS District Conservationist. Mr. Davisson received the manure from Ohio Fresh Eggs as confirmed by the ODA inspector's conversation with Davisson on October 28, 2004 and as further verified by the ODA inspector on October 29, 2004. Specifically, ODA found that vaccine vials were discarded into manure at OFE Croton Pullet no. 4 in barn no. 17 and around the perimeter of barn no. 17. OFE thereafter arranged with Mr. Davisson for manure distribution and utilization as authorized by Rule 901:10-2-11 of the OAC and by the terms and conditions of the OFE permit.

Beneficial use of the manure as part of manure distribution and utilization approved in the Manure Management Plan is prevented due to the presence of medical wastes and other wastes in the manure, thus violating the terms and conditions of the permits.

Corrective Actions

OFE is required to correct these deficiencies with the actions and schedule as follows:

Immediately remove manure from the Davisson farm site. Haul the manure back to OFE in order to remove all medical wastes, debris, and other wastes from the manure. In the

alternative, as authorized by the Davissons, remove all medical wastes, debris, and other wastes from the manure at the Davisson farm. Notify ODA by telephone or e-mail of the chosen alternative within 24 hours, with written confirmation in five (5) days. In any event, all medical wastes, debris, and other wastes shall be managed and disposed of in accordance with applicable State and local laws within 14 days of the date of this letter.

After 14 days from the date of this letter, an ODA inspector will inspect your facilities or the Davisson farm based upon the option selected by OFE to return to compliance. The inspector will determine whether you have returned to compliance. If OFE is still not in compliance, I will consider proceeding with other enforcement options, including assessing a civil penalty as permitted by ORC § 903.16 of \$1,600.

A response to this letter is required. In your letter, indicate if you are responding only on your own behalf or on behalf of all recipients.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (J) and (K) of Rule 901:10-5-04 of the OAC to determine that this is a first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is medium, and that the gravity of the violations is medium level. The appropriate penalty in this matter will be \$1,600 unless the deficiencies are corrected.

Sincerely,


Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Mary Beth Ruttan, Assistant Attorney General
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Jim Young, LEPP Inspector
Robin Burton, ODA, Division of Animal Industry
Cathy Alexander, Ohio EPA
Wyandot SWCD
Hardin SWCD
Champaign SWCD
Union SWCD
Jim Kiracofe, Licking SWCD



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Director Fred L. Dailey

Livestock Environmental Permitting Program
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Phone: 614-387-0470 • Fax 614-728-6335

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November 5, 2004

**CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

KSM-DOLA
Attn: Todd Stickley
7148 SR 199
Upper Sandusky, Ohio 43351

Re: Warning Letter

Dear Mr. Stickley:

In a letter dated March 5, 2004, the Livestock Environmental Permitting Program Inspector summarized the findings of an inspection conducted on February 26, 2004. The Inspector noted two areas of your facility that were deficient and that needed improvement to meet Ohio Department of Agriculture requirements and to prevent violations and possible enforcement actions. Further, the Inspector noted that corrections, if any, would be verified in the next inspection.

The next inspection was conducted on August 12, 2004, and it was discovered that you were still violating your Review Compliance Certificate and the rules for the Livestock Environmental Permitting Program by not conducting a required annual sampling and analysis of groundwater.

The following rule is at issue:

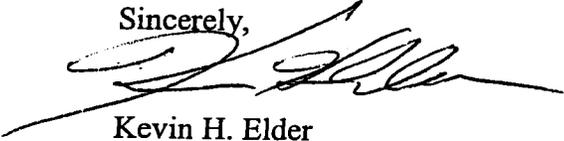
Rule 901:10-2-08 of the Ohio Administrative Code (OAC) provides as follows as (3):

(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:

- (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 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.

You corrected this deficiency only after the inspector reminded you of your obligation during his second inspection in August. Please be warned that failure to comply the rules within the time set by the inspector can result in enforcement action by the Director and a penalty assessment. We anticipate your compliance in 2005.

Sincerely,



Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Jennifer Tiell, ODA Legal Counsel
Jim Young, LEPP Inspector
Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette B. Bradley
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

October 29, 2004

Mark and Marie Osterholt Farm
C/o Mr. and Mrs. Mark Osterholt
1289 Burville Road
Ft. Recovery, Ohio 45846

Re: Warning Letter

Dear Mr. and Mrs. Osterholt:

In a letter dated February 5, 2004, the LEPP Inspector summarized the findings of an inspection conducted on January 22, 2004. The Inspector noted several areas of your facility that were deficient and that needed improvement to meet ODA requirements and to prevent violations and possible enforcement actions. Further, the Inspector noted that corrections, if any, would be verified in the next inspection.

The next inspection was conducted on August 26, 2004 and it was discovered that you are violating your Permit to Operate and the rules for the Livestock Environmental Permitting Program. The inspection in January of the year identified at least six (6) violations. In August, it was noted by the Inspector that while some of the previous violations had been addressed, there were several violations that had not been taken care of, primarily with respect to the turkey part of the operation, and they are outlined below. In addition, you have failed to continuously maintain records of inspections for insect and rodent control.

The following rules are at issue:

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraph (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 per cent 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.

Rule 901:10-2-16 of the OAC provides as follows at paragraph (A):

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.

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

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

Rule 901:10-2-08 of the OAC provides as follows at paragraph (A)(3):

- (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.

- (b) The operating level of fabricated structures 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 six inches of freeboard.

Rule 901:10-2-11 of the OAC provides as follows:

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."

Rule 901:10-2-16 of the OAC provides as follows at (A)(1)(e):

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

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:

* * * * *

- (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.

Rule 901:10-2-14 provides as follows at paragraph (C)(3):

In determining how to minimize nitrogen leaching that may impact waters of the state, the owner or operator shall do the following:

- (a) Assess each land application site with the Ohio nitrogen leaching risk assessment procedure contained in appendix C, table 5 of this rule;

Rule 901:10-2-16 of the OAC provides as follows at paragraph (A):

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:

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

* * * * *

- (xii) Results of the nitrogen leaching risk assessment procedure and the phosphorus soil test assessment procedure or phosphorus index risk assessment procedure.

Rule 901:10-2-19 of the OAC provides as follows at paragraph (B)(3)(a):

- (a) Management controls. The following management controls require regular inspections to be conducted by the owner or operator in intervals as described in the insect and rodent control plans. Monitoring records and inspection records shall be maintained in the operating record as required by rule 901:10-2-16 of the Administrative Code.

You are required to begin the required record keeping immediately upon receipt of this letter. The LEPP Inspector will visit your operation within the next 60 days. If, at that time, you have not returned to compliance, I will recommend stronger enforcement action to the Director including payment of a penalty. If you do not understand the requirements of the rules, then

please contact your inspector and ask questions in order to resolve any misunderstandings. Nearly all of the rules listed here are both state and federal rules and it will be necessary for you to understand these and work within these requirements for the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. H. Elder', written in a cursive style.

Kevin H. Elder, Executive Director
Ohio Department of Agriculture
Livestock Environmental Permitting Program

Cc: Michelle McKay, LEPP Inspector
Cathy Alexander, Ohio EPA
Mercer County SWCD
Bill Knapke, Cooper Farms
File

IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

STATE OF OHIO, ex rel.
JIM PETRO
ATTORNEY GENERAL OF OHIO,
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, Ohio 43215-3428,

CASE NO. 04CV36948

Plaintiff,

v.

OCT 2 2004

JUDGE SCHMENK

5 C'S FARM, INC.
05-327 Thiel Road
Hicksville, Ohio 43526

Defendant.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein and the Plaintiff, State of Ohio ("Plaintiff" or "Director"), and the Defendant 5 C's Farm, Inc. ("Defendant") having agreed to the entry of this Consent Order.

NOW THEREFORE, without trial of any issue of law or fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over the parties and subject matter jurisdiction over the case pursuant to R.C. Chapter 903. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 903 and the rules and regulations promulgated thereunder. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, their agents, officers, employees, assigns, successors in interest, and any other person acting either in concert or in participation, or both, with any of them who receive actual notice of the Consent Order.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Defendant currently operates a concentrated animal feeding facility ("CAFF") located at Route 2, Box 05191 Thiel Road, Hicksville, Defiance County, Ohio 43526 (the "Facility"). Plaintiff alleges in its Complaint that, since August 19, 2002, Defendant has operated and continues to operate the Facility without a Permit to Install ("PTI") from Ohio EPA, a Review Compliance Certificate ("RCC") from the Director, or a Permit to Operate ("PTO") from the Director as required by R.C. 903.03(A)(2). Defendant denies these allegations. The execution by Defendant of this Consent Order shall not constitute an admission that any of the allegations are true. Defendant has submitted a completed PTO application to the Director.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction and release of any civil liability by Defendant and its shareholders, agents, officers, employees, assigns, and successors in interest for all claims of violations alleged in the Complaint up through the date the Director either approves or denies Defendant's application for a PTO. This Consent Order shall also constitute full satisfaction and release of any civil liability by Defendant and its shareholders, agents, officers, employees, assigns, and successors in interest for any installation, construction, or modification of the Facility occurring between August 19, 2002 through the date this Consent Order is signed without the issuance of a PTI by the Director under R.C. 903.02. However, if the Director denies Defendant's PTO application and Defendant continues to operate the Facility after such denial, this Consent Order does not preclude Plaintiff

from bringing claims for any violations resulting from Defendant's continuing operation of the Facility without a PTO or RCC after such denial.

5. Nothing in this Consent Order shall be construed to limit the authority of Plaintiff to seek relief against appropriate persons other than those released in paragraph 4 above for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to seek relief against Defendant or any other appropriate persons for claims not alleged in the Complaint and violations occurring after the filing of the Complaint, except for the failure to obtain a PTI under R.C. 903.02 for any installation, construction, or modification of the Facility occurring between August 19, 2002 through the date this Consent Order is signed and except for any continuing operation of the Facility before the Director approves or denies Defendant's PTO application. Nothing in this Consent Order shall limit Defendant's right to raise any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Further, nothing in this Consent Order shall be construed to diminish the Director's authority or discretion to grant, deny or revoke the permit application or any future permit application associated with the Facility.

IV. PERMANENT INJUNCTION

6. Defendant is hereby enjoined and immediately ordered, as follows:

A. Defendant shall not make any future modifications, as defined by the rules promulgated under R.C. Chapter 903, to 5C's Farm without first applying for and receiving a PTI from the Director in accordance with R.C. 903.02.

B. Defendant shall not construct or operate any new concentrated animal feeding facility without first applying for and receiving a PTI and PTO from the Director in accordance with R.C. 903.02 and 903.03.

V. TIME EXTENSIONS

7. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

VI. CIVIL PENALTY

8. Defendant is hereby ordered and enjoined to pay a civil penalty of \$11,000.00 within sixty (60) days of the signing of this Consent Order by the Court. The civil penalty shall be paid by certified or cashier's check for the appropriate amount, made payable to "Treasurer, State of Ohio, for deposit to the Livestock Management Fund 5L8", which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal, or her successor at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VII. MISCELLANEOUS

9. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state, or local laws, regulations, rules, or ordinances. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

VIII. RETENTION OF JURISDICTION

10. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

IX. COURT COSTS

11. Defendant is hereby ordered to pay the court costs of this action.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

12. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XI. SIGNATORIES

13. The undersigned is a representative of Defendant and understands the terms and conditions of the Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the Defendant to this document.

IT IS SO ORDERED.

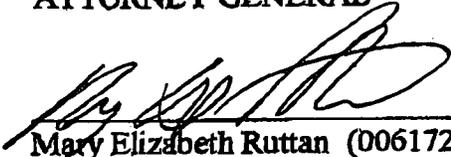
/s/ Joseph N. Schmenk

JUDGE, COURT OF COMMON PLEAS
DEFIANCE COUNTY

DATE

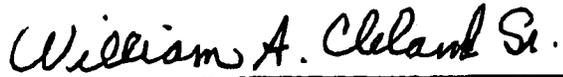
APPROVED:

JIM PETRO,
ATTORNEY GENERAL



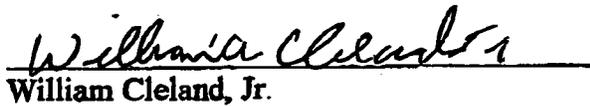
Mary Elizabeth Ruttan (0061721)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Counsel for Plaintiff

5 C's FARM, INC.



William Cleland, Sr.
President

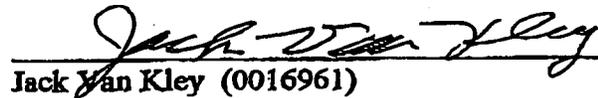
Title



William Cleland, Jr.

v. p.

Title



Jack Van Kley (0016961)
Jones, Day
41 South High Street, Suite 1900
Columbus, Ohio 43215
Telephone: (614) 469-3875
Counsel for Defendant



Ohio Department of Agriculture

OHIO
PROUD

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

Administrative Office
8995 East Main Street • Reynoldsburg, Ohio 430
Phone: 614-466-2732 • Fax 614-466-61
ODA home page: www.state.oh.us/agr/ • e-mail: wwwagri@ohio.gov

October 15, 2004

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43031

Certified Mail Return Receipt Requested

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

Ronald L. Flory
Mohamed Mousa Aboughazala
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43023-0173

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. 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 . Specifically, OFE has violated Section VI paragraph 8 and Section VII at E Operating Requirements for all Facilities as set forth in paragraphs 30 & 34.

Further, ODA has determined that the following conditions in permits to operate issued for OFE Croton Layer no. 1, 2, 3 and 4 and Pullet no. 4 have been violated .

The Moisture Management section of OFE's Insect and Rodent Control Plan provides that:

- a. Keeping manure as dry as possible in order to maintain 30% moisture or less (as sampled by the Fresh Eggs Protocol on a quarterly basis); utilizing daily water leak inspections, a good maintenance program, and proper barn ventilation. ODA will be notified when Ohio Fresh Eggs LLC sends in samples to the lab and OFE will forward all results to the ODA. If manure moisture is over 30%, OFE will inform ODA of possible remedial actions, if chosen.

* * * *

- c. Pit fans are used in two layer barns (barns 27A and 28B) at Layer #2 as a method to enhance manure drying. Pit fans will be run as long as necessary to control manure moisture levels and as long as the proper environmental conditions in the barn can be maintained to allow for the requirements for the layers or pullets and the house personnel.

- d. Manure that has become wet shall be removed when the following two conditions occur:

- a. When manure cannot be properly contained
- b. When insect control is not effective (Emphasis added)

* * * *

Daily

House Inspections:

- a) Every day an inspector walks each pit to locate, record, and repair water leaks immediately. Water leaks are repaired immediately.

* * * *

Based upon recent inspections, ODA has found that OFE has failed to have effective daily water leak inspections, a good maintenance program, and proper barn ventilation to achieve manure with moisture of less than 30%. As you are aware, ODA issued a Warning Letter to OFE earlier this year. This letter was based upon the first quarter analysis of manure moisture. On June 18, 2004, OFE responded with a list of corrective actions intended to address these violations. However, the results of subsequent ODA inspections show that corrective actions undertaken by OFE since June 18, 2004 have been inadequate or ineffective to maintain compliance with the terms of the permits to operate and with the requirements of the March 2001 Consent Order.

Further, ODA has reviewed OFE's quarterly manure moisture analyses and daily barn inspection reports for this year. ODA's review is included with this letter and is based on daily barn inspection reports for May 2004 to August 2004 and based on the quarterly manure moisture analyses for January 2004 to March 2004 and April 2004 to June 2004. This analysis has also demonstrated that OFE has failed to achieve manure with moisture of less than 30%.

Barn Inspection Reports

In particular, ODA has made the following observations for each of the facilities:

- At Layer no. 1, barns 5, 13A, and 14B had problems with wet manure and water leaks that were not fixed for at least a month. ✓
- At Layer no. 3, barns 34, 37, and 41 had leaks that caused some manure release via pit doors (PD) at all three barns. Pit fans were either not used or they required maintenance in barns 41A and 42B and so were not capable of controlling manure moisture levels as required by the permits.
- At Layer no. 2 barns 20, 24, 27, 28, 27A, and 28B had problems with either pit fans or wet manure from birds.
- ~~At Layer no. 2, the terms and conditions of the permit required OFE to keep manure as dry as possible in order to maintain 30% moisture or less utilizing daily water leak inspections, a good maintenance program, and proper barn ventilation.~~ However, OFE employee teams failed to note that the birds were producing very wet manure. As a result, manure moisture far exceeded the 30% limit established in the consent order and the permit. Wet manure developed in early to mid-June 2004. At an inspection on September 15, 2004, OFE stated that the birds and the bird feed were "probably the problem" causing the wet manure. ODA believes that OFE had data two months ago that showed wet manure from the birds and the causes of such wet manure, such as feed type, should have been investigated at that time.

Manure Moisture Reports

The following list of deficiencies is based on reports submitted to ODA for the first quarter (January 2004 to March 2004) and second quarter (April 2004 to June 2004).

- Layer no. 2 had standing water in barn 15 for 6 weeks followed by abundant flies for 3 weeks. Beginning in June 2004, barn 15 had birds producing wet manure. [permit OFL2-0001.PO0001.LICK 21 days abundant flies at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation. Note that for violations of the permits' Insect and Rodent Control Plans throughout this Notice of Deficiencies Resulting in Noncompliance, are attributed to "extreme" and

“abundant” levels of flies as determined by ODA referring to the criteria described in terms and conditions of the permits.]

- During the same timeframe barns 16, 17, 18, 19, 10, 21, 22, 23, and 26 had birds producing wet manure.

The following barns exceed the 30% manure moisture limit:

- At Layer no. 1 barn 5 [permit OFL1-0001.PO0001.LICK 30 days exceedance of the 30 % moisture limit at \$ 2, 500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation] ✓
 - At Layer no. 2 barns 15-20, 22, 26, 27, 27A, and 28B [permit OFL2-0001.PO0001.LICK 30 days exceedance of the 30% moisture limit at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation] ✓
 - At Layer no. 3 barns 31, 34, 36, 37, and 41 [permit OFL2-0001.PO0001.LICK 30 days exceedance of the 30% moisture limit at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation]
 - At Layer no.4 barns 43, 47, 49, 50, 51, and 56 [permit OFL2-0001.PO0001.LICK 30 days exceedance of the 30% moisture limit at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation]
-

The following barns not only exceeded the 30% manure moisture but moisture increased from the first quarter to second quarter such that the moisture exceedances were exacerbated over the subsequent quarter. These increases occurred after the Warning Letter was issued by ODA.

- At Layer no. 1 barns 3, 7, 10, and 13 [permit OFL1-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]
- At Layer no. 2 barns 21, 23-25, and 28 [permit OFL2-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]
- At Layer no. 3 barns 30, 32, 35, 40, and 42 [permit OFL3-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]
- At Layer no. 4 barns 45, 53, and 55 [permit OFL3-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

ODA Inspections

In addition, the following deficiencies, also resulting in noncompliance, were observed by ODA staff during an inspection on September 14, 2004:

Layer no.1

- Barn 2 is newly remodeled and was recently stocked with layers. Moderate to abundant flies were noted on the manure conveyer belts. There was also about 2 –3 inches of manure-laden water in the conveyer belt pit that transports the manure from the barn and currently loads the manure into spreaders for land application.
- Fly levels in the clean out areas around the doors of barn 13 were moderate to abundant.
[permit OFL2-0001.PO0001.LICK at 1 day abundant flies at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

Layer no.2

- Barn 15 had exceptionally wet manure. The manure pit in barn 15 resembled a liquid manure storage building. The manure was so moist that the manure was level from door to door and wall to wall. Both flies and larvae were moderate to abundant. Larvae were noted in the top part of the manure. Large amounts of red, unhatched fly pupae were noted in the manure. Abundant to extreme amounts of adult flies were noted inside the barn.
- Barn 16 had a small cone on the manure and the manure was wet. There were abundant flies on the walls and on the manure but the inspectors could not perform an inspection because the manure was too wet.
- Barn 17 had pit barn doors falling off tracks or broken. There was a bad water leak running from the inside of the barn to the outside. Stephanie Tudor, OFE Compliance Team, called an OFE manager to have it checked out and later a manager called her back. The manager stated that OFE had fixed a leak earlier and swept all the water towards the wall and so it was now running out of the barn, but the original “problem” had been fixed. No coning was noted of the manure. Although the manure it was too wet for the inspectors to go into barn, abundant levels of flies were noted. In Barn 17 the manure was very moist and was level from door to door and wall to wall. Both flies and larvae were moderate to abundant.
- Barn 18 had “soupy” manure, as the manure coming from the birds was very wet and yellow in color. The center row in the barn did not appear to be as wet but inspectors could not get to it through the rest of the wet manure. Inspectors could not do a complete inspection due to the soupy

manure and could not get close to the center row. Fly levels were moderate.

- Barn 24 had a hole in the pit wall.
- Barn 26 had wet manure with a little more coning noted. The middle of aisles appeared to be very wet and moderate to abundant flies appeared to be on the posts. There were abundant flies in the feathers on the manure. Inspectors could not walk through this barn either due to the wet manure conditions.
- Barn 23 had black liquid oozing from the front door and the clean out doors were blocked with dirt.
- Barn 26 had dry manure on top but when pressure was applied to the top of the manure the manure would move in a wave type manner similar to the motion of a waterbed. Fly levels were moderate to abundant.
- Barn 27 had manure "rolling out" or flowing slowly from of the clean out door when inspectors opened it.

Layer no. 2 generally

Inspectors noted poor drainage and maintenance between barns. Flies were swarming the inspectors' vehicles. There were many instances of dirt piled up by the doors holding the manure in and some dirt piled by sections of walls. Many cinder blocks of the buildings were noted missing from some pit walls and the tops of barn walls were rusted out in areas.

The feed bin areas between barns 16 and 18 have severe drainage problems. There was no more feed pad under one of the feed bins – it had badly deteriorated.

Overall, Layer no. 2 was in poor condition.

[permit OFL2-0001.PO0001.LICK at 1 day abundant flies at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation], [permit OFL2-0001.PO0001.LICK at 1 day exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

Layer no. 3

Although no barns were entered, inspectors drove through the site. ODA noted that walls and other building parts are deteriorating. Barn doors were blocked with dirt piles. Areas noted had leaking foundations due to manure releases from the manure pits. The overall appearance and upkeep of this facility was below average.

Layer no. 4

This site is belt-battery. Inspectors examined one of the storage barns and noted abundant to extreme amounts of flies. Larvae amounts were abundant-plus. Flies were covering the inspectors' vehicle. Walls of storage buildings were cracked. Not only is this amount of flies is atypical at other farms where belt-battery systems are used, but also this is atypical for poultry farms in general.

Dead flies were thick and covering the ground in most locations. Flyspecks were noted to have coated and blackened fan shields. Flies were noted all through the grass areas that had just been mowed.

- Barn 49, a belt battery barn, had moderate levels of larvae in the manure storage area. The manure was flattened against the walls and appeared to have been wet at one time. The flies were abundant both inside and outside the manure storage door way.
- Barn 50 is being remodeled. The manure has been pushed to the east end of the barn and is very soupy. There is construction debris in this manure.
- Barn 53 had a wall near the manure clean out door with a horizontal crack in the wall and manure stains were observed on the outside walls. The manure stains appear to have come from manure juices that seeped through the walls.

The overall condition of this farm was below average to poor. [permit OFL4-0001.PO0001.LICK at 1 day abundant flies at \$ 4,500 per day in accordance with Rule 901:10-5-04(K) Category II, low violation], [permit OFL4-0001.PO0001.LICK at 1 day exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

Pullet no. 1

A moderate amount of flies were flying around. Black liquid was again noted outside of the barn. Not too many feet away from where the black liquid was observed was the storm water pond with the water well located in the corner.

Pullet no. 2

Inspectors did not go into the barns. However, the following was observed from outside of the barns. There was a block out of the wall in barn 7 with manure coming out of the resulting open space in the wall. Barn 8 had an area of dense flies on the outside of a wall. The feed bins were in dire need of being cleaned-up. The pit walls were showing much deterioration. Black liquid was noted under fans at barn 8 and 6. The doors on

barn 6 appeared ready to burst open. The site's appearance and upkeep overall appeared to below average to poor.

Pullet no. 4

- Barn 20 had manure that was "moving" because in spots, there were more larvae than manure. These spots resembled "rolling balls of larvae." Extreme amounts of flies were noted in the front part of the barn.
- Barn 21 was hot and abundant larvae were noted. Both living and dead abundant flies were noted with extreme amounts of flies noted in the front of the pit, on the floor. The manure was wet.
- Flies were swarming outside and covering the inspectors' vehicle. Fly levels outside the barns were abundant. Feed bins needed to be cleaned up. Extreme amounts of flies were noted around most feed bins.
- This is the facility closest to the Rutherford home, the source of the most recent fly complaints.
[permit OFP4-0001.PO0001.LICK at 1 day abundant flies at \$4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation], [permit OFL4-0001.PO0001.LICK at 1 day exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

Pullet no. 3

This site was not inspected on September 14, 2004.

Corrective Actions

OFE is required to correct these deficiencies with the actions and schedule as follows:

First, OFE must revise its employee training for daily barn inspections. Our analysis shows that inspections, if performed, are conducted by teams that are limited to counting flies, larvae, beneficials, and water leaks with no examination of other causes of wet manure. Inspections by an individual such as by Cale Ayres or Chris Art are more encompassing and include the condition of the birds, the pit fans, and the walkways. OFE is not examining the barns as a whole as required by the permits and as a result, OFE has not addressed other conditions that stimulate fly blooms such as the bird feed and pit fans.

Second, trend analyses must be performed as required by your permits, under the following provision of the permits:

The Insect and Rodent Control Plan at Hierarchy of Oversight:

In order to evaluate the effectiveness of the pest control program and the ability of the insect monitoring program to provide accurate and timely information to management for pest control decisions, the Director of the Compliance Department, the Senior Production Manager, and the Director of Operations will review inspection forms quarterly.

Trend analyses will be developed by a compliance officer of all monitoring data and compared with actions and effectiveness of the pest control program for the purpose of continuing program evaluation and modification for improvement. The trend analyses will be evaluated monthly by a professional entomologist who will provide a report interpreting trends and make recommendations as to plan changes (if deemed necessary).

Copies of these trend analyses shall be submitted quarterly to ODA to confirm that analyses are performed to ODA's satisfaction and for ODA use. At the end of the quarter, insert manure moisture data from the required quarterly analysis of manure moisture.

Third, OFE must repair or replace all broken doors and barn openings at Layer no.2 to prevent weathering of manure by December 1, 2004.

Fourth, OFE must fix all water leaks immediately upon discovery and document the repairs in the daily barn inspections reports.

Fifth, the permits require that "Manure that has become wet shall be removed when the following two conditions occur:

- i. When manure cannot be properly contained
- ii. When insect control is not effective"

Accordingly, OFE must submit a schedule within 45 days to ODA for ODA approval that does all of the following:

- 1) Lists each barn that exceeds the manure moisture rate of 30%.
- 2) Lists 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) Provides, 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) Lists the dates for manure removal for all other barns.

After 45 days from the date of this letter, an ODA inspector will inspect your facility to determine whether you have returned to compliance by assessing OFE's compliance with

corrective actions one through 4, above, and by determining whether the schedule submitted by OFE for corrective action 5 shall be approved. If OFE is still not in compliance, I will consider proceeding with other enforcement options, including assessing a civil penalty as permitted by ORC § 903.16 of \$456,000.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (J) and (K) of Rule 901:10-5-04 of the OAC to determine that these are both first cited violations and past violations of the above-identified laws and rules, that the category of seriousness of the violations is medium and the gravity of the violations is low level. The appropriate penalty in this matter will be \$ 456,000 unless the deficiencies are corrected.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Enclosures

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Licking SWCD

Pullets

Barns	5/20/2004	5/27/04	6/3/04	6/9/04	6/16/04	6/23/04	6/30/04	7/16/04	7/21/04	7/29/04	8/4/04	8/11/04	8/19/04	8/25/04
1	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	fly abn	No barn	No barn
2	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
3	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
4	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
5	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
6	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
7	fly abn	fly abn	fly abn	water leak										
8	fly abn	fly abn	fly abn	water leak										
9	fly abn	fly abn	fly abn	water leak										
10	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
11	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
12	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
13	No barn	water leak abn fly	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
14	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
15	rotten chick	fly abn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
16	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
17	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
18	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
19	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
20	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
21	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn

If beneficials abundant not noted
*Cale

w/w = walkways
Abn. = abundant

Nothing noted =
flies few to mod

Layer #1

Barns	5/20/04*	5/27/04	6/3/04*	6/9/04	6/17/04*	6/23/04	7/2/04*	7/7/04	7/16/04*	7/21/04	7/29/04	8/4/04	8/11/04	8/19/08	8/25/04	
1	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	8/25/04
2	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
3(51%)	No birds	No birds	No birds	No birds	Birds removed	No birds	58%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
4	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
5(42%)	No barn	No barn	No barn	No barn	Damp manure	No barn	40%	water leak	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
6	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
7(44%)	No barn	No barn	Barn closed?	No barn	w/w collapse	63%	No barn	No barn	No barn	No barn	No barn	No barn	No barn	3 water leaks	3 water leaks	3 water leaks
8	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	water leak	No barn	No barn	No barn	No barn	No barn
9(22%)	No birds	No birds	No birds	No birds	No birds	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	flies abn.	No barn	No barn
10	No barn	No barn	No barn	No birds	No birds	16%	No birds	No birds	No birds	No birds	No birds	No barn	No barn	No barn	No barn	No barn
11(43%)	No birds	No birds	No birds	No birds	No barn	No barn	No barn	No barn	No barn	No barn	No birds	No barn	No barn	No barn	No barn	No barn
12	No barn	No barn	No barn	No barn	No birds	68%	No birds	No birds	No birds	No birds	No birds	No barn	No barn	No barn	No barn	No barn
13(35%)	w/w no walk	No barn	No barn	No barn	wet manure fr birds	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
14	No barn	No barn	No barn	No barn	No barn	62%	No barn	No barn	No barn	No barn	No barn	No barn	No barn	3 water leaks	No barn	No barn
13A(61%)	"coffee"	water leak abn fly	priority larvae	priority files/larvae	priority wet	priority fly abn (20%)	No barn	priority water leak	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
14B(58%)	manure wet top	priority files	wet manure	priority files/larvae	very wet priority	26%	No barn	No barn	No barn	No barn	No barn	No barn	water leak	No barn	No barn	No barn

If beneficials abundant not noted
*Cafe

w/w = walkways
Abn. = abundant

Nothing noted =
flies few to mod

Layer #2

Barns	5/20/04*	5/27/04	6/3/04*	6/9/04	6/17/04*	6/23/04	7/2/04*	7/7/04	7/16/04*	7/29/04	8/4/04	8/11/04	8/19/08	8/25/04
15(75%)	1-2" water	priority	1-2" water no w/w		manure sludge	water 5-6"	no w/w	70%	disaster bird wet manure			priority flies abn.	priority flies abn.	priority flies
16(77%)	priority fly abn.				wet manure	wet manure water leak	wet house	68%	birds wet manure					priority larvae
17(64%)	1-2" water		wet house cleaned out	water leak	wet manure	wet manure	wet manure	abn larvae 49%	bird wet manure			priority flies larvae	priority flies larvae	
18(70%)		priority	wet manure		very wet house	very wet house		abn larvae 51%				priority larvae		
19(71%)		w/w bad birds wet manure		damp manure	damp manure			61%	bird wet manure					
20(67%)								57%						
21(72%)	w/w bad		w/w/bad			water leak	w/w collapse		birds wet manure			water leak		
22(71%)			birds wet manure			water leak	w/w collapse	74%						
23(61%)			birds wet manure			water leak	w/w collapse	60%				water leak		
24(67%)				water leak				67%	wet house					
25(56%)			w/w bad		damp on top		wet manure	70%						
26	"coffee"		w/w bad "coffee"	priority larvae abn.	very wet manure	priority larvae	wet slop manure	62%	wet house					
27(69%)				damp	damp		w/w bad	76%					priority flies	
28(71%)					damp		w/w bad	51%			water leak		water leak	
27A(29%)	*		*	scraper wet	scraper wet		scraper wet	73%						
28B*(37%)	*			scraper wet	scraper wet			21%						
								26%						

*Cale
w/w = walkways

abn.=abundant
Nothing noted = few to mod. files

* = drying fan problem

Layer #3

Barns	5/20/04*	5/27/04	6/4/04*	6/9/04	6/16/04*	6/30/04	7/2/04*	7/7/04	7/14/04*	7/22/04	7/28/04	8/4/04	8/11/04	8/19/08	8/25/04
29	No birds	No birds	No birds		3-4" water	14 water leaks			13 water leaks	birds wet manure	7 water leaks		6 water leaks	10 water leaks	priority leak
30(50%)	priority larvae						61%		priority larvae	w/w bad			priority larvae		
31(73%)							63%		water leak	w/w bad					
32(55%)	priority flies larvae		priority larvae			water leak	71%							water leak	2 water leaks
33	No birds	No birds	No birds	No birds	No birds	No birds			Birds added	Birds rooster	8 water leaks		6 water leaks	water leak	2 water leaks
34(72%)		priority larvae					55%		priority larvae	large water leak - PD				2 water leaks	
35(54%)					priority larvae extreme	water leak	61%			w/w bad					
36(71%)							67%					water leak			
37(71%)					priority larvae								water leak - manure PD	same water leak	
38	No birds	No birds	No birds	No birds	No birds	No birds	55%		No birds	repopulate house	No birds	No birds	No birds	No birds	8 water leaks
39	No birds	No birds	No birds	No birds	No birds	No birds			No birds	No birds	No birds	No birds	No birds	No birds	4 water leaks
40(54%)	priority flies larvae				2 water leaks		67%								
41(67%)						water leak	71%		water leak	w/w bad		water leak			
42(66%)			water leak				67%			w/w bad			PD		
41A(47%)	water leak				9 water leaks	3 water remain	18%			*	2 water leaks		water leak		2 water leaks
42B(59%)					2 water leaks		19%			*	water leak	water leak	same water leak		

* = Chris # = Cale

+ = please submit missing report

w/w = walkways
bad = collapsed

* = pit fan issue
PD = manure out of pit door

Layer #4

Barns	5/20/04*	5/27/04	6/4/04*	6/9/04	6/16/04*	6/30/04	7/2/04*	7/7/04	7/14/04*	7/22/04	7/28/04	8/4/04	8/11/04	8/19/08	8/25/04
43(67%)	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
44	No barn	No barn	No barn	No barn	No barn	37%	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
45(37%)	No barn	No barn	No barn	No barn	No barn	50%	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
46	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
47(66%)	No birds	No birds	No birds	No birds	priority larvae	53%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
48	No birds	No birds	No birds	No birds	No birds	33%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
49(59%)	No birds	No birds	No birds	No birds	No birds	33%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
50(73%)	No birds	priority larvae	No birds	No birds	No birds	33%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
51	No birds	priority larvae	No birds	No birds	No birds	65%	No birds	No birds	No birds	mow grass	No birds	No birds	No birds	No birds	But has manure
52	No birds	No birds	No birds	No birds	No birds	59%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
53(60%)	No birds	No birds	No birds	No birds	No birds	65%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
54	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
55(51%)	wet manure flies abn.	wet manure flies abn.	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
56(50%)	No barn	No barn	No barn	No barn	No barn	56%	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
55A(50%)				scraper wet water leaks	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
56B(44%)	*			scraper wet		18%				* wet area					
										wet area					
														No birds	No birds

* = Chris + = Cale

abn. = abundant

* = pit fan



Governor Bob Taft
Lieutenant Governor Jennette B. Bradley
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/ • e-mail: agri@odant.agri.state.oh.us

October 4, 2004

E & J Farms
C/o Mr. Eric Siefring
3241 Mercer-Darke Country Line Road
New Weston, Ohio 45348

Re: Warning Letter

Dear Mr. Siefring:

Upon reviewing our files I found that a letter that I had drafted to sent on July 14, 2004 was never signed and sent. I wanted to correct the matter and inform you that I reviewed and approved the inspection report for the Ohio Department of Agriculture's July 9, 2004 inspection of E & J Farms.

Overall, your facility and your operations are in good shape. Your management practices are acceptable. But you were missing some important information required for your Operating Record. Rule 901:10-2-16 (A)(1)(b) requires manure characterization records. This means test data or sample results collected annually for total manure produced and your manure nutrient content. See also Rule 901:10-2-10.

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, Legal Counsel
Mercer County SWCD
File



Ohio Department of Agriculture



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

Administrative Offices
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-466-2732 • Fax 614-466-6124
ODA home page: www.state.oh.us/agr/ • e-mail: wwwagri@ohio.gov

September 8, 2004

Certified Mail Return Receipt Requested

Andreas Farms Inc.
446 Ragersville Road SW
Sugarcreek, Ohio 44681

Dan Andreas
8482 Bowman Rd SW
Sugarcreek, Ohio 44681

Bill Andreas
9597 Yoder Rd SW
Sugarcreek, Ohio 44681

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

As the owners and operators of Andreas Farms Inc., the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal

feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

* * * * *

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

Facts in Support of Findings of Deficiencies

1. Andreas Farms Inc. is an existing concentrated animal feeding facility, at 446 Ragersville Road SW, Sugarcreek, Ohio 44681, Tuscarawas County and is referred to as "Facility."
2. Bill Andreas and Dan Andreas are the owners and operators of Andreas Farms Inc.
3. The Facility has the design capacity to raise or maintain approximately 1,095 dairy cattle or 1,694 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 06-5055 on November 3, 1997 by the Ohio Environmental Protection Agency.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Andreas Farms Inc. of the Facility's obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated July 31, 2003, February 2, 2004, May 25, 2004, and August 20, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Andreas Farms Inc. and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of an RCC for the Facility:
 - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the

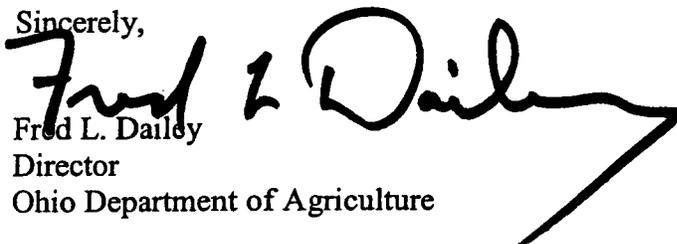
Director cannot determine that the Operation conforms to the best management practices of the rules. You are required to submit soil samples in compliance with rule 901:10-2-13 of the O.A.C.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,


Fred L. Dailly
Director
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Jennifer Tiell, ODA Legal Counsel
Jim Young, LEPP Inspector
Tuscarawas SWCD



Ohio Department of Agriculture



Governor Bob Taft
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ODA home page: www.state.oh.us/agr/ • e-mail: wwwagri@ohio.gov

Certified Mail Return Receipt Requested

September 8, 2004

Todd Stoll and Ed Stoll
Stoll Farms Incorporated
6818 Coal bank road
Marshallville, Ohio 44645

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

As the owners and operators of the Stoll Farm Incorporated, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, the actions 2) you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

* * * * *

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

Facts in Support of Findings of Deficiencies

1. Stoll Farm is an existing concentrated animal feeding facility at 6818 Coal Bank Road, Marshallville, Ohio 44645, Wayne County and is referred to as "Facility."
2. Ed Stoll and Todd Stoll are the owners and operators of Stoll Farm.
3. The Facility has the design capacity to raise or maintain approximately 3,250 dairy cattle or 4,450 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 08-047-NE on May 12, 2000 by the Ohio Environmental Protection Agency.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Stoll Farm of the Facility's obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated May 15, 2003 and May 10, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Stoll Farm and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of a RCC for the Facility:
 - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
 - b. Insect and Rodent Control Plan as required by rule 901:10-2-19 of the O.A.C.
 - c. Mortality Management Plan as required by rule 901:10-2-15 of the O.A.C.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.

10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine that the presence and negative effects of insects and rodents at the facility and in the surrounding areas will be minimized.
11. Without a complete and accurate Mortality Management Plan the Director cannot determine that the Mortality Management Plan conforms to the best management practices of the rules.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,



Fred L. Dailey
Director
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Jennifer Tiell, ODA Legal Counsel
Jim Young, LEPP Inspector
Wayne SWCD



Ohio Department of Agriculture

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Lieutenant Governor Maureen O'Connor
Director Fred L. Dailey

Administrative Offices
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Phone: 614-466-2732 • Fax 614-466-6124
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Certified Mail Return Receipt Requested

September 8, 2004

Jim and Mary Wenning
1500 Union City Road
Ft. Recovery, Ohio 45846

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. and Mrs. Wenning:

As the owner and operator of the Wenning Farm, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

* * * * *

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best

management practices of these rules, the director may issue an order denying a review compliance certificate.”

Facts in Support of Findings of Deficiencies

1. Wenning Farm is an existing concentrated animal feeding facility, 1596 Union City Road, Fort Recovery, Ohio, Mercer County and is referred to as “Facility.”
2. Jim and Mary Wenning are the owners and operators of Wenning Farm.
3. The Facility has the design capacity to raise or maintain approximately 600,000 layers or 6,000 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-074-IW on August 19, 1991 by the Ohio EPA.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to obtain a RCC.
7. The Department notified Wenning Farm of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated October 17, 2002, March 4, 2004, July 12, 2004, and August 25, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Wenning Farm and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the O.A.C for the Director to make a determination in support of issuance of an RCC for the Facility:
 - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the O.A.C. Correspondence from the Department sent to you on October 17, 2002 and March 4, 2004 informed you that you are required to install a liquid level indicator, depth marker, or other device to measure manure capacity and freeboard in your lagoon. Without this installation, you cannot comply with the requirements of your Manure Management Plan. You are further required to submit soil samples in compliance with rule 901:10-2-13 of the O.A.C.

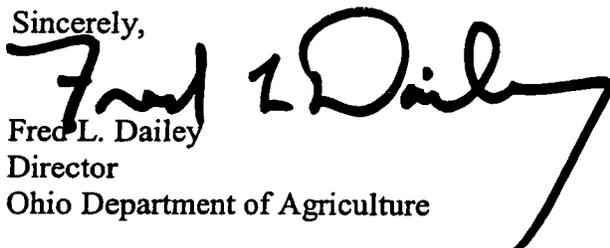
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,



Fred L. Dailey
Director
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Jennifer Tiell, ODA Legal Counsel
Michelle McKay, LEPP Inspector
Mercer SWCD



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

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Certified Mail Return Receipt Requested

September 8, 2004

Gene and Sharron Evers
1105 Goettemoeller Rd.
Maria Stein, OH 45860

Rick and Brenda Evers
6795 Ft. Recovery-Minster Rd.
Maria Stein, OH 45860

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. and Mrs. Gene Evers and Mr. and Mrs. Rick Evers:

As the owner and operator of A.J. Evers and Sons, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal

feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

* * * * *

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

Facts in Support of Findings of Deficiencies

1. A.J. Evers and Sons is an existing concentrated animal feeding facility at 1105 Goettemiller Road , Maria Stein, Ohio, Mercer County and is referred to as "Facility."
2. Gene and Sharron Evers and Rick and Brenda Evers are the owners and operators of A.J. Evers and Sons.
3. The Facility has the design capacity to raise or maintain approximately 120,600 layers or 1,206 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-138B-IW, on November 7, 1996 by the Ohio EPA.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Mr. and Mrs. Gene Evers of the Facility's obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated December 2, 2003, May 24, 2004, and August 24, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted for A.J. Evers and Sons. ODA found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the O.A.C. for the Director to make a determination in support of issuance of an RCC for the Facility:
 - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the O.A.C.
 - b. Insect and Rodent Control Plan as required by rule 901:10-2-19 of the O.A.C.

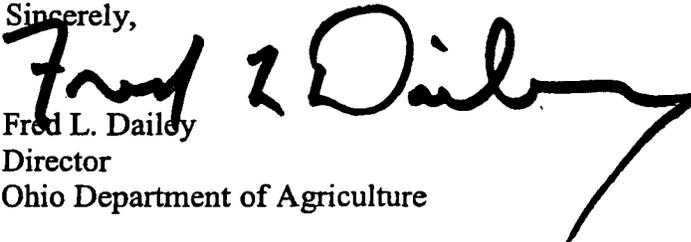
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Manure Management Plan conforms to the best management practices contained in the rules.
10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine whether the presence and negative effects of insects and rodents at the facility and in the surrounding areas are minimized.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,


Fred L. Dailey
Director
Ohio Department of Agriculture

Cc: ~~M~~ Mary Beth Ruttan, Assistant Attorney General
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Jennifer Tiell, ODA Legal Counsel
Michelle McKay, LEPP Inspector
Mercer SWCD