



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

Certified Mail Return Receipt Requested

September 8, 2004

Robert Unrast and Perry Unrast
8758 ST RT 119
Maria Stein, Ohio 45860

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

As the owners and operators of the Unrast 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, 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. Unrast Farm is an existing concentrated animal feeding facility at 8758 State Route 119, Maria Stein, Ohio 45860, Mercer County and is referred to as “Facility.”
2. Robert Unrast and Perry Unrast are the owners and operators of Unrast Farm.
3. The Facility has the design capacity to raise or maintain approximately 212,000 layers or 2,120 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-105-IW on September 9, 1994, 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 Unrast Farm of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated March 4, 2004, July 16, 2004, August 4, 2004, and August 25, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Unrast 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.
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.

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



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Certified Mail Return Receipt Requested

September 8, 2004

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

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Boersma:

As the owner and operator of Nine Mornings Daires, 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

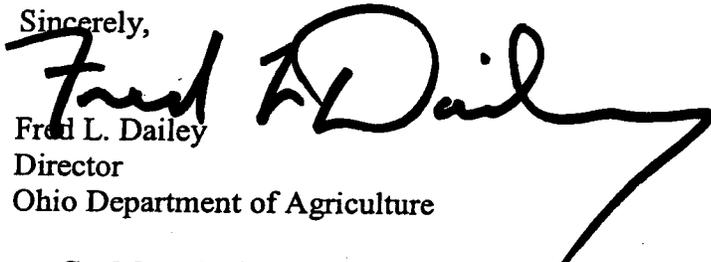
1. Nine Mornings Dairies is an existing concentrated animal feeding facility, at 6787 Road 144, Antwerp, Ohio, Paulding County and is referred to as “Facility.”
2. Jetse Boersma is the owner and operator of Nine Mornings Dairies.
3. The Facility has the design capacity to raise or maintain approximately 1,172 dairy cattle, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA PTI 08-076-NW, on August 13, 2002 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 Jetse Boersma and Nine Mornings Dairies of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated September 5, 2003 and May 27, 2004
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Nine Mornings Dairies and found that the Facility failed to provide the following documents 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.
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 as required by the rules. You that you are required to install a liquid level indicator, depth marker, or other device to measure manure capacity and freeboard in your manure pond. Without this installation, you cannot comply with the requirements of your Manure Management Plan. You are further required to submit manure samples in compliance with rule 901:10-2-10 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. 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



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Certified Mail Return Receipt Requested

September 8, 2004

Roger Albers
5967 Depweg Road
Celina, Ohio 45822

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Albers:

As the owner and operator of the Roger Albers 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. Roger Albers Farm is an existing concentrated animal feeding facility, 5967 Depweg Road, Celina, Ohio, Mercer County and is referred to as “Facility.”
2. Roger Albers is the owner and operator of Roger Albers Farm.
3. The Facility has the design capacity to raise or maintain approximately 125,600 layers or 1,256 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-10579 on July 3, 1997 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 Roger Albers Farm of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated March 31, 2004, April 17, 2004, June 20, 2004, and August 23, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Roger Albers Farm. The Department 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 as required by 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: 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
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Certified Mail Return Receipt Requested

August 31, 2004

William Ringler
Ringler Feedlots
572 Waldo-Fulton Road
Waldo, OH 43356

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Ringler:

As the owner and operator of Ringler Feedlots, the Ohio Department of Agriculture ("ODA") is issuing Director's Notice of Deficiencies Relating to Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice of Deficiencies is your written notice of deficiencies resulting in noncompliance, the actions you must take to correct the deficiencies, and 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 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 OAC 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. Ringler Feedlots is an existing concentrated animal feeding facility located at 2135 Township Road 224, Ashley, Ohio 43003, Morrow County and is referred to as "Ringler Feedlots" or "Facility."
2. William Ringler is the owner and operator of Ringler Feedlots.
3. Ringler Feedlots has the design capacity to raise or maintain 7,000 swine, which constitutes 2,600 animal units or more than one thousand animal units.
4. Ringler Feedlots was issued Ohio EPA Permit to Install No. 01-5414 by the Ohio Environmental Protection Agency on November 21, 1994.
5. On August 19, 2002, the Ohio Department of Agriculture 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 William Ringler and Ringler Feedlots of the Facility's obligations to comply with ORC Section 903.04 and to obtain a RCC in correspondence dated August 22, 2002, November 17, 2003, December 16, 2003, and May 24, 2004.
8. As of May 24, 2004, the Department received and reviewed the application for a RCC submitted by Ringler Feedlots 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. Mortality Management Plan, as required by rule 901:10-2-15 of the OAC.
 - c. Insect and Rodent Control Plan, as required by rules 901:10-2-19 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 and that the Manure Management Plan does not conform 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 operation and in the surrounding areas are minimized.
11. Without a complete and accurate Mortality Plan, the Director cannot determine whether the Facility is being operated in a manner that 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. Rule 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 the 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
Morrow SWCD



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

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 430
Phone: 614-387-0470 • Fax 614-728-63

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

August 27, 2004

Certified Mail Return Receipt Requested

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

Re: Warning Letter

Dear Mr. Flory:

My staff responded to complaints of manure discharges into waters of the State on August 4 from Croton Layer No. 1 and August 12, 2004 from Mt. Victory Layer No. 5. Based on investigations performed with Ohio EPA and based upon reports and conversations with OFE employees and agents, Ohio Fresh Eggs has violated Rules 901:10-1-10 and 901:10-2-14 of the Ohio Administrative Code (OAC). On August 18, 2004 at a meeting held with my staff of the Livestock Environmental Permitting Program (LEPP) you disagreed with some of the conclusions made by staff with respect to these investigations. For that reason, this letter explains our finding with respect to each incident with supporting calculations on manure application rates used by OFE. Finally, I note that irrespective of any disagreements, OFE staff has been responsive and cooperative to address manure discharges in both incidents including manure clean up.

The following rules are at issue:

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

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

Rule 901:10-2-14 of the OAC provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

“(i) The crop nitrogen requirements or removal as described in paragraph (C) of this rule and as expressed in thousands of gallons of manure per acre;

“(ii) The crop phosphorus requirements or removal as described in paragraph (D) of this rule and as expressed in thousands of gallons of manure per acre;

“(iii) The restrictions on the volume of liquid manure application, taken from paragraphs nine and/or fifteen in appendix A of this rule, with volume expressed as a measure of gallons per acre or inches per acre, with twenty seven thousand two hundred gallons equal to one acre/inch;

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; and

“(v) The application rate shall be adjusted to avoid surface ponding and/or runoff from a land application site. (Emphasis added)

“(b) For solid manure:

“(i) Either the crop nitrogen requirements or removal of nitrogen as described in paragraph (C) of this rule expressed in pounds per ton of dry manure per acre; (Emphasis added)

“(ii) The crop phosphorus requirements or removal as described in paragraph (D) of this rule expressed in pounds per ton of dry manure per acre; or

“(iii) The restrictions on the volume of solid manure applied, taken from paragraphs nine and/or fifteen in appendix A of this rule with volume expressed as a measure of tons/acre.”

Rule 901:10-2-14 (C) of the OAC provides, in pertinent part at (3):

“ Manure application rate nitrogen criteria:

“(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;

“(b) If the nitrogen leaching risk assessment procedure completed in accordance with paragraph (C)(3)(a) of this rule demonstrates that the land application site has a high nitrogen leaching potential and no growing crop, then application of manure shall be limited to fifty pounds of nitrogen per acre calculated at the time of application prior to October first.” (Emphasis added)

August 4, 2004 Croton Layer No. 1

LEPP and Ohio EPA conducted an investigation as a result of a reported fishkill. After inspecting the site of the fishkill and discharge, examining operating records, and talking to OFE employees, the inspectors concluded that 156 wet tons of manure was applied from Layer No. 1 barns 5 and 7 with an average moisture content of 47.1%.

The application rate was reported at 6 tons/acre but there was confusion over whether the application rate was in wet or dry tons. Dick Rowley stated that he estimated the moisture in the manure and removed it and that the data on the forms was in dry tons.

In our investigation, Ron Flory had the D & D truck weighted with manure close to the moisture that was hauled to the field. This indicated the 12 and 15 wet tons per truck were hauled. Average manure nutrient data from houses 5 and 7 at Layer 1 on a dry basis was 0.73% ammonia nitrogen, 2.42% organic nitrogen, 6.23% phosphate, and 3.56% potassium.

$$82.5 \text{ dry tons} \times .73/100 \times 2000 \text{ lb/ton} = 1,205 \text{ lbs ammonia N}$$

$$82.5 \text{ dry tons} \times 2.42/100 \times 2000 \text{ lb/ton} = 3,993 \text{ lb organic N}$$

$$82.5 \text{ dry tons} \times 6.23/100 \times 2000 \text{ lb/ton} = 10,280 \text{ lb P}_2\text{O}_5$$

$$82.5 \text{ dry tons} \times 3.56/100 \times 2000 \text{ lb/ton} = 5,874 \text{ lb K}_2\text{O}$$

Nitrogen

Based on the ODA Rule, nitrogen applications are limited to 50 lb as applied N by adding ammonia N to 1/3 organic N during summer applications unless a cover crop is provided.

$$1205 + 1/3 (3993) = 2536 \text{ lb N as applied}$$

$$2536 \text{ lb N} / 26 \text{ ac} = 97.5 \text{ lb N/ac}$$

Phosphate

The maximum rate for phosphate applications is 500 lb/ac

$$10,280 \text{ lb P}_2\text{O}_5 / 26 \text{ ac} = 395 \text{ lb P}_2\text{O}_5/\text{ac}$$

Potash

$$5,874 \text{ lb K}_2\text{O} / 26 \text{ ac} = 226 \text{ lb K}_2\text{O}/\text{ac}$$

A nitrogen application rate of 50 lb/ac would be a rate of 1.63 dry ton/ac

P₂O₅ rate at 500 lb/ac would be: 4 dry ton/ac

K₂O rate at 500 lb/ac would be: 7.02 dry ton/ac

Therefore using the most limiting nutrient chart would limit the application to 1.63 dry tons/ac or 3.1 wet tons/ac at 47.1 % moisture based on nitrogen. The 3.17 dry ton/ac application rate or 6 wet ton application rate is a violation of OFE's permit and is about 2 times the amount allowed by your permit. OFE's staff should schedule time to review application guidelines with their manure applicator (Dick Rowley) and use the actual manure analysis for moisture content, which OFE is required to perform. The most limiting nutrient chart should be clearly explained along with manure nutrient data from the houses supplying manure.

Copies of documents relied upon for the above calculations are enclosed with this letter.

Finally, we note that your Permit to Operate has a Manure Management Plan for solid manure requires Distribution and Use in accordance with Rule 901:10-2-11 of the OAC. OFE may make an operational change to apply solid manure but this requires full compliance with the record keeping specified by Rule 901:10-2-16(A)(1)(c) of the OAC

Although not required now, we recommend that records of weather forecasts with predicted rainfall are kept and manure is stockpiled during periods or predicted periods of inclement weather. In the future, records of forecasts and weather conditions both during and after manure application will be required by ODA rules.

The attached map shows the application area, the ponds, and Otter Fork immediately west of the ponds.

August 12, 2004 Mt. Victory Layer No. 1

ODA received a complaint of a manure spill into an unnamed tributary of McDonald Creek on August 12, 2004 and notified Ohio EPA. Based on Ohio EPA's inspection of the 79 acre application site and communications with your staff, we have learned that egg wash water was irrigated for approximately eleven (11) hours on August 11, 2004 and irrigated for several more hours on August 12.

For liquid manure application, it is required that application rates are correct, that the soil's available water capacity is checked, that plugs are available, and that periodic observations are made of manure application. Unless these best management practices are performed, then manure runoff is discharge to waters of the state and a violation. Within thirty (30) please provide me with a report of the above incidents including your views on the land application of the solid manure, your plans to manage solid manure through Distribution and Utilization or by other means, and the use of best management practices for egg wash water irrigation.

Sincerely,



Kevin H. Elder
Executive Director, Livestock Environmental Permitting Program

Enclosure

Cc: Andy Rogowski, LEPP Engineer
Jim Young, LEPP Inspector
Rick Wilson, Ohio EPA
Hardin SWCD
Licking SWCD

**Before the Ohio Department of Agriculture
State of Ohio**

In the matter of:

State Line Agri, Inc.
9159 State Route 118
Ansonia, Ohio 45303

2004-286

Order

The parties have reached an agreement resolving the rule violations and proposed civil penalties contained in ODA's March 8, 2004 Notice of Opportunity for Hearing Letter. This agreement negates the need for an administrative hearing pursuant to Revised Code Chapter 119.

Based on the parties' Joint Stipulation and Settlement Agreement, by the authority vested in my office by law, it is hereby

ORDERED:

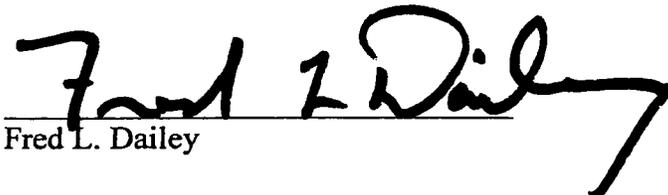
1. That, based on State Line's failures to maintain freeboard in its manure lagoons, State Line is ordered to pay the ODA proposed civil penalty in the amount of \$200.00 by check made payable to "Treasurer, State of Ohio, for the Livestock Management Fund 5L8," within ten days after this Order is journalized.

2. That State Line is ordered to install a freeboard depth marker, or staff gauge into its manure lagoons by September 1, 2004.
3. That, upon journalization, a certified copy of this Order be sent to State Line Farms.

Effective date of this Order: Upon Journalization.

Fred L. Dailey, Director
Ohio Department of Agriculture




Fred L. Dailey

Entered, Ohio Department of Agriculture Journal this 10th day of
August 2004, by Corrie Ellis.

Notice

In accordance with section 119.12 of the Revised Code, the Director's order may be appealed to the court of common pleas of the county in which your business is located or the county in which you reside. Notice of any appeal must set forth the order appealed from and the grounds for appeal and must be filed with the Director and the court within fifteen days of the date of mailing of this Order.

CERTIFICATION

STATE OF OHIO

COUNTY OF LICKING, SS

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of the ORDER which was entered upon the order journal of the Ohio Department of Agriculture on the 19th day of August, 2004.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 19th day of August, 2004.


Fred L. Dailey, Director
Ohio Department of Agriculture





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

August 6, 2004

Henk Arts
5624 Elm Sugar Rd.
Convoy, OH 45832
419-749-0033

Re: Arts Dairy
5624 Elm Sugar Rd.
Convoy, OH 45832
419-749-0033
Tully Township
Van Wert County

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Arts:

I have been informed that you received a warning letter from the Ohio Department of Agriculture's Livestock Environmental Permitting Program on January 27, 2004. In January inspectors found that you lacked freeboard in your manure storage pond. In February inspectors found that you applied manure on frozen or snow-covered ground, which staff attribute to problems in managing your manure storage capacity and Kevin Elder, Executive Director, wrote to you on March 19, 2004 with recommended steps to take to improve manure management. On July 28, 2004, staff from the Livestock Environmental Permitting Program visited your dairy to inspect the freeboard and found that you are once again not in compliance.

The following law is at issue:

Division (A) of Section 903.16 of the Ohio Revised Code provides, in pertinent part:

" The Director of Agriculture may propose to **require corrective actions and assess a civil penalty** against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is **not in compliance with** section 903.02, 903.03, or 903.04 of the Revised Code, **the terms and conditions of a** permit to install, **permit to operate**, or review compliance certificate issued for the concentrated animal feeding facility, **or rules adopted under division (A) of section 903.10 of the Revised Code.** (Emphasis added)

“However, the director may impose a civil penalty only if all of the following occur:

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

The following is the rule at issue:

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:

- “(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)

You have sixty (60) days from the date on this letter within which you must correct these deficiencies by removing the manure and applying 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 LEPP inspector. In addition to applying manure to obtain the required freeboard, I expect that you will apply enough manure yet this summer/fall to prevent having to apply on frozen or snow covered ground.

After the sixty (60) 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 an assessed civil penalty of \$5,760.00.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the Ohio Department of Agriculture 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

Arts Dairy

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 moderate and the gravity of the violations is low level. The appropriate penalty in this matter will be \$5,760.00 unless the deficiencies are corrected.

Sincerely,

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

Fred L. Dailey, Director
Ohio Department of Agriculture

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



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

Livestock Environmental Permitting Program
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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

June 17, 2004

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

Re: Warning Letter

Dear Mr. Zylstra:

Twice in 2004 either the Director or myself have had to issue formal enforcement notice letters to you for violations occurring at your facility. A warning letter and a Notice of Deficiencies Resulting in Noncompliance were issued to you. In both cases, ODA inspectors found that, among other violations, you failed to maintain the required freeboard.

Rule 901:10-2-08 of the Administrative Code governs operations at a concentrated animal feeding facility and this rule 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:

- (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)

You asked Jim Young, ODA Inspector, if you could use the leachate pond to relieve the manure storage in the existing fabricated manure storage structure. As reported by Mr. Young, you were again unable to maintain the required amount of freeboard as required by the cited rule. The silage leachate pond was authorized to be built in accordance with Permit to Install ZLY-0001.PI001.PAUL issued on July 2, 2003. The silage leachate pond was constructed to the same specifications as the existing manure storage pond. Gary Zwolinski, ODA Engineer, inspected the new leachate pond on May 5, 2004 and found it to be completed except for the final seeding. However, you were notified in

writing that the pond could only be used when the following information was received in this office:

“* A notarized statement from the owner certifying that the pond was constructed in accordance with the design plans.

* A copy of the completed and approved as-built plans along with the QA [quality assurance] documentation certifying the proper construction of the pond.

“Once this information is received, a letter will be drafted and sent to the Zylstra Dairy informing them that the pond can be put into use. If there are any questions, feel free to call.”

The requirements listed in Mr. Zwolinski's May 5, 2004 communication to you were also listed in my Warning Letter issued to you on March 5, 2004:

Rule 901:10-2-02 of the Ohio Administrative Code provides, in pertinent part:

“Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals.”

After Mr. Young's inspection, you sent a letter to Mr. Zwolinski dated June 2, 2004, stating that, according to Mr. David Gerdeman, P.E., who is responsible for the construction for Zylstra Dairy, the silage leachate pond was completed, tested and inspected in the first week of May 2004. You stated that “[T]his means that the leachate pond that was constructed meets or exceeds design plans.” However, your letter did not include the information that Mr. Zwolinski requested nor did your letter satisfy the rule cited. ODA did not receive the notarized statement until June 4, 2004 and did not receive the as-built plans until June 8, 2004.

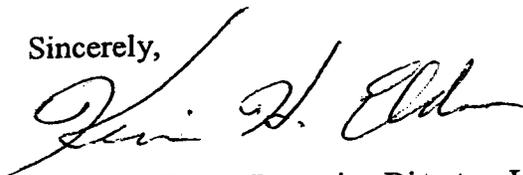
During an inspection on June 7, 2004, Mr. Zwolinski observed that the leachate pond was in use and contained manure. A letter to approve use of the leachate pond for manure storage was prepared and issued by Mr. Zwolinski dated June 9, 2004.

I find it necessary to go “on the record” yet again to warn you that I perceive a pattern of noncompliance that concerns me. In this case, you knew what the rule required, you were told by Gary Zwolinski how to comply but you proceeded to use the leachate pond for manure storage at least 72 hours in advance of receiving authorization. On its face, this appears to be a short period of time and involved some paperwork for compliance. It did not present harm to the environment. But the real problem, which is a potential environmental problem, is your continued inability to manage manure removal in a timely manner and to comply with freeboard. We have only completed the first half of calendar year 2004 and yet this Department has had to warn you three times about

freeboard problems and inspect your facility numerous times. We still find that you have trouble following the rules. My staff informs me that you and members of your family blame everybody and everything for your difficulties and take responsibility for nothing. As a farmer, I, too, understand that weather has positive and negative affects on agricultural operations of all sizes. Nevertheless, we are expected to plan and manage for Ohio weather conditions that are known and foreseeable. It has been my pleasure as Executive Director of this new program to find that farmers can and do manage and plan for the ill effects of weather. Those with problems contact us, work with us, or use the assistance of their local soil and water conservation district to minimize actual or potential water pollution. Most of the CAFFs for which I have regulatory responsibility consistently comply with laws and rules.

With all of the above in mind, I want to remind you that your Permit to Operate expires on July 2, 2008. To be eligible for permit renewal, your compliance history will be evaluated. Your compliance history is in your control. It is your responsibility. Continued inattention to requirements may well result in more enforcement.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
Cathy Alexander, Ohio EPA
Liz Pessefall, Paulding SWCD



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

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Certified Mail Return Receipt Requested

June 11, 2004

WestFin, LLC
c/o Jefferson L. Blauser and Elizabeth E. Blauser
Rebecca Blauser
4361 State Route 202
Tipp City, Ohio 45371

Re: Notice of Deficiencies Resulting in Noncompliance

Dear Mr. and Mrs. Blauser and Ms. Blauser:

On May 21, 2004, I issued a Notice of Deficiencies Resulting in Noncompliance ("Notice") to Jefferson Blauser and to Christopher Blauser, D.V. M. as a result of serious violations discovered at an operation located at 11566 U.S. Route 127 in Versailles, Ohio. By that date, the ODA Division of Animal Industry had issued two violations notices against Ohio Valley Farms, Inc. and planned legal proceedings for violation of 941.14 of the Ohio Revised Code. The May 21st letter also notified the recipients of other deficiencies that resulted in noncompliance with the ODA Livestock Environmental Permitting Program. As a result of these notices, Dr. Glauer and Kevin Elder of my staff met with Christopher Blauser and Dr. Minton on May 27, 2004 to discuss the seriousness of the violations and required actions to correct the violations.

You are operating a concentrated animal feeding operation without authorization by permit and you are in violation of a number of rules governing the operation of your operation. A copy of the May 21, 2004 Notice of Deficiencies Resulting in Noncompliance is attached hereto and the findings and actions required for corrective actions are fully incorporated into this Notice.

You are required to do the following:

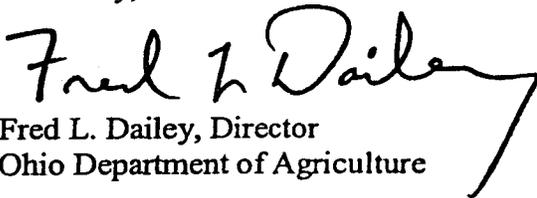
Submit a complete application for a Permit to Operate to the ODA Livestock Environmental Permitting Program not later than July 1, 2004. Reduce the total number of animals at your facility to less than 1,000 animals by June 15, 2004 and maintain the reduced number of swine until such time as those decisions with respect to permits are final and effective.

In the alternative, you may submit a closure plan to ODA Livestock Environmental Permitting Program not later than July 1, 2004. The requirements for closure are set forth in Rule 901:10-2-18 of the Ohio Administrative Code and include reduction or elimination of the total number of animals at your operation.

While the alternative of operation closure may appear to remove you from the jurisdiction of the Livestock Environmental Permitting Program, you are advised that recent changes to Ohio law mean that the Ohio Department of Natural Resources in coordination with the Darke Soil and Water Conservation District, may issue an order pursuant to Section 1511.02 of the Ohio Revised Code to require you to obtain a Permit to Operate from ODA.

ODA will re-inspect the facility to determine if you have complied with this Notice. ODA will expect a complete Permit to Operate application on the date noted above. If it is determined that you are not in compliance, then I will consider an enforcement action and a civil penalty for these violations of Chapter 903 of the Ohio Revised Code.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

- c: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
✓ Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Dr. David Glauer, Chief, Division of Animal Industry
Michelle McKay, LEPP Inspector
Tim Brunswick, Darke SWCD
Christopher Blausner, D.V.M. [11566 U.S. Route 127, Versailles, Ohio 45380]
File



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

June 4, 2004

Certified Mail Return Receipt Requested

Brian and Kevin Winner
13324 U.S. Route 127
Rossburg, Ohio 45362
Attention: Mr. Brian Winner

Re: Warning Letter

Dear Mr. Winner:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on May 24, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint about flies from your facility. The ODA inspector found that insects were well under control and the facility is well kept. However, we find that WB Poultry is not complying with the Permit to Install (PTI) issued to Brian and Kevin Winner, WB Poultry on September 25, 1998.

Section 903.04 of the Ohio Revised Code provides as follows at (B):

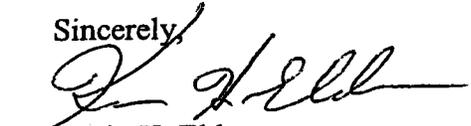
“ On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, the authority to enforce terms and conditions of installation permits that previously were issued to animal feeding facilities shall be transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those installation permits. On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, an installation permit concerning which enforcement authority has been transferred shall be deemed to have been issued under this section.”

The Director of the Ohio Department of Agriculture finalized the program to regulate concentrated animal feeding facilities on August 19, 2002. On that date, all PTIs issued by Ohio EPA were transferred to this Department for enforcement.

Our files show that Ohio EPA issued Notice of Violation letters to you dated July 30, 2001 and December 13, 2001. In addition, and as documented in inspection reports dated February 10, 2004 and May 24, 2004, ODA staff finds that WB Poultry is still not complying the PTI. The special conditions in the Ohio EPA PTI for annual manure sampling have not been fulfilled. Special condition 16 of the PTI required insect control measures, including record keeping on the use of fly cards, inspections conducted, and other visual monitoring. This documentation is missing. In short, the PTI required documentation from you of specific operations at your facility and you have not complied with these requirements.

All of the record keeping requirements in your Ohio EPA PTI may also be found in rules 901:10-2-10, 901:10-2-16, and 901:10-2-19 of the Ohio Administrative Code. Any authorization to operate a concentrated animal feeding facility in Ohio will require compliance with these rules. Your immediate attention to this matter is required. If, at the time of your next inspection, your records have not improved, I will recommend enforcement to the Director, including an assessment of a penalty.

Sincerely,



Kevin H. Elder,

Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer

Michelle McKay, LEPP Inspector

Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture

Tim Brunswick, Darke SWCD

Cathy Alexander, Ohio EPA



Ohio Department of Agriculture



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

Livestock Environmental Permitting Program
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

May 26, 2004

Mr. Hette DeVries
7188 Sager Road
LaRue, Ohio 43332

Mr. Ronald L. Waterman
Barrett, Easterday, Cunningham,
Eselgroth & Waterman, LLP
5455 Rings Rd., Ste. 100
Dublin, Ohio 43017

Re: Settlement Agreement

Gentlemen:

Enclosed please find a copy for each of you of the final executed Settlement Agreement, Order No. 2004-112 effective April 19, 2004.

Sincerely,

Jennifer R. Tiell
Legal Counsel, Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Mary Beth Ruttan, Assistant Attorney General
File

**Before the
Ohio Department of Agriculture**

In the matter of

April 19, 2004

Mr. Hette de Vries
De Vries Dairy, LLC
7188 Sager Road
LaRue, Ohio 43332

Order No. 2004-112

Settlement Agreement

1. This agreement is made between Hette de Vries on behalf of De Vries Dairy, LLC and the Ohio Department of Agriculture (ODA).
2. De Vries Dairy, LLC stipulates to the jurisdiction of ODA over this matter pursuant to Ohio Revised Code Chapter 903.
3. For purposes of this Settlement Agreement, De Vries Dairy, LLC does not dispute the allegations set forth in the Notice of Opportunity for Hearing dated March 8, 2004 sent to De Vries Dairy, LLC by the Director of the Ohio Department of Agriculture. Further, De Vries Dairy, LLC stipulates that it was properly served and received the March 8, 2004 Notice from the Director and that he timely requested a hearing pursuant to that Notice.
4. This Settlement Agreement is made between the parties as the complete and final settlement of all matters referred to in the Notice of Opportunity for Hearing dated March 8, 2004.
5. The parties agree that the terms of the Settlement Agreement bind the parties hereto, their assigns and successors in interest.
6. Based upon the foregoing as a full and complete settlement of this matter and in the mutual best interests of the parties, De Vries Dairy, LLC and ODA agree to the following settlement:
 - a. De Vries Dairy, LLC waives its right to a hearing pursuant to Chapter 119 of the Ohio Revised Code and specifically withdraws its request for a hearing in this matter.

- b. DeVries Dairy, LLC agrees to pay a civil penalty of \$ 700.00, which shall be paid to "The Livestock Management Fund" as required by Section 903.19 of the Ohio Revised Code, the full amount to be paid within ten (10) days after the date this Settlement Agreement is accepted by the Director.
- 7. Hette de Vries and De Vries Dairy, LLC waive any and all claims and causes of action that they may have against the State of Ohio, ODA, and any officers, employees, or agents of either, arising out of the matters which are the subject to this Settlement Agreement. This document is a public record in accordance with Section 149.43 of the ORC and shall be released by ODA if requested and only if required by law.

DE VRIES DAIRY, LLC

Hette de Vries

Hette de Vries

director

Title

Ronald L. Waterman

Ronald L. Waterman
Barrett, Easterday, Cunningham,
Eselgroth & Waterman, LLP
5455 Rings Rd., Ste. 100
Dublin, OH 43017.

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



John L. Shailer per tele. 5/21/04
John L. Shailer
Assistant Attorney General for the
Ohio Department of Agriculture
MIBR



Ohio Department of Agriculture



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

Administrative Offices
8995 East Main Street • Reynoldsburg, Ohio 43068-3399
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Certified Mail Return Receipt Requested

Christopher Blausner, D.V.M.
11566 U.S. Route 127
Versailles, Ohio 45380

Jefferson Blausner
4361 State Route 202
Tipp City, Ohio

May 21, 2004

Re: Notice of Deficiencies Resulting in Noncompliance

Dear Sirs:

Staff of the Ohio Department of Agriculture has advised of serious violations occurring at an operation owned and operated by you in Versailles, Ohio. The ODA Division of Animal Industry has issued two violations notices and may initiate legal proceedings against you for violation of 941.14 of the Ohio Revised Code. The purpose of this letter is to notify you of other deficiencies at your operation that result in noncompliance with the ODA Livestock Environmental Permitting Program. You are operating a concentrated animal feeding operation without authorization by permit and you are in violation of a number of rules governing the operation of your operation.

The following are the sections of law at issue:

Section 903.16(A) of the Ohio Revised Code provides as follows:

“The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A) of section 903.10 of the Revised Code.”

Section 903.03 (A)(2) provides as follows:

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

Section 903.01(E) provides as follows:

“Concentrated animal feeding facility means an animal feeding facility with a total design capacity of more than one thousand units.” (Emphasis added)

Section 903.01(B) provides as follows:

“Animal feeding facility” means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

“Animal feeding facility” also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure. (Emphasis added)

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

ODA staff of the Livestock Environmental Permitting Program inspected the operation on April 29 and May 19, 2004. We found that manure from all barns is stored, treated, and handled in a manner that demonstrates that the operation is a single animal feeding facility as defined in the statute. For example, only one separate covered manure storage building is used to store manure from the entire operation. In addition, manure from all barns is commingled over the site such that there is only one common area of manure disposal. ODA finds that you are operating an animal feeding facility with design capacity of more than one thousand animal units or more than 2, 500 swine. You do not

have a permit to install issued by the Director of the Ohio Environmental Protection Agency and do not have a permit to operate issued by the Ohio Director of Agriculture.

The following rule is at issue:

Rule 901:10-2-07 of the Administrative Code provides as follows:

“(A) Unless otherwise indicated, an application for a permit to operate shall contain the information required in rule 901:10-1-02 of the Administrative Code and shall attach all of the following information:

- (1) A manure management plan that complies with the best management practices set forth in rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the Administrative Code.
- (2) An insect and rodent control plan that conforms to best management practices and is in accordance with rule 901:10-2-19 of the Administrative Code.
- (3) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code.
- (4) An emergency response plan in accordance with rule 901:10-2-17 of the Administrative Code.

“(B) If a biosecurity plan is submitted, it shall be included with the permit to operate application.”

In determining that you operate without authorization by permit, staff also finds that your operation lacks all of the plans listed in the rule. Further, mortality and manure are dumped on the premises contrary to any generally acceptable agricultural practices or any applicable best management practices.

To correct these violations, you are required to do the following:

Submit a complete application for a Permit to Operate to the ODA Livestock Environmental Permitting Program not later than July 1, 2004 to the ODA Livestock Environmental Permitting Program. Reduce the total number of animals at your facility to less than 1,000 animals by June 15, 2004 and maintain the reduced number of swine until such time as such time those decisions with respect to permits are final and effective.

In the alternative, you may submit a closure plan to ODA Livestock Environmental Permitting Program not later than July 1, 2004. The requirements for closure are set forth in Rule 901:10-2-18 of the Ohio Administrative Code and include reduction or elimination of the total number of animals at your operation.

While the alternative of operation closure may appear to remove you from the jurisdiction of the Livestock Environmental Permitting Program, you are advised that recent changes to Ohio law mean that the Ohio Department of Natural Resources in coordination with the Darke Soil and Water Conservation District, may issue an order pursuant to Section 1511.02 of the Ohio Revised Code to require you to obtain a Permit to Operate from ODA.

ODA will re-inspect the facility to determine if you have complied with this Notice. If it is determined that you are not in compliance, then I will consider an enforcement action and a civil penalty for these violations of Chapter 903 of the Ohio Revised Code.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

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



Governor Bob Taft
Lieutenant Governor Jennette Bradley
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Certified Mail return Receipt requested

John L. Jackson
1048 ST RT 235 N
DeGraff, Ohio 43318

May 19, 2004

Re: Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Jackson:

This letter is to notify you in writing of the deficiencies resulting in noncompliance at your facility, to inform you of the actions you must take to correct those deficiencies, and to provide you the time period within which the corrections must be made in order to attain compliance.

The following are the sections of law at issue:

Section 903.16(A) of the Ohio Revised Code provides, in pertinent part, as follows:

“ The Director of Agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including.... rules adopted under division (A) of section 903.10 of the Revised Code.”

Section 903.16 of the ORC provides, in pertinent part, as follows:

“Civil penalties shall be assessed under this division as follows:

(1) A person who has violated... rules adopted under division (A) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in

rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.”

Section 903.01 of the ORC defines “manure” and “mortality composting” at divisions (O) and (R) respectively:

“Manure” means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

“Mortality composting” means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.”

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides, in pertinent part, as follows:

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

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

“All land application of manure shall comply with all restrictions contained in appendix A of this rule.”

Rule 901:10-2-15 of the OAC provides as follows:

“A permit to operate shall include a plan for the disposal of dead livestock. The plan shall include best management practices to burn, bury, render or compost consistent with sections 941.14, 953.26, and 1511.022 of the Revised Code. In the alternative, the owner or operator may choose to follow the requirements set forth in section 3734.021 of the Revised Code and rules promulgated thereunder. Records for implementing the plan for the disposal of dead livestock shall be included in the operating record set forth in rule 901:10-2-16 of the Administrative Code.”

Rule 901:10-1-07 of the OAC provides, in pertinent part:

“(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:

* * * * *

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

On April 20, 2004, the ODA Livestock Environmental Permitting Program (LEPP) received a complaint regarding manure that was over applied at your farm. LEPP conducted an inspection. At the same time, the Logan Soil and Water Conservation District contacted LEPP as a result of a similar complaint and an investigation by the District. The NRCS District Conservationist and an ODNR Wildlife Biologist also visited your farm on this date to take wetland measurements.

None of the inspectors observed over application of manure or manure run-off that was cited in the complaint. Instead, LEPP discovered that you have disposed of liquid and solid hog manure in the wetland.

On April 22, 2004, LEPP sent an inspector and an engineer to investigate the wetland. Both concluded that the accumulation of manure in the wetland could not have been caused by run-off from the surrounding field or from an application too close to the wetland. Where the solids are accumulated, there are tracks that look as if someone backed into that area of the wetland. The tread was still visible in the soil. The solids (which were easily distinguishable from the dark black soil by their light to medium brown color) were as deep as about 8 inches on the outer 50-75 feet of the wetland and a liquid/slurry type hog manure (mixed with normal runoff water) appeared to be an average of 6-8 inches over about an acre. A little further south, near where the manure applicator got stuck a couple days prior, Jason Bell, Logan County Soil and Water Conservation District, and Michelle McKay, LEPP Inspector, noted additional manure solids that were also very deep, 8+ inches. Hog hair and fly larvae were abundant. LEPP noted that many of the solids were covering the reeds in the wetland, meaning that the vegetation was not growing on the manure, which indicated that the manure was there relatively recently.

The manure was disposed of or dumped into the wetlands. The manure was not stockpiled or land applied according to best management practices set forth in rules adopted pursuant to Section 903.10 of the Revised Code, specifically Rule 901:10-2-14 of the OAC.

LEPP also found bones, carcasses, and other hog parts spread on the surface of your fields. You have not decomposed the hog mortality as allowed by Rule 901:10-2-15 in order to land apply it with other manure in accordance with Rule 901:10-2-14. You have not complied with the alternative best management practices specified in Rule 901:10-2-15 to burn, bury, or render the mortality.

Finally, ODA finds that this is at least the second time that you have failed to have required records available for inspection as is required by Rule 901:10-2-16. While you have previously faxed or mailed much of this information to LEPP's office, you could not provide these records or records of any sampling (including soil and manure samples and the stream samples required by your Ohio EPA permit) the day of the inspection. You have a lack of documentation of manure quantities, manure removal dates, name of applicators, amounts handled by each applicator—all of this is unaccounted for in any records, a violation of Rule 901:10-2-16 of the OAC

You have thirty (30) days within which you must correct these deficiencies by removing the manure from the wetland and applying it correctly. In the alternative, you may remove the manure from the wetland and arrange for its transport and use through distribution and utilization according to Rule 901:10-2-11 of the OAC. You must keep records of the manure amounts and the final application or use of the manure in your operating records and you must make these records available to the LEPP inspector.

After the thirty (30) 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 other enforcement proceedings, including payment of a penalty.

Finally, I must remind you that you continue to operate your farm without either a Permit to Operate or a Review Compliance Certificate (RCC) as required by Sections 903.03 and 903.04, respectively, of the ORC. By letter dated December 5, 2003, I had proposed to deny a Review Compliance Certificate to Jackson Farms. A hearing on the proposed denial was postponed, pending good faith efforts by you to comply with all RCC requirements, including affidavits submitted by you under oath to comply with the law.

The violations cited in this Notice are serious and require your prompt attention.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Mary Beth Ruttan, Assistant Attorney General
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Jason Bell, Logan SWCD
Cathy Alexander, Ohio EPA

**Before the
Ohio Department of Agriculture**

In the matter of

April 19, 2004

Mr. Hette de Vries
De Vries Dairy, LLC
7188 Sager Road
LaRue, Ohio 43332

Order No. 2004-112

Settlement Agreement

1. This agreement is made between Hette de Vries on behalf of De Vries Dairy, LLC and the Ohio Department of Agriculture (ODA).
2. De Vries Dairy, LLC stipulates to the jurisdiction of ODA over this matter pursuant to Ohio Revised Code Chapter 903.
3. For purposes of this Settlement Agreement, De Vries Dairy, LLC does not dispute the allegations set forth in the Notice of Opportunity for Hearing dated March 8, 2004 sent to De Vries Dairy, LLC by the Director of the Ohio Department of Agriculture. Further, De Vries Dairy, LLC stipulates that it was properly served and received the March 8, 2004 Notice from the Director and that he timely requested a hearing pursuant to that Notice.
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 - a. De Vries Dairy, LLC waives its right to a hearing pursuant to Chapter 119 of the Ohio Revised Code and specifically withdraws its request for a hearing in this matter.

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- 7. Hette de Vries and De Vries Dairy, LLC waive any and all claims and causes of action that they may have against the State of Ohio, ODA, and any officers, employees, or agents of either, arising out of the matters which are the subject to this Settlement Agreement. This document is a public record in accordance with Section 149.43 of the ORC and shall be released by ODA if requested and only if required by law.

DE VRIES DAIRY, LLC

Hette de Vries

Hette de Vries

director

Title

Ronald L. Waterman

Ronald L. Waterman
 Barrett, Easterday, Cunningham,
 Eselgroth & Waterman, LLP
 5455 Rings Rd., Ste. 100
 Dublin, OH 43017.

Fred L. Dailey

Fred L. Dailey, Director
 Ohio Department of Agriculture



John L. Shailer per tel with 5/21/09

John L. Shailer
 Assistant Attorney General for the
 Ohio Department of Agriculture

MBR



Governor Bob Taft
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Certified Mail Return Receipt Requested

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

Van Ham Dairy
7089 Road 22
Continental, Ohio 45831

March 19, 2004

Re: Warning Letter

Dear Mr. and Mrs. Van Ham:

On March 2, 2004, staff from Ohio EPA contacted this office to relay information from a complainant in regards to manure laden runoff from a land application site. We contacted the Putnam Soil Water Conservation District to see if the District had any knowledge of this occurrence and learned that they had heard of it.

Andy Ety, of my staff, contacted you to discuss plans for construction. I asked Mr. Ety to also investigate the complaint and to coordinate the investigation with Rick Wilson, Ohio EPA. Rick Wilson took care of the stream sampling and Andy Ety investigated the land application and setback observance.

We found that approximately 40 loads of wasted feed and straw bedded waste had been applied to the field located directly south of your facility and on the east side of Township Road 22 during the middle of February on frozen/snow covered ground. You recorded that you applied 40 loads at 4 tons per load and covered approximately 40 acres. Therefore, the estimated application rate would be 4 tons per acre, which meets the requirement of 5 tons per acre on frozen/snow-covered ground conditions. This field is a wheat stubble field that had been chisel plowed and had approximately 40%-50% ground cover. The requirement for frozen/snow-covered ground is 80%, or greater, groundcover.

This field is bordered by a road (Township Road 22) ditch on the West side of the field and a tributary to Auglaize River on the South side of the field. The field is bordered on the west and south side by a 33' vegetative buffer, on which no manure was applied. On approximately the northern ½ of western side of the field, the total setback from the road

edge of the field, the total setback from the road ditch was 115 feet, or approximately 82 feet from the vegetative buffer. The required setback from this road ditch is a total of 100 feet for frozen/snow-covered ground, with no vegetative buffer required. The total setback from the perennial stream along the southern border of the field was an average of 50 feet, or 17 feet beyond the 33-foot vegetative buffer. The requirement from this stream is a 33-foot vegetative buffer and a total setback of 100-foot.

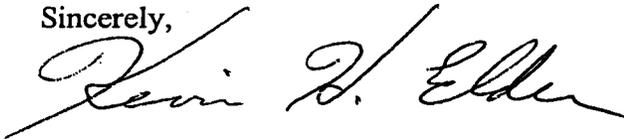
Several other areas of runoff concerns are the shallow surface drains that are located on the northern ½ of the field that drain east to west to the road ditch along Township Road 22. It is understood that this manure was applied when the field was snow-covered and these shallow surface drains would be difficult to detect with a measurable amount of snow on the ground. However, a 100-foot setback should have been maintained from these surface drains for frozen/snow-covered ground application. In each of these surface drains, you took the front-end loader and compacted dirt to reduce the risk of manure-laden runoff. During the time of the inspection, there was no evidence of runoff occurring into the road ditch, although water was backed up in the field as shown in the pictures that were taken.

Mr. Ety talked to you about the requirement to contact ODA prior to applying manure on frozen/snow-covered ground. You said you were unaware of this requirement for solid manure or a wasted feed product.

At the time of the investigation, there appeared to be no visual impairment of the road ditch or the tributary. However, Rick Wilson collected a sample and will send the Ohio EPA findings to you by separate correspondence.

I want to remind you again that you must contact this office prior to any land application of manure because of winter conditions. If another incident occurs this winter then I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: ~~W~~Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Albert Maag, Putman SWCD
John L. Shailer, Assistant Attorney General
Robert Karl, Esq.
Cathy Alexander/Rick Wilson, Ohio EPA



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

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Certified Mail return Receipt requested

March 19, 2004

Henk Arts
5624 Elm Sugar Rd.
Convoy, OH 45832

Dear Mr. Arts:

On February 20, 2004 Rick Wilson, Ohio EPA, reported to the Livestock Environmental Permitting Program that manure laden water appeared to be in the road ditches along SR49, just south and west of the Arts Dairy. At the time of his observations it was raining and runoff appeared to be coming from fields on which your dairy had recently applied manure on frozen or snow-covered ground. Mr. Wilson took several pictures of the road ditch and collected a sample from the ditch.

LEPP also received calls about this incident from a local person and from Mark Weihrauch, an officer for the Division of Wildlife, Ohio Department of Natural Resources. Andy Ety, of my staff, visited the site on February 25, 2004 to determine if the land application was completed as required in your permit.

Mr. Ety learned that between February 13 and February 17, 2004, you applied 23 loads of manure at 6,000 gallons per load on this field, which at the time of application, was snow covered and frozen. The application rate was estimated at 3,000 gallons per acre. Review of records, including the operating record, showed that all other manure application had been performed by a local crop farmer who was using your equipment to haul manure to his own land near Convoy. This would be considered to be Distribution and Utilization.

For the field on the Eastern side of SR 49, setbacks were roughly 200 feet from any perimeter of the field. Jim Young, also of my staff, had visited this field with you to go over the relevant setbacks and criteria for frozen/snow covered ground application on this field.

Mr. Ety then visited the application field and it was very difficult for him to determine where manure had been applied. This was liquid manure that was applied and very little

solids were present. It was also applied on snow-covered ground and the snow had melted by the time of the visit and this added to the difficulty in determining the exact location of the application. He was able to evaluate tire tracks in the wheat stubble from the application equipment. It appeared that no application equipment had been operated within 200 feet of the western edge of the field and within 150 feet of the eastern edge of the field. Both the western edge and most of the eastern side of the field have open ditches and/or surface drains. The setback for this type of application would have been met with the setbacks you followed. In addition to these ditches, approximately 5-6 surface drains/waterways are present and run perpendicular (West/East) from the way manure was applied. Obviously, the application tire tracks ran through these surface drains, but it was hard to determine if manure had been applied through them or not. Mrs. Arts said that they shut the application equipment off on each side of the drains for 100 feet. The only indication as to whether manure was applied through them was by looking at the color of the wheat stubble. It appeared, but difficult to verify, that you had applied through some of these areas by the darker color of wheat stubble from where you had not applied. In discussions with a neighbor, he said it was difficult to determine during the time of application if the drains had been affected because there was snow on the field. Many waterways had standing water, which was frozen at the time of the inspection, that appeared to be clear and with no manure-laden runoff.

LEPP received a copy of sample results collected by Ohio EPA and finds the presence of ammonia in adjacent waterways at 20 mg/l. Ohio EPA will send its findings to you by separate correspondence.

On January 22, 2004, I sent you a warning letter to advise you of regulatory requirements for applying manure on frozen or snow-covered ground, as required in rule 901:10-2-14 of the Ohio Administrative Code. It appears that you have tried to comply with this rule in terms of notifying and coordinating with Jim Young, LEPP, to observe setbacks and to follow correct application rates. However, all requirements of the rule must be complied with in order to land apply manure in an environmentally safe manner.

In this most recent event, it appeared that applying through these shallow surface drains could have been the cause on contributing to any manure-laden runoff. Each of these surface drains shall have a setback of 100' on each side of the drain during application on frozen or snow-covered ground.

For the future, be advised that ODA's rules will increase the required setbacks from these surface drains to 200', which will affect your plans for manure application in the Fall-Winter 2004. You should recognize that with the numerous surface drains present in this field, this field will more than likely not be suitable for future manure application when field conditions are frozen or snow-covered. Therefore, I request that you respond to this letter with the following information:

1. Provide the total number of acres available for land application of manure and your existing or intended cropping plans for these acres;

2. Provide the total number of gallons of manure to be spread from now until December 15, 2004;
3. Provide the total volume (gallons) of manure storage currently available, less your freeboard requirement;
4. Describe the type of equipment that will be utilized for hauling manure including the capacity of the equipment and the volume that can be applied on a daily basis;
5. Provide the total number of cows that you have now and intend to have by December 15, 2004;

Please provide this information in writing and within the next forty-five (45) days. At that time, my staff and I will contact you again with the purpose of working with you to use the information provided by you (as listed in 1 to 5, above) to develop a plan that demonstrates adequate storage capacity until April 30, 2005 as well as sufficient capacity for land application of manure, in accordance with the rules. The goal of this plan would be to have adequate storage by December 15, 2004 to allow for your facility to not have to land apply manure from this date until April 30, 2005 based on the number of cows you plan to have during this timeframe. Please be reminded that frozen/snow covered ground application is to only be utilized during emergency situations and not a routine practice in any manure management plan. Finally, you may not increase the size or number of your herd until I am satisfied that we have a plan that will ensure your compliance through April 30, 2005.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Mark Weihrauch, ODNR, Division of Wildlife, District 2
Cathy Alexander/Rick Wilson, Ohio EPA
Van Wert SWCD



Governor Bob Taft
Lieutenant Governor Jennette Bradley
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

March 8, 2004

Stateline Agri, Inc.
Attention: Mr. Rick Kremer
9159 State Route 118
Ansonia, Ohio 45303

Re: Notice of Hearing

Dear Mr. Kremer:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Stateline Agri imposing a civil penalty of \$ 253.44 because of your failure to comply with the applicable laws and rules listed as follows:

The following are the rules at issue:

Rule 901:10-2-08 of the OAC 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:

"(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."

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

You were informed on June 13, 2003 that a Permit to Operate was required for your facility. By letter dated June 17, 2003, Kevin Elder, Executive Director of the Livestock Environmental Permitting Program required you to submit a complete Permit to Operate application, along with submittal of the "as-built plans" for your current facility. You

were asked to submit this information by the end of July to allow for review and decisions on the Permit to Operate by the end of September 2003.

At the June 13th inspection, you were also informed that your facility did not have the amount of freeboard required and you were directed to take actions to make corrections to reduce the volume of the lagoon.

At the July 24th inspection, ODA staff found the lagoon to be overflowing in four places and ready to overflow at a fifth place.

On October 21, 2003, you were issued a Notice of Deficiencies Resulting in Noncompliance¹ pursuant to rule 901:10-5-03 of the OAC. This rule also requires re-inspection by the Department to determine if the facility is still not in compliance. On January 2, 2004, your facility was re-inspected. The large pond had virtually no freeboard left. The smaller pond had approximately six inches left, though an exact amount was unable to be determined since a level indicator has still not been installed in the ponds. Finally, the inspector determined that the pipe joint was still leaking. Photographs were taken of the pipe joint and ponds.

The inspector made the following observations, which are noted but are not cited here today as violations: Vegetative cover and embankments of the ponds were not good and debris appeared to be floating in the ponds, including a large tree stump.

Specific violations

Based upon the above-identified laws and rules, and the results of inspections, the following is a concise statement of the violations:

Failure to maintain freeboard as required by rule 901:10-2-08 of the OAC.

I specifically reserve the right to pursue future enforcement action, if necessary, for any violations of Section 903.03 of the ORC and rules 901:10-2-04 and 901:10-2-06 of the OAC.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the Ohio Department of Agriculture 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 the considerations given by the Director pursuant to paragraph (D) of

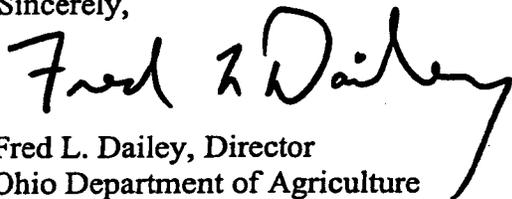
¹ You were required to submit an application for a Permit to Operate no later than August 11, 2003 and to also comply with OAC 901:10-2-06 (A)(8) requiring minimum storage capacity, which, in your case is 180 days. The permit application was received on November 10, 2003 and, if diligently pursued by you should enable you to return to compliance with the minimum storage requirements of this rule.

Rule 901:10-5-04 of the OAC, the Director has 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 second violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level, and that an appropriate penalty in this matter is proposed \$253.44.

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 March 8, 2004.

At the hearing, you may appear in person, be represented by an attorney, or you may represent your position, arguments or contentions in writing. At the hearing, you may present evidence and examine witnesses appearing for and against you to show cause why the proposed action should not be levied against you. The Assistant Attorney General assigned to the Department will represent the Department at this hearing.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
John L. Shailer, Assistant Attorney General
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Michelle McKay, LEPP Inspector



Ohio Department of Agriculture

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Certified Mail Return Receipt Requested

March 8, 2004

Mr. Hette DeVries
7188 Sager Road
LaRue, Ohio 43332

Re: Notice of Hearing - DeVries Dairy

Dear Mr. DeVries:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to DeVries Dairy imposing a civil penalty because of DeVries Dairy's failure to comply with the applicable laws and rules listed as follows:

Applicable Laws

Section 903.16 (A) of the Ohio Revised Code ("ORC") provides

"(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

"(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must

take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.
“(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

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

Section 903.02 (A)(2) provides as follows:

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

Section 903.03 (A)(2), in pertinent part:

“...no person shall operate a concentrated animal feeding facility without a permit to operate issued by the director under this Section.”

The following are the rules at issue:

Rule 901:10-1-01(VV) of the Ohio Administrative Code OAC states, in pertinent part, that a modification means one of the following:

- (1) A material and substantial alteration of the facility including an increase of the number of animal units of the design capacity of an existing facility by 10 percent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or operation's capacity be modified to increase by more than 10 percent in the aggregate.

* * * * *

(5) Changes to the manure storage or treatment facility that result from any of the following:

- (a) An expansion of more than ten percent in treatment or storage capacity;
- (b) A significant change in treatment technology; or
- (c) Closure of part of the manure storage or treatment facility.

Rule 901:10-1-09 (A) of the OAC provides:

(A) No facility or activities regulated by a permit to install or a permit to operate or a NPDES permit under this chapter shall be modified as that term is defined in rule 901:10-1-01 of the Ohio Administrative Code unless the permit is modified in compliance with this rule.

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

On August 19, 2002, the Director finalized the program required under Division (A)(1) of the Revised Code and assumed authority to enforce terms and conditions of the installation permits described and listed in paragraph one that previously were issued and enforced by the Director of Environmental Protection.

On January 3, 2003 ODA Livestock Environmental Permitting Program Engineers visited the DeVries Dairy. The Engineers found DeVries Dairy to be using the manure treatment lagoon that was under review by ODA for draft permit to install and a draft permit to operate.

Due to frozen ground DeVries became unable to land apply, and instead utilized the manure treatment lagoon because construction was complete and the lagoon was ready for use. The DeVries Dairy operated the clay-lined manure treatment lagoon without a permit modification and without the permit to operate from ODA for a period of four to six weeks.

On January 7, 2003, Director Dailey issued a Notice of Deficiencies Resulting in Noncompliance (or, "Notice of Violation" or "NOV") to the DeVries Dairy for operating the manure treatment lagoon without the required permits from ODA.

The Director issued both permits to DeVries Dairy on January 24, 2003.

Subsequent inspections were conducted by ODA on March 7, May 1, and June 3.

Specific violations

Based upon the above-identified laws and rules, and the results of inspections, the following is a concise statement of the violations:

Failure to have approved permits issued prior to utilizing the manure storage and treatment facilities.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the director 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 the

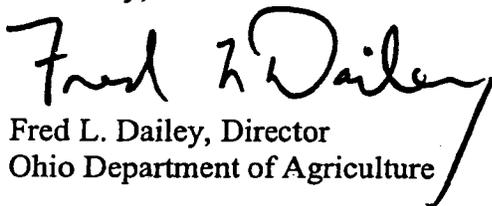
considerations given by the Director pursuant to paragraph (D) of Rule 901:10-5-04 of the OAC, the Director has referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is a first violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level, and that an appropriate penalty in this matter is proposed as \$ 700.00.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: 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 March 8, 2004.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this letter the Department may proceed without you.

At a Chapter 119 hearing, you may appear in person, an attorney may represent you, or you may present your position, arguments, or contentions in writing. John L. Shailer, Assistant Attorney General representing the Ohio Department of Agriculture, will be representing the Department 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 order should not be issued against you. At the conclusion of the hearing, the hearing officer will prepare a report of the facts and submit the report to the Director of Agriculture for his consideration.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
John L. Shailer, Assistant Attorney General
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Ron Waterman, Legal Counsel for DeVries
Jim Young, LEPP Inspector



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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

March 8, 2004

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

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Sirs:

I have been informed that you have received a warning letter from the Ohio Department of Agriculture's Livestock Environmental Permitting Program on January 27, 2004. On February 25, 2004, my staff responded to a complaint from the Paulding Soil and Water District about the area of your dairy in response to additional complaints filed because of manure application on frozen or snow covered ground and because manure is flowing into waters of the State.

The following are the rules at issue:

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.
- ODA requires notification when manure is being applied to frozen or snow-covered ground.

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:

(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)

In the warning letter, you were asked to review your Permit to Install for the maximum operating level of your structures.

You have not notified ODA prior to any manure land application on frozen or snow-covered ground. Setbacks required for drainage ways and/or grassed waterways were not maintained. Manure was not incorporated or could not be incorporated on frozen/snow-covered ground.

This Department issued a Permit to Install and a Permit to Operate to you on July 2, 2003. To date, you have not commenced any construction of the necessary improvements for your facility nor do you conduct operations as required by the Permit to Operate. I am directing my staff to return to your facility for a thorough inspection of your entire operation within the next thirty (30) days. If further investigation shows a continuing pattern of noncompliance, then I will consider an action to propose to revoke the Permits previously issued to you in order to prevent expansion of your facilities until such time as I am confident that you can operate in accordance with requirements. In the alternative, I may consider other legal sanctions such as fines and penalties to be paid by you in an amount of at least \$464.40, depending upon the results of the next inspection to be conducted by my staff.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
Cathy Alexander, Ohio EPA
Liz Pessefall, Paulding SWCD



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

March 3, 2004

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

Re: Warning Letter

Dear Mr. Flory:

Violation of Ohio Department of Agriculture laws and rules were discovered during an inspection by my staff on February 20, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that you were land-applying manure on snow-covered ground. This was done at the Tagg Road location. This application took place without the prior notification of the Department. This was a violation of the requirement that when land applying manure during the winter on snow covered or frozen ground you are must notify this Department before you begin.

In addition, my staff discovered two violations at Cooperider Dairy Farm with manure from Ohio Fresh Eggs. While you are not responsible for these violations, your assistance in apprising your manure recipients of the following would be appreciated. First, when land-applying manure on snow covered ground or frozen ground you must first notify the Department. This did not happen at the Cooperider Dairy Farm. Second, the setbacks for manure application were not observed along the application field to the north of Cooperrider Dairy Farm on Tagg Road. Specifically, it was evident that a drier layer of manure had been applied in the setback area between the wet manure application and the road ditch. For winter application all the following requirements must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover.
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.

- Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

You have failed to comply with the notice requirement. Write this office within seven (7) days and provide me with a report on the steps you will take to address your noncompliance. We take these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,

Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc : Larry Cooperrider
Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA
Licking County SWCD



Ohio Department of Agriculture



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

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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

February 10, 2004

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 26, 2003. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint that tiles on your farm were flowing and that you had a discharge from land applying egg wash water to a field. I understand that your lagoon was getting full and that you found it necessary to land apply manure. No records were available on freeboard measurements.

The inspection noted that the lagoon was approximately $\frac{3}{4}$ empty. The tile was plugged and the waterway was dammed. There was a trace of red left in the ditch from the egg wash water, but it was mostly clear. The discharge was taken care of but a discharge occurred. It appeared to the inspector that the discharge flowed into a defined waterway or "waters of the State" in violation of your Ohio EPA Permit to Install, which is now enforced by this Department.

The following are the rules at issue:

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

* * * * *

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; ...”

You are currently subject to Ohio EPA Permit to Install 08-044-NW which was transferred to this Department for enforcement on August 19, 2001. As required by law, you are working to obtain a Review Compliance Certificate that will regulate your farm under ODA rules and under those portions of the Ohio EPA permit that do not conflict with any ODA rules. Some of the conditions of the Ohio EPA permit required monitoring and reporting. With the RCC you will find that ODA rules also require monitoring and recordkeeping. Records need to be maintained in good order in an Operating Record that is always available to an inspector. I want to take this opportunity to note the requirements that apply with respect to land application activities at a facility such as yours. The applicable rule is 901:10-2-16 of the OAC and it provides, in part at paragraph (A)(1)(c):

“ Land application site records. Records for each land application site, including:

* * * * *

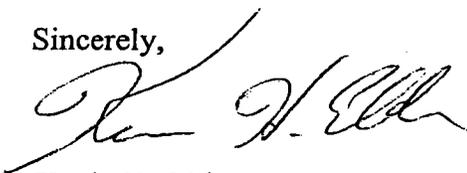
“(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

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

A copy of Appendix B, which is referred to in the rules, is included here for your use along with a copy of the Complaint Follow-Up Report.

You must contact this office prior to any land application of manure because of winter conditions. In the meantime, my staff will continue to work with you to develop a Review Compliance Certificate for your facility.

Sincerely,



Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Enclosures (2)

Cc: Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Mercer County SWCD
Rick Wilson, Ohio EPA

Complaint Follow-up, Wenning Farm, Mercer County

Latitude: 40° 23. 576' N

Longitude: 84° 46. 902' W

November 26, 2003

Michelle McKay, Livestock Environmental Inspector

I spoke with Mr. Kevin Elder of the Ohio Department of Agriculture Livestock Environmental Permitting Program. He informed me that he had received a complaint that the James Wenning Farm had a discharge from land applying their egg wash water to a field where the tiles were already flowing. He said the Ohio Environmental Protection Agency was already on their way and he wanted me to check it out as well.

I arrived at the farm at about 10:30 am and spoke with Mr. Wenning. He stated that Kahlig's had applied about 290,000 gallons on 60+ acres. This would equal 4,833 gallons per acre or less. He stated that they did not have any application records yet because it had just been applied the day before.

Mr. Wenning said the lagoon was getting full, so they had to apply the manure. I asked about the freeboard and he stated there was more than one foot of freeboard and they probably could have made it until February before the lagoon was too full. It was impossible to tell how much freeboard there had been because the lagoon was probably about $\frac{3}{4}$ empty at the time of the inspection. No records were available on freeboard measurements.

I explained that freeboard requirements will be required record keeping as part of ODA's rules. Mr. Wenning stated that he just keeps an eye on the lagoon and applies when it is getting too full. He stated this year did not work out so well due to the excessive rainy weather.

Mr. Wenning also stated that Rick Wilson with Ohio EPA had been out to the site and stated everything looked okay and he could break open the dam they had created to block polluted water from continuing down the waterway. He stated the game warden had also been out there and thought everything looked okay as well. He also said the discharge only occurred in his waterway and not Waters of the State. Mr. Wenning had other business to take care of and I went to inspect the situation without him.

As stated before, I noted that the lagoon was probably close to $\frac{3}{4}$ empty. I noted the tile was plugged and the waterway was dammed. There was a trace of red left in the ditch from the egg wash water, but it was mostly clear. It appeared the situation was taken care of by the time I was out there, though it was obvious a discharge did occur.

Also important to note was the fact that the waterway where the discharge occurred did not appear to be just a "grassed waterway" that farmers will sometimes install to help prevent erosion. It appeared to be defined waterway with water that regularly flows through it. It should be known that any water that flows off a property is considered to be Waters of the State. This includes, but is not limited to, grassed waterways when water is in them, drainage ditches, creeks, streams, and ponds with a discharge outlet. This excludes puddles and ponds with no discharge.

Via email, Rick Wilson confirmed that they also noted a discharge and that Ohio EPA will be handling the situation as an agency as well.

In conclusion, a discharge of egg wash water did occur and was remedied when noticed. The tile was plugged and waterway dammed. While a low rate of wash water appears to have been applied, no manure applications probably should have occurred due to the saturation of the soils and reports that the tiles were already running prior to application. I left the farm at 11:05 am.

Appendix B of rule 901:10-2-14 Available Water Capacity.

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

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

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

Available Moisture in the Soil	Sands and Loamy Sands	Sandy Loam and Fine Sandy Loam	Very Fine Sandy Loam, Loam, Silt Loam, Silty Clay Loam	Sandy Clay, Silty Clay, Clay, Fine and Very Fine Textured Soils
0% Soil Moisture	Dry, loose and single-grained; flows through fingers.	Dry and loose; flows through fingers.	Powdery dry; in some places slightly crusted but breaks down easily into powder.	Hard, baked and cracked; has loose crumbs on surface in some places.
Soil Depth Amount to reach AWC	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.5''}$ $\frac{0-24''}{3.5''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$
50% or Less Soil Moisture	Appears to be dry; does not form a ball under pressure.	Appears to be dry; does not form a ball under pressure.	Somewhat crumbly but holds together under pressure.	Somewhat pliable; balls under pressure.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$
50 to 75% Soil Moisture	Appears to be dry; does not form a ball under pressure.	Balls under pressure but seldom holds together.	Forms a ball under pressure; somewhat plastic; slicks slightly under pressure.	Forms a ball; ribbons out between thumb and forefinger.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{1.8''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$
75% to Field Capacity	Sticks together slightly; may form a weak ball under pressure.	Forms a weak ball that breaks easily, does not stick.	Forms ball; very pliable; slicks readily if relatively high in clay.	Ribbons out between fingers easily; has a slick feeling.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$	$\frac{0-8''}{0.4''}$ $\frac{0-24''}{0.9''}$	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$

100% Field Capacity	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand
Above Field Capacity	Free water appears when soil is bounced in hand.	Free water is released with kneading.	Free water can be squeezed out.	Puddles; free water forms on surface.

Source: USDA-NRCS (2001). Field Office Technical Guide – Conservation Practice Standard. Waste Utilization – Code 633. Columbus, OH.



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

February 10 2004

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

Re: Warning Letter

Dear Mr. Stoll:

Violation of Ohio Department of Agriculture laws and rules was discovered during inspections by my staff on November 26 and November 27, 2003. On those dates, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated complaints that your farm had had applied manure to a field so that there was manure runoff to properties other than the land application site and that manure ponded on these other properties. The results of the investigations are summarized here.

The following was observed during the investigation on November 27, 2003:

- Manure had been surface applied to a corn stubble field at the location owned by William Kaufman and farmed by Stoll Farms Incorporated. The part of the field along Coal Bank Road had soybean stubble as residue.
- Some of the manure had flowed along the corn rows south to the end rows. At this point the manure had flowed east along the end rows and at one (1) location had flowed out of the corn field, into the shared driveway, down the driveway, and crossed into a field of barley owned by Don Grimes.
- There was some standing manure laden water in the shared driveway and in the Grimes barley field. There was an estimated volume of 500-1000 gallons of manure runoff from the application field.
- The application of manure had been terminated and the edge of the application field bordering the shared driveway and a short stretch along the unnamed tributary had been plowed [incorporated?]. The inspector observed no manure leaving the application field and there was no manure laden water reaching the unnamed tributary.
- Upon examining the application field it was observed that a fifty-two and one half (52 ½) foot setback from the grass along the unnamed tributary had been observed and the same setback maintained along the shared driveway. The ponded manure laden water in the barley field was eighty-two (82) feet from the tributary.
- The weather was overcast and warming.

The following was observed during the investigation on November 27, 2003:

- The plow furrows along the shared driveway were full of manure-laden water.
- After walking the entire unnamed tributary bank along the application field, there was no evidence of water-laden manure leaving the application field and entering neither the tributary nor a grass waterway in the field.

The shared driveway had some standing manure laden water standing in the tracks and the barley field had a small ponded area of manure-laden water. However, there was no evidence of manure-laden water reaching the tributary.

- The water at the culvert used for a crossing of the tributary by the shared driveway had a brownish black coloring. A water sample was taken at this location, down stream. The water sample was a light brown in color with a pH of 7.0 and the sample had the following results:

Sample #61184	
Ammonia	1.23 mg/l
Nitrate + Nitrite	5.30 mg/l
TKN	3.98 mg/l
Total Phosphorus	0.418 mg/l

- Another water sample was taken at the road culvert under Back Massillon Road, upstream. The water sample was clear with a pH of 7.0 with the following results:

Sample #61185	
Ammonia	0.16 mg/l
Nitrate + Nitrite	5.83 mg/l
TKN	0.70 mg/l
Total Phosphorus	0.098mg/l

- A third water sample was taken at a culvert passing under Coal Bank Road with the water source coming from the west side of Coal Bank Road and exiting a tile into the unnamed tributary. The sample at this location was a light brown in color and had a pH of 8.0 with the following results:

Sample #61186	
Ammonia	0.498 mg/l
Nitrate + Nitrite	0.67 mg/l
TKN	1.15 mg/l
Total Phosphorus	0.946mg/l

- The water source for the third water sample comes from a ditch and a wooded area. Upon walking south on Coal Bank Road an odor similar to that of sewage could be detected as the ditch neared several homes. There appears to be a septic line out letting into this ditch and eventually entering the unnamed tributary of the Newman Creek. After the tile

carrying this ditch water enters the tributary the water and the plant growth in the tributary carry a brownish black color. Accordingly, we are sending a copy of this letter to the Wayne County Health Department for its information.

The following rules are at issue:

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

* * * * *

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; and

“(v) The application rate shall be adjusted to avoid surface ponding and/or runoff from a land application site.”

Stoll Farms, Inc. continues to work with my staff in order to complete a Review Compliance Certificate (RCC), which is required by Section 903.04 of the Revised Code. Incidents of manure runoff and ponding on properties that are not part of the selected application site violate the rules and raise concern as to whether you can perform manure application in a manner that will protect waters of the State. I understand that actions were taken while the inspector was present to correct problems with runoff and ponding. But please be advised that any subsequent violations could require escalated enforcement action by this Department.

Sincerely,



Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
John L. Shailer, Assistant Attorney General
Jennifer Tiell, LEPP Legal Counsel
Mike Nishimura – ODNR-DSWC
Rick Wilson – Ohio EPA
Bob Humpil, Wayne County Health Dept

Don Grimes
Daniel Kaufman
Duane Wood, Wayne SWCD

Appendix B of rule 901:10-2-14 Available Water Capacity.

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

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

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

Available Moisture in the Soil	Sands and Loamy Sands	Sandy Loam and Fine Sandy Loam	Very Fine Sandy Loam, Loam, Silt Loam, Silty Clay Loam	Sandy Clay, Silty Clay, Clay, Fine and Very Fine Textured Soils
0% Soil Moisture	Dry, loose and single-grained; flows through fingers.	Dry and loose; flows through fingers.	Powdery dry; in some places slightly crusted but breaks down easily into powder.	Hard, baked and cracked; has loose crumbs on surface in some places.
Soil Depth Amount to reach AWC	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.5''}$ $\frac{0-24''}{3.5''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$
50% or Less Soil Moisture	Appears to be dry; does not form a ball under pressure.	Appears to be dry; does not form a ball under pressure.	Somewhat crumbly but holds together under pressure.	Somewhat pliable; balls under pressure.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$
50 to 75% Soil Moisture	Appears to be dry; does not form a ball under pressure.	Balls under pressure but seldom holds together.	Forms a ball under pressure; somewhat plastic; slicks slightly under pressure.	Forms a ball; ribbons out between thumb and forefinger.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{1.8''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$
75% to Field Capacity	Sticks together slightly; may form a weak ball under pressure.	Forms a weak ball that breaks easily, does not stick.	Forms ball; very pliable; slicks readily if relatively high in clay.	Ribbons out between fingers easily; has a slick feeling.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$	$\frac{0-8''}{0.4''}$ $\frac{0-24''}{0.9''}$	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$

100% Field Capacity	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand
Above Field Capacity	Free water appears when soil is bounced in hand.	Free water is released with kneading.	Free water can be squeezed out.	Puddles; free water forms on surface.

Source: USDA-NRCS (2001). Field Office Technical Guide – Conservation Practice Standard. Waste Utilization – Code 633. Columbus, OH.



Governor Bob Taft
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Certified Mail Return Receipt Requested

Kalmbach Swine Management
Paul Kalmbach, President
Dick Regnier, Secretary/Treasurer
PO Box 38
7148 State Highway 199
Upper Sandusky, Ohio 43351

February 10, 2004

Re: Warning Letter

Dear Mr. Kalmbach:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint that your farm had a discharge of hog manure from the pit in barn #3.

The inspection found that approximately 5,000 gallons of manure was discharged. This manure flowed between barn #2 and barn #3 to the west and ponded in an area of a wheat field. Your staff tried to clean the manure up but the manure made ground underneath soft and smeary and was difficult.

We have been informed that a 5,000 gallon vacuum tanker was rented from a neighbor and five loads of manure were removed from the facility on the evening of January 27 and land applied. We have also been informed that current manure levels are as follows: barn #1 and barn #2 have two (2) inches of freeboard barn #3 has no freeboard, and barn #4 has three (3) inches of freeboard.

The following rules are at issue:

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

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

* * * * *

(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. (Note: For fabricated structures that do not receive rainfall or runoff, the twenty-five year, twenty-four hour storm event shall not apply.)

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

* * * * *

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; and

“(v) The application rate shall be adjusted to avoid surface ponding and/or runoff from a land application site.”

Finally, I understand that my staff has reviewed with your staff other requirements in the rules that apply to manure applications to frozen or snow-covered ground. I want to take the opportunity presented with this warning to remind you of those requirements:

The chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: For unincorporated manure application on frozen or snow covered ground, all of the following must be met:

- Greater than or equal to 80 percent ground cover;
 - If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
 - Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
 - Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
 - Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
 - Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. The KSM-Dola Swine Farm continues to work with my staff in order to complete a Review Compliance Certificate (RCC), which is required by Section 903.04 of the Revised Code and the RCC is nearly final. I remind you, however, that work on the RCC should have been completed by August 19, 2003. We take these violations and these deadlines seriously. If we do not hear from you, I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Howard Lyle, Hardin County SWCD
Rick Wilson, Ohio EPA
Todd Stickley

Appendix B of rule 901:10-2-14 Available Water Capacity.

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

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

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

Available Moisture in the Soil	Sands and Loamy Sands	Sandy Loam and Fine Sandy Loam	Very Fine Sandy Loam, Loam, Silt Loam, Silty Clay Loam	Sandy Clay, Silty Clay, Clay, Fine and Very Fine Textured Soils
0% Soil Moisture	Dry, loose and single-grained; flows through fingers.	Dry and loose; flows through fingers.	Powdery dry; in some places slightly crusted but breaks down easily into powder.	Hard, baked and cracked; has loose crumbs on surface in some places.
Soil Depth Amount to reach AWC	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.5''}$ $\frac{0-24''}{3.5''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$
50% or Less Soil Moisture	Appears to be dry; does not form a ball under pressure.	Appears to be dry; does not form a ball under pressure.	Somewhat crumbly but holds together under pressure.	Somewhat pliable; balls under pressure.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$
50 to 75% Soil Moisture	Appears to be dry; does not form a ball under pressure.	Balls under pressure but seldom holds together.	Forms a ball under pressure; somewhat plastic; slicks slightly under pressure.	Forms a ball; ribbons out between thumb and forefinger.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{1.8''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$
75% to Field Capacity	Sticks together slightly; may form a weak ball under pressure.	Forms a weak ball that breaks easily, does not stick.	Forms ball; very pliable; slicks readily if relatively high in clay.	Ribbons out between fingers easily; has a slick feeling.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$	$\frac{0-8''}{0.4''}$ $\frac{0-24''}{0.9''}$	$\frac{0-8''}{0.25''}$ $\frac{0-24''}{0.6''}$

100% Field Capacity	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand	On squeezing, no free water appears on soil, but wet outline of ball on hand
Above Field Capacity	Free water appears when soil is bounced in hand.	Free water is released with kneading.	Free water can be squeezed out.	Puddles; free water forms on surface.

Source: USDA-NRCS (2001). Field Office Technical Guide – Conservation Practice Standard. Waste Utilization – Code 633. Columbus, OH.



Governor Bob Taft
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Livestock Environmental Permitting Program
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Certified Mail return Receipt requested

January 27, 2004

Henk Arts
5624 Elm Sugar Rd.
Convoy, OH 45832

Re: Warning Letter

Dear Mr. Arts:

On January 16, 2004, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility at 10 inches. The purpose of this letter is to remind you of rules requiring proper freeboard and to warn you of possible violations of Ohio Department of Agriculture laws and rules.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) 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 one foot 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:

(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) Please review your Permit to Install for the maximum operating level of your structures.

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

You recently received a warning letter from me that concerned land application of manure and our investigation of a complaint. If you have not responded to that letter yet, then you may respond to both the January 22 letter and this letter at the same time. But it is important that you contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA



Governor Bob Taft
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Certified Mail Return Receipt Requested

Mr. Hette DeVries
DeVries Dairy
7188 Sager Road
LaRue, Ohio 43332

January 27, 2004

Re: Warning Letter

Dear Mr. DeVries:

On January 13, 2004, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility at 12 inches. The purpose of this letter is to remind you of rules requiring proper freeboard and to warn you possible violations of Ohio Department of Agriculture laws and rules.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) 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 one foot 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:

(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) Please refer to your Permit to Install for the maximum operating level of your existing structures.

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

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground: All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc : Andy Ety, LEPP Engineer

Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA



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Certified Mail Return Receipt Requested

Jan and Anja Van Ham
22177 Road C
Continental, Ohio 45831
Van Ham Dairy
7089 Road 22
Continental, Ohio 45831

January 27, 2004

Re: Warning Letter

Dear Mr. and Mrs. Van Ham:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 16, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility and found only one-inch freeboard remaining. This measurement was taken at the lowest elevation of the manure storage structures that would allow manure to overflow the system. With your existing manure storage system, this point would be the top of the concrete ramp that goes into your concrete sand settling basins. As a temporary solution, it appeared that you had piled excess dirt, or solid manure, at the upper end of this ramp to contain the manure within the structure. This should be considered a temporary solution and is not authorized as part of your permanent manure storage structure.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) 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 one foot 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:

- (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) Please refer to your Permit to Install for the maximum operating level of your structures.

ODA reminds you that we require notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

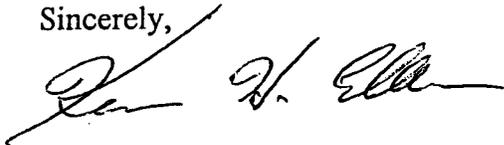
- Greater than or equal to 80 percent ground cover;
 - If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
 - Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
 - Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
 - Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
 - Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take

these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is written in a cursive style with a long, sweeping underline.

Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Robert Karl, Esq.
Rick Wilson, Ohio EPA



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 4306
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

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

January 27, 2004

Re: Warning Letter

Dear Mr. Zylstra:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 16, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that you were land-applying manure on snow-covered ground. Setbacks for manure application were not observed along the main surface drain south of the facility along Township Road 21. South of the facility along State Route 111, liquid manure had been surface applied to soybean stubble and setbacks were not observed.

If you land apply manure during the winter on snow-covered or frozen ground you are required to notify this Department before you begin. In addition, all of the following requirements must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways.

On January 16, 2004, inspectors observed that you recently removed liquid manure from your concrete manure storage pond. It was noted that prior to removing the manure, the level in this pond was at, or above, the top of the concrete wall. It was evident that temporary measures were taken to prevent an overflow of the manure storage pond by pushing fill material up against these walls. This earthen embankment is considered a temporary measure and is not considered as part of the permanent structure authorized in your operations. Let me take this opportunity to remind you of requirements in the rules:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) 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 one foot above the liquid level of the total storage volume.”

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:

- (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.”

Please refer to your Permit to Install for the maximum operating level of your structures.

I have also been informed that you may have stocked animals to the capacity of over 700 dairy cows as described in permits issued on July 3, 2003 for your facility. This presents a serious problem because you have so far failed to begin construction necessary to manage manure for a herd of this size. Your facility does not have the required capacity of 180 days manure storage for this number of dairy cows.

Rule 901:10-2-06 (A)(7) provides as follows:

“(7) Storage period.

The minimum storage period of manure for a manure storage pond and manure treatment lagoon shall be one hundred eighty days of manure production unless alternative use and design is otherwise approved by the department. This section is not intended to address the surface water runoff where the runoff does not enter into the pond or lagoon. (Emphasis added).”

Rule 901:10-2-02 of the Ohio Administrative Code provides, in pertinent part:

“Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals. (Emphasis added)

You have failed to comply with any of the steps listed in this rule. Please be advised that you have no authority or permission to increase your stock above 700 animals without appropriate construction of the facilities authorized in the PTI, which requires a minimum of 180 days manure storage. It is believed that you have capacity for 60 to 90 days of storage.

Contact this office immediately and in writing and provide me with a report on the steps you will take to address your noncompliance. We take these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc : Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA



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

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 4306
Phone: 614-387-0470 • Fax 614-728-6335

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Certified Mail Return Receipt Requested

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

January 27, 2004

Re: Warning Letter

Dear Mr. Boersma:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 16, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility and found only one-inch freeboard remaining.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) 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 one foot 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:

- (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)

ODA reminds you that we require notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:
All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

In order to obtain a Review Compliance Certificate from ODA, which you are required to do, you are expected to comply with the rules listed above for freeboard and for land application of manure. You must also follow Rule 901:10-2-15 of the OAC for the proper disposal of dead livestock. My staff reports that carcasses were scattered about the surface ground of your facility. In Ohio, best management practices require you to burn, bury, render, or compost consistent with laws and rules enforced by ODA in Sections 941.14 and 953.26 of the Revised Code

R.C. Section 941.14 provides, in part:

“(A) The owner shall burn the body of an animal that has died of, or been destroyed because of, a dangerously infectious or contagious disease, bury it not less than four feet under the surface of the ground, remove it in a watertight tank

to a rendering establishment, or otherwise dispose of it in accordance with section 953.26 or 1511.022 [1511.02.2] of the Revised Code within twenty-four hours after knowledge thereof or after notice in writing from the department of agriculture.

“(B) The owner of premises that contain a dead animal shall burn the body of the animal, bury it not less than four feet beneath the surface of the ground, remove it in a watertight tank to a rendering establishment, or otherwise dispose of it in accordance with section 953.26 or 1511.022 [1511.02.2] of the Revised Code within a reasonable time after knowledge thereof or after notice in writing from the department or from the township trustees of the township in which his premises are located.”

Section 953.25 provides:

“(A) No raw rendering material shall be fed to an avian, equine, ovine, bovine, or porcine animal.

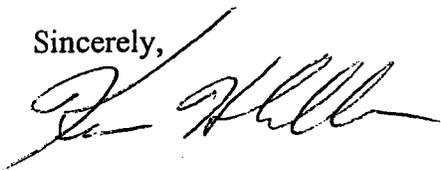
“(B) Except as provided in division (C) or (D) of this section, no raw rendering material shall be sold or offered for sale to a person who is not licensed under section 953.23 of the Revised Code unless the material is in a labeled wrapper or is in some other way identified or denatured in a manner approved by the department of agriculture. The label or identification shall state plainly in legible letters at least two inches high that the product is inedible and is not sold or intended for human consumption.

“(C) Raw rendering material may be sold or otherwise transferred to a person who operates a mink ranch, dog kennel, zoo, captive wildlife farm, or pet food manufacturing plant and who has written permission from the department to handle raw rendering material.

“(D) Raw rendering material may be sold or otherwise transferred to a person who operates a composting facility in accordance with rules adopted by the director of environmental protection under section 3734.02 of the Revised Code.”

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems and proper disposal of dead livestock. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Dr. R. David Glauer, Chief, ODA Division of Animal Industry
Mr. Lewis Jones, Chief, ODA Division of Dairy
Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA



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

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Certified Mail Return Receipt Requested

Schilderink Dairy Farm
Mr. Tonnie Schilderink
12593 Rd. 71
Paulding, Ohio 45879

January 27, 2004

Re: Warning Letter

Dear Mr. Schilderink:

On January 16, 2004, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility at 13 inches. The purpose of this letter is to remind you of rules requiring proper freeboard and to warn you possible violations of Ohio Department of Agriculture laws and rules.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) 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 one foot 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:

(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) 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.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

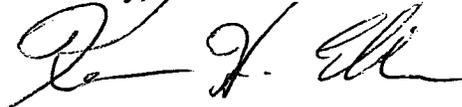
- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc :Andy Ety, LEPP Engineer

Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA



Ohio Department of Agriculture



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

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

January 24, 2004

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

Certified Mail

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

Certified Mail

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

Certified Mail

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

Certified Mail

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance for the Croton Layer No. 3 facility. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC), Rule 901:10-2-04, and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. FIRST VIOLATION- MANURE MOISTURE

A. VIOLATION

ODA has determined that for 48 weeks, from January 1, 2004 through December 5, 2004, the terms and conditions of the March 2001 Consent Order and of OFE's Insect and Rodent Control Plan (IRCP) have been violated. Paragraph 30 of the Consent Order requires that OFE "maintain the moisture content in the manure . . . at/or below 30%" OFE's IRCP requires that OFE "keep manure as dry as possible in order to maintain

30% moisture or less” As noted by an ODA inspector on December 6, 2004, the manure moisture in Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 exceeded 30%.

B. CORRECTIVE ACTION REQUIRED

Within ten days of receipt of this letter, OFE must submit a schedule indicating the dates OFE intends to remove the manure from Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40. OFE must complete manure removal and distribution and utilization for the barns by March 31, 2005.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D), (F), (J) and (K). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for 48 weeks, for a total of \$120,000.00, and the potential for escalated enforcement.

II. SECOND VIOLATION- BAIT STATIONS

A. VIOLATION

ODA has determined that the terms and conditions of OFE's IRCP have been violated. OFE was required to place bait stations on the outside perimeter of each barn. As noted by an ODA inspector on December 6, 2004, no rodent bait stations or traps were placed at the perimeter of any barns at the Croton Layer No. 3 facility in violation of the terms and conditions of the permit.

B. CORRECTIVE ACTION

Bait stations shall immediately be placed around the perimeter of each barn at the Croton Layer No. 3 facility and shall be managed in accordance with the terms and conditions of OFE's permit.

C. PENALTY ASSESSMENT

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment

of civil penalty in the amount of \$2,500.00 per week for one week, for a total of \$2,500.00, and the potential for escalated enforcement.

III. THIRD VIOLATION- WEEKLY INSPECTIONS

A. VIOLATION

ODA has determined that the terms and conditions of OFE's permit have been violated. OFE was required to perform weekly inspections of the storage ponds or treatment lagoons or fabricated structures to determine that there is no evidence of erosion, animal damage, leaks or discharge. As noted by the ODA inspector on December 6, 2004, water from the old inlet pipe into egg wash cell No. 1 had eroded the interior embankment of the storage pond. Several animal burrows located in the interior embankment of egg wash cell No. 1 were noted. In egg wash cell No. 2, two locations in the embankment were eroded. Several animal burrows located in the interior embankment of egg wash cell No. 2 were noted.

B. CORRECTIVE ACTION

The storage ponds and interior embankments should be immediately and regularly checked for evidence of erosion, animal damage, leaks and discharge. Any erosion, animal damage, leaks, and/or discharges shall be repaired immediately.

C. PENALTY ASSESSMENT

ODA has determined that the violations herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$800.00 per week for one week, for a total of \$800.00, and the potential for escalated enforcement.

IV. FOURTH VIOLATION-RESHAPING AND REGRADING

A. VIOLATION

ODA has determined that OFE has violated O.A.C. 901:10-2-04(E). OFE is required to prevent pollution from discharge of precipitation runoff from manure storage or treatment facilities by implementing one or more of the provisions contained in O.A.C. 901:10-2-04(E)(1). As noted by on ODA inspector on December 6, 2004, the areas between the high-rise barns at the Croton Layer No. 3 Operation needed to be reshaped and regraded to avoid ponding water and to allow for vegetative growth.

B. CORRECTIVE ACTION

By February 15, 2005, OFE must submit plans to Kevin Elder, Executive Director, Livestock Environmental Permitting Program, detailing how OFE intends to reshape and regrade the areas between high rise barns at Croton Layer No. 3 to avoid ponding water and to allow for vegetative growth.

C. PENALTY ASSESSMENT

ODA has determined that the violations herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$800.00 per week for one week, for a total of \$800.00, and the potential for escalated enforcement.

After 45 days from the date of this letter, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, or its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$124,000.00, 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
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Hardin SWCD



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

Livestock Environmental Permitting Program
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Certified Mail return Receipt requested

January 22, 2004

Henk Arts
5624 Elm Sugar Rd.
Convoy, OH 45832
419-749-0033

Re: Arts Dairy
5624 Elm Sugar Rd.
Convoy, OH 45832
419-749-0033
Tully Township
Van Wert County

Dear Mr. Arts:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 16, 2003 which we attribute to your farm with land application of manure at Feasby-Wisener Road on the west side of Middle Creek. A copy of the Complaint Follow-Up Report is being sent to you by the inspector, Michelle McKay and provides details of her findings during the inspection.

First, ODA requires notification when manure is being applied to frozen or snow-covered ground; this notification was not obtained.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.

- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

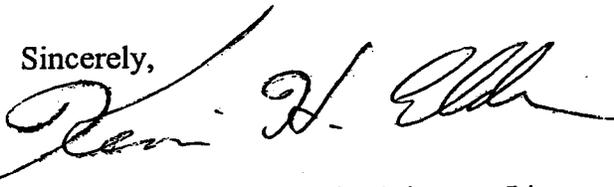
The field complained of had been worked so that the required ground cover was not met.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground. This buffer was not met along either Middle Creek or the drainage ditch alongside the road. More importantly, manure was directly applied through a main surface drainage ditch in the northern part of the field.

The Van Wert County Soil and Water District took photographs on December 16, 2003, that verify that the field was snow covered when application occurred. It was also clear that manure was not incorporated and it was not incorporated the following day when ODA inspected the site. The application rate was not known, but was estimated to be 6,000 gallons/acre.

Andy Ety, ODA Engineer, met with Helma Arts on December 19, 2003 to briefly discuss this matter with you and to assure that the requirements for manure application on snow covered/frozen ground were understood, if such application were necessary in the immediate future. To follow up on this meeting and to show compliance with your Permit to Operate, please contact this office immediately so we can schedule a time to review your land application sites for possible snow covered/frozen ground applications and address any concerns we may have with these sites. We take these violations seriously. If we do not hear from you, we will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc : Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Rick Wilson, Ohio EPA



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

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Certified Mail return Receipt requested

John Douglass
Catalpadale
4981 Fox Lake Road
Marshville, OH 44645

December 19, 2003

Re: Notice of Deficiencies Resulting in Noncompliance

Catalpadale
Marshville, Ohio

Dear Mr. Douglass:

On 29 September 2003 the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint of manure running down the creek, into a pond on neighboring Kelbly property, and to waters of the State. The source of the manure was from west of Black Diamond Road on property farmed by Catalpadale Farms.

The following are the sections of law at issue:

Section 903.04(C) of the Ohio Revised Code (ORC):

“ 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.”

Section 903.04(F) of the ORC provides, in pertinent part:

“(F) After a review of the existing installation permit, an inspection of the facility, and a review of the information furnished under division (E)(2) of this section, and upon determining that 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, the director shall issue an order issuing a review compliance certificate to the facility. In issuing the certificate, the director shall consider technical feasibility and economic costs. The director shall not require a significant capital expenditure, as defined by rule, by the facility before issuing a certificate.

“The director may issue an order denying a review compliance certificate if the facility's insect and rodent control plan or manure management plan does not conform to best management practices and the requirements established in section 903.06 of the Revised Code and in rules. The denial of a review compliance certificate terminates the existing installation permit that was issued to the facility. (Emphasis added)

Section 903.03 (A)(2) of the ORC provides:

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

The following rules are at issue:

Rule 901:10-1-03(A) of the Ohio Administrative Code (OAC) provides, in pertinent part:

“ Criteria for decision making by the director. The director shall deny, suspend or revoke a permit to install or permit to operate if:

* * * * *

(5) The facility is not designed or constructed as a non-discharge system or operated to prevent the discharge of pollutants to waters of the state or to otherwise protect water quality;”

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

“ A manure management plan is a plan developed to minimize water pollution and protect waters of the state. The manure management plan shall include best management practices for reuse and recycling nutrients and best management practices to minimize odors resulting from manure storage, handling, transportation, land application and odors from mortality.

"(1) The manure management plan shall specify the frequency of inspections to be conducted by the owner or operator at the manure storage or treatment facility.

* * * * *

"(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."

Based on the inspection conducted in response to the complaint filed, staff of the Ohio Department of Agriculture's Livestock Environmental Permitting Program found the following:

- The manure storage pond had over-topped in the southeastern corner, an apparent low spot in the earthen bank, in violation of Rule 901:10-2-08 of the OAC. The remainder of the manure storage pond had one to two feet of freeboard.
- The manure that over-topped the pond had meandered southeast through a hay field of alfalfa and grass mix. A small amount of manure was observed at the point of entry into the road ditch to the west of Black Diamond Road.
- Upon examining the Black Diamond Road ditch, a six-inch PVC pipe outlet was located. This pipe outlet had a one-half to one-inch flow of brown discolored liquid being discharged into the road ditch. This road ditch passed through a culvert under Black Diamond road then flowing east through the Kelbly property.
- On the Kelbly property, a small upstream pond that discharged into both a larger down stream pond and the stream had brown discolored water. No dead fish were observed. The down stream pond discharges back into the stream and continues to flow east.
- The creek then passes under Dalton-Fox Lake Road and proceeds north along the road and was brown and discolored.
- Water samples were taken from the following locations with the results from Ohio EPA Division of Environmental Services Laboratory Inorganic Analysis Data Report as follows:

Sample Location	Sample Results
#1 Stream start at Black Diamond Road GPS Location	Ammonia 47.4 mg/L

N 40° 53' 05.71"	Nitrate + Nitrite	9.0 mg/L
W 81° 41' 08.91"	TKN	63.4 mg/L
Elevation 297 meters	Total Phosphorus	6.39 mg/L
#2 Upstream Pond at Surface Outlet		
GPS Location	Ammonia	12.0 mg/L
N 40° 53' 06.55"	Nitrate + Nitrite	7.10 mg/L
W 81° 40' 44.96"	TKN	14.3mg/L
Elevation 290 meters	Total Phosphorus	1.17 mg/L
#3 Downstream Pond at Surface outlet		
GPS Location	Ammonia	11.4 mg/L
N 40° 53' 08.53"	Nitrate + Nitrite	1.64 mg/L
W 81° 40' 41.61"	TKN	17.3 mg/L
Elevation 286 meters	Total Phosphorus	1.52 mg/L
#4 East of Dalton – Fox Lake Road		
GPS Location	Ammonia	10.8 mg/L
N 40° 53' 12.74"	Nitrate = Nitrite	4.44 mg/L
W 81° 40' 33.20"	TKN	12.8 mg/L
Elevation 283 meters	Total phosphorus	0.997mg/L

Specific violations

Based upon the above identified law and rules and the results of our inspection and testing, the following is a concise statement of violations:

1. Discharge of manure on or about September 29, 2003 in violation of special condition 2 of Ohio EPA Permit To Install No. 08-048-NE.
2. Failure to maintain manure lagoon freeboard. OAC 901:10-2-08(A)(3)(a)
3. Failure to properly inspect lagoon, including failure to inspect lagoon on the required frequency. OAC 901:10-2-08(A)(1) and (A)(3).
4. Failure to operate manure lagoon as a non-discharge facility. OAC 901:10-1-03.
- 5.

Your facility is the subject of Ohio EPA Permit to Install No. 08-048-NE for which enforcement was transferred to the Ohio Department of Agriculture on August 19, 2002. That permit and these facilities were required by September 30, 2003, to submit an RCC application pursuant to Section 903.04 of the ORC. In lieu of making such a filing, you submitted an application for a permit to operate, which permit application is currently incomplete due to the failure to include a CNMP with the application. In a letter dated June 27, 2003, you acknowledged that the permit application is on hold

The following actions shall performed as specified below:

1. Preventative actions:

- a. Insert a tile plug into the six-inch PVC pipe.
- b. Lower the manure pond level to maintain the required freeboard within thirty (30) days of the receipt of this letter.
- c. Perform regular inspections of the freeboard level of the pond each month and record in an Operating Record. The frequency of these inspections may change only if a Review Compliance Certificate or a Permit to Operate specifies a different inspection frequency.
- d. Find the location that manure is entering the field tile doing the discharge no later than January 31, 2004.

2. Promptly complete all required actions to properly complete the application for permit to operate currently pending by January 31, 2004. Respond to any and all corrections required by the review of that application by the Livestock Environmental Permitting Program.

You must complete all of these actions by January 31, 2004 to the satisfaction of the Department of Agriculture in order to "return to compliance" for the above noted violations. My authorized representative will re-inspect the facility, to determine if you have complied with this Notice. If it is determined that Catalpadale is not in compliance, then I will consider enforcement proceedings.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Jim Young, LEPP Inspector
John L. Shailer Assistant Attorney General
Jennifer Tiell, Legal Counsel, 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

Certified Mail return Receipt requested

Anton Pohlmann
Buckeye Egg Farm, L.P.
11212 Croton Road
Croton, Ohio 43013

Croton Farm, LLC
11212 Croton Road
Croton, Ohio 43023-0173

November 7, 2003

Dear Mr. Pohlmann,

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on Wednesday, November 5, 2003 at the Croton Hatchery/Breeder Pullets site. Prior to this inspection, Cale Ayers of your staff telephoned Kevin Elder, Executive Director, Livestock Environmental Permitting Program (LEPP) and Stephanie Tudor contacted the LEPP Inspector, Jim Young. In addition, Ron Flory, Fresh Eggs Manager, contacted Mr. Elder to confirm that this Department had indeed been notified. Mr. Elder was told that a valve that is part of the tank or silo used to collect cockerel mortality broke or opened and resulted in a discharge of the cockerel waste contents that flowed in to Bowl Run. Mr. Elder was informed of the actions that were underway to contain the cockerel waste and to clean up the discharge. This included use of a sump pump to try to intercept the manure, which proved unsuccessful because the sump hole hit a tile. BEF next installed a dike to contain the spilled manure within a stream segment approximately 700 feet in length and then pumped this manure to egg wash ponds, which are authorized to store manure. Nevertheless, the cockerel waste mortality flowed into Bowl Run, which is "waters of the state."

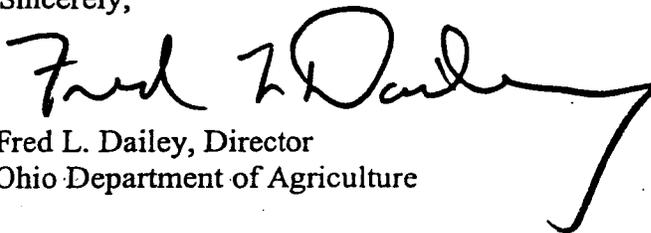
The cockerel waste contents are "manure" as this term is defined in Section 903.01(N) of the Ohio Revised Code (ORC):

"Manure means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs; animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta."

The cockerel wastes are mortality to be managed as manure and as part of a "manure management plan" as required in rule 901:10-2-07(A)(1) of the Ohio Administrative Code (OAC). A manure management plan cannot include mortality management that is inconsistent with rule 901:10-2-15 of the OAC. This rule allows dead livestock to be burned, buried, rendered or composted according to the rules. In fact, ODA recognizes that the manure management plan used by Fresh Eggs Manager, LLC specifies rendering of this waste. But a discharge to waters of the state is not authorized and is thus a violation of rules 901:10-2-07 and 901:10-2-15 of the OAC.

In accordance with rule 901:10-5-03 of the OAC, you must take actions to correct the violations. While recognizing that actions were taken to contain and clean up the discharged manure, to correct the violations you are required to submit a report in writing within five (5) days of receipt of this letter that explains in detail the cause of the manure discharge, including all of the information required by rule 901:10-2-17(A)(4) of the OAC. This report must include details of any corrective actions to be taken to assure ODA that this type of failure and discharge will not re-occur. Please direct your report to Mr. Elder, Livestock Environmental Permitting Program. After receipt and review of your report, an inspector from the LEPP staff will inspect the Croton Hatchery/Breeder Pullets site to determine if you have returned to compliance.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Cathy Alexander/Rick Wilson, Ohio EPA
Ronald L. Flory, Fresh Eggs Manager, LLC
William Leininger/Cale Ayers, Buckeye Egg Farm



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

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

October 21, 2003

Certified Mail return Receipt requested

Rick Kremer Hog Farm
9159 State Route 118
Ansonia, Ohio 45303

Re: Notice of Deficiencies Resulting in Noncompliance
Rick Kremer Hog Farm

Dear Mr. Kremer,

Section 903.16 of the Ohio revised Code (ORC) provides that the Director may request the Ohio Attorney general to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03 and 903.04 of the ORC.

The following are the sections of law at issue:

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

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

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraphs (A)(7) and (A)(8):

“ A manure storage pond or manure treatment lagoon subject to this rule shall be designed and the plans stamped by a professional engineer. The following design and construction criteria shall be followed:

* * * * *

“(7) Storage period.

The minimum storage period of manure for a manure storage pond and manure treatment lagoon shall be one hundred eighty days of manure production unless alternative use and design is otherwise approved by the department. This section is not intended to address the surface water runoff where the runoff does not enter into the pond or lagoon.

“(8) 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 one foot above the liquid level of the total storage volume.”

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:

(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.”

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

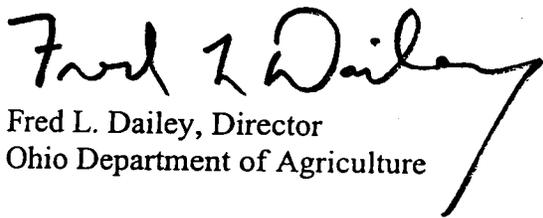
This Notice of Violation is sent to you as a result of violations of the laws and rules listed above as discovered during an inspection and discussion that you had with my staff on Friday, June 13, 2003 at your farm and as a result of a subsequent inspection conducted by my staff on June 24, 2003. You were informed on June 13, 2003 that a Permit to Operate was required for your facility. By letter dated June 17, 2003, Kevin Elder, Executive Director of the Livestock Environmental Permitting Program required you to submit a complete Permit to Operate application, along with submittal of the “as-built plans” for your current facility. You were asked to submit this information by the end of July to allow for review and decisions on the Permit to Operate by the end of September 2003. At the June 13th inspection, you were informed that your facility did not have the amount of freeboard required and you were directed to take actions to make corrections to reduce the volume of the lagoon.

At the June 24th inspection, ODA staff found the lagoon to be overflowing in four places and ready to overflow at a fifth place. This is a violation of ODA laws and rules. You must take steps immediately to return to compliance. You are required to submit an application for a Permit to Operate no later than August 11, 2003. In the alternative, you may choose to de-populate to 2,500 hogs or less not later than August 31, 2003.

To date, you have not submitted the required permit application. Therefore, I require you to submit the application for a Permit to Operate within 20 business days or to submit a letter sent certified mail return receipt requested notifying Kevin Elder, Executive Director, Livestock Environmental Permitting Program, of your plans to de-populate. Upon receipt of this notice to Mr. Elder, an inspector will be assigned to verify your actions.

If it is determined that Rick Kremer Hog Farm is not in compliance, then I will consider enforcement proceedings and seek a penalty.

Sincerely,

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

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jim Young, LEPP Inspector
Jennifer Tiell, Legal Counsel
John Shailer, Assistant Attorney General

**OHIO DEPARTMENT OF AGRICULTURE
STATE OF OHIO**

In re:

BUCKEYE EGG FARM, L.P.
CROTON FARM, LLC
ANTON POHLMANN

Order No. 2003-255

Respondents/Applicants

ORDER

Based on the record before me I find that on August 19, 2002, the Ohio Department of Agriculture ("the Department") issued a Notice of Opportunity for Hearing to Buckeye Egg Farm, L.P. and Croton Farm, LLC. The Notice advised Buckeye Egg Farm and Croton Farm of the Department's proposal to issue an order revoking certain permits to install held by Buckeye Egg Farm or Croton Farm for failure to comply with Rules 901:10-1-03(A)(5), 901:10-1-03(B), and 901:10-1-10(F) of the Ohio Administrative Code ("OAC"). Further, the Department proposed to deny certain pending applications for permits submitted by Buckeye Egg Farm based on the applicant's history of substantial noncompliance in violation of OAC Rule 901:10-1-03(B). The specific permits proposed for revocation were:

Croton facility -

PTI 01-382
PTI 01-454
PTI 01-491
PTI 01-382M
PTI 01-2475
PTI 01-039-IW
PTI 01-7152
PTI 01-7269

Mt. Victory facility -

PTI 03-7224
PTI 03-9594

Goshen facility -

PTI 03-11083-IW
PTI 03-10878-IW.

The specific permit applications proposed for denial were:

Croton facility -

PTI 01-265

	PTI 08-075-CD
Mt. Victory facility -	PTI 03-137-IW PTI 08-071-NW PTI 08-072-NW
Goshen facility -	PTI 08-070-NW
Marseilles facility -	PTI 03-113-IW PTI 03-139-IW PTI 03-9775 PTI 08-043-NW PTI 08-073-NW.

Buckeye Egg Farm and Croton Farm submitted a timely request for a hearing before the Department with respect to the proposed revocations and denials.

On October 11, 2002, a second Notice of Opportunity for Hearing was issued by the Department. The purpose of this Notice was to name Anton Pohlmann as a respondent in this matter (hereinafter, Buckeye Egg Farm, Croton Farm and Anton Pohlmann may be referred to collectively as "Respondents" or "Respondents/Applicants"). A timely request for a hearing before the Department was submitted with respect to the October 11, 2002 Notice.

The hearing was held before Alan L. Lapp, Hearing Officer. The hearing began November 25, 2002 and concluded December 11, 2002. The Department of Agriculture was represented by Margaret A. Malone, Barbara A. McGinn, and Robert W. Cheugh II, Assistant Attorneys General. The Respondents/Applicants were represented by David E. Northrop and Daniel T. Swanson of Porter, Wright, Morris & Arthur. On June 19, 2003 the Hearing Officer issued his Report and Recommendation, which was received by Appellant on June 20, 2003.

The Appellant filed objections to the Report and Recommendation on July 1, 2003. Both parties filed briefs with the Hearing Officer prior to the issuance of the Report and Recommendation.

Appellants' objections to the Report and Recommendation, the parties' briefs, and relevant portions of the transcript and exhibits were considered by the Department before approving, modifying or disapproving the Report and Recommendation.

After careful consideration, by the authority vested in my office by law, it is hereby ORDERED:

1. That the Findings of Fact and Conclusions of Law contained in the Report and Recommendation attached hereto as Exhibit A, are specifically adopted as my own;
2. That the Recommendation contained in the Report and Recommendation attached hereto as Exhibit A is approved and confirmed;
3. That the following permits of Respondents/Applicants, Buckeye Egg Farm, L.P., Croton Farm, LLC and Anton Pohlmann are hereby revoked:

Croton facility - PTI 01-382
PTI 01-454
PTI 01-491
PTI 01-382M
PTI 01-2475
PTI 01-039-IW
PTI 01-7152
PTI 01-7269

Mt. Victory facility - PTI 03-7224
PTI 03-9594

Goshen facility - PTI 03-11083-IW
PTI 03-10878-IW.

4. That the following permits of Respondents/Applicants, Buckeye Egg Farm, L.P., Croton Farm, LLC and Anton Pohlmann are hereby denied:

Croton facility - PTI 01-265
TI 08-075-CD

Mt. Victory facility - PTI 03-137-IW
PTI 08-071-NW
PTI 08-072-NW

Goshen facility - PTI 08-070-NW

Marseilles facility - PTI 03-113-IW
PTI 03-139-IW
PTI 03-9775
PTI 08-043-NW
PTI 08-073-NW.

5. That to assure the orderly and environmentally acceptable cessation of operations at the Respondents' facilities, the Respondents shall proceed as follows:
 - a. Respondents shall close two barns every five (5)-business days, commencing within twenty (20) business days of the effective date of this ORDER in the sequence set forth in paragraphs (a)(1) through (a)(4). All barns closed as of the effective date of this ORDER shall be considered closed and shall remain closed. Respondents shall adhere to all applicable laws in completing the closures.
 - 1) Respondents shall begin barn closures commencing at the Marseilles facilities located in Wyandot County.
 - 2) Respondents shall next commence barn closures at the Croton facilities, located in Licking County. Respondents shall proceed as follows for the Croton facilities:
 - a) Close all barns at Layer Site No. 2;
 - b) Close all barns at Layer Site No. 1;
 - c) Close all barns of the pullet sites, breeder site, and hatchery.
 - d) Close all barns of the remaining Layer sites.
 - 3) Respondents shall next commence barn closure at the Goshen facility, located in Hardin County.
 - 4) Respondents shall next commence barn closure at the Mt. Victory facilities, located in Hardin County.
6. Barn closures include but are not limited to:
 - a. Remove all poultry;

- b. Clean and remove feed from feed bins and feed conveyor lines;
 - c. Drain all water lines and shut off service to all water lines.
7. Concurrent with the barns closures listed above, Respondents shall commence closure of any manure storage ponds or manure treatment lagoons not authorized by NPDES permits issued by the Director of Ohio EPA. Closure shall be performed in accordance with rule 901:10-2-18 paragraph (A) items (2), (3) and (4) of the Ohio Administrative Code. Item (A)(1) shall not apply.
8. Barn closures of all of Respondents' facilities shall be completed no later than June 1, 2004. Manure shall be removed from all manure storage or treatment facilities, including all barns, no later than September 1, 2004.
9. That upon journalization a certified copy of this Order be sent to the following:

Margaret A. Malone
Barbara A. McGinn
Robert W. Cheugh II
Assistant Attorneys General
Ohio Attorney General's Office
30 East Broad Street, 25th Floor
Columbus, Ohio 43215; and

David E. Northrop
Daniel T. Swanson
Porter, Wright, Morris & Arthur,
41 South High Street, Suite 2900,
Columbus, Ohio 43215.

Effective date of this Order: Upon journalization


Fred L. Dailey, Director


8 July, 2003
Date

Entered Ohio Department of Agriculture Journal on this 8th day of
July, 2003 by Craig Ellis

NOTICE OF APPEAL RIGHTS

This ORDER may be appealed within 30 days to the Environmental Review Appeals Commission (ERAC), 309 South Fourth Street, Room 222, Columbus, Ohio 43215, pursuant to Sections 903.09 and 3745.04 of the Revised Code. The notice of appeal must set forth the ORDER appealed from and the grounds of the party's appeal. A copy of the Notice of Appeal shall also be filed with the Director of Agriculture within three days after filing the appeal with ERAC.

CERTIFICATION

STATE OF OHIO,
COUNTY OF LICKING, SS

:
:

Order No. 2003-255

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of ORDER #2003-255, which was entered upon the order journal of the Ohio Department of Agriculture on 8th, day of July, 2003.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 8th day of July, 2003.

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





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

March 4, 2003

The Honorable Jim Petro
Attorney General of Ohio
C/o Dale T. Vitale, Senior Deputy for Environmental Enforcement
State Office Tower
30 East Broad Street, 17th floor
Columbus, Ohio 43215

Re: Referral of 5C Farm, Mr. Bill Cleland, Sr. Mr. Bill Cleland, Jr.

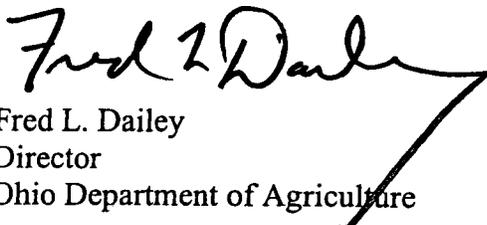
Dear Mr. Petro:

In accordance with Sections 903.16 of the Ohio Revised Code, I hereby request that your office take appropriate enforcement action against the above-referenced individuals as owners/operators of 5C Farm for violations of Sections 903.02 and 903.03 of the Ohio Revised Code.

On February 14, 2003, I issued a Notice of Violation letter to Mr. Cleland, Sr. and Mr. Cleland, Jr., informing them that a copy of the Notice would be forwarded to your office with a request to bring an action that includes a civil penalty. A copy of the Notice was subsequently transmitted to your office along with a copy of the file.

If there are any questions about this case or matters related to this request, please direct them to Jennifer Tiell, an attorney on my staff.

Sincerely,



Fred L. Dailey
Director
Ohio Department of Agriculture



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

Administrative Office
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-466-2732 • Fax 614-466-6112
ODA home page: www.state.oh.us/agri/ • e-mail: wwwagri@ohio.gov

Certified Mail Return Receipt Requested

Mr. William Cleland, Jr. and
Mr. William Cleland, Sr. Co-owners
5C Farm
05191 Thiel
Hicksville, Ohio 43526

February 14, 2003

Re: Notice of Deficiencies Resulting in Noncompliance
5C Farm

Gentlemen:

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03, and 903.04 of the ORC.

The following are the sections of law at issue:

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

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

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

Section 903.03 (A)(2): Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on

which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit issued by the Director under this Section.

The following is the rule at issue:

901:10-2-01 of the Ohio Administrative Code: Permit to install; purpose and applicability.

(A) Purpose and applicability of a permit to install.

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

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

Based upon an inspection on January 8, 2003, the 5C Farm was found to have installed an animal feeding facility with design capacity of more than one thousand animal units. Your farm does not have a permit to install issued by the Director of the Ohio Environmental Protection Agency and does not have a permit to install issued by the Ohio Director of Agriculture. In fact, I have been informed that this Department has not received any applications for required permits from you.

Given the fact that much of the construction is well underway, be advised that a copy of this Notice will be forwarded to the Office of the Attorney General with a request to bring an enforcement action that includes a civil penalty.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Barbara A. McGinn, Assistant Attorney General
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture



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

Certified Mail Return Receipt Requested

Mr. Hette DeVries
7188 Sager Road
LaRue, Ohio 43332

January 7, 2003

Re: Notice of Deficiencies Resulting in Noncompliance
DeVries Dairy
7188 Sager Road
LaRue, Ohio 43332

Gentlemen:

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03, and 903.04 of the ORC.

The following are the sections of law at issue:

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

The following are the rules at issue:

Rule 901:10-1-01(VV) of the Ohio Administrative Code OAC states, in pertinent part, that a modification means one of the following:

- (1) A material and substantial alteration of the facility including an increase of the number of animal units of the design capacity of an existing facility by 10 percent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or operation's capacity be modified to increase by more than 10 percent in the aggregate.
- (5) Changes to the manure storage or treatment facility that result from any of the following:
 - (a) An expansion of more than ten percent in treatment or storage capacity;
 - (b) A significant change in treatment technology; or
 - (c) Closure of part of the manure storage or treatment facility.

901:10-1-09 Permit modification.

(A) No facility or activities regulated by a permit to install or a permit to operate or a NPDES permit under this chapter shall be modified as that term is defined in rule 901:10-1-01 of the Ohio Administrative Code unless the permit is modified in compliance with this rule.

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

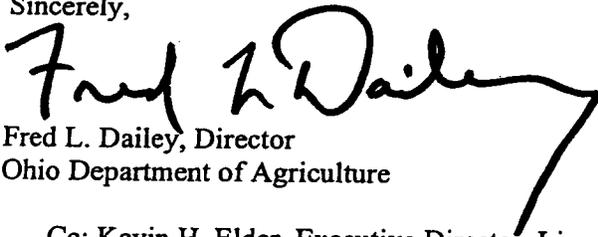
Based upon a visit on January 3, 2003, by ODA Livestock Environmental Permitting Program Engineers, DeVries Dairy was found to be using the manure treatment lagoon that is currently under review as a draft permit by the Ohio Department of Agriculture.

DeVries Dairy is currently operating under an Ohio EPA PTI No. 08-050-NW issued June 2002. The Ohio EPA PTI authorized the installation and operation of a concrete or cement fabricated structure. DeVries Dairy submitted applications to ODA for a permit to install modification and a permit to operate. The applications submitted to ODA propose to modify the fabricated structure, previously approved, to a manure treatment lagoon with a clay liner and a higher degree of permeability and protectiveness.

I recognize that the modification implemented by DeVries is an environmentally sound choice, but DeVries has not yet been issued the permits in accordance with the law, including, but not limited to, the procedures set forth in Section 903.09 of the ORC.

I recommend that you contact legal counsel for the Ohio Department of Agriculture in order to schedule a meeting to discuss actions to be taken. Contact Jenny Tiell, Legal Counsel or Kristi Ford, Legal Assistant at 614-387-0470 to further discuss this issue.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Barbara A. McGinn, Assistant Attorney General
Shannon McQuade, Chief Legal Counsel, Ohio Department of Agriculture
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Ron Waterman, Counsel for DeVries



Ohio Department of Agriculture



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Certified Mail Return Receipt Requested

Mr. Andrew Brehm
15188 US 127
West Unity, Ohio 43570

Dr. Leon Weaver
4962 Burkwood Court No. 101
Sylvania, Ohio 43560

September 4, 2002

Re: Notice of Deficiencies Resulting in Noncompliance
Mill Creek Dairy
20858 Williams Co. Road P
Alvordton, Ohio 43501

Gentlemen:

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03, and 903.04 of the ORC.

The following are the sections of law at issue:

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

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

The following is the rule at issue:

901:10-2-01 Permit to install; purpose and applicability.
(A) Purpose and applicability of a permit to install.

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

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

Based upon an inspection on August 29, 2002, Mill Creek Farm was found to have installed an animal feeding facility with design capacity of more than one thousand animal units. Mill Creek Farm does not have a permit to install issued by the Director of the Ohio Environmental Protection Agency and does not have a permit to install issued by the Ohio Director of Agriculture.

Mill Creek Farm has submitted applications for a permit to install and a permit to operate but has not been issued the permits in accordance with the law, including, but not limited to, the procedures set forth in Sections 903.05 and 903.09 of the ORC.

To correct these violations, you are required to cease construction immediately. You may not commence construction until such time that the decisions with respect to the permits are final and effective.

The Director or his authorized representative will re-inspect the facility to determine if you have complied with this Notice. If it is determined that Mill Creek Farm is not in compliance, then the Director may bring an action for an injunction and a civil penalty. In addition, be advised that violation of Section 903.02(A)(2) of the ORC is a misdemeanor violation, subject to fines of up to \$1,000.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Barbara A. McGinn, Assistant Attorney General
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture