

[REDACTED]
London, Ohio 43140
740-852-0060

11/22/2008

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN16J)
77 W. Jackson Blvd.
Chicago, IL 60604

Re: Transferring NPDES authority to the ODA

Dear Mr. Gluckman

Thank you for taking the time to read this letter.
I am going to give you factual information that should convince you that the Ohio Dept of Agriculture has demonstrated significantly, and repeatedly, a lack of regard for their other job, which is, the enforcement of the regulations that are designed to protect the environment.

Let me begin with giving you a very brief statement of my position in this matter.
I have not traveled the state to gather this information. All of this has occurred in a very small area around London Ohio. I do know, that similar events are occurring across the state.

I do not have a financial interest in this matter.

I do have an interest in the environment.

I have witnessed people's lives, and homes being severely compromised because of the lack of enforcement.

I have observed a river full of dead fish, because the ODA has not enforced the regulations .

I do not believe any company or person should be allowed to harm, hurt, or infect another innocent victim. I think that is an American principle.

Like may others, I have incurred added costs to my business because of EPA regulations...because the EPA was doing it's job.

You do not have a conflict. You can stand strong in your conviction to protect the environment, and the human beings that live in it.

THE ODA CANNOT MAKE THAT STATEMENT

You will notice I have included a number of copies and documents. I will do my best to substantiate that every word I am telling you is correct, and easily verified.

About 6 years ago a CAFO with less than 700 milking cows was established south of London. The ASSEN Farm.

I know you are concerned with farms over 700, but the ODA's performance, and honesty, should apply to Cafo's of any size.

There were multiple spills into the rivers. The county engineer was called because the ODA isn't open on weekends. The Engineer's office found that the "mains" on the drain tiles were packed with silage instead of being capped properly.

The ODA never really acknowledged that it even happened.

More recently the Assen Dairy, a Vreba -Hoff project has continued to have issues

The neighbors state they have called the ODA with no response, and the local sheriff no longer responds to the calls because they do not have any authority.

In 2009 on May 1st, 7th and 8th The Assen dairy again turned the river black. This time the local residents did not call the ODA. Instead they called the Ohio EPA. It was after business hours, so it is difficult to get a response. The spills on the 7th and 8th were during the day. The EPA did, as expected, responded very quickly. The assessment was that there was not only a spill, but a fish kill. Many of us laughed at Kevin Elders press statement, recalling the alleged phone call from the Assens, when he said, "it was a call the Assens didn't want to make" We thought it was a little easier to explain why they called when the channel 4 and 10 helicopters were flying over his head, videotaping their evening report. Just so we are clear, we called the EPA, they contacted soil and water. Enclosed are the articles in the paper documenting the spill. Do the ODA's records list this event? I don't know, but I suspect you might be curious. The Assen's mentioned that they didn't realize the fields were tiled. In Madison County, every field is tiled. This was on their property, they knew it. It is the requirement that they know if a field is tiled. Interestingly, I have spoken to Kevin Elder about Assen. His comment has been...we just haven't been able to get them to comply. That would suggest to me that they know there is a problem, but don't want to deal with it, or are willing to look the other way. I suggested fines, not unlike what the EPA might do to any other type of factory, his response was...we can't do that. It might put them out of business.

What is more important to the mission of the EPA, protecting the environment, or the business' bottom line?

Let's move on to the next issue, which is under the parameters of the new proposed transfer of authority.

The Vreba-Hoff application to install a 5400 head factory dairy.

Under the rules of HR141, the bill that transferred the authority from the EPA to the ODA, the very first hurdle was a background check. If any person or entity applying for the permit has a history of any violations of any substance the director is to deny the application. If the applicant files false information, or lies on the application, the director must deny the application.

(Keep in mind, you are contemplating giving them the total and complete authority for the NPDES permits, the only regulation that is not under their control. Is there any reason to believe they will honor your guidelines any better than they have adhered to the first set of regulations.

As part of the application, logically the applicant needs to list his, or the company's name. It also asks if they have in the past 5 years operated a CAFO, If so did you have any violations.

In part A1 of the application (A copy of the application is enclosed)

The applicant enters the name Orleton Farms, WHM van Bakel, Managing partner.

Later he signs and prints his name.

In part A5 It asks if the applicant has operated a CAFF in the past five years immediately preceding the date of the application

Note his response...None (this is a fraudulent statement)

You will also note that for some reason he has changed the name perhaps to disguise the fact he is lying on question 5., and question 4 as well.

At this point this application should have been rejected.

One of the authors of HB141 Chris Widener is intimately familiar with the law that was given to the ODA to administer. In his opinion, the application should have been rejected because of the fraudulent statement. The ODA obviously no longer feels that they need to adhere to those guidelines that were carefully thought out to protect Ohioans and the waters of this State. Instead they are committed to satisfying the Farm Bureau, and

protecting industries that are exclusively committed to making money with no regard for people or the environment.

These pages of the application are included for you to review.

What happens now is very interesting, and I hope for you very concerning.

William H van Bakel, and his company Vreba-Hoff has quite a reputation.

In Michigan, Indiana, and Ohio they have set up countless Cafo's many under the 700 head guideline to escape regulations, on occasion multiple farms next to each other but separately owned, using common equipment. They have amassed hundreds if not thousands of violations. Everything from dumping on frozen ground, countless spills into lakes and rivers, radical over application, indeed saturation of soil, moving the depth indicator in the manure lagoon because they were above the allowed levels, just to name a few. He and his partners have many names. I have included a list of their many aka's. Just that should tell you something.

When they, the ODA, came to Madison County to garner the support of the community, they did a very impressive power point presentation, you may have seen it yourselves. In that presentation, they don't want you to associate the project with the Vreba-hoff name. In fact in the presentation, their Manure Management guru, Tom Menke, (you heard his testimony on Nov 18th in Columbus), specifically states verbally, and in writing on the screen "This is not Vreba-Hoff" It is a farmer gentleman WHM van Bakel.

This is a presentation with Kevin Elder by his-side, stating that this is not Vreba-Hoff.

A bigger lie could not have been told. And they did the presentation 3 times, and told every one three times including several legislators, that it was not Vreba-Hoff!!!

This is Tom Menke, the ODA primary consultant on manure management and the owner of the "Earth Mentor" manure management system that is, as of right now, not proven, and has failed it's initial tests in Michigan. (While I realize you are only concerned with Ohio right now, I know the Farm Bureau will be pushing for the same transfer in Michigan, Indiana and ultimately across the country.

As a side note, it is my understanding that the ODA's independent advisory council includes Tom Menke, a representative from the Farm Bureau, and a Vreba-hoff attorney. Now there's an unbiased lot.

Finally,

I am including a set of letters.

As a result of Sen. Austria expressing some concern about the Orleton Dairy (they will spread manure less than a mile from an elementary school, just barely a mile from a community of over 2000 people, and on the headwaters of the Darby, a protected sanctuary of wildlife.

A representative of the ODA, Adam Ward, (he also testified in Columbus on the 18th) sent Sen. Austria a letter to ease his concerns.

Please read his response, then compare it to our analysis of his statements compared to historical fact.

What you will find is that the ODA will say whatever they think you want to hear, to gain absolute control of permitting these CAFO's and to allow any individual or company to operate one.

If they misrepresented the truth to a legislator, why would they not do the same to you?

To date their track record when dealing with good farmers like many that you heard the other night, is probably okay. The problem is, the new breed has only one issue."show me the money" most are not Americans, most could care less about the soil. They are not spreading the liquid sewage to fertilize, they are spreading it to get rid of it. If they thought they could get away with dumping in a river, or in the case of Michigan into lake Huron, they will do it in a minute. The EPA will bust them, the ODA will not. Check the records, the ODA has not issued any amount of fines.

You appear to care about our country. I am sure that you must wince when you think about dumping coal mining sludge into the rivers, or going back to burning hi- sulfur coal.

The time may come when it is right to turn this over to the ODA, it's just not today. Give them some time to prove they can deal with the people who are not good stewards of the land. When you see the fines starting to build, then you know they can carry that torch that the EPA has carried for these many years.

I know the Farm Bureau is a very intimidating organization, and most elected officials won't even think of crossing their path, but you can stand up and do what is right. If additional documentation from other parts of the state would be helpful, we will be glad to provide that for you.

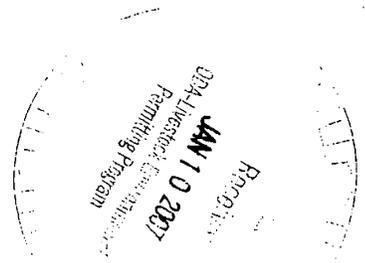
Thank You for your careful thought in this matter.

Very Sincerely,

A solid black rectangular redaction box covering the signature area.

PACKETT "A"

Permit Part A General Information - Orleton Farms, LLC 01/05/07



Part A GENERAL INFORMATION

The following general information is required for all permits.

1. Owner's/Operator's Name and Address and Signature

Note: If there is more than one owner/operator or if this is a Corporation or Limited Liability Partnership (LLP) all owner/operators, officers, directors, partners or others that have a right to control the facility must be listed below. If there are more than two names, add the names, addresses and phone numbers of all additional individuals on a separate piece of paper. At least one owner/operator must sign and certify the permit application Rule 901:10-2-01) Any change in owner/operator before a final decision is made on any permit requires signature and certification by the new owner/operator

Owner Name: Orleton Farms, LLC
Mr. W.H.M. van Bakel, managing member
Address: 2920 Quarry Rd.
City: Maumee
State: OH Zip: 43537
Phone: (517) 937-1356
Fax: (419) 335-1924
E-mail:

**Application Received 1/9/07
Application In Review Process**

Orleton Name: Orleton Farms, LLC
Mr. W.H.M. van Bakel, managing member
Address: 2920 Quarry Rd.
City: Maumee
State: OH Zip: 43537
Phone: (517) 937-1356
Fax: (419) 335-1924
E-mail:

Signature

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information is, to the best of my knowledge and belief, true and accurate and complete I am aware there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations" 901:10-1-02(A)(8)

← HIS SIGNATURE

Name of the owner or operator (Signature here), member Orleton Farms, LLC

W.H.M. van Bakel

← W.H.M. VAN BAKEL

Date 01-09-2007

PART A OF
APPLICATION FOR PERMIT INSTALL

3. **Other Animal Feeding Facilities.** This information shall be completed by both the owner and the operator, where the operator is not the owner. Please specify who is the "owner" and who is the "operator."

The owner and operator of the dairy is Orleton Farms, LLC.

4. Please list the name(s) of AFFs or CAFFs that the applicant for the current permit has operated (during the five-year period immediately preceding the submission of the current permit application) or is operating in Ohio. Please include the location and/or address(es) and the name of the county. Please provide any and all permit identification numbers.

THIS IS A SOLICITED RESPONSE

* None

*

**Application Received 1/9/07
Application In Review Process**

ASK IF THEY HAVE OPERATED A CAFF IN PAST 5 YEARS

5. Please list the name(s) of AFFs or CAFFs that the applicant has operated (during the five-year period immediately preceding the submission of the current permit application) or is operating elsewhere in the United States and that are regulated by the Federal Water Pollution Control Act. Please include the location and/or address(es) and the name of the county. Please provide any and all permit identification numbers.

* None

*

*

6. Please list the name(s) of AFFs or CAFFs that the applicant has operated (during the five-year period immediately preceding the submission of the current permit application) or is operating outside the United States. Please include the location and/or address(es) and the name of the county. Please provide any and all permit identification numbers. Please provide the addresses of the regulating entities.

* None

*

*



If the operator of the CAFF is a person who is not the owner, identify the operator.

N/A

For example, the following questions describe the nature of an operator:

Is this person employed or to be employed to be responsible for the direct control or overall operations of the CAFF? Yes

Will this person's duties or responsibilities involve, in whole or part, the management of the facility and the exercise of independent or discretionary judgment? Yes

Will this person have the right to control or in fact control management of the facility and or the selection of officers, directors, or managers of the CAFF? Yes

Is this person employed (or to be employed) in a supervisory capacity for the facility? Yes

**Application Received 1/9/07
Application In Review Process**
"Right to control or in fact controls management of the applicant or of the owner" means an individual who has authority which:

- (1) Is delegated in the interest of the employer;
- (2) Involves the exercise of that individual's independent judgment;
- (3) Is not merely authority to perform a routine or clerical task; and
- (4) Has authority to perform or effectively to recommend any one or more of the following actions: hiring, firing, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, disciplining, directing, or adjusting grievances of, employees whose duties or responsibilities involve, in whole or part, the management of (including but not limited to the evaluation of, identification of, (the effects of), handling of, transportation of, storage of, or treatment of, application of manure.

"Right to control or in fact controls management of the applicant or of the owner" includes any individual who has an agreement that grants authority to operate the CAFF as set forth in a contract with the applicant or permittee or the prospective owner.

- (1) Is there a contract?
- (2) Are there employees of the contractor who are employed in a supervisory capacity for the subject facility; or
- (3) Are employees of the contractor empowered to exercise independent judgment for the subject facility.



Wilhelmus van Bakel, Alexander van Bakel, and Henricus van Bakel own Orleton Farms, LLC indirectly through its parent companies. The Van Bakels are experienced dairymen. They grew up on and worked on their parents' dairy farm, Vreba Dairy. This dairy was established in 1956 and is currently the largest dairy farm in the Netherlands with 1056 cows and 675 heifers. They have been the co-directors (operators) of that farm for approximately two decades (Alexander for 22 years, Wilhelmus for 21 years, and Henricus for 19 years). Wilhelmus has a higher education degree in dairy management, Alexander has a vocational degree in agriculture, and Hendrices has a vocational degree in cattle management.

A department for the City of Venray in the Netherlands oversees environmental compliance at Vreba Dairy,. As demonstrated by Venray's letter, Vreba Dairy's environmental record has been exemplary, with no violations.

Through their indirect ownership interest in Vreba Dairy BV, the Van Bakels have an indirect ownership interest in other companies affiliated with Vreba Dairy BV. More information about these affiliates can be obtained from the Supplemental Compliance Information for Orleton Dairy Leasing, LLC, which is incorporated herein by reference. The Van Bakels do not operate any animal feeding operation associated with these affiliates. Accordingly, only the environmental history of Vreba Dairy is relevant to this background check.

As to background information on this application, Vreba Dairy operated by the Van Bakels has a spotless environmental record. Therefore, Orleton Farms, LLC has sufficient reliability, expertise, and competence to operate Orleton Dairy in substantial compliance with ODA's requirements.

THIS IS A NON-SOLICITED RESPONSE

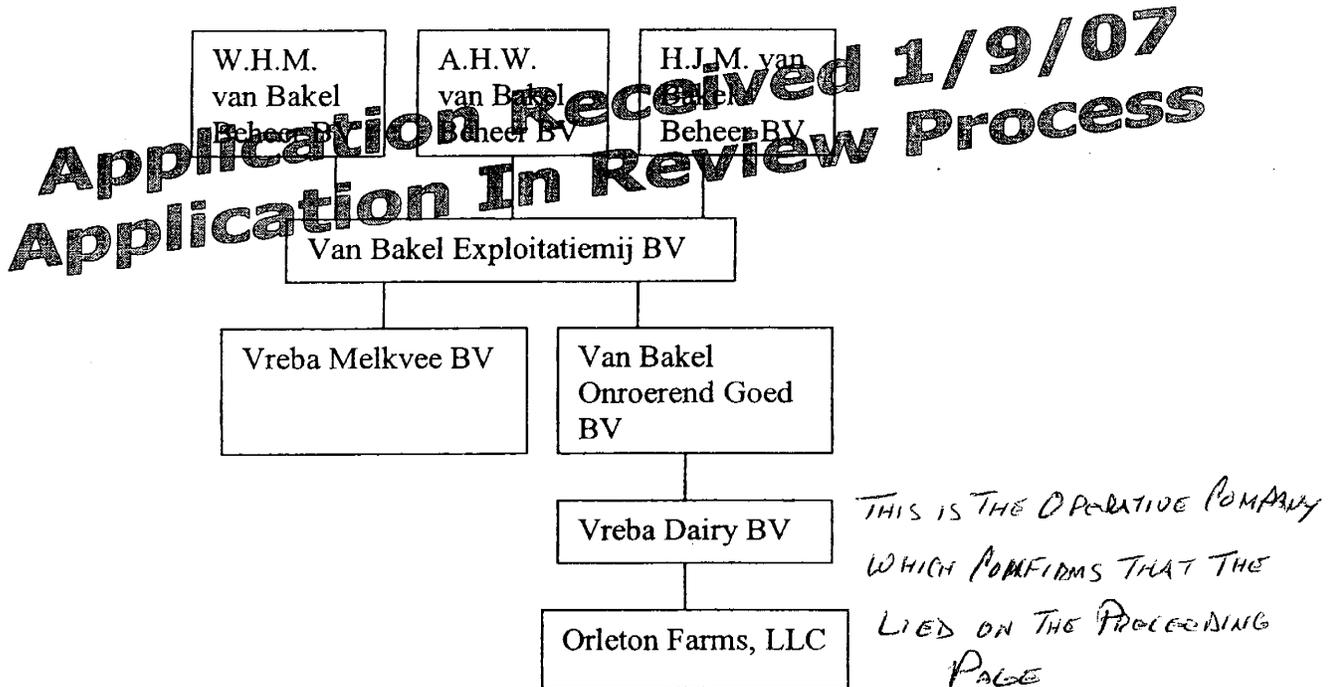
Application Received 1/19/07
Application In Review Process
← THE LINE IS NOT AN HONEST RESPONSE IN COMPLIANCE WITH THE

SUPPLEMENTAL COMPLIANCE INFORMATION
FOR ORLETON FARMS, LLC

Orleton Farms, LLC will be the owner and operator of Orleton Dairy. Vreba Dairy BV¹ is the sole member of Orleton Farms, LLC. Vreba Dairy BV in turn is owned by Van Bakel Onroerend Goed BV, which is owned by Van Bakel Exploitiemij BV. Van Bakel Exploitiemij BV is owned by W.H.M. van Bakel Beheer BV, A.H.W. van Bakel Beheer BV, and H.J.M. van Bakel Beheer BV, which are owned respectively by Wilhelmus van Bakel, Alexander van Bakel, and Henricus van Bakel (hereinafter referred to as the "Van Bakels").

Another subsidiary of Van Bakel Exploitiemij BV named Vreba Melkvee BV owns and operates a dairy named Vreba Melkvee (Vreba Dairy) in the Netherlands.

The following organizational chart depicts the relationships among these companies:



Orleton Farms, LLC is a new company that has not previously owned or operated a dairy. Accordingly, the company itself has no environmental record to report.

Aldert Nieuwenhuis and Johannes Jansen will make the day-to-day decisions for the company. Aldert Nieuwenhuis will be the business manager for Orleton Dairy responsible for office management, finances, and administration. Johannes Jansen has a decade of experience in dairy herd management and milk production as a veterinarian.

¹ A BV is a business form created in the Netherlands for a company that has some characteristics of an American corporation and some traits of an American limited liability company.

What do regulators have to say?

"We have not been happy with how they've (**Vreba-Hoff**) operated," said Christopher Jones, director of the Ohio EPA. "We've started to do a number of inspections on them and seen some consistent problems."

From the Dayton Daily News: 12.06.2002

"**Lucrative megafarm market lures Europeans**"

<http://www.daytondailynews.com/project/content/project/farm/1206future.html>

"They haven't shown any willingness at all to cooperate," Robert McCann, state (Michigan) Department of Environmental Quality spokesman, said. "The fact the DEQ is being forced to spend so much of its time trying to get **Vreba-Hoff** to comply with the most basic of water-protection laws is ridiculous. It's frustrating."

Toledo Blade

Article published Saturday, September 29, 2007

<http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20070929/NEWS06/709290365>

In one section of the four-page letter, written by Rachel D. Matthews, a Michigan Department of Environmental Quality inspector, the company was accused of "significant, ongoing storm water issues due to sloppy management."

Toledo Blade

Article published Saturday, March 24, 2007

<http://toledoblade.com/apps/pbcs.dll/article?AID=/20070324/NEWS06/703240399>

"While Michigan rightly prides itself on a rich agricultural heritage, operations such as these that flout the law and pose an environmental threat to the waters of this state give all of agriculture a black eye," said DEQ Director Steve Chester. "The citizens of this state should not be subjected to the pollution generated by factory farms, and the DEQ will do what's necessary to pursue these violators (**Vreba-Hoff**)."

From the Michigan Environmental Council

Michigan Environmental Report

Volume 21 . Number 5

October 2003

According to the Ohio Revised Code (ORD) section 903.10, the Director of the ODA has no choice but to, at a minimum, suspend if not deny the Verba-Hoff mega dairy permit application as a result of clean water act violations in three states.

The following criteria is a partial listing of what the Ohio Department of Agriculture is to apply when evaluating Mega-Dairy Permit to Install (PTI) and a Permit to Operate (PTO) applications.

The ORC states the Director shall deny, suspend or revoke a permit to install (PTI) or a permit to operate (PTO) if:

The applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with:

- 1. the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code*
- 2. any other applicable state laws pertaining to environmental protection*
- 3. environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise and competence.*

The above applies to the applicant's ability to operate a proposed new or modified facility within substantial compliance with Chapter 903.10 of the Revised Code and these rules.

Furthermore the ODA director is charged with considering the last five years to include:

Any administrative enforcement action (including an administrative order of notice of violation), civil suit, or criminal proceeding that is:

Pending

(a) Pending against the applicant or a business concern owned or controlled by the applicant;

Resolved

(b) Resolved or dismissed in a settlement agreement, in a consent order or decrees, is adjudicated or otherwise dismissed and that may or may not have resulted in the imposition of:

(i) A sanction such as a fine, penalty, payment or work or service performed in lieu of a fine or penalty; or

(ii) Cessation or suspension of operations.

Any revocation, suspension, or denial of a license or permit or equivalent authorization.

A search of Fulton County, Ohio court records reveals 14 records (five separate suits) in reference to Vreba-Hoff or associates having been sued related to the operations of their dairy farms.

How Much Evidence is needed to invoke ORC Rule 903.10 that requires the ODA Director to Deny or Suspend these PTI / PTO for a company with violations?

Dayton Daily News, Greene Co., OH (7/11/04):

"In the past three years, the Ohio Division of Wildlife has linked 15 manure spills statewide to dairies developed by **Vreba-Hoff Dairy**, seven of them in the past six months. Two spills killed fish."..."In the wake of mishaps at dairies across the Midwest, Vreba-Hoff has come under increased scrutiny from state and federal regulators..."

Cleveland Plain Dealer, Cleveland, OH (8/1/04):

"In southern Michigan, a citizens group has documented illegal manure discharges at all 10 dairies built by **Vreba-Hoff**. In the last four years, the Michigan Department of Environmental Quality confirmed more than 100 violations and discharges, including fish kills, and filed lawsuits against two of the dairies. Both have been asked to install sewage treatment plants, a plan that Vreba-Hoff rejects."

Toledo Blade, Toledo, OH (10/27/04):

"Four more northwest Ohio dairy farms, all built by **Vreba-Hoff Dairy Development Corp.**, have received U.S. EPA findings of violations and administrative orders to make changes to prevent contamination of creeks and ditches. That brings the number of Vreba-Hoff-designed dairies receiving EPA orders this fall to 16. It is thought to be the last of the orders resulting from an EPA tour of Vreba-Hoff-designed dairies in Ohio, Michigan, and Indiana that began about a year ago, an EPA spokesman said."AND (expanding upon the above described EPA orders)

Muncie Star-Press, Muncie, IN (10/27/04):

"Sixteen Indiana, Ohio and Michigan dairy CAFOs (concentrated animal feeding operations) built by **Vreba-Hoff Dairy Development** have been ordered by the U.S. EPA to correct numerous alleged violations of the Clean Water Act. The runoff or discharge of silage leachate or juice which can be a stronger water pollutant than raw human sewage was a common problem at the farms. Other alleged violations included damaged, weedy or eroded manure lagoons, and failure to address the potential for storm water to cause manure and silage leachate pollution."

The New York Times, New York, New York (3/26/2005): By James DAO

"Last year the federal Environmental Protection Agency issued citations against 16 of the Dutch farms (**Vreba-Hoff**) in Ohio, Indiana and Michigan, asserting that they had violated clean-water regulations intended to prevent liquid manure and other wastes from leaching into waterways."

Daily Telegram, (1/20/2007): By James Rufus Koren

On Dec. 1, the Michigan Department of Environmental Quality's Water Bureau sent a notice of noncompliance to **Vreba-Hoff**, stating that the dairy had improperly disposed of manure. The notice states that on Nov. 25, manure waste went through a field tile and into a tributary to Bean Creek. The Nov. 25 incident was not the first time **Vreba-Hoff** had been cited for letting manure get into local waterways. In 2004, the DEQ filed a lawsuit against **Vreba-Hoff**, alleging more than 25 improper waste discharges, said DEQ spokesman Bob McCann. That lawsuit was settled with a 2004 consent agreement, and McCann said the dairy has violated that agreement 16 or 20 times with illegal discharges and other issues. (*in reference to Vreba-Hoff*)..... But McCann also said the vast majority of CAFOs in Michigan cooperate more fully with DEQ regulations.

Toledo Blade (7/21/2007); By Tom Henry

Megafarm is cited on water issues at 20 Ohio dairy sites

The complaint was filed because the Ohio EPA "couldn't work out a resolution" with **Vreba-Hoff**, said Dina Pierce, another Ohio EPA spokesman.

News Release from the Michigan Department of Environmental Quality

entitled, "DEQ Takes Action against **Vreba-Hoff**

Contact: Robert McCann (517) 241-7397 **Agency:** Environmental Quality (1/19/2007)

In the materials filed by the Department of Attorney General today, the DEQ alleges that the following violations of the 2004 Consent Judgment have occurred and will continue to occur without action from the Court:

1. Failure to treat all agricultural waste;
2. Land application of untreated agricultural waste;
3. Failure to properly mark available capacity on storage structures;
4. Failure to separate sand from manure;
5. Two unlawful discharges to waters of the state occurring on November 25, 2006, and January 10, 2007;
6. The land application of agricultural waste in the winter;
7. Land application of untreated agricultural waste within the Lime Lake Basin;
8. Failure to submit monthly progress reports; and
9. Failure to maintain a balance between waste production and waste utilization or disposal.

Excerpts from Ohio Department of Agriculture's (ODA) response: Orleton Farms PTI and PTO Application Review dated-12-7-07 with non-ODA commentary

It is clear, the Orleton proposed Mega-dairy Manure Management facilities is undersized. The "Manure Treatment Pond 2" is proposed to be 23% smaller than required. The dry storage area is calculated to be 100% usable vertical stack plus used for double storage of sand components. ODA stated, "This does not appear realistic"

--- non-ODA commentary--- Haven't they installed more than three dozen dairies already just in the state of Ohio? Don't they know how to construct a facility with sufficient capacity? Why is it so undersized? What happens when the facilities overflow?

In Part B6, a major test well is totally omitted. ODA states, "The well log states the well was drilled 3-14-07. Where is the well?"

--- non-ODA commentary--- Don't the applicants portray themselves as experts in their field? How detailed and complete is this plan when such major mistakes are still being made in their SECOND filling?

According to the Executive Summary, the separation between one of the facility ponds and the groundwater aquifer was calculated using the WRONG aquifer. They used a lower aquifer not the highest. ODA states, "Shouldn't the separation be based on the upper most aquifer elevation?"

--- non-ODA commentary--- This calculation error could misrepresent the separation between drinking water and contaminants. Again, aren't they supposed to be the experts? Is our drinking water really going to be protected?

ODA states, "Sheet 12 of 20 references sheet 7 of 20 for a wall section that isn't there."

--- non-ODA commentary--- Don't the applicants portray themselves as experts in their field? How detailed and complete is this plan really when such major mistakes are still being made in there SECOND filling?

ODA asks, "Will the staff gage be a vertical pole or a device laying on the embankment?"

--- non-ODA commentary--- The Michigan Attorney General's office alleged that instead of using the staff gage as prescribed, the staff gage was merely pulled up to misrepresent the lagoon depth instead of emptying said lagoon. Shouldn't the ODA be asking the depth gages to be FIXED to prevent manual manipulation?

ODA states, "Sheet 16 shows the borings for the storm pond in a different location than the geological report. Where are the borings?"

--- non-ODA commentary--- Don't the applicants portray themselves as experts in their field? How detailed and complete is this plan really when such major mistakes are still being made in there SECOND filling?

ODA states, "How was the depth to aquifer determined?" And later states, "Why isn't the site well included in Exhibit G?"

--- non-ODA commentary--- Missing methodology? Don't the applicants portray themselves as experts in their field? How detailed and complete is this plan really when such major mistakes are still being made in there SECOND filling?

What kind of neighbor is Vreba-Hoff to other private recreational lakes?
- Problems with manure management specifically handling & spreading -

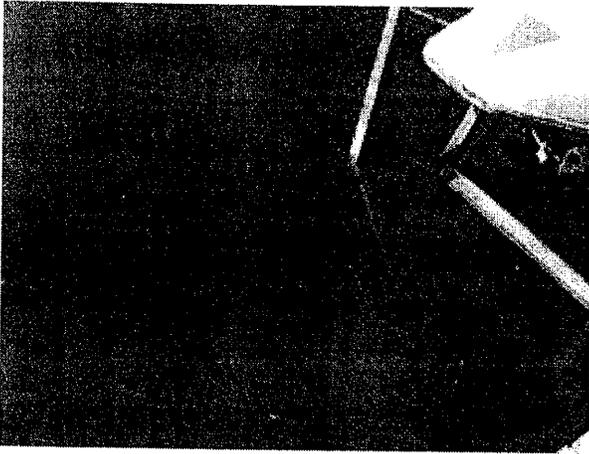
<https://mi.gov/deq>

Contact: Robert McCann (517) 241-7397

Agency: Environmental Quality

December 28, 2004

From November 2002 through March 2004, the DEQ staff documented 25 separate discharges of agricultural waste to area waterways, including tributaries to Bean and Durfee Creeks, and the Lime Lake Inlet.



←Jet Ski on Lift over GREEN water!

Photo courtesy of www.nocafos.org

May 5, 2004 - the lake turned completely green, from excess nutrients and algal bloom.

Hillsdale County, Michigan. The water goes blackish until the algae can start to digest the nitrate and phosphorus pollution, then turns pea green!

The Hillsdale Daily News

Neighbors sniff: Mega dairy plays foul

Jan Bellamy, Staff Writer

517.437.6014

Tuesday, April 3, 2007

You have headaches, sinus problems, constant frustration and anger, disgust with the blackened water," said John Klein, resident of Lime Lake.

"And the odor — your entire lifestyle revolves around the odor, whether you will have to close the windows, or guests will leave your home because they can't stand the smell," said Klein. "Remember, what you are smelling is really emissions of hydrogen sulfide, methane and ammonia."

Klein is also president of the Environmentally Concerned Citizens of South Central Michigan, which monitors odors and discharges at the facility and on area farmlands.

.....
http://www.michigan.gov/deq/0,1607,7-135-3308_3323-107093--,00.html

Contact: Robert McCann (517) 241-7397

Agency: Environmental Quality

December 28, 2004

Effluent from the aerated pond will be discharged to a reduced land area through an advanced irrigation system calibrated so that no unlawful discharge occurs during or after irrigation. Vreba-Hoff has also agreed to immediately cease the land application of untreated agricultural waste to the Lime Lake basin area. Once the wastewater treatment system is in use, the land application of untreated agricultural waste in other areas will cease as well.

.....
From www.nocafos.org

August 13-21, 2003

-In Hillsdale County, during the same episode of high heat and humidity, another dairy CAFO applied liquid manure on area fields. This prompted residents of Lime Lake to call in odor complaints to MDEQ and close doors and windows. MDEQ investigated but no action was taken and there was no relief from fumes for several days. One resident reported that he smelled the liquid manure "50% of the time" throughout the year. Four long-time residents of this small lake community reported feelings of sadness, depression, anger at the recurring stench which is worse in mornings, evenings and at night when MDEQ is not present. They report their lives have altered since the construction of this large dairy CAFO ¼ mile uphill from their homes on Lime Lake in 2001.

Lime Lake residents expressed concern over repeated discharges of foul smelling, brown and green water into the inlet of Lime Lake. Water samples were taken by volunteers of ECCSCM , (Environmentally Concerned Citizens of South Central Michigan) from 2001-2003. Water samples taken at Lime Lake Inlets, showed 42 of 82 water samples violated Michigan's water quality standards for either E.coli or dissolved oxygen. (For more information see nocafos.org "water sampling data".)

Waste runoff a worry with mega-farms

By Chris Christoff

Detroit Free Press (7/22/03)

But for all of the technology, a very low-tech method disposes of the nearly 40 million gallons of liquefied manure each year. It is stored in huge concrete-lined ponds and spread on 6,000 acres of farmland, most of it owned by other farmers

John Klein is president of Environmentally Concerned Citizens of South Central Michigan, which regularly samples water from drains and streams around the Vreba-Hoff CAFOs and others in Hillsdale and Lenawee counties.

Klein lives on Lime Lake a mile from one of the two Vreba-Hoff farms. Klein said manure odors from the farms force him at times to close up his house, and that contamination of Lime Lake would make property values "around zero." He said Vanderhoff has not done enough to stop pollution.

"Farmers will tell you that you're in the country, get used to country smells," Klein said. "Well, we've been here since 1985. This is not your typical country smell. "They point to the right to farm, but I've got a right to live, too," Klein said.

Damage Mega-Dairies cause on local roads!

--- Article excerpts ---

Dayton Daily News (12/10/07) By Ben Sutherly

Livestock farms can mean rough roads to some officials

Lack of zoning for agriculture presents issues for counties in northern Ohio

DEFIANCE — In the late 1990s, Defiance County got its first large dairy farmbecause of road usage, wear and tear ... \$130,000 in upgrades and repairs were needed in 2004 and 2005 "Nearly \$75,000 of that money came from an Ohio Public Works Commission no-interest loan. The rest came from the township, which has collected about \$33,000 in the first four years of a 10-year tax-financing arrangement", Warren Schlatter said.

"Every other type of development that causes damage to the roads has a mechanism by which we make sure that (the cost of the) damage is not passed on to the taxpayer," Madison County Engineer David Brand said. "That doesn't exist in the case of these farms."

"If a Meijer comes to town and they need infrastructure help, they are made to pay for it. When a megadairy comes to town, it hides under the exemption of agriculture," Torrey said.

Dennis Verhoff is a farmer and a trustee in Putnam County's Palmer Twp. — a township with a \$100,000 annual budget for road maintenance that's facing a \$500,000 road upgrade brought on by a dairy farm with 1,100 cows.

Vreba-Hoff's Conway, who believes the large farms should be seen as economic development opportunities in rural counties, agrees with local officials on one point.

"The entire way we look at financing infrastructure improvements needs to be evaluated," she said.

Toledo Blade (7/11/04) By JANE SCHMUCKER

Mega dairy's use of roads understated -

Officials say local taxes unable to cover damages

In announcing plans for what would be Ohio's largest dairy farm, its Wauseon developer vastly underestimated the impact on rural roads - a growing concern of many area officials who say local taxes from dairy farms don't cover the damage they do to the roads.

Vreba-Hoff Dairy Development's estimates of the number of truck trips for a proposed 4,500-cow dairy in Hardin County were off by thousands of trips per year, according to a Blade review.

"I believe it is just a math mistake, and it would be my mistake," said Karen Miller, the Vreba-Hoff employee who signed last month's letter from the company to Hardin County commissioners and Marion Township trustees announcing plans for the dairy.

However, other letters from Vreba-Hoff to county and township officials have low-balled traffic figures as well, though to a lesser extent, according to a review by Ohio State University dairy management expert Normand St-Pierre at The Blade's request.

"A misleading courtesy is not very courteous," Ohio State's Mr. St-Pierre said. "I don't want that kind of courtesy."

The wear and tear from semis and other heavy equipment on rural roads is the biggest concern that county and township officials have about dairy farms, said Gerald Potter, a Hardin County commissioner.

Consider Manders Dairy near Weston in Wood County.

It is billed \$14,330 a year in real estate taxes on its dairy buildings and the 38 acres they sit on, which the county auditor values at \$989,100. Of that annual bill, \$649 goes to a Liberty Township road levy, \$763 goes to the county general fund, and \$522 goes to the Liberty Township general fund levy. General fund money is sometimes used for road and bridge projects in some areas.

"It would be difficult for those numbers to generate enough money to pay for the wear and tear," Wood County Engineer Tony Allion said.

The difference in heavy traffic is more than five-fold. From a 100-acre field, corn sold as grain might fill 18 semi trailers. The same field of corn sold to a dairy as silage should fill at least 100 heavy trucks.

"And unfortunately that's exactly where we want these dairy farms is out in the boonies," Paulding County Engineer Mark Stockman said.

But rural roads are not built to handle the thousands of semi tractor and heavy truck trips a year that the largest dairy farms require. Mr. Stockman said he considers the damage to roads from one semi tractor trip equivalent to 1,000 car trips.

The Great American Dream ?

Why are CAFO's so abundant in Ohio, Michigan and Indiana?

Great Lakes Bulletin News Service, (August 6, 2004): By Stephanie Rudolph

Stephen Vanderhoff's life story reflects the Great American Dream. The 33-year-old son of Dutch natives who immigrated to Michigan in the 1960s, Mr. Vanderhoff grew up on a farm that had just five cows. Today he owns nearly 6,000 of them.

Mr. Vanderhoff's family built a business in Hillsdale County, in south central Michigan, by taking advantage of land prices vastly cheaper, and environmental regulations far less stringent, than those in their native Netherlands. They now operate two of the state's largest dairy farms, which operate under the name **Vreba-Hoff Farms**. Their cows are worth \$4.5 million and produce 40,000 gallons of milk a day. The family also has a consulting business that, so far, has taught about 50 other Dutch families how to do what they did — move to America and become wealthy by building concentrated animal feeding operations, or CAFOs.

Although mainstream agriculture views CAFOs as models of farm efficiency, productivity, and profitability, many people living near such factory farms see them as major polluters that produce and fail to properly manage a deluge of manure. That is why for the past four years citizens near **the Vreba-Hoff Farms** have continually tested the local waterways and constantly filed complaints with the Michigan Department of Environmental Quality. They allege that manure from the **Vreba-Hoff operations** and eight other nearby livestock factories — which generate a stench so foul that clothes exposed to it sometimes need repeated laundering before they are wearable again — seriously harm local streams and lakes. Their continued testing and complaining gradually brought close DEQ scrutiny to all 10 CAFOs in the area.

So Mr. Vanderhoff's dream is now trapped in its own nightmare, which includes a DEQ water pollution lawsuit, continued community opposition, shifting federal and state regulations, and a new federal permitting program administered by the state for overseeing CAFOs. Yet, despite the increasing scrutiny, some environmentalists and local residents say that his and the other farms remain environmentally damaging and terrible to live near. They assert that far too much of the 120,000 gallons of manure the Vreba-Hoff farms produce every day finds its way into local waterways, and that the phosphorous, nitrogen, *e coli* bacteria, and other pollutants the manure contains is harming lakes, streams, and the aquatic life that depend on them.

Janet Kauffman, a local resident and member of Environmentally Concerned Citizens of South Central Michigan, a group that wants to protect the environment from CAFOs, says it is hard to see much progress since the DEQ began issuing permits early last year.

"A year and a half later," Ms. Kauffman said, "even the dairies recognize a problem, but nobody has a solution."

Little Regulation, Plentiful Profit, Growing Confusion

Mr. Vanderhoff insists that he is now doing everything the DEQ requests, including expanding his manure holding lagoons, developing a partial waste treatment system, and halting wintertime manure spraying, a practice that often leads to serious runoff problems.

And despite a \$50,000 DEQ fine and continuing pollution and legal problems, the two operations, known as **Vreba-Hoff I** and II, remain financially successful. That is because CAFOs, like Wal-Mart stores, get rich through high-volume sales of low-priced products. They eschew traditional pasture grazing in favor of crowding huge numbers of cows into sprawling buildings equipped with expensive machinery that feeds and milks in assembly-line fashion. But unlike the more traditional, albeit less profitable, dairy farms they are driving out of business, CAFOs produce so much manure that many of them have difficulty properly disposing of it. Most operations temporarily store manure in lagoons and use tanker trucks to transport and spray it onto nearby farm fields.

For decades, Michigan CAFOs were completely unregulated and free to pollute because the state failed to enforce federal regulations passed in 1976. While it lasted, that lack of regulation contributed to a CAFO building boom in Michigan; according to the EPA, Michigan had no large CAFOs in 1976; today it has about 160. Now, responding to the growing uproar about their smell and environmental damage, the state is scrambling to impose long-delayed regulations on them.

"People get away with murder if no one seeks to enforce the law," said Anne Woiwode, who, as director of the Sierra Club's Michigan chapter, has long campaigned to bring regulation to Michigan's factory farms. "The state was overtly violating the Clean Water Act in respect to CAFOs."

Under strong pressure from a variety of citizen groups, including the Sierra Club, the Michigan Environmental Council, the Michigan Land Use Institute, and from the U.S. Environmental Protection Agency, former Republican Governor John Engler ordered the state DEQ to begin issuing federally required CAFO permits in January of 2002. The process was slowed, however, when the Bush administration revised federal CAFO rules in 2003, forcing the state to do the same thing.

Now most Michigan CAFOs are in regulatory limbo. Only about two dozen have actually received permits, according to a DEQ official. And while residents living around CAFOs agree that the DEQ now takes the problem seriously — the DEQ last week filed its second pollution lawsuit against a CAFO owned by a Vanderhoff family member in Dover Township, near Adrian — some feel that the department's new permitting program will yield little environmental improvement. Meanwhile, many CAFO farmers are rushing to catch up with the new regulations. Mr. Vanderhoff complains that he still does not know what qualifies as a violation of the law, and the DEQ admits that the system is quite complicated.

An Offer They Can't Refuse

Environmentalists who closely study CAFOs say that unless more stringent steps are taken to eliminate the water pollution that often accompanies them, water contamination will continue to grow. The combination of very large production and minimal costs for pollution control make CAFO farming a growth industry.

In fact, as the Vanderhoff family discovered, the industry is so profitable that it is not only driving most dairy farmers to switch to CAFOs, it is attracting people from faraway places to seek their fortunes with it. That includes the Netherlands, where land is expensive, environmental regulations are tight, and farmers must purchase "milk quotas" to sell their product. Because CAFOs are close to being either illegal or impossible there, Dutch dairy farmers are leaving the homeland and heading for the American heartland.

To these farmers, America is a land of unprecedented opportunity. Many are choosing to liquidate their assets in a country where a cow is worth \$34,000 and take their cash and their families to America. They are helped by an obscure immigration law that allows them emigrate in exchange for making a minimum \$1 million business investment in the United States. These farmers, as a result, are leveraging small, modestly profitable, but quite valuable European dairy farms into large, highly profitable, and polluting American ones.

The Vanderhoffs capitalized on this opportunity by building their own farms and then showing their fellow countrymen how to do the same thing. Cecilia Conway, Stephen Vanderhoff's sister, is a **partner in Vreba-Hoff Dairy Development**, a company that actively recruits Dutch farmers to come to the United States for a fee that she wouldn't disclose. So far 37 families, most of them Dutch and all aided by Ms. Conway's company, have moved to Michigan, Ohio, or Indiana to start CAFOs. Seven of them are in Michigan; 11 others are in development. Ms. Conway says that every farm helped by her company has succeeded.

The migration of Dutch farmers to the United States is now so strong that it has attracted the attention of Dutch Public Television, which visited south central Michigan in mid-July. Marjan Moolenaar, a correspondent for Dutch Public Television, said she was visiting the area because "50 families have moved to Indiana, Ohio, and Michigan and there are more coming" and yet "nobody seems to know about it."

Learning Curve

Since a new federal law began requiring farmers to obtain a CAFO permit before they start operation, Ms. Conway says that her consulting business has slowed. She also admits that the new regulations and increasing public scrutiny of her family's farms underline the fact that the company has not been perfect.

"We've made our mistakes in the past," she said. But she blamed most of those problems on the new regulations, which she said are very complicated. She also cited problems with advice **the Vreba-Hoff development company** received from its own consultants, who she said were poorly informed. Ms. Conway also admits there was "an error made in manure application, there was a discharge. Adjustments needed to be made." She said she is confident that her company is learning and such errors will not continue.

But John Klein, president of Environmentally Concerned Citizens of South Central Michigan, who lives near the **larger Vreba-Hoff operation**, questions why CAFOs are essentially sticking their neighbors with the bill for their own learning curve. "We're paying the price of their education," he complained.

Just how much Mr. Vanderhoff is learning is unclear, though. Recently, when the DEQ deemed two local bodies of water near the Vreba-Hoff Farms as "impaired," Mr. Vanderhoff insisted he was not responsible.

"They might be impaired, but it is me?" he asked. "I don't think so." He says broken septic systems or wetlands are more likely causing the pollution. He says that what is actually generating all the criticism about his farms are not environmental issues but the fact that many people find farms such as his socially unacceptable.

Mr. Vanderhoff, some of his neighbors, and environmentalists who say they want to clean up livestock factories such as his agree on one thing: The present regulations are inadequate. Mr. Vanderhoff thinks that making the definition of "discharge" less broad will help his operation.

"When we're talking about zero discharge, we're creating a situation that is almost unlivable," he claimed. He added that, in his view, state and federal regulations requiring "zero discharge", which means that farms cannot release any pollutants that violate water quality standards, is unrealistic and extreme.

Environmentalists agree that the no-discharge policy is not working, but for different reasons. They say that the polluting discharges will stop only when farmers are forced to practice more effective and more expensive waste management techniques. As Mrs. Kauffman, coordinator of water testing for the ECCSM puts it, "There are so many alternative ways to handle waste."

Star Press, Muncie, IN: By Seth Slaybaugh,

"The overabundance of manure in the Netherlands is a major environmental problem that the government is serious about tackling, according to "Manure and the Environment," a report published in 2001 by the Dutch Ministry of Agriculture, Nature Management and Fisheries."... "Niessen is one of dozens of European dairy farmers – mostly Dutch – who have moved to Indiana, Michigan and Ohio since the late 1990s, in part because there is an excess of manure in the Netherlands." "Together, the immigrants have started 11 concentrated animal feeding operations (CAFOs) in Indiana housing 12,625 dairy cows. That represents more than 8% of Indiana's dairy cow population. **Vreba-Hoff Dairy Development**, of Wauseon, Ohio is steering the European farmers to the three states."... "The public is making a stink over the new Dutch dairies in all three states because of their size, odors, manure spills, construction violations and other concerns."

Washington Post, (July 29, 2007) By: Kari Lydersen

HUDSON, Mich. -- Peter van der Vegt knew he'd be "milking 70 cows for the rest of my life" if he continued to work at his family's dairy farm in the Netherlands, where milk production ceilings and land shortages add as much as \$40,000 to the cost of a cow.

"I wanted a challenge; I wanted to live the American dream," van der Vegt said. So, in 1999, he moved to Angola, Ind., to run a 600-head dairy operation set up by Vreba-Hoff Dairy Development, a company run by six second-generation Dutch siblings from Michigan and three of their cousins in the Netherlands

With **Vreba-Hoff's** help, almost 50 Dutch families have set up dairy farms in Michigan, Indiana and Ohio over the past decade. The company oversaw the design and construction of the dairy for van der Vegt and helped him obtain financing and immigration papers. Now van der Vegt, 42, is moving to a 3,500-cow operation near South Bend, Ind.

They come here just so they can keep dairy farming, because they love it," said Cecilia Conway, who runs **Vreba-Hoff's** U.S. operations with her sister and four brothers. She said the dairies help stimulate stagnant rural economies.

But residents are not exactly rolling out the welcome mat.

The 6,000-cow operation **Vreba-Hoff** runs in south-central Michigan and many of its other dairies have clashed with state regulators and residents. People complain of an overpowering stench and environmental pollution from the "Dutch dairies," which generally house several thousand cows in what are known as concentrated animal feeding operations and produce hundreds of thousands of gallons of manure each day.

The first **Vreba-Hoff** dairy, near Hudson, Mich., opened in 1997. When a second facility opened nearby in 2000, residents formed a group called Environmentally Concerned Citizens of South Central Michigan to oppose the company.

Most of the farmers recruited by **Vreba-Hoff** had much smaller pasture-based operations in the Netherlands. Critics say they are ill-equipped to operate the "turnkey" dairies set up by Vreba-Hoff.

"These are huge, polluting facilities, and they have no experience running them," said Kathy Melmoth, 55, a registered nurse with a small farm in the area.

The Michigan Department of Environmental Quality has been in a legal tug of war with Vreba-Hoff for several years, filing a lawsuit in 2003 that resulted in a 2004 consent decree in which the company agreed to build an on-site waste treatment facility. This year, the department asked a judge to hold the company in contempt of court for violating the decree, asserting that **Vreba-Hoff** was still failing to correctly dispose of manure. Robert McCann, a spokesman for the department, said it has had problems with other dairies set up by **Vreba-Hoff**.

Conway said many of the allegations of violations are exaggerated. She blames the problems on flawed waste-treatment machinery and heavy rainfall, which caused a manure backup last fall because it cannot be spread on fields during rain.

"We had some hiccups, we've admitted some mistakes, but we're moving forward," she said.

When the **Vreba-Hoff** cows leave their stalls to be milked three times a day, the manure blanketing the floor is vacuumed out and trucked to an on-site treatment plant and then to storage lagoons. The treated manure is used as fertilizer, sprayed over fields or injected into the soil.

Opponents say that when the dairy is spreading manure on the fields, they feel like prisoners in their homes. They complain of breathing problems, burning eyes, sore throats and nausea.

"You can't hang laundry; you have to close all the windows tight; you can't have picnics," said Lynn Henning, 49, a corn and soybean farmer who also works for the Sierra Club. Henning runs a water sampling program in the streams around the **Vreba-Hoff** dairy, where tests have shown elevated E. coli and low oxygen levels caused by algae blooms fed by nitrogen and phosphorus from manure and other farm waste.

Conway said the odor issue is subjective and noted that people who live next to the farm, including her sister and the owners of a bed-and-breakfast, have no complaints.

Meanwhile, the dairies have split the community. "There are conflicts that didn't exist before," said resident Janet Kauffman, 62, a professor at Eastern Michigan University. "There's this whole level of resentment and hostility that's new. I resent [other residents'] raising calves for Vreba-Hoff; and they resent us taking pictures of the operations. It's really sad when that happens in a small community."

In a Power Point Presentation made on July 24, 2006, by Cecilia Conway, Director of Customer Relations, **Vreba-Hoff Dairy Development**, to the NACAA at their annual meeting, the cost per cow to start up a dairy in Netherlands versus Ohio is \$41,000 versus \$7,100 --- attributed to milking quota's and facilities infrastructure required by manure handling laws as well as real estate cost differences.

Active Citizens for Responsible Environmentalism calls on State and Federal Legislators for Reform

State Reform

Sitting Criteria and Operational Standards

While it is true ACRE believes the sitting criteria for CAFO's desperately need to be redefined with much emphasis on groundwater/drinking water protection, manure treatment/handling reform must be paramount!!!

Until the State of Ohio legislature can revise the sitting and operational criteria ACRE is calling for:

- Ban on spreading of manure/waste products during winter four months for all factory farms over 700 head until new operating standards can be implemented

And to be included in the citing and operational criteria revision ACRE is calling for

- Require Zero run-off to be enforced – ie complete sewer treatment not partial for all farms over 700 head.
- Ban on spreading of manure/waste products during winter four months for all factory farms over 700 head.
- Adding local “host community” road repair/improvement requirements of all factory farms over 700 head. This should be in the form of an annual payment to local counties as long as the dairy is operating.

Federal Reform

ACRE is calling on US Rep Debra Pryce's office to investigate and implement as appropriate a period of environmental probation for all business entities or individuals accessing the US economy through the process known as “Immigrant Petition by Alien Entrepreneur” (application number 526). The probation should be for a period of 24 months and trigger a revocation of the Work Visa / Citizenship process if the entity or associated individuals violate federal environmental laws.

Currently, this process requires a \$1,435 application fee, proof of a million dollar investment and employing at least 10 individuals. There is no environmental component. That needs to change.

Instructions

Please read these instructions carefully to properly complete this form. If you need more space to complete an answer, use a separate sheet(s) of paper. Write your name and Alien Registration Number (A #), if any, at the top of each sheet of paper and indicate the section and number of the item to which the answer refers.

What Is The Purpose of This Form I-526?

This form is for use by an entrepreneur to petition the U.S. Citizenship and Immigration Services (USCIS) for status as an immigrant to the United States pursuant to section 203(b)(5) of the Immigration and Nationality Act, as amended. That section of the law pertains to immigrant visas for an investor in a new commercial enterprise.

Who May File Form I-526?

You may file this petition for yourself if you have established a new commercial enterprise:

1. In which you will engage in a managerial or policy-making capacity, and
2. In which you have invested or are actively in the process of investing the amount required for the area in which the enterprise is located, and
3. Which will benefit the U.S. economy, and
4. Which will create full-time employment in the United States for at least ten U.S. citizens, permanent residents, or other immigrants authorized to be employed, other than yourself, your spouse, your sons or daughters, or any nonimmigrant aliens.

The establishment of a new commercial enterprise may include:

1. Creation of a new business;
2. The purchase of an existing business with simultaneous or subsequent restructuring or reorganization resulting in a new commercial enterprise; or
3. The expansion of an existing business through investment of the amount required, so that a substantial change (at least 40 percent) in either the net worth, number of employees, or both, results.

The amount of investment required in a particular area is set by regulation. Unless adjusted downward for targeted areas or upward for areas of high employment, the amount of investment shall be **\$1,000,000 (one million dollars)**. You may obtain additional information from our website at www.uscis.gov, or an American embassy or consulate abroad.

General Instructions

Fill Out the Form I-526

1. Type or print legibly in black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
3. Answer all questions fully and accurately. State that an item is not applicable with "N/A." If the answer is none, write "none."

Initial Evidence Requirements.

The following evidence must be filed with your petition:

1. Evidence that you have established a lawful business entity under the laws of the jurisdiction in the United States in which it is located, or, if you have made an investment in an existing business, evidence that your investment has caused a substantial (at least 40 percent) increase in the net worth of the business, the number of employees, or both.

Such evidence shall consist of copies of articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document; a certificate evidencing authority to do business in a state or municipality, or if such is not required, a statement to that effect; or evidence that the required amount of capital was transferred to an existing business resulting in a substantial increase in the net worth or number of employees, or both.

This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records or other similar instruments, agreements or documents evidencing the investment and the resulting substantial change.

2. Evidence, if applicable, that your enterprise has been established in a targeted employment area. A targeted employment area is defined as a rural area or an area which has experienced high unemployment of at least 150 percent of the national average rate. A rural area is an area not within a metropolitan statistical area or not within the outer boundary of any city or town having a population of 20,000 or more.
3. Evidence that you have invested or are actively in the process of investing the amount required for the area in which the business is located.

Such evidence may include, but need not be limited to, copies of bank statements, evidence of assets that have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement, or other evidence of borrowing that is secured by assets of the petitioner.

4. Evidence that capital is obtained through lawful means. The petition must be accompanied, as applicable, by: foreign business registration records, tax returns of any kind filed within the last five years in or outside the United States, evidence of other sources of capital, or certified copies of any judgment, pending governmental civil or criminal actions, or private civil actions against the petitioner from any court in or outside the United States within the past 15 years.
5. Evidence that the enterprise will create at least ten full-time positions for U.S. citizens, permanent residents, or aliens lawfully authorized to be employed (except yourself, your spouse, sons, or daughters, and any nonimmigrant aliens). Such evidence may consist of copies of relevant tax records, Forms I-9, or other similar documents, if the employees have already been hired, or a business plan showing when such employees will be hired within the next two years.
6. Evidence that you are or will be engaged in the management of the enterprise, either through the exercise of day-to-day managerial control or through policy formulation. Such evidence may include a statement of your position title and a complete description of your duties, evidence that you are a corporate officer or hold a seat on the board of directors, or, if the new enterprise is a partnership, evidence that you are engaged in either direct management or policy-making activities.

Translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies. Unless specifically required that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

Where To File?

If the new commercial enterprise is located, or will principally be doing business in: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky,

Louisiana, Mississippi, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Carolina, South Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, or Texas, Vermont, the U.S. Virgin Islands, Virginia or West Virginia, mail the petition to:

**USCIS Texas Service Center
P.O. Box 852135
Mesquite, TX 75185-2135**

If the new commercial enterprise is located, or will principally be doing business in: Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin or Wyoming, mail the petition to:

**USCIS California Service Center
P.O. Box 10140
Laguna Niguel, CA 92607-0526**

What Is the Filing Fee?

The filing fee for the Form I-526 is **\$1,435.00**.

Use the following guidelines when you prepare your check or money order for the Form I-526:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security**, unless:
 - A. If you live in Guam and are filing your petition there, make it payable to **Treasurer, Guam**.
 - B. If you live in the U.S. Virgin Islands and are filing your petition there, make it payable to **Commissioner of Finance of the Virgin Islands**.
 - C. If you live outside the United States, Guam, or the U.S. Virgin Islands, contact the nearest U.S. consulate or embassy for instructions on the method of payment.

NOTE: Please spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

How to Check If the Fees Are Correct.

The form fee on this form is current as of the edition date appearing in the lower right corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our website at www.uscis.gov, select "Immigration Forms" and check the appropriate fee;

2. Review the Fee Schedule included in your form package, if you called us to request the form; or
3. Telephone our National Customer Service Center at 1-800-375-5283 and ask for the fee information.

Address Changes

If you change your address and you have an application or petition pending with USCIS, you may change your address on-line at www.uscis.gov, click on "Change your address with USCIS" and follow the prompts or by completing and mailing Form AR-11, Alien's Change of Address Card, to:

**U.S. Citizenship and Immigration Services
Change of Address
P.O. Box 7134
London, KY 40742-7134**

For commercial overnight or fast freight services only, mail to:

**U.S. Citizenship and Immigration Services
Change of Address
1084-I South Laurel Road
London, KY 40744**

Processing Information

Acceptance.

Any petition that is not signed or accompanied by the correct fee will be rejected with a notice that it is deficient. You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by USCIS.

Initial processing.

Once the Form I-526 has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your Form I-526.

Requests for more information or interview.

We may request more information or evidence or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. The decision on the Form I-526 involves a determination of whether you have established eligibility for the requested benefit. You will be notified of the decision in writing.

Approval.

If you have established that you qualify for investor status, the petition will be approved. If you have requested that the petition be forwarded to an American embassy or consulate abroad, the petition will be sent there unless that consulate does not issue immigrant visas. If you are in the United States and state that you will apply for adjustment of status, and the evidence indicates you are not eligible for adjustment, the petition will be sent to an American embassy or consulate abroad. You will be notified in writing of the approval of the petition and where it has been sent, and the reason for sending it to a place other than the one requested, if applicable.

Meaning of petition approval.

Approval of a petition shows only that you have established that you have made a qualifying investment. It does not guarantee that the American embassy or consulate will issue the immigrant visa. There are other requirements that must be met before a visa can be issued. The American embassy or consulate will notify you of those requirements. Immigrant status granted based on this petition will be conditional. Two years after entry, the conditional investor will have to apply for the removal of conditions based on the ongoing nature of the investment.

Denial.

If you have not established that you qualify for the benefit sought, the petition will be denied. You will be notified in writing of the reasons for the denial.

USCIS Forms and Information

To order USCIS forms, call our toll-free number at 1-800-870-3676. You can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at 1-800-375-5283 or visiting our internet website at www.uscis.gov.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass**. To access the system, visit our website. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Senator Steve Austria
Statehouse, Room 132
Columbus, OH 43215

Dear Senator Austria,

We greatly appreciate your inquiries on our behalf regarding the proposed Orleton CAFO near our communities and school. We also extend our thanks to Mr. Ward of the Ohio Department of Agriculture (ODA) for his letter dated August 4, 2008, and are hopeful for a continued meaningful dialog with the department. Unfortunately, we find several of the assertions within the letter do not coincide with published scientific and historical information. Our purpose with this writing is to provide this information to insure you have an accurate understanding of the basis for our concerns regarding the proposed Orleton CAFO.

Although we who endorse this letter are a diverse group of your constituents, our commonality is in the knowledge the long term economic and environmental interests of Madison County are in conflict with the proposed CAFO. Those that are farmers are gravely concerned about agriculture's continued vitality and acceptance in view of the damage CAFOs are causing across Ohio. Our goal is to dispel the stale rhetoric on both sides of the question of industrialized agriculture, in favor of a fact based dialog which we're confident will bring substantive common sense changes to the regulatory landscape.

It is our hope you'll join us, along with U.S. Fish and Wildlife, the Ohio EPA, and our Soil and Water district office; all of whom express serious concerns about building this facility within the Darby Watershed. Thank you for your attention to this matter, and know we anxiously await your response.

Sincerely,

The residents of Lake Choctaw and rural Madison County

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

- I. **Mr. Ward writes:** *“This application requires the farm to adhere to over 250 pages of regulations that are considered to be the most stringent in the United States.”*

Response: Federal law dictates the framework of state’s permitting programs. Therefore, rules such as requiring geological explorations, manure and insect management plans, and detailed engineering drawings are not unique to Ohio. To the credit of the ODA their rules go beyond the federal minimums in some aspects, but to say they are the most stringent in the United States may be no more hubris. For example, several important agricultural states have recognized the need to protect public health through regulating Hydrogen Sulfide emissions from CAFOS. Such protections are noticeably absent from Ohio law. The following is a synopsis of other state’s additional health protections:

- The Minnesota Pollution Control Agency has established an ambient air quality standard for hydrogen sulfide at the property line of operations larger than 1000 animal units, and also requires these facilities to include an Air Emission Plan in their water quality permit. Furthermore, the Nebraska Department of Environmental Quality has implemented an ambient air quality standard for total reduced sulfur, which includes hydrogen sulfide from CAFOs.
- In addition to air emissions several states have also recognized the need to regulate odor from CAFOs. Colorado has established a dilution standard of 7:1, meaning that an air sample collected at the CAFO’s property line is diluted with seven parts air. If odor can still be detected after dilution by an olfactometer it is deemed a violation. Missouri also uses an olfactometer to enforce odor regulations.
- The North Carolina Division of Air Quality uses a complaint response system that requires formal investigation of odor complaints. If a determination of an “Objectionable Odor” is made, then additional management practices have to be approved and installed. If management practices fail, then the facility must install add-on control technology.
- By statute Indiana allows Counties the liberty to enact ordinances for CAFO setbacks. Ordinances creating minimum setbacks based on the number of animal units from “...*churches, daycares, schools, and medical facilities because the people that frequent these facilities (children, elderly, and ill) have an increased need for protection from air emissions because of their heightened susceptibility.*” Similar common sense ordinances or statues would obviously preclude the Orleton CAFO from being sited only 1/3 or mile up wind of our community’s Elementary School, or on a property that drains into a National Scenic waterway containing 37 rare and endangered species.

Finally, many states also have nuisance laws that allow citizens to sue for nuisance violations, including objectionable odor. In contrast, Ohio statutes (3767.13(D), 929.04,

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

903.13) have a combined affect of making citizen suits all but impossible. We have no comprehensive comparison between Ohio and other state's regulations. However the absence of CAFO emissions regulations, a lack of other common sense site and setback standards, and the virtual immunity of CAFOs from nuisance suits are indicative of Ohio's regulatory inadequacy. Ohio must join other states in doing more to protect the environment, communities, and our most vulnerable citizens from industrialized agriculture.

II. **Mr. Ward writes:** *“For the first time, specialized agriculture inspectors enforce regulations...”*

Response: The available historical data shows Ohio is not vigorously enforcing the regulations. For example, over a 4 year span ending July 2006, Ohio enforcement actions against animal feed operations cost the operators a total of \$6,660.81. During the same period the U.S. EPA found Ohio AFOs/CAFOs had violated the law on numerous occasions, which ultimately cost these operations over \$1,314,000.00 in compliance costs. The U.S. EPA found more Ohio operations in violation than anywhere else in the United States. Any prudent person must ask themselves why these violations were not addressed by the ODA and OEPA, leaving the federal government to step in and protect the environment. More recent data suggests a continued use of ineffectual deficiency notices and infrequent inconsequential fines against CAFOs. Even if Ohio had *“...the most stringent regulations in the United States,”* they offer no protection to the environment or the public if they're not enforced, or fail to be adequate deterrents against violations.

III. **Mr. Ward writes:** *“There are currently 168 permitted farms in Ohio and, since the ODA began regulating large livestock and poultry farms 5 1/2 years ago, there has been only one fly complaint and two odor complaints at a permitted dairy.”*

Response: This statement attempts to portray Ohio CAFOs and AFOs as environmentally benign. However, the statistics reveal a very different reality. Available historical data between 2002 and 2006 reveals numerous odor complaints, **an average of 7 sewage discharges per month from these operations into the waters of the state, and over 1 fish kill per month during this time period.** By any reasonable measure the prescribed best management practices, the facility operators, and the ODA have failed to protect the environment and the public. These statistics demonstrate how irresponsible it is to even contemplate building the Orleton CAFO within the Darby watershed. It's a certainty a discharge will ultimately occur and destroy a national scenic river along with 37 rare and endangered species.

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

- IV. **Regarding air quality concerns Mr. Ward writes:** *“...the nearest residence to Orleton Farms would be at least one mile away, the Choctaw Lake NE homes are two miles from the proposed manure processing facility and three miles from the proposed dairy barns. ...Monroe Elementary School is two miles from the proposed manure processing facility and 1.3 miles from the proposed dairy barns...”*

Response: These statements ignore the fact that all tillable property of the facility is part of the manure management system, since spreading (land-applying) the sewage on the property IS the ultimate means of disposing/managing the waste. Based on U.S. EPA emission models, the emissions from land-application of waste constitute an enormous percentage of the total hazardous emissions from these facilities. Therefore, the reality is numerous homes along Milford Center road are within 800 feet, the Choctaw Lake community within 1.15 miles, and Monroe Elementary 1/3 of a mile down wind from these emission sources.

In addition, the ODA cited an important air quality study conducted by the University of Iowa in attempting to assuage our health concerns regarding emissions from the proposed CAFO. However, critical conclusions from the Iowa study group were omitted from the ODA response. For example the study asserts the following:

- *“With current animal production practices, stored manure must be removed and land-applied. During these times hydrogen sulfide, ammonia and odor levels at or near production facilities may be significantly higher than during normal conditions.”*
- *“Hydrogen sulfide and ammonia are recognized degradation products of animal manure and urine (See Chapter 3.4 in the full report). Both of these gases have been measured in the general vicinity of livestock operations at concentrations of potential health concern for rural residents, under prolonged exposure (See Chapter 8.0).”*
- *“The World Health Organization lists hydrogen sulfide as a toxic hazard in many environments, and recommends specific exposure limits. The ATSDR lists hydrogen sulfide and ammonia on its registry of toxic substances under its federal mandate to protect the public health according to the Comprehensive Environmental Response, Compensation, and Liability Act...” “Furthermore, the ATSDR has published Minimum Risk Levels (MRL’s) for these substances to protect the public’s health.1”*
- *“While emissions from CAFOs fluctuate over time, they produce chronic rather than acute exposures. Rather than representing single doses, these exposures are recurring and may persist for days with each episode.*

The National Institutes of Health conducted a study of children attending Elementary Schools near CAFOs and concluded:

“A significant difference was found in the prevalence of physician-diagnosed asthma among students in the two schools studied. In the study school, located near a CAFO, the

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

asthma prevalence was quite high, 19.7%, approaching the prevalence of asthma reported among inner-city socioeconomically disadvantaged children.”

Furthermore, the American Public Health Association reviewed all of the available scientific research and concluded that although additional data and research are required, recommended a moratorium on the construction of CAFOs citing:

“...encouraging as a precautionary principle--"that public health decisions must often be made in the absence of scientific certainty, or in the absence of perfect information"--action to prevent potential harm to reproductive health, infants and children, even if some cause and effect relationships have not been established with scientific certainty;42 while noting that children suffer disproportionately from asthma; while fetuses, infants and children are more vulnerable to adverse impacts from bacterial and antimicrobial-resistant infections,43-45 as well as from exposure to neurotoxins,46 all health impacts to which existing science suggests that emissions from CAFOs may contribute;... ”

In public policy statements from the Federal Farm Bureau Federation, as in the letter from the ODA, the phrase “sound science” is used as a justification to oppose any additional meaningful regulations to reduce the health and environmental impacts of CAFOs. This rhetoric simply doesn’t withstand a thorough review of the scientific literature; period. To allow this massive agricultural facility so close to the communities of Lake Choctaw, Plumwood, and an Elementary School is to disregard “sound science” in favor of corporate interests and the agricultural lobby.

V. Mr. Ward writes: *“Orleton Farms proposes to implement the EarthMentor manure processing and treatment system that is designed to greatly decrease, if not eliminate, any hydrogen sulfide emissions.”*

Response: This statement is patently incorrect. The EarthMentor system relies on anaerobic bacteria concentrations in enormous sewage lagoons to “treat” the waste. This process is called anaerobic digestion. The natural byproduct of this bacterial consumption is Hydrogen Sulfide gas which is emitted from the lagoon(s) on an almost continuous basis. Furthermore, as stated in the Iowa study, additional emissions of Hydrogen Sulfide would be emitted when the waste is sprayed/land applied to the fields near the Elementary School and Lake Choctaw community. Therefore, contrary to Mr. Ward’s statement, the EarthMentor system does not eliminate Hydrogen Sulfide emissions, it is the major source of them.

Lastly, recent information obtained from the Michigan Department of Environmental Quality indicates the EarthMentor systems installed at large dairies within their State is failing miserably in “treating” the waste. The MDEQ has therefore prohibited the land-application of the waste by the affected dairies.

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

- VI. In response to our concerns about discharges into the Darby Creek Mr. Ward writes:** *“Discharges of manure and nutrients into the waters of the state are not only unacceptable, but illegal.”*

Response: Agreed. However, this fact has not prevented over 312 manure discharges into the waters of the state or prevented over 60 fish kills. Again, lax enforcement of the rules and insignificant fines are not a deterrent to such destruction of our waters.

- VII. In reference to concerns about reductions in real estate values Mr. Ward writes:**
“...a leading agricultural realtor in central Ohio...did keep records on property values sold near the Buckeye Egg Farm...sold for more money than the value on the tax cards. ...when a large livestock farm starts up in the area, land prices actually increase in value.”

Response:

A realtor’s feelings on this matter are irrelevant. Instead we offer the following from John A. Kilpatrick a partner and senior analyst with Mundy Associates, LLC, an economic, market, and valuation firm specializing in complex real estate matters. Kilpatrick is the author of four books and numerous articles on real estate matters, and is a frequent speaker on real estate economics and valuation. The excerpts are as follows:

*Concentrated Animal Feeding Operations and Proximate Property Values
Abstract
The Appraisal Journal July 2001, Volume LXIX Number 3*

- **University of Minnesota Study**
In 1996, the Minnesota Department of Agriculture commissioned a study by researchers at the University of Minnesota on the topic of value diminution resulting from proximate CAFOs. In addition to substantial secondary research in the area, the study authors also conducted primary research into value impacts in that state. Specifically, they conducted a hedonic price analysis on 292 rural residences that were sold during 1993-1994 in two Minnesota counties. They found a statistically significant pricing impact related both to the existence of a CAFO as well as the distance from the CAFO. In other words, not only does a CAFO have a significant impact on property value, but the nearer the CAFO, the greater the impact. The researchers also found that CAFOs tend to be located near older or lower valued homes. Hence, the pricing impacts in a simple empirical study may be muted by other negative impacts to value, and high-valued residences may be impacted to a greater degree by CAFOs than would be suggested by their findings.

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

- **University of Missouri Study**

Following the methodology of the Minnesota study, researchers at the University of Missouri were able to quantify both the average value impact of a CAFO and the impact by distance. An average vacant parcel within 3 miles of a CAFO experienced a value loss of about 6.6%. However, if that parcel was located within one-tenth of a mile from the CAFO (the minimum unit of measure in the study) and had a residence on it, then the loss in value was estimated at about 88.3%.

- **North Carolina Study**

Palmquist, et. al, were the first to quantitatively determine that the distance from a residence to a CAFO has an impact on residential values. However, their study looked only at residences already near CAFOs and measured the impacts of additional CAFO capacity (either new CAFOs or additional livestock at existing CAFOs) located at 0.5-, 1.0-, and 2.0-mile distances from the residence. Nonetheless, they established a methodological model for spatial impacts of CAFOs.

- **Summary and Conclusions**

*“The above suggests that the establishment of a CAFO may result in value diminution to other nearby properties. The amount of the value loss is typically an inverse function of distance (closer properties diminish more), a function of property type (newer, nicer residences lose more), and a function of property use (farm will lose value due to diminished productivity and comparative marketability to other farm lands). While the appraisal profession has only begun to quantify the loss attributable to CAFOs, **it is clear from the above case studies that diminished marketability, loss of use and enjoyment, and loss of exclusivity can result in a diminishment ranging from 50% to nearly 90% of otherwise unimpaired value.**”*

VIII. Mr. Ward writes: “According to data released by the Ohio Livestock Coalition (OLC), the proposed new dairy farm in Madison County would be a \$35 million project that would result in the direct employment of 35 persons, or \$1.3 million annual local wages.” He continues indicating: “...dairy farm will purchase approximately \$12.5 million of goods and services annually...”

Response: We believe data provided by lobbying groups with their incumbent political and financial interests have no place in an objective and meaningful discourse on this subject. To gauge the economic affects of CAFOs on rural economies, we must rely upon data and analysis from agricultural economists and sociologists without political or economic axes to grind. For example John Ikerd, Professor Emeritus of Agricultural Economics at the University of Missouri Columbia writes:

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

“A fundamental principle of industrialization is the substitution of capital and technology for labor and management – to make it possible for fewer people to produce more. Large-scale operations simply concentrate the jobs created in one place and call it economic development while the larger numbers of jobs lost elsewhere are ignored or denied. In total, numbers of independent livestock producers displaced will most certainly be greater than the number of jobs created in new large scale, corporate operations.”

In addition, we encourage you to review the following studies that demonstrate the economic decline and reduced tax receipts of rural communities when CAFOs move into a locality or region:

- a)** A study by MacCannell (1988) of comparable types of communities found that the concentration and industrialization of agriculture were associated with economic and community decline locally and regionally..
- b)** Studies in Illinois (Gomez and Zhang 2000), Iowa (Durrenberger and Thu 1996), Michigan (Abeles-Allison and Conner 1990), and Wisconsin (Foltz et al. 2002) demonstrated decreased tax receipts and declining local purchases with larger operations.
- c)** A Minnesota study (Chism and Levins 1994) found that the local spending decline was related to enlargement in scale of individual livestock operations rather than crop production. These findings consistently show that the social and economic well-being of local rural communities’ benefits from increasing the number of farmers, not simply increasing the volume of commodity produced (Osterberg and Wallinga 2004).

In conclusion, we assert the foregoing rebuttals to the assertions of agricultural special interests groups and the Ohio Department of Agriculture cannot withstand a vigorous and objective examination of the science. The facts are:

- The Ohio Department of Agriculture is a deeply conflicted body due to the statutory constructs that make it both advocate and regulator of the same industry; incapable or unwilling to protect the public and the environment.
- Over 300 Elementary School children situated 1/3 of a mile down wind will essentially be guinea pigs for the over 416,000 lbs. of Ammonia gas and 20,000 lbs. of deadly Hydrogen Sulfide gas emitted by this facility each year.
- The foregoing data unequivocally shows the homes of Lake Choctaw, and properties down wind will be de-valued as a result of the proposed facility.
- Allowing the installation of a CAFO generating 280,000,000 pounds of manure annually within the pristine Darby Watershed is a reckless regulatory action of the highest order.

Orleton Farms CAFO – Rebuttal to ODA letter dated 8/4/08

- The economy and the health of Madison County residents will be harmed by this CAFO.
- The national recognition and endangered species of the Watershed mean any discharge of manure from this facility will result in a furious public backlash. The political and legal ramifications of damaging this ecosystem are enormous. The role of CAFOs in agriculture and their continued existence in rural Ohio are at stake.

August 4, 2008

Senator Steve Austria
Statehouse, Room 132
Columbus, OH 43215

Dear Senator Austria:

Thank you for writing regarding your concerns about the proposed Orleton Dairy in Madison County. I appreciate you taking your time to share your views with me.

As a matter of background, this 5,290 head dairy farm is proposed to be located on one of the largest continuous tracts of land east of the Mississippi River. Dating back to 1933, the farm was once owned by the Procter & Gamble family. While the farm has been used as rented crop land in recent years, it was once one of the state's largest swine farms and in the past regularly fed out over 13,000 head of beef cattle and had large numbers of poultry, sheep and dairy cows. During those periods, there were very minimal environmental regulations.

On January 9, 2007, Orleton Farms applied for a Permit to Install (PTI) and Permit to Operate (PTO) with the Ohio Department of Agriculture (ODA) Livestock Environmental Permitting Program (LEPP) to stock 5,428 dairy cows, which would make it the largest dairy in the state. This would include 4,420 milking cows and 1,008 dry cows. No calves or heifers (young cattle) would be raised on-site. This application requires the farm to adhere to over 250 pages of regulations that are considered to be the most stringent in the United States. The information in the application, which specifies strict construction standards and management of the farm and by-products, is currently undergoing a comprehensive review by LEPP engineering and legal staff.

Your primary issues with this farm seem to be focused on the environmental and quality of life issues associated with the large amount of manure produced from large farms, and the ODA regulations that would protect the surrounding surface and ground water. Since the ODA began permitting and inspecting concentrated animal feeding facilities (CAFFs) in August 2002, there have been strict rules that regulate the timing and rate of manure application, as well as the location, weather and soil conditions at the time of application. For the first time, specialized agriculture inspectors enforce regulations

developed with the environmental community that far exceed the federal standards in 14 specific areas and that are based on sound science.

The requirements for large farms were written by an advisory committee and geological exploration subcommittee that included representatives from the U.S. Geological Service, Ohio EPA, ODNR Division of Geological Survey, U.S. Department of Agriculture, Agricultural Research Service and the Ohio Fractured Flow Work Group, as well as the Ohio Environmental Council.

Prior to ODA assuming the regulatory responsibility for large farms, the Ohio Environmental Protection Agency issued only PTIs for concentrated animal feeding operations, had no PTOs, and had no routine inspection program. Under the ODA, the state requires both a PTI and a PTO, and two on-site inspections each year. The PTI includes siting criteria, a geological report, manure storage and treatment facilities size and design plans, and information about groundwater quantity and quality – all of which exceed federal standards.

The PTO includes a manure management plan, land application setbacks, mortality management plan, methods to minimize odors, emergency response plan, insect and rodent control plan, groundwater monitoring, operators' records, and a closure plan. Proper manure management is one of the most important aspects of the Permit to Operate. There has never been a failure of a manure lagoon built in Ohio that was constructed in compliance with the U.S. Department of Agriculture, Natural Resource Conservation Service's Ohio engineering standards, from which ODA's standards are based.

It is noteworthy that, while the federal government calls for the ODA LEPP staff to inspect only 25 large farms per year, they have performed more than 1,500 inspections since August 2002. There are currently 168 permitted farms in Ohio and, since the ODA began regulating large livestock and poultry farms 5½ years ago, there has been only one fly complaint and two odor complaints at a permitted dairy.

You also mention that you were concerned about the quality of air around the facility as well. From a geographical standpoint, the nearest residence to Orleton Farms would be at least one mile away, the Choctaw Lake NE homes are two miles from the proposed manure processing facility and three miles from the proposed dairy barns. The village of Plumwood and Monroe Elementary School is two miles from the proposed manure processing facility and 1.3 miles from the proposed dairy barns, with several tree buffers in between.

I would recommend reading the 16-month air quality study conducted by the Iowa State University, Department of Agriculture and Biosystems Engineering, that measured concentrations of ammonia and hydrogen sulfide on farms and neighboring residences. The study indicated that meteorological factors, such as wind speed and solar radiation affect the concentration of hydrogen sulfide and ammonia more than the size of the operation or type of manure storage used on the farm.

The study also shows that ammonia concentrations inside residences tend to be more concentrated than ammonia levels in the air outside the residence, or at the livestock farm's property line. Dr. Steven Hoff, the study's author, said evidence suggests that ammonia levels may be related more to inhabitants' lifestyle, including smoking cigarettes and having indoor pets, than to the residence's proximity to a large livestock farm. Those results support a previous study conducted by the Department of Health and Human Services in Missouri in 2003.

There have also been studies conducted at The Ohio State University on dairy, poultry and swine facilities for air and odor emissions. This two-year odor and gas study of Ohio livestock farms does not substantiate claims that either hydrogen sulfide or ammonia gas is being emitted at hazardous levels from permitted farms in our state. Initial results of these studies indicate that emissions upwind and downwind from the livestock and poultry facilities were very similar (within 500 feet downwind). For further information regarding this study, contact OSU Extension.

Orleton Farms proposes to implement the EarthMentor[®] manure processing and treatment system that is designed to greatly decrease, if not eliminate, any hydrogen sulfide emissions.

Regarding odor, it is important to note that while ammonia and hydrogen sulfide are not directly regulated, the inherent characteristics of manure from a concentrated animal feeding operation (CAFO) are the same that farmers have been dealing with throughout the ages. The manure from a CAFO today is no better or no worse than the manure that all dairy producers have worked with throughout generations. The regulations that allow livestock production (using accepted agricultural practices) recognize there are dusts and odors in farming that are inherent to producing food.

The Ohio Department of Agriculture has defined rules and regulations that must be followed when issuing a Permit to Install and a Permit to Operate to large concentrated animal feeding operations. The department's Livestock Environmental Permitting Program regulates the planning and operation of these farms to make certain that best management practices are followed in the storage and application of manure to minimize odors and the threat of run-off.

ODA requires each permitted farm to have a manure management plan, so the manure is distributed and recycled properly as a nutrient to the soil, and to prevent manure run-off. Because the farm has whole-farm manure management plans, the rules require the operator to either land apply in accordance with the rules or to find adequate distribution for all the manure. Soil testing determines how much manure should be applied to farm fields and applying more is in violation of the law.

Rules require application only with available water holding capacity, thus avoiding application on saturated land. Farmers are required to monitor and control drainage tile flow. Routine inspections of farmer's actually applying manure, as well as inspections of

all their records of manure application, track this to assure they are land applying or distributing and using manure correctly. If the Orleton Farms permit would be approved and it is not followed, the farm could be subject to an enforcement action by ODA.

Your concern that there would be runoff of manure into the creeks and streams that would end up in the Big and Little Darby Creeks is certainly not an acceptable or common practice in Ohio. No farm, including the proposed new dairy in Madison County, is allowed to degrade the environment. The Darby watershed, as well as all watersheds, is important. Discharges of manure and nutrients into the waters of the state are not only unacceptable, but illegal. In addition to the ODA permit requirements, Orleton Farms will also have to meet the rigorous requirements of the Big Darby Creek stormwater construction NPDES permit currently administered by the Ohio EPA.

You mentioned there have been numerous studies that have shown property values are negatively affected by large farms. To my knowledge, there hasn't been a comprehensive university study undertaken on this subject in Ohio. However, a leading agricultural realtor in central Ohio, along with the county auditor, did keep records on property values sold near the Buckeye Egg Farm, which was one of the biggest environmental violators in the state. They found that most properties adjacent to the farm's northern facilities in Mt Victory, Marseilles and Goshen sold for more money than the value on the tax cards. It has been this realtor's experience that the large livestock operations are much cleaner than numerous small and medium sized operations, and when a large livestock farm starts up in an area, land prices actually increase in value.

Ohio is a state that is built on agriculture. From the state's thousands of farms that produce more than 200 diverse crops to the more than 1,000 agricultural processing plants, we are blessed to be a state with a strong, multi-billion dollar agricultural base. Food and agriculture is Ohio's top industry, contributing \$93 billion to the state's economy.

An important part of our agriculture industry is livestock and poultry production, which generates more than \$229 million in tax revenue each year and contributes more than \$8 million to Ohio's economy. Our livestock and poultry operations account for more than one-third of Ohio's farm production and one-sixth of the state's farm income, providing for more than 47,000 jobs on the farm or in processing.

There are 76,200 farms in Ohio and it is ODA's responsibility to hold farms of all sizes to high environmental standards to help assure a safe, abundant food supply that benefits communities and protects the environment throughout the state of Ohio. Ninety-three percent of the department's budget is dedicated to protecting producers, agribusinesses, and the consuming public by enforcing clearly written, scientific-based regulations as stipulated in Ohio's laws. In turn, Ohioans get soundly regulated businesses that add value to any neighborhood.

According to data released by the Ohio Livestock Coalition (OLC), the proposed new 5,428 head dairy farm in Madison County would be a \$35 million project that would

result in the direct employment of 35 persons, or \$1.3 million annual local wages. In addition, studies conducted by The Ohio State University show that every job created on a dairy farm creates an additional 2.2 jobs in the agricultural industry downstream, or 77 additional support jobs for the 5,428 head dairy.

OLC figures indicate that a 5,000-cow dairy farm will purchase approximately \$12.5 million of goods and services annually to support their operation. These include such items as feed, fuel, machinery, veterinarian, accounting, insurance and manure haulers, which are often purchased or contracted locally. According to studies conducted by the Wisconsin Milk Marketing Board and Pennsylvania's Center for Dairy Excellence, every cow generates \$13,000 of economic activity per year. Consequently, every dollar that a dairy farm or their employees spend locally would create a multiplier effect of more than 2½ times the original dollar.

I certainly understand the concerns regarding large livestock and poultry farms and, like you, want nothing more than to make certain that all permitted farms carefully follow and abide by Ohio's stringent standards.

Sincerely,

Adam Ward
Legislative Liaison
Ohio Department of Agriculture



Steve Austria
Majority Whip

Ohio Senate
Senate Building
Columbus, Ohio 43215
614-466-3780
614-387-0788 Fax

Committees:

Finance and Financial Institutions
Highways & Transportation, Chairman
Insurance, Commerce and Labor
Judiciary-Criminal Justice
Rules
Correctional Institutions Inspection Committee

Select Committees:

Aerospace and Defense Advisory Council
Family Violence Prevention Center
Advisory Council
Minority Development Financing
Advisory Board
Legislative Service Commission
Speed to Scale Task Force

August 4, 2008

Brian Welch
2025 Palouse Drive
London, OH 43140

Dear Mr. & Mrs. Welch:

Enclosed, please find the correspondence my office received from Adam Ward, Legislative Liaison for the Ohio Department of Agriculture (ODA). I hope you find this information useful.

Once again, thank you for contacting my office in regards to Orleton Farms. Should you have additional questions in regards to this issue, please contact my office, as my door is always open.

Sincerely,

Steve Austria
Majority Whip
Ohio Senate

SA/smk

Who has the real ownership of Orleton Farms, LLC?

Business names registered (or tax record/billing) to the address below:
Over 75 legal entities all registered/associated with the below address.
Almost 60 in Ohio.

Suite 140
1290 North Shoop Avenue
Wauseon, OH 43567

Orleton Farms Articles of Incorporation in Michigan is signed by Vreba Hoff's lawyer, and has the Vreba Hoff I Dairy address in Hudson on it. Articles of Organization as found at
http://www.dleg.state.mi.us/bcs_corp/dt_llc.asp?id_nbr=B1940D&name_entity=ORLETON%20FARMS,%20LLC

ORLETON FARMS LLC., OHIO
ORLETON FARMS LLC., A MICHIGAN LLC.

VREBA-HOFF DEVELOPMENT AUTHORITY, A MICHIGAN ENTITY

VREBA-HOFF DAIRY LEASING LLC.

VREBA-HOFF DAIRY DEVELOPMENT LLC.
VREBA HOFF DAIRY DEVELOPMENT II, L.L.C. JUN 22 2000
VREBA-HOFF DAIRY DEVELOPMENT III LLC. 12/30/1999 - OHIO
VREBA-HOFF DAIRY DEV IV, LLC.
VREBA HOFF DAIRY DEVELOPMENT V, L.L.C. JAN 30 2001
VREBA HOFF DAIRY DEVELOPMENT VI, L.L.C. APR 09 2001
VREBA-HOFF DAIRY DEVELOPMENT VII LLC.

VREBA-HOFF HOLDINGS LLC. - 4/11/2000 - MICHIGAN

INDIANA

DE JONG DAIRY LEASING, LLC – 5/3/2004- Indiana Domestic Corp
BOERMAN CARROLL DAIRY LEASING LLC - 1/18/2007 - Indiana Domestic Corp.
BOERMAN CARROLL DAIRY LLC - 5/8/2006 – Indiana Domestic Corp.
FOUNTAIN HILL DAIRY, LLC - 10/3/2005 – Indiana Domestic Corp.
FOUNTAIN RIDGE DAIRY LEASING LLC - 8/21/2007— Indiana Domestic Corp.
FOUR-LEAF CLOVER DAIRY LEASING LLC-11/15/2004- Indiana Domestic Corp.
FRIESIAN-MEADOWS DAIRY LEASING LLC- 12/1/2005-Indiana Domestic Corp.
HULSBOSCH DAIRY FARM LEASING LLC-11/9/2005-Indiana Domestic Corp.
NEW HOLLAND DAIRY, LLC-10/3/2005-Indiana Domestic Corp.
NEW SCHOONEBEEK DAIRY LEASING LLC-1/27/2005-Indiana Domestic Corp.
NOORD ZUID DAIRY FARM, LLC-1/14/2005 –voluntarily dissolved-2/23/2007-Indiana Domestic Corp.
OOLMAN DAIRY LEASING LLC-9/2/2004- Indiana Domestic Corp.
OPTIMA DAIRY LEASING LLC- 5/14/2007- Indiana Domestic Corp
OPTIMA DAIRY LLC-5/14/2007- Indiana Domestic Corp
PASMAN PLEASANT DAIRY LLC-10/29/2007- Indiana Domestic Corp
ROCK CREEK DAIRY LEASING LLC-1/12/2006- Indiana Domestic Corp
ROCK CREEK DAIRY LLC-12/14/2005- Indiana Domestic Corp
SEVEN HILLS DAIRY LEASING LLC-12/11/2003- Indiana Domestic Corp
TERRA NOVA DAIRY LEASING LLC-4/19/2007- Indiana Domestic Corp
TERRA NOVA DAIRY LLC-4/19/2007- Indiana Domestic Corp
TOLL-TAIL DAIRY LEASING LLC-4/13/2007- Indiana Domestic Corp
TRESLONG DAIRY LEASING, LLC-11/3/2004- Indiana Domestic Corp
UNION-GO DAIRY LEASING, LLC-3/29/2004- Indiana Domestic Corp

YELLOW HILLS DAIRY LEASING LLC-6/10/2005- Indiana Domestic Corp
YELLOW HILLS DAIRY LLC-6/10/2005- Indiana Domestic Corp

MICHIGAN

1 Vander Hoff Haley Dairy LLC	9864 Haley Rd.	Clayton, MI 49235
2 Mericam Dairy LLC	(Waldron Dairy) 11774 Meridian Rd.	Waldron, MI 49288
3 Mibbelloon Dairy LLC	4071 S County Line Rd.	St. Louis, MI 48880
4 New Flevo Dairy LLC	9597 Forrister Rd.	Adrian, MI 49221
5 TE Voortwis Dairy LLC	3800 Stein Rd.	Bad Axe, MI 48413
6 Vander Hoff Brothers Dairy LLC	1216 Grove Rd.	Reading, MI 49274
7 Vreba Hoff Dairy 1 LLC	7601 Dillon Hwy.	Hudson, MI 49247
8 Zwemmer Dairy LLC	3261 Berne Rd.	Elkton, MI 48731
9 Vreba Hoff Dairy 2	8502 S. Meridian Road	Hudson, MI 49247
10 Z-Star Dairy	4737 Limerick Road	Elkton, MI 48731

VREBA-HOFF FARM, LLC - B1307D
VREBA-HOFF FUNDING, INC, 522570
VREBA-HOFF HOLDINGS, LLC- B70845
VANDER HOFF BROS. DAIRY, LLC – B06306
VANDER HOFF DAIRY MANAGEMENT, LLC – B14189

OHIO

This list is yet to be totally confirmed, some listed are suspected but believed, in good faith, to be accurate.

FAR HILLS DAIRY LEASING LLC 1517901 Cecilia C.M. Conway 1290 N. Shoop Avenue
Suite 140 Wauseon Ohio 43567 Jan 28 2005 Active

VREBA-HOFF DAIRY DEVELOPMENT, L.L.C. 1262953 Cecilia C.M. Conway 7018 Cloister Road
Toledo Ohio 43617 Jan 21 2003 Active

ASSEN HEIFER RAISING L.L.C. 1390198 Cecilia C.M. Conway 7018 Cloister Road
Toledo Ohio 43617 May 22 2003 Active

THE ASSEN HEIFER RAISING AND CUSTOM TMR LLC 1389756 Cecilia C.M. Conway 7018 Cloister Road
Toledo Ohio 43617 May 22 2003 Active

ZIJLSTRA HEIFER RAISING L.L.C 1388925 Cecilia C.M. Conway 7018 Cloister Road
Toledo Ohio 43617 May 19 2003 Active.

VAN DE KOLK DAIRY LLC 1388930 Cecilia C.M. Conway 7018 Cloister Road
Toledo Ohio 43617 May 19 2003 Active

REYSKENS HEIFER RAISING AND CUSTOM TMR LLC 1435546 Cecilia C.M. Conway 1290 N Shoop Avenue Suite 140
Wauseon Ohio 43567 Jan 15 2004 Active

GREAT LAKES DAIRY L.L.C. 1410238 Cecilia Conway 1290 N. Shoop Ave.
Suite 140 Wauseon Ohio 43567 Sep 08 2003 Active

FRISIAN HIJMA DAIRY L.L.C 1384212.1290 N. Shoop Ave., Suite 140
Wauseon Ohio 43567 Apr 25 2003 Active.

FRISIAN HIJMA HEIFER RAISING L.L.C. 1384211 1290 N. Shoop Ave. Suite 140
Wauseon Ohio 43567 Apr 25 2003 Active

MANDERS EQUIPMENT, LLC. 1384901 1290 N. Shoop Ave., Suite 140
Wauseon Ohio 43567 Apr 29 2003 Active

NAOMI DAIRY L.L.C. 1425345 Domestic Limited Liability Company Nov 24 2003 Active

MEERLAND DAIRY LEASING LLC 1543759 Domestic Limited Liability Company May 17 2005 Dead

MEERLAND DAIRY LLC 1421043 Domestic Limited Liability Company Oct 31 2003 Active

NEW IJSSELSTEIN DAIRY LEASING, LLC1703032Domestic Limited Liability CompanyMay 29 2007Active
NEW IJSSELSTEIN DAIRY, LLC1606127Domestic Limited Liability CompanyMar 06 2006Active
NOORD ZUID DAIRY FARM LEASING, LLC1605913Domestic Limited Liability CompanyMar 06 2006Active
NOORD ZUID DAIRY FARM, LLC1578848Domestic Limited Liability CompanyOct 28 2005Active
REYSKENS DAIRY L.L.C.1435558Domestic Limited Liability CompanyJan 15 2004Active
REYSKENS DAIRY LEASING L.L.C.1543454Domestic Limited Liability CompanyMay 16 2005Active
SPRINGFIELD DAIRY LEASING, LLC1543807Domestic Limited Liability CompanyMay 19 2005Active
SPRINGFIELD DAIRY LLC1449463Domestic Limited Liability CompanyMar 18 2004Active
STARDUST DAIRY, LLC1304904Domestic Limited Liability CompanyMar 08 2002Active
TYMOCHTEE CREEK DAIRY, LLC1745095Domestic Limited Liability CompanyDec 10 2007Active
VAN ALPHEN DAIRY LEASING LLC1506095Domestic Limited Liability CompanyDec 06 2004Active
VAN DE KOLK DAIRY LLC1388930Domestic Limited Liability CompanyMay 19 2003Active
VAN DER BURG DAIRY LLC1543758Domestic Limited Liability CompanyMay 17 2005Active
VAN DEURZEN DAIRY, LLC1546197Domestic Limited Liability CompanyMay 27 2005Active
VAN DONGEN DAIRY, LLC1326775Domestic Limited Liability CompanyJun 26 2002Active
VAN ERK DAIRY, LLC1358040Domestic Limited Liability CompanyDec 19 2002Active
VAN HAM DAIRY LEASING, LLC1650708Domestic Limited Liability CompanySep 26 2006Active
VAN HAM DAIRY, L.L.C.1142899Domestic Limited Liability CompanyDec 30 1999Active
VAN RAAJ DAIRY, LLC1346333Domestic Limited Liability CompanyOct 16 2002Active
VANDER MADE DAIRY, L.L.C.1076086Domestic Limited Liability CompanyMay 12 1999Active
VISSERS DAIRY LLC1508430Domestic Limited Liability CompanyDec 13 2004Active
ZUURHOUT DAIRY LLC1652200Domestic Limited Liability CompanyOct 04 2006Dead
DAIRY MANAGEMENT SUPPORT LLC1515032Domestic Limited Liability CompanyJan 18 2005Active
HARRISON DAIRY LLC1556604Domestic Limited Liability CompanyJul 15 2005Active
HILLBEX DAIRY LEASING LLC1506094Domestic Limited Liability CompanyDec 06 2004Active
HILLBEX DAIRY LLC1498842Domestic Limited Liability CompanyNov 05 2004Active
MANDERS DAIRY LEASING LLC1532177Domestic Limited Liability CompanyMar 29 2005Active
MANDERS DAIRY, LLC1322708Domestic Limited Liability CompanyJun 06 2002Active
NEW IJSSELSTEIN DAIRY LEASING, LLC1703032Domestic Limited Liability CompanyMay 29 2007Active
NEW IJSSELSTEIN DAIRY, LLC1606127Domestic Limited Liability CompanyMar 06 2006Active
OLSTHOORN DAIRY, L.L.C.1197639Domestic Limited Liability CompanyDec 15 2000Active
OOLMAN DAIRY LEASING LLC1587823Domestic Limited Liability CompanyDec 19 2005Active
OOLMAN DAIRY LLC1587815Domestic Limited Liability CompanyDec 19 2005Active
WEZBRA DAIRY, L.L.C.
VAN HAM DAIRY, L.L.C.
GINA DAIRY, L.L.C.

SOME FACTS ABOUT THE MEGA DAIRY TO BE LOCTAED JUST NORTH OF CHOCTAW LAKE

- It is of unprecedented size. It is twice the size of other operations (source: darbycreeks.org) Up to 46 million gallons of manure and waste water would be generated annually. This is the equivalent of a city of more than 140,000 people. (source: Public Trust Alliance; Ohio.sierraclub.org)
- Current plans call for manure to be placed in an open pit located about 2 miles north east of Lake Choctaw. (source: applicant proposal) This will create an open air lagoon providing a breeding ground for flies and other pests as well as rancid odors including dangerous gasses, such as ammonia and hydrogen sulfide. (source: ccofd.org and Dayton Daily News 1/31/2006)
- The proposed waste treatment plan, called Earth Mentor, is untested. (source: OSU ATI facility, recommended by Dean Moser). Current manure disposal technology has only some benefits....and is not a cure-all" (source: J. Shaner, Ohio Environmental council.)
- The plan calls for spreading manure on surrounding land. (source: PTI application) Shifting winds and runoff after rains or during winter month when the ground is frozen could place Choctaw Lake at risk of contamination.
- The water required to run such an operation is estimated at 300,000 gallons per day. (source: data noted by CAFO's CNMP's 2007) Studies of the impact on the aquifer providing water to Lake Choctaw and the surrounding community have not been done. (source: discussion with manager of State of Ohio's permitting process)
- The records reflect Verbra-Hoff has a long history of clean water violations. Lawsuits accumulating as of March 30, 2007 number at more than 75 citations in Michigan. (source: Sierra club action.org) Vepra-Hoff has been issued more than \$140,000 in fines, none of which has been paid. (source: Toledo Blade 4/2/07, State of Michigan Attorney General's Office, letter dated 9/26/2007)
- How will the land purchased recently by Verba-Hoff interests near the Madison County airport be used? If used to spread fertilizer / manure, could it pose yet another threat from run off into area watersheds and increase air pollution?

Want to know more?

**Please join us on Wednesday, January 9, at 7:00 pm at the Choctaw Lake Lodge
for an in-depth presentation and Q & A.**

Stacy MADISON

SATURDAY, MAY 10, 2008

The Madison Parress

18 PAGES

SERVING GREATER MADISON COUNTY, OHIO, SINCE 1842

NEWSTAND 50¢ - HOME DEL. 33¢

Year 166, Volume No. 112
WWW.MADISON-PRESS.COM

SPORTS



St. Patrick School's girls track team wins its first diocesan recreation championship

SEE PAGE B1

Draw Your Mom Contest Results

see page 10A

BRIEFLY

GOLF OUTING SET

Sign up for the 31st annual Madison County Chamber of Commerce Golf Outing is

State agencies investigating 2nd manure spill

BY DEAN SHIPLEY

Press Staff Writer

Madden Higgins' ditch was running black.

That's not all. As the ditch was "running black," it was also so full of ammonia — from manure runoff — that about 500 aquatic animals died as a result of an apparent improper manure application on an adjacent field Wednesday afternoon.

Julia Cumming of the Madison County Soil and Water Conservation District saw the black water Wednesday afternoon. That "blackness" was apparently caused by an excessive amount of manure.

That manure allegedly had been applied by Pieter Assen. Due to the "unknown tile" in the field on which the manure was applied, it traveled through the tile into the ditch.

Assen operates a large dairy operation on Yankeeetown-Chenoweth Road.

An attempt to reach Assen by

phone Friday was not successful. Assen apparently had attempted to plug the tile outlet but not before enough manure had entered the ditched and caused a kill of aquatic animals.

Cumming said she noticed minnows in the water "belly up."

The Ohio Department of Natural Resources Wildlife Division is investigating the spill. Its lead investigator, Kandy Klosterman, said Friday that on Thursday she walked a two-mile section of the ditch and noticed two more tiles discharging manure.

The manure carries high dosages of ammonia, which caused the death of about 500 aquatic animals. Among them were:

- Bullhead catfish, approximately 6 to 7 inches in length
- Bluegill sunfish
- Darters and other minnows
- Tadpoles
- Crayfish

Klosterman said she spoke with the landowner and applicator, which she declined to name because of the investigation. She said she asked him if he had a permit and he said he did.

She notified the Ohio EPA and Ohio Department of Agriculture. Klosterman said the Division of Wildlife counts all of the dead animals.

Each animal is assigned a certain dollar value by the American Fish Society. Those numbers are tabulated, along with mileage, the hourly rate of employees spent on the investigation, as well as equipment used — such as ampules for water samples taken on site.

"The responsible party will be responsible civilly for the charges," Klosterman said.

See Fish page A2

'It's a magical moment'

For 45 years, Phyllis Follrod's been helping young women become mothers

She said at this point in the investigation it is too soon to comment on potential criminal charges.

"This has happened in the past," she said. "He's not a first-time offender."

Cumming said Assen needs to assume every field in Madison County has some kind of tiling given its topography. Tiles were installed, in some cases many years ago, to facilitate drainage.

She felt he also needed to observe the recommended setback from ditches, distances of 35 feet to 100 feet.

Cumming observed Assen "seemed concerned and sorry that it happened."

Kevin Elder, executive director of livestock permitting program of the Ohio Department of Agriculture, said Assen was spraying the manure on a crop of triticale — a high-protein cattle food

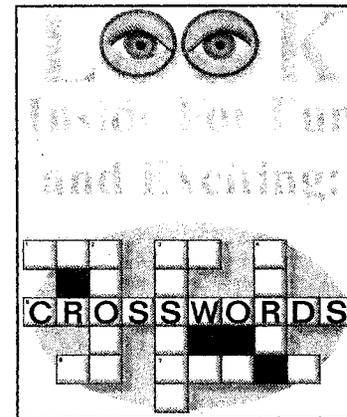
— which was acting as a buffer.

The investigation into the spill is ongoing, said Dina Pierce of the Ohio Environmental Protection Agency.

"Whether to issue a violation is still too soon to say," Pierce said Thursday. She said an OEPA investigator, Rick Wilson, was on site Wednesday evening.

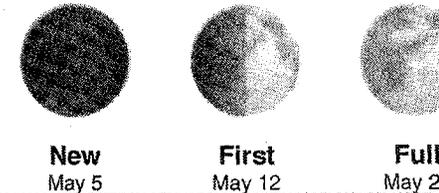
Dean Shipley can be contacted at (740) 852-1616 or by e-mail at news3@madison-press.com

... people is invited to attend this service.



City	High	Low	Cond.	City
Atlanta	85	62	rain	Minneapolis
Boston	55	44	rain	New York
Chicago	64	48	pt sunny	Phoenix
Dallas	91	62	cloudy	San Francisco
Denver	55	34	windy	Seattle
Houston	91	73	pt sunny	St. Louis
Los Angeles	72	57	pt sunny	Washington
Miami	88	75	mst sunny	

Moon Phases



New May 5
First May 12
Full May 20

UV Index

Sat 5/10	Sun 5/11
8	5
Very High	Moderate

The UV Index is measured on a 0 - 11 number scale, 0 with a higher UV Index showing the need for greater skin protection.

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AT THE CLOSE OF THE DAY ON WALL STREET

Stock	Today's Trading	Change
ABBOTT LABS	51.78	+0.50
AT&T	38.59	-0.27
BP PLC ADR	72.10	-0.60
CAMCO FINAN CP	11.05	-0.30
CHURCH DWIGHT	53.74	-0.30
CVS CAREMARK CRP	41.34	-0.18
DEERE & CO	86.31	-0.51
FIRSTENERGY	75.99	+0.08
FIRSTMERIT CORP	20.50	-0.09
GENERAL MOTORS	20.29	-0.86
HONDA MOTOR CO	31.11	-0.64
HUNTGTON BKSHR	9.17	-0.22
JPMORGAN CHASE	46.57	+0.52
KROGER CO	26.30	-0.19
LIMITED BRANDS	17.95	+0.02
MCDONALDS CORP	59.24	-0.53
NATIONAL CITY	6.00	+0.23
NATWIDE FINL	49.87	-0.13
PEPSICO INC	67.51	-0.03
STAPLES INC	21.50	+0.06
TARGET CORP	52.24	-0.10
WAL-MART STORES	57.18	+0.02
WENDY'S INTL	26.45	-0.31
WORTHINGTON INDS	18.38	-0.29

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STUDENT WEATHER FORECAST

Local Forecast

Mainly sunny, High 69F, Winds 10 mph

IS YOUR CHECKBOOK MORE

TUESDAY, MAY 13, 2008

The Madison Press

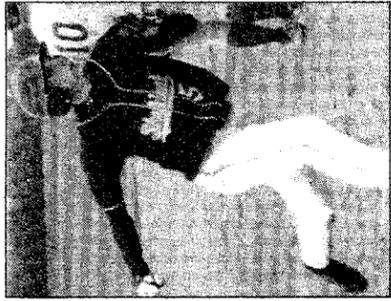
12 PAGES

SERVING GREATER MADISON COUNTY, OHIO, SINCE 1842

NEWSTAND 50¢ - HOME DEL. 33¢

Year 166, Volume No. 114
WWW.MADISON-PRESS.COM

SPORTS



Aaron Miller paced all Shekinah Christian batters in first-round play of the Division IV District Tournament. See how they fared against Danville.
SEE PAGE 10

BRIEFLY AFTERNOON OF MUSIC PLANNED

Madison County Historical Society will present an afternoon of music from the recently refurbished Knabe piano built in 1863.

Mark Potter and his son, Chase, of West Jefferson, refurbished the piano.

They will begin entertainment at 2 p.m. Sunday.

Admission is free for this event.

The event will be held at 260 E. High St. in London.

Commissioners to state: "This was no accident"

BY DEAN SHIPLEY
Press Staff Writer

Madison County Commissioner Bob Hackett succinctly summed up the three commissioners' reaction to two manure spills that occurred last week:

"We're not happy."

The commissioners said Monday they have issued a letter to Robert Boggs, director of Ohio Department of Agriculture (ODA), in response to the manure spills which took place in two separate

ditches in Oak Run Township south of London.

An apparent improper manure application last week on an Oak Run Township field contaminated a large ditch and resulted in killing about 500 different types of aquatic animals, according to the Madison Soil and Water Conservation District.

The manure allegedly had been applied by Pieter Assen who operates a large dairy operation on Yankeetown-Chenoweth Road.

The commissioners' letter to ODA expresses their concern for "damage to our watersheds, to our community, and to the reputation of other operators who are following the rules and regulations."

The letter states the problems identified by the county engineer's office and the soil and water conservation district as follows:

- Assen Dairy is now working with the Soil and Water Conservation District and National Resources Conservation Services to update the manure plan to show which field that they will apply. However, the dairy does not have written agreements in place with the surrounding neighbors to spread manure.

- The applicator, Jonny Davison, flagrantly violated every regulation in the handbook about spreading manure appropriately. They dumped the manure out of semi trucks in a manner that can-

not possibly be calibrated to apply at the allowed rate...In addition, he applied the liquid manure on the ditch at a heavy enough rate that the manure was ponding on the berm. This was no "accident." The applicator should be fined, and his license, revoked.

- Although it was the applicator who failed to follow the regulations, Assen Dairy hired him. They should be held accountable for not making sure that he fulfilled his contract correctly. They could have tilled the ground beforehand...monitored the ditch to make sure that tile was not leaking manure and be prepared with tile plugs or equipment to crush the leaking tile. Claiming igno-

rance about tile location is yet another way to avoid responsibility. Tile is everywhere, and Assen knows this.

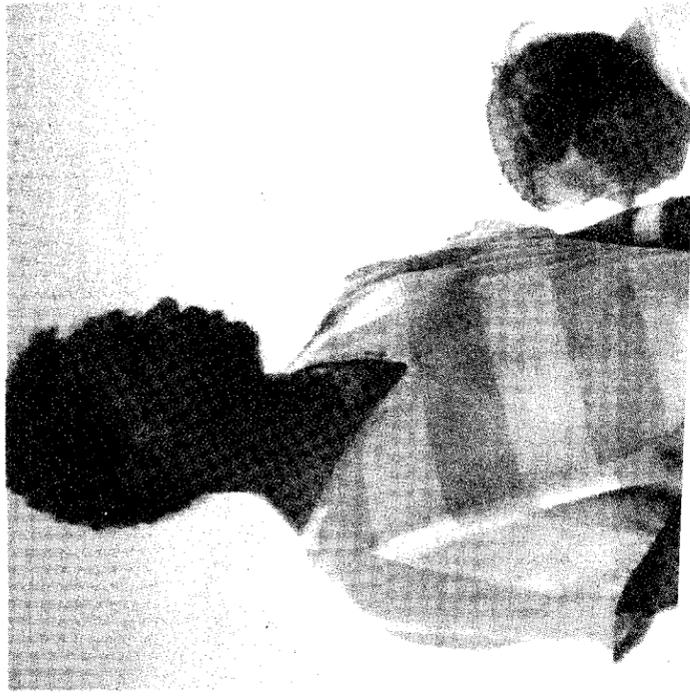
- We are relying on the operator's word that he is spreading at a rate according to plan...Our waterways are not sewers. An independent person needs to oversee the manure spreading.

- The inspector was not notified about the incident until later...there are only a few inspectors for many operations around the state.

- The Division of Wildlife has the ability to issue fines based on the number of fish killed. What

See Dairy page 2

Judge sets bond at \$50,000 for accused shooter



Faces second-degree felony assault; hearing scheduled

BY STEPHANIE SCAPAROTTI

According to authorities, at approximately 5 a.m. Sunday, Marks shot Baker once in the collar bone and once in an arm with a 9mm hi-point semi-automatic handgun.

Baker was transported to the intensive care unit at the Ohio

ed that he has lived in London since 1996 and is employed "nowhere at the time."

According to Marks, he currently lives with his stepdaughter and girlfriend at the Claudia Drive apartment.

Picken set bond at \$50,000

Beathard and son Todd, along with Andy Smith, "worked" the crowd and coaxed them to bid a total of more than \$12,000 for items donated to the friends.

Roger Lynch, also one of the Friends, said all the money is not yet in. But he expects the total amount raised to be just short of \$13,000. Included in that amount will be the proceeds of \$116 from a bicycle raffle.

Among the auction highlights

On the eighth sale — Kipp's second — the total amount raised by the cake stood at \$950.

Upon hearing that, Kipp raised his own high bid at the time — usually an auction no-no — another \$50 to make the total cake sale one "grand" event.

Lynch said it was fitting because McKenzie worked tirelessly to make previous auctions successful. He took the lead in securing donations from all parts

- \$450 for the Mancini/OSU buckeye quilt
 - \$350 for the John Deere-themed quilt by Marjorie Hopkins
 - Two tickets to the OSU/Minnesota football game brought \$250
- Pass also praised the results of the silent auction, which was held in the morning. A number of items were entered therein and were bid on without the cajoling

working on gaining the permission from Norfolk-Southern Railway to run the path alongside its railroad right-of-way.

"That would be excellent," Lynch said.

"It would be good for everyone, especially that part of downtown."

Dean Shipley can be contacted at (740) 852-1616 or by e-mail at news3@madison-press.com

COMMUNITY BRIEFS

Benefit dinner slated

Wild About Wellness is having a Relay for Life Benefit Dinner at the Madison County Senior Center, 280 W. High St. in London, from 6-8 p.m. on Friday, May 16.

The choice is pork loin or homemade beef and noodle dinner.

Tickets are available for purchase before the event and at the door for \$10 for adults and \$7 for 12 and under.

In addition, Wild About Wellness will also be having a bake sale and 50/50 raffle at the dinner.

For more information or to order tickets, contact Cheryl McSavaney at (740) 852-3065 or via e-mail at cmsavaney@co.madison.oh.us.

Barbecue slated

A barbecue sponsored by West Jefferson High School will take place from 10:30 a.m. to 2:30 p.m. Saturday, May 17.

Pulled pork sandwiches are \$6 for drink chips and sandwich. Sandwich only is \$5.

The barbecue is being held at C and C Towing, 230 E. Main St. in West Jefferson.

Proceeds go to the West Jefferson Local School Student Council and 2010 After Prom Committee.

For more information, call Jen Miller at the high school at (614) 879-7681.

Dairy from page 1

can the inspector/ODA do?"

"The commissioners feel change is needed," they concluded.

Among the changes they would like to see are:

- The permitted operation notify ODA prior to spreading

- The rules and regulations are in place because it's not practical with the current manpower to over see every application

- If ODA does not have the manpower to oversee every application, then the inspection could be handled through an agreement with the local soil and water conservation district

- Inspection fees should be charged to the operation spreading the manure.

"We believe that large livestock

operations such as Assen Dairy need to understand the importance of following the manure management plan or face real consequences," the commissioners' letter stated. "What happened was preventable and created unnecessary damage to our county."

The letter is signed by all three commissioners — Chris Snyder, David Dhome and Bob Hackett.

Copies were sent to Kevin Elder, Department of Agriculture; state Rep. Chris Widener; state Sen. Steve Austria, Assen Dairy and Sean Logan, director, Ohio Department of Natural Resources.

Dean Shipley can be contacted at (740) 852-1616 or by e-mail at news3@madison-press.com

AT THE CLOSE OF THE DAY ON WALL STREET

Stock	Today's Trading	Change
ABBOTT LABS	52.78	+1.00
AT&T	39.11	+0.52
BP PLC ADR	73.00	+0.90
CAMCO FINAN CP	11.55	+0.50
CHURCH DWIGHT	54.01	+0.27
CVS CAREMARK CRP	41.19	-0.15
DEERE & CO	89.37	+3.06
FIRSTENERGY	76.47	+0.48
FIRSTMERIT CORP	21.18	+0.68
GENERAL MOTORS	20.76	+0.47
HONDA MOTOR CO	30.76	-0.35
HUNGTGN BKSHR	9.32	+0.15
JPMORGAN CHASE	47.24	+0.67
KROGER CO	27.18	+0.88
LIMITED BRANDS	18.80	+0.85
MCDONALDS CORP	60.87	+1.63
NATIONAL CITY	5.95	-0.05
NATWIDE FINL	50.71	+0.84
PEPSICO INC	67.35	-0.16
STAPLES INC	21.96	+0.46
TARGET CORP	53.48	+1.24
WAL-MART STORES	58.02	+0.84
WENDY'S INTL	26.68	+0.23
WORTHINGTON INDS	18.68	+0.30

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The Madison Press

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www.madisonpress.com

16 PAGES • Year 166, Volume No. 162

Local dairy cited in manure spills

BY DEAN SHIPLEY

Press Staff Writer

On Tuesday, the Ohio Environmental Protection Agency (OEPA) issued Assen Dairy LLC a Notice of Violation (NOV) for three violations which took place on May 1 at the Mom and Dad field on Armstrong Road, and May 7 and May 8 at the Madden Ditch near Madden-Higgins Road.

The dairy operation on Yankeetown-Chenoweth Road (State Route 9) in Union Township is run by Pieter Assen whose herd numbers 1,700 cows.

While the milk rolls off to market in

trucks, Assen and his employees are left to manage millions of gallons of cow manure. It is his apparent mismanagement of three incidences in May which precipitated corrective action from the Ohio Environmental Protection Agency (OEPA), Ohio Department of Agriculture (ODA) and the division of Wildlife.

However, Assen reported the incidences to the appropriate agencies as required by law.

At the time of the first violation, Kevin Elder, executive director of live-stock permitting for the Ohio

Department of Agriculture (ODA), said, "It was not classified as serious."

An ODA inspector and Ohio Department of Natural Resources wildlife officer were on the scene. It was reported no fish were killed.

Nevertheless, in its findings in the six-page NOV, the OEPA determined that on the aforementioned dates Assen was responsible for violations of the following state regulations:

- Of Ohio Revised Code: No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other

wastes in a location where they cause pollution of any waters of the state.

- Of Ohio Administrative Code: The surface waters of the state, to every extent practical and possible, shall be:

- "Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits or that will adversely affect aquatic life.

- "Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be

unsightly or cause degradation.

- "Free from materials entering the waters as a result of human activity producing color or other conditions in such a degree as to create a nuisance.

- "Free from substances entering the water as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone (May 7 and 8 only)."

In the same document, Assen Dairy was cited for violations of its permit to

See Cited page 5

AT THE 119TH MADISON COUNTY FAIR

ed from page 1

of manure. The document cites page of the permit and which apply to Assen's three incidences of apparent manure discharge:

the heading of "daily maximum discharge limitations," 1.b. states: "Dry weather discharges of manure are prom-

production and land application areas." comment that followed said: "Dry weather discharges of to waters of the state resulting from manure application of manure to drainage tiles was documented May 1, and May 8."

also noted that "manure was not applied in accordance terms and conditions of permit."

ure was applied "up to the road ditch (which is included definition of waters of the state." The permit specifies

manure not be applied closer than 100 feet, unless a 35-foot vegetated buffer has been established where manure application is prohibited.

• Manure was applied when there was a greater than 50 percent chance of rain beginning at 10 p.m. May 7, 2008. The permit states

ication shall not occur on saturated soils or during rain or ents and shall not occur if the forecast contains a greater percent chance of precipitation.

schedule of compliance it was noted that Assen needed his manure management plan "to meet the terms and is of his NPDES (National Pollutant Discharge on System) permit." The update was due Oct. 31, 2006. ent notices of apparent non-compliance to this request : to Assen on Nov. 14, 2006; Feb. 21, 2007; May 21, 2007; 16, 2007.

office still has not received the required update," the ted.

en does not provide an updated manure management plan, be facing "escalated enforcement in the form of director's ings and orders (DFFOs) with potential for monetary civil

id such a penalty, Assen will have to work closely with the comply with his permit.

eds to update his management plan per the schedule of com- said Rick Wilson, who issued the NOV to Assen. "We need date it to the specific fields where the problems occurred."

id said Assen will be required to keep the plan current. If there fic problem, the plan needs an update. "There were several found deficient according to the language of the permit," id.

f the deficiencies is record keeping. Wilson said he spoke n and he confirmed he had received the NOV and the record- orms which need to be filled out.

need to work with us to provide what we want, to make sure on what were asking for," Wilson said.

ey can be contacted at (740) 852-1616, ext. 17 or by e- ws3@madison-press.com

Ohio's 6 species of bladderwort make it a fascinating place

BY SALLY ENGLE
Brown News Service

The bladderwort is one of the most intriguing plants in Cedar Bog. This tiny plant, standing scant inches tall, looks like a cheerful dwarf snapdragon standing in a pool of water. In fact, only one of the three varieties of bladderwort is actually standing. The others are free-floating in the fen, holding their blooms above water awaiting their meals to arrive on the hoof. Unlike most plants, these delicate little blossoms are actually card-carrying carnivores with an appetite for anything they can suck up into their tiny bladders.

Six species of bladderwort are found in Ohio and all but two are rare. Of those, three are found at Cedar Bog. One is endangered and one is threatened. The common bladderwort (*Utricularia vulgaris*) can be found in many wetland areas around Ohio. The Flat-leaved Bladderwort (*Utricularia intermedia*) is a threatened plant in our state and the Horned Bladderwort (*Utricularia cornuta*) is an endangered plant in our state and others.

Most think the name Bladderwort comes from the Latin word for small bladder or bag, *utriculus*. The miniature bladders are attached to the stem of the plant, usually the leaf-bearing stem, and act as a trap for small insects such as water fleas (only 0.2 to 0.5 mm long), microscopic insects and miniscule bits of plant material. Minute hairs on the bladders are triggered and snap! The trap is sprung! Water and prey are sucked into the vacuum of the bladder, but the bladderwort has adapted to absorb the water and keep the prey inside. The lucky bladderwort has a meal to digest and it can take up to 30 minutes to carry out this task. Then the bladder resets the vacuum. It's now open for business and waiting for the next unlucky traveler to find its way to the little-bag in

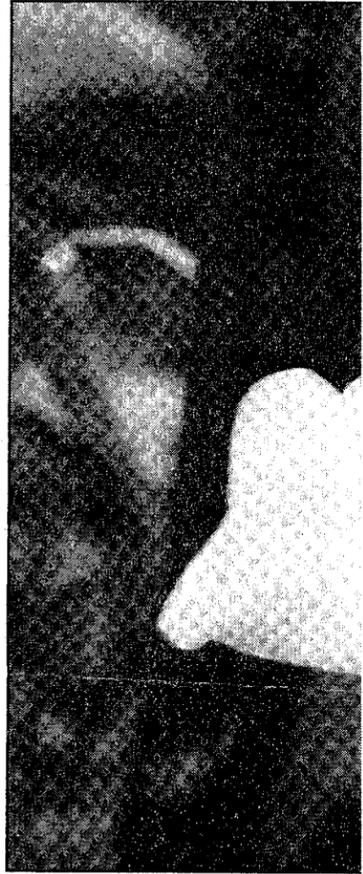
the Bog. Nutrients have been absorbed, just like any other plant, but through the bladder rather than through roots like other plants.

The Common Bladderwort is less than 4 inches tall and can have six to 20 blooms on its flowering stem along with separate branches with leaves all floating in a tangle. Although it does not look as efficient as its relatives, the bladders on the leaf-stems scoop up prey very effectively. The Common Bladderwort can thrive on calm waters of a pond habitat, which makes it less picky than the other varieties and allows the plant more opportunities to succeed.

The Cedar Bog variety that appears on the state threatened species list is the Flat-leaved Bladderwort. This plant also grows in Ohio fens and has separate branches for leaves, and blooms. The branches that have leaves are also the branches that have the bladders. Like the Common Bladderwort, this plant is also a floating bladderwort, but it does not tend to get its branches entangled. It does, however, have specific habitat needs and this has placed it in a dangerous position.

The Horned Bladderwort is the tallest of Cedar Bog's three varieties. It can grow up to 4 inches tall and may produce as many as six flowers on a stem. The flower has a distinct spur, giving the plant its unique look and name. This species of bladderwort has leaves that grow beneath the surface and anchors itself, unlike its floating cousins. This plant needs a fen or peat wetland to survive. The scarcity of these wetland habitats has put this plant at great risk and on the endangered species list.

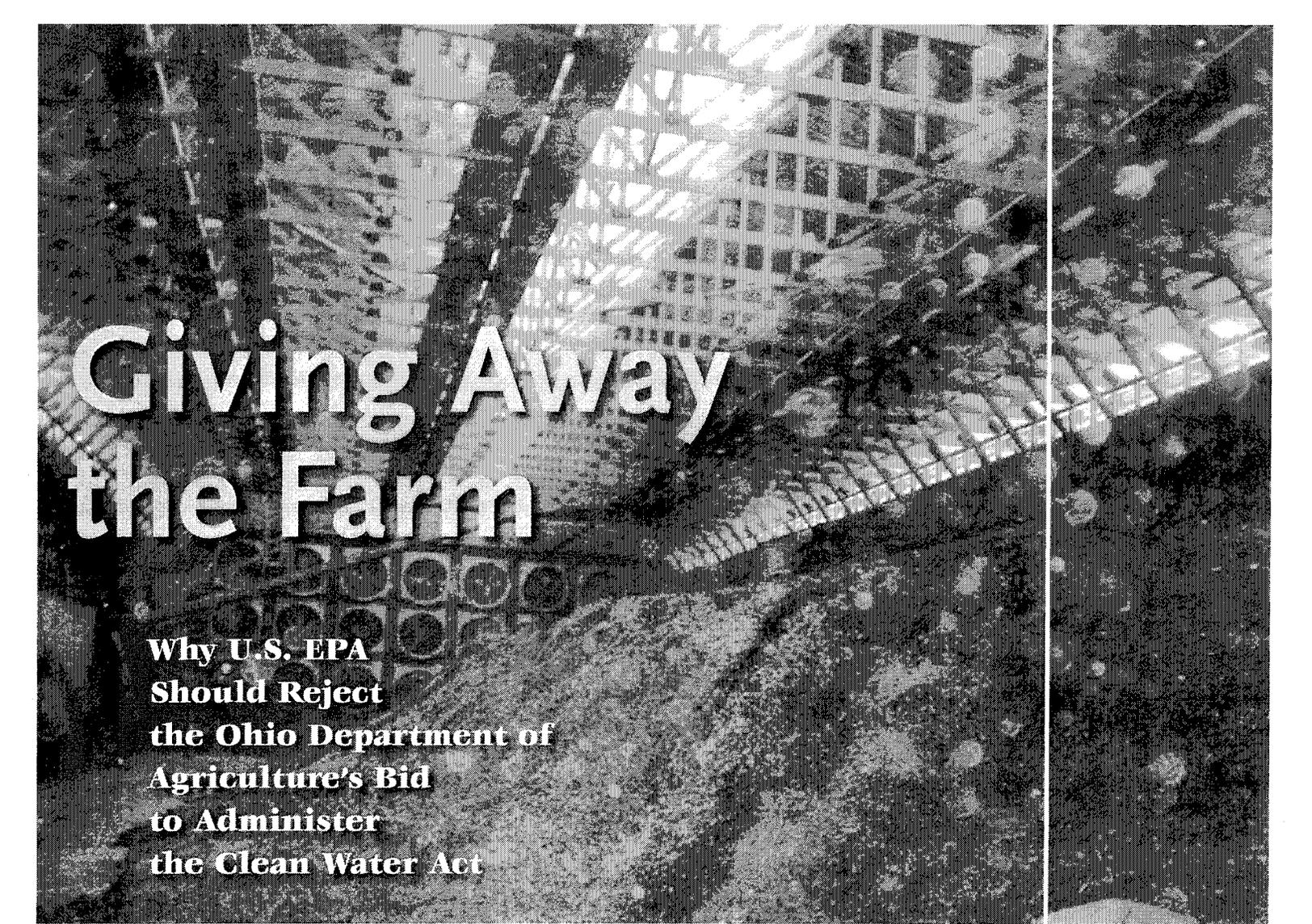
Cedar Bog, with its unique variety of habitats, is home to all three varieties. Walking down the boardwalk, visitors can see these carnivorous plants among the sedge mats and the fen meadows. Existing side-by-side with



The Flat-leaved Bladderwort, species, is on Ohio's endangered

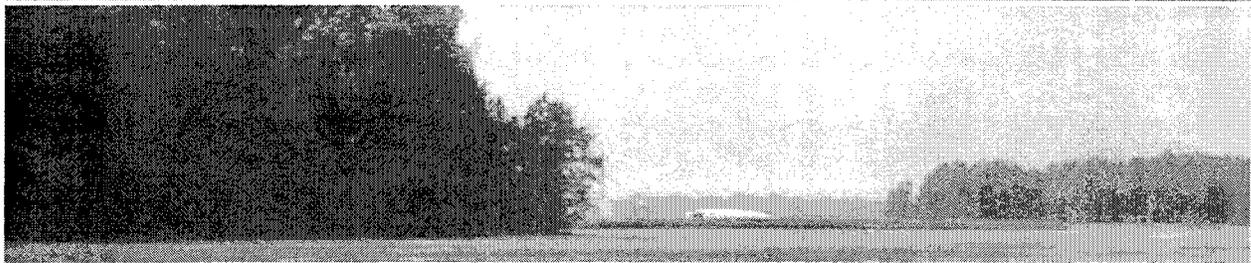
the (Colopogan) Grass Pinks orchids, ramps, Showy Lady's Slippers and sedges, these mighty meat-eaters look deceptively dainty. Each spring, usually in May, the flowers begin to bloom and the hunt is on. The flowering season continues through August when the Bladderwort dies down and goes to seed.

The plant can reproduce in two ways. One way is to produce seed. In this way the plant operates as an annual and replenishes itself. The other way it can reproduce is by a bud called a turion. These firm balls of internodes are formed late in the year and covered with sticky residue from the leaves of the stems. Turions wait until warm weather returns and the send out new growth, the plant now acting as a perennial.



Giving Away the Farm

**Why U.S. EPA
Should Reject
the Ohio Department of
Agriculture's Bid
to Administer
the Clean Water Act**



October 2006

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Environmental Integrity Project

OCTOBER 2006

THE ENVIRONMENTAL INTEGRITY PROJECT (EIP)

(<http://www.environmentalintegrity.org>) is a non-profit, non-partisan organization dedicated to stronger enforcement of existing federal and state anti-pollution laws, and to the prevention of political interference with those laws. EIP's research and reports shed light on how enforcement and rulemaking affect public health. EIP also works closely with communities seeking enforcement of environmental laws.

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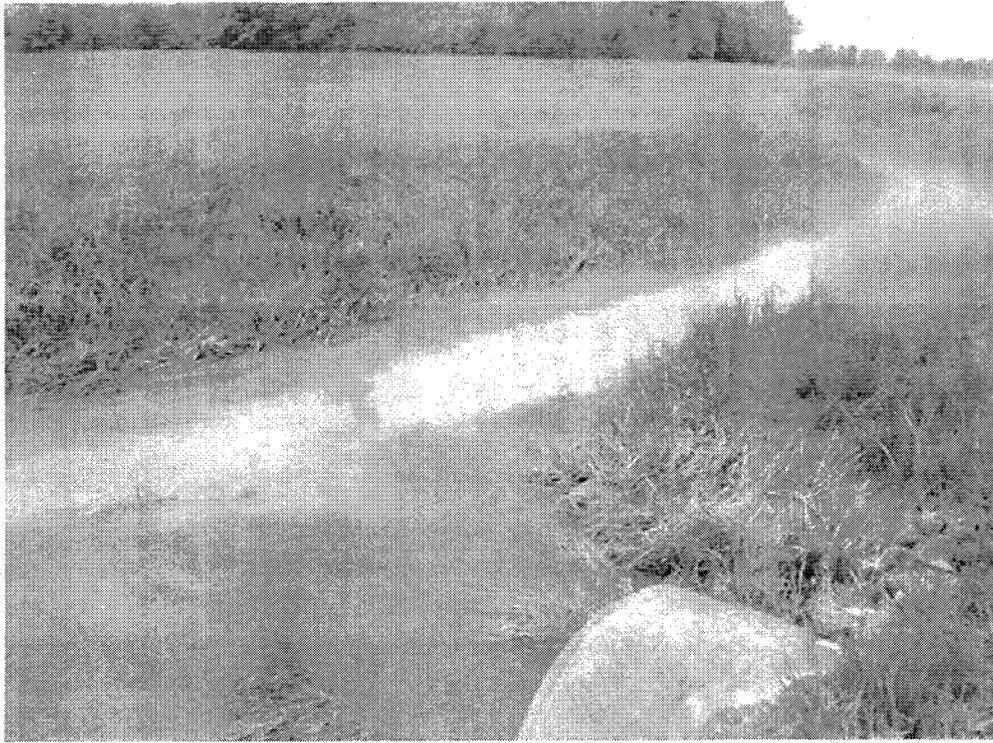
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Manure runoff from drainage way into unnamed tributary of Little Tymochtee Creek.
SOURCE: OEPA NOTICE OF VIOLATION TO COREY DAIRY (JUNE 28, 2004)

Executive Summary

Ohio has undergone a tremendous shift toward industrialized livestock production in all sectors, including hogs, poultry, and dairy. During the 1990s, the number of large industrialized livestock production facilities known as Concentrated Animal Feeding Operations (CAFOs) more than tripled in the state. For example, according to the U.S. Department of Agriculture's (USDA) farm census, while the number of hog farms in Ohio fell from 20,062 to 4,976 from 1974 to 2002 (75.2 percent decrease), the number of hogs sold rose from 3,165,535 to 4,609,153 (45.6 percent increase). Overall, the concentration of confined animals at Ohio farms almost doubled between 1982 and 1997, and the trend appears to be accelerating.

Because of the environmental and public health impacts of these facilities, effective regulatory oversight is critical. In Ohio, CAFOs generate approximately 10,545,271 tons of manure per year, with some individual facilities creating more waste than medium-sized cities. For instance, the manure production at Van Deurzen Dairy, a 4,500-head facility in Hardin County, Ohio approved by the Ohio Department of Agriculture (ODA) in 2005 will be approximately equivalent to human waste production from 95,000 people, exceeding the population of the state's seventh largest city of Youngstown. Unfortunately, right-to-farm legislation restricts local governments from exercising control over CAFO siting

and impacts. And the federal regulatory structure under the Clean Water Act has been in constant flux because of changing U.S. EPA rules and litigation over the Clean Water Act's reach with respect to CAFOs. Thus, it is even more imperative that Ohio state government step up its efforts to regulate the livestock industry to protect public health and the environment.

Not surprisingly, the livestock industry has lobbied hard and successfully to consolidate regulatory oversight within ODA — an agency with a “mission ... to provide regulatory protection to producers, agribusinesses, and the consuming public; to promote Ohio agricultural products in domestic and international markets; and to educate the citizens of Ohio about our agricultural industry.” In 2000, the Ohio state legislature took the extraordinary step of transferring regulatory authority over livestock operations from the Ohio Environmental Protection Agency (OEPA) to ODA. This regulatory authority consists of power to issue and to enforce two types of permits: (1) state permits for construction, modification, and operation of CAFOs with 1,000 or more animal units, and (2) National Pollutant Discharge Elimination System (NPDES) permits, which are federal Clean Water Act permits issued by authorized states, including Ohio.

Despite this transfer of legislative authority, NPDES permitting authority remains in the hands of OEPA — pending

U.S. EPA approval of ODA's implementation plan for the program. If U.S. EPA grants approval, it would mark the first time in the nation's history that a state agriculture agency gained authority over NPDES permits.

As an initial matter, it is questionable whether any state department of agriculture should have environmental regulatory oversight of CAFOS. This question is underscored by ODA's mission to protect producers and agribusiness and educate the public about the industry. In contrast, OEPA identifies its mission as "protect[ing] the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." For OEPA's Division of Surface Water, which currently administers NPDES permitting for CAFOs, the mission is "[t]o protect, enhance and restore all waters of the state for the health, safety and welfare of present and future generations."

Given the policy implications raised by Ohio's plan to transfer water permitting of CAFOs to ODA, it is critical to take stock of ODA's current implementation of the state operating permit program, which it has implemented since August 2002. In this report, the Environmental Integrity Project evaluates Ohio's regulation of the livestock industry since the transfer of state operating permitting authority, identifies areas for improvement in Ohio's inter-agency scheme, and considers implications of authorizing ODA to issue NPDES permits.

Program Deficiencies

EIP identifies four crucial problem areas of ODA's current program. Aside from the questions they raise about transferring NPDES authority for CAFOs to ODA, they must be addressed by ODA to protect public health and the environment.

1. *ODA does not deter noncompliance through effective enforcement.* ODA's enforcement relies on warning letters and notices of deficiencies with limited escalation, even with repeat violators. In fact, ODA has only assessed three penalties in four years — two in the negligible amounts of \$200 and \$700 — while over a similar time period, OEPA assessed double the number of penalties and in amounts averaging \$16,786. One particularly egregious example of ODA's lax enforcement policy is Buckeye Egg Farm, which has had numerous pollution incidents. In 2003, ODA allowed Ohio Fresh Eggs to purchase Buckeye Egg Farm and it has since amassed 36 ODA notices of deficiencies without a single fine being levied against it.
2. *ODA fails to effectively regulate manure transfer from permitted farms.* If a state permitted facility applies manure to fields under its control, it is liable for resulting environmental harm. Increasingly, Ohio facilities circumvent this liability by transferring manure for land application elsewhere, with little sunshine on what happens after the permitted facility makes the hand off.
3. *ODA places inadequate restrictions on winter manure applications.* Because of the manure transfer loophole, ODA's attempt to restrict winter land application onto frozen ground is essentially nullified.
4. *ODA has reduced permit coverage and reporting requirements.* When ODA assumed the state operating permit program, up to 35 facilities — or a quarter (24.3 percent) of original OEPA-permitted factory farms — fell off the regulatory radar with the transfer of state permitting authority.

Recommendations

Given the urgent need for effective permitting and enforcement for CAFOs, EIP recommends the following improvements to ODA's program before considering any transfer of further authority to ODA:

- *Accelerate, streamline, and toughen up enforcement.* The record of enforcement against recalcitrant polluters shows an unacceptable lag of time between violations and compliance. ODA should eliminate warning letters and off-the-record notices as steps in the enforcement process. Further, there are so few instances of actual penalties being levied — only 3 final orders with penalties in four years — that facilities are far likelier to opt for the economic benefits of either long-delayed compliance or outright noncompliance. Without the “stick,” or the credible threat of escalation and penalty, compliance is left to the honor system.
- *Close manure transfer loophole by establishing producer-based liability.* For transferred manure, ODA should adopt a policy presumption that clearly assigns liability for discharges and spills to manure producers. For example, Wisconsin holds producers liable for all manure discharges and spills, including spills of manure land applied by a third party. In order for a producer to transfer liability, it must obtain written approval from the state, and only may do so in enumerated circumstances.
- *Bring medium CAFOs under state operating permits.* To supplement regulation of unpermitted CAFOs, ODA should work to bring more existing facilities under state operating permits. A pragmatic policy could leave existing permitting thresholds in place as a baseline requirement, while imposing a new requirement on medium CAFOs to obtain state operating permits if they violate best management practices as established under Ohio's agricultural pollution abatement rules. This requirement would parallel federal rules that place NPDES permit requirements on medium CAFOs that discharge to state waters. Since few unpermitted facilities wish to face the permit review and application process, a violation-based permit requirement would motivate more facilities to comply with best management practices. ODA could then focus on the medium-sized operations and bring an end to the cat-and-mouse game of manipulating facility sizes as a means of avoiding inspection and enforcement.
- *Require annual reports for ALL facilities.* The annual reporting requirement under the NPDES program should extend to all permitted facilities and all certified manure brokers. When a state agency receives a location-based report of a manure discharge, an investigator should have immediate access to a map that identifies any nearby fields that receive manure, the brokers who apply it, and the facilities that produce it. At the very least, OEPA's three-year reporting requirement for new facilities should be re-implemented. More reports will also create more information on appropriate design standards and changes to future rules.
- *Restrict wintertime manure transfers.* Restrictions on wintertime application of manure must by definition extend to wintertime distribution and

utilization of manure. Distribution and utilization is a code phrase for land application at fields not under a permitted facility's control. It is a self-defeating exercise for ODA to place restrictions on manure application to frozen or snow-covered ground while placing no restrictions on the amount of manure that facilities can transfer during winter months. Indeed, ODA's relatively aggressive enforcement of freeboard violations in the winter may often have the unintended consequence of increasing winter applications by third-party brokers or applicators. Oversight of manure brokers is minimal. They sign an agreement with the manure-producing facility promising to use best management practices, without facing any enforceable permit terms.

- *Hone inter-agency tools.* State agencies should develop a common database to log complaints, compile environmental violations, and track compliance at CAFOs. In addition, for every manure-related entry in the common database, agencies should identify the original source facility producing the manure – whether or not the agency has determined that the source facility is “at fault.” Tracking manure-related incidents on a source-facility basis will enable speedy, targeted investigations of repeat violators.

- *Learn from past missteps.* Prior to any final transfer of water permitting authority, ODA and OEPA should prepare comprehensive reports to identify problems that occurred during the state-permit handover in 2002. While EIP has found certain areas of weakness and raised questions about this transfer, the affected state officials and state agencies are in a better position to apply these lessons to any further transfer of authority.

- *Report to citizens.* The unavailability of basic enforcement and compliance information has broad implications. Public access is critical because it allows citizens to make informed decisions regarding environmental issues that affect their communities. Citizens also need compliance data in order to assist U.S. EPA and the states in ensuring that environmental violations are resolved. Moreover, the public's direct access to compliance information provides incentives for regulated entities to comply with the law.

Finally, providing information on the internet will free up more resources for core permitting and enforcement activities. ODA should post key enforcement information on its website, and all state agencies should post their CAFO databases related to discharges and fish kills on their websites.

Second, parallel with the shift to concentrated production, the livestock industry has lobbied hard and successfully to consolidate regulatory oversight within the Ohio Department of Agriculture (ODA).¹¹ In 2000, the state legislature took the extraordinary step of transferring regulatory authority over livestock operations from Ohio Environmental Protection Agency (OEPA) to ODA.¹² This regulatory authority consists of power to issue and enforce two types of permits: (1) state permits for construction, modification, and operation of CAFOs with 1,000 or more animal units,¹³ and (2) National Pollutant Discharge Elimination System (NPDES) permits, which are federal Clean Water Act permits issued by authorized states.¹⁴ While ODA has administered state permits since finalizing the Live-

stock Environmental Permitting Program in August 2002,¹⁵ NPDES permitting authority remains in the hands of OEPA — pending U.S. EPA approval of ODA's implementation plan for the program.¹⁶ If U.S. EPA grants approval, it would mark the first time in the nation's history that a state agriculture agency gained authority over NPDES permits.¹⁷

In this report, the Environmental Integrity Project evaluates Ohio's regulation of the livestock industry since the transfer of state permitting authority, with the aim of analyzing ODA and OEPA's enforcement record over the last four years, identifies areas for improvement in Ohio's inter-agency scheme, and considers implications of further delegating authority to ODA to issue NPDES permits.



This three-photo sequence shows the consequences of manure over-application, from ponding in fields, to discharge, to fish kill.

Top: Land application field (note manure ponding). Middle: Unnamed tributary of Blues Creek downstream of manure discharge (note stream color).

Bottom: Dead fish in Blues Creek.

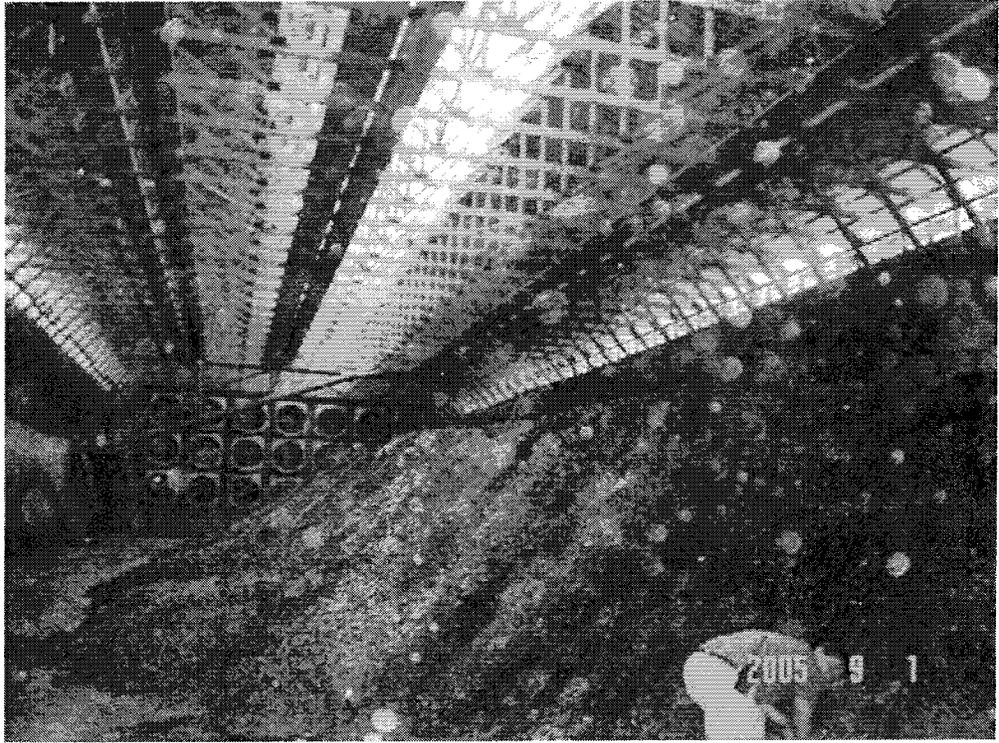
SOURCE: OEPA NOTICE OF VIOLATION TO MARTINO HOG FARM (DECEMBER 19, 2003)

many cases, manure spills and pollution from factory farms may not be potent enough to cause a fish kill, but they still result in water quality degradation and harm other aquatic insects and wildlife.

In fact, agriculture is the leading source of water pollution and the leading cause of fish kills in Ohio.³² Livestock-related incidents account for 72 percent of those fish kills,³³ with Ohio wildlife officials linking the deaths of 330,000 fish to livestock over a 10-year period.³⁴ Chronic spills from CAFOs and other sources can strip waterbodies of aquatic life, and areas with high concentrations of CAFOs have some of the poorest water quality. For example, the Wabash River, which winds 475 miles through Ohio and Indiana before emptying into the Ohio River near Evansville, is Ohio's "most degraded watershed," according to OEPA, and is "unlikely" ever to support healthy aquatic communities.³⁵ Linking this environmental degradation to factory farms, studies found the poorest water quality in northern Darke and southern Mercer counties — an area with hundreds of small and medium-sized livestock farms and half of the state's large CAFOs.³⁶

In addition to polluting surface waters, CAFOs also threaten underground sources of drinking water, since it is well established that in many agricultural areas shallow groundwater can become contaminated with manure pollutants.³⁷ Over 800,000 private water wells and approximately 40 percent of public water wells depend on Ohio's groundwater for drinking water, making factory farm contamination a serious public concern.³⁸ Although glacial tills and other sediments rich in clay were thought in the past to be water-resistant, recent research in Ohio has found cracks, joints, and other pathways called macropores in these deposits that may transport manure contaminants to groundwater.³⁹

This contamination poses serious risks to human health. More than 150 pathogens found in livestock manure



Manure stack inside poultry operation.

SOURCE: ODA, HORST BROTHERS POULTRY COMPLAINT INVESTIGATION REPORT (SEPT. 1, 2005)

Federal and State Regulatory Landscape

Federal Clean Water Act Permitting Program: NPDES

The Clean Water Act legally defines CAFOs as point sources;⁴⁵ therefore, CAFOs cannot discharge pollutants into waters of the United States without an NPDES permit.⁴⁶ To be considered a CAFO under federal law, a facility must first be defined as an Animal Feeding Operation (“AFO”).⁴⁷ An AFO is a lot or facility where the following conditions are met: Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period,⁴⁸ and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.⁴⁹

Previous U.S. EPA regulations, dating back to the mid-1970s, defined AFOs as CAFOs if they confined more than 1,000 animal units.⁵⁰ Smaller AFOs that confined 300 to 1,000 animal units were also considered CAFOs if they discharged pollutants through a man-made device or if pollutants were discharged to waters that ran through the facility or otherwise came into contact with the confined animals.⁵¹ AFOs were not CAFOs, however, if they discharged in a 25-year, 24-hour storm event.⁵² U.S. EPA could designate an AFO as a CAFO, including those with fewer than 300 animal units, if U.S. EPA or an authorized state determined that the AFO was a “significant contributor of pollutants.”⁵³

U.S. EPA adopted new CWA regulations for CAFOs in February 2003.⁵⁴ The new rules contain many of the basic features and structure as the old rule with some important exceptions. First, under these new regulations, Large AFOs, or operations that confine *the equivalent of more than 1,000 animal units* (e.g., 1,000 beef cattle, 2,500 swine over 55 lbs; 700 dairy cattle; 30,000 laying hens, etc.) require permits regardless of whether they only discharge in a large storm event.⁵⁵ Second, large poultry operations are covered by the new rules, regardless of what type of waste disposal system they use (dry litter operations were previously exempt).⁵⁶ Third, all CAFOs must develop and implement a nutrient management plan to ensure the appropriate agricultural utilization of the nutrients when applying waste to cropland.⁵⁷ U.S. EPA determined that these new rule changes, as well as the other requirements, are economically achievable for CAFOs. U.S. EPA’s economic analysis shows that this new rule will cause very few CAFOs to experience financial stress.⁵⁸

In *Waterkeeper Alliance v. EPA*,⁵⁹ the United States Court of Appeals for the Second Circuit invalidated certain provisions of the 2003 Rule and remanded several other issues back to U.S. EPA for further consideration. Most importantly for this Report, the Second Circuit invalidated the 2003 Rule’s requirement that all CAFOs with the “potential to discharge” apply for an NPDES permit.⁶⁰ In

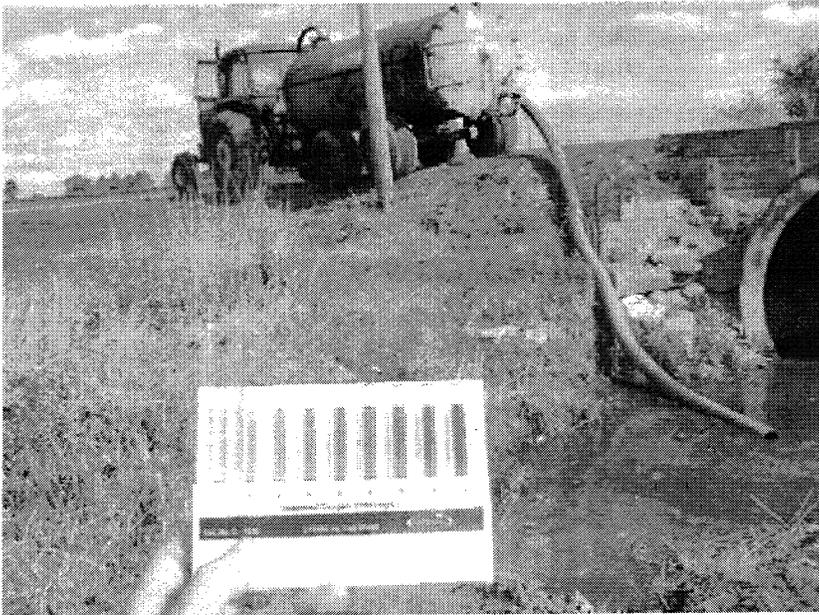
August 2006, U.S. EPA issued a proposed rule addressing the issues remanded by the Second Circuit.⁶¹ EPA's 2006 Proposed Rule requires all CAFOs to apply for permits when they "discharge or propose to discharge" pollutants.⁶² Thus the proposed regulations cover facilities that discharge and those that are not currently discharging, but will discharge at some time in the future.

In Ohio, OEPA currently issues NPDES permits to CAFOs. Thus, a large or medium sized CAFO that discharges (and under the 2006 Proposed Rule "propose[s] to discharge"), must obtain an NPDES permit with limitations designed to protect the waters of Ohio.

State Operating Permit Program: PTI, PTO, and RCC

Ohio CAFOs may also be subject to state permitting requirements, now implemented by ODA. All feeding operations that confine poultry or livestock equaling 1,000 or more animal units⁶³ for at least 45 days in a year must apply for a permit to install (PTI) and permit to operate (PTO) prior to constructing or expanding livestock facilities, even if they do not plan to discharge pollutants.⁶⁴ Existing facilities of these sizes or larger that have not been permitted must also apply for a permit to operate.⁶⁵ Under the terms of the transfer of permit authority, existing facilities with OEPA-issued operating permits — permits issued prior to August 2002 — were required to obtain a Review Compliance Certificate (RCC) from ODA. PTI/PTOs, PTOs, and RCCs are *all* state operating permits administered by ODA. While the primary concern of the NPDES program is protection of water quality, the state operating permit program focuses on facility construction and management.

The state operating permit program and the NPDES permitting program have both distinct and overlapping coverage. The state operating permit program is not as broad as the NPDES permitting program because the state program applies only to large CAFOs. Thus, a medium CAFO that discharges may need an NPDES permit but not a state operating permit, whereas a large CAFO that is purportedly a zero-discharge facility will require a state operating permit but not an NPDES permit. Most large CAFOs, however, will need both an NPDES permit and a state operating permit.



Efforts to pump manure-laden water from tributary, while OEPA inspector conducts field test for dissolved oxygen.

SOURCE: OEPA NOTICE OF VIOLATION TO LIBERTY LEAN (JANUARY 14, 2003)

Ohio's Permitting and Enforcement Structure

At the state-government level, three agencies share regulatory authority over livestock operations in Ohio: (1) ODA administers state permits through the Livestock Environmental Permitting Program, which confers authority over construction, modification, and operation of large CAFOs; (2) OEPA administers federal permits through delegation under the Clean Water Act, which confers authority over large and medium CAFOs that discharge to state waters; and (3) Ohio Department of Natural Resources (ODNR) has pollution abatement authority over unpermitted facilities such as small and medium CAFOs, as well as power to seek restitution for fish kills and stream litter. Essentially, no local regulation of CAFOs has existed since Ohio Farm Bureau succeeded in stripping local control over factory farms in 2003.⁶⁶ However, Soil and Water Conservation Districts (SWCDs), operating as 88 independent subdivisions of ODNR, investigate pollution incidents on a county level. ODA, OEPA, and ODNR have entered into inter-agency agreements with procedures to notify one another of manure spills and to coordinate with each other and local SWCDs to investigate spills.⁶⁷

ODA

ODA has issued state operating permits to 156 CAFOs.⁶⁸ All feeding operations that confine poultry or livestock equaling 1,000 or more animal units⁶⁹ for at least 45 days in a year must apply for a permit to install (PTI) and permit to operate (PTO) prior to constructing or expanding livestock facilities, even if they do not plan to discharge pollutants.⁷⁰ Existing facilities of these sizes or larger that have not been permitted must also apply for a permit to operate.⁷¹ Under the terms of the transfer of permit authority, existing facilities with OEPA-issued operating permits – permits issued prior to August 2002 – were required to obtain a Review Compliance Certificate (RCC) from ODA.

Livestock Environmental Permitting Program Statistics (as of 6/8/2006)⁷²

Total number of permit facilities	156
Number of permit applications in review process	20
Total number of inspections	885
Total number of complaints	390

TABLE 1. ODA-ISSUED PERMITS (AS OF AUGUST 3, 2006)

Year	Review Compliance Certificate	Permit to Operate	Permit to Install/Permit to Operate	Total
2002	0	0	0	0
2003	31	20	15	66
2004	49	5	13	67
2005	1	0	9	10
2006	0	5	4	9
Total	81	30	41	152*

* ODA's list of 156 permitted facilities includes 1 facility with an unknown permit type and 3 facilities with an unknown permit date.

Permitted facilities undergo regular, twice-yearly inspections to ensure compliance with the goal of preventing problems from occurring. Facilities that do not follow the rules, including best management practices, or cause water quality problems, receive notices of violations and may be subject to escalated enforcement actions with penalties. Examples of types of violations include, but are not limited to, operating a facility without proper permits, not following permit requirements as issued, and discharging manure into waters of the state. Enforcement actions for these violations can result in penalties of up to \$25,000 per day of violation, depending on the severity, intent and actions taken to mitigate impacts to the environment.⁷³

ODA employs a number of steps in "escalated enforcement" in order to secure compliance.⁷⁴ Although not codified in statute or regulations ODA's practice is to issue a warning letter to a facility.⁷⁵ If the facility does not return to compliance, then the ODA implements the formal enforcement procedures set out in the Ohio statutes and administrative code. The Director issues a notice of

deficiencies resulting in noncompliance (NOD), which would include: (1) requirement for compliance; (2) a schedule to return to compliance; and (3) a proposed penalty in the event items (1) and (2) are not followed.⁷⁶ Upon re-inspection, if the facility is still not complying, the Director issues a notice of hearing, which is a legal proceeding, with attorneys present, including the Ohio Attorney General's Office representing ODA.⁷⁷ At the conclusion of a hearing a final order is issued by the Director, including corrective actions for compliance and payment of a penalty.⁷⁸

In addition, in an emergency, the Director may issue emergency orders, which are effective immediately. If a farm would be unresponsive to an emergency, ODA can perform emergency response to stop any spill.⁷⁹

As of July 31, 2006, ODA had engaged in 155 enforcement actions, consisting of 64 warning letters, 75 notices of deficiency, 10 notices of hearing, 1 emergency order, and 5 final orders.⁸⁰ On three occasions, ODA assessed monetary penalties, which were in the amounts of \$200, \$700, and \$5,760.⁸¹

TABLE 2. ODA ENFORCEMENT BY TYPE OF ACTION AND YEAR (THROUGH JULY 31, 2006)

Year	Warning Letter	Notice of Deficiency	Notice of Hearing	Final Order	Emergency Order	Total
2002	0	1	1	0	0	2
2003	0	5	0	1	0	6
2004	25	20	6	3	0	54
2005	33	32	2	1	1	69
2006	6	17	1	0	0	24
Total	64	75	10	5	1	155*

TABLE 3. ODA ENFORCEMENT BY TYPE OF ACTION AND CATEGORY OF VIOLATION (THROUGH JULY 31, 2006)

Type of Violation	Warning Letter	Notice of Deficiency	Notice of Hearing	Final Order	Emergency Order	Total
Land Application	13	4	0	0	0	17
Manure Storage	19	34	4	3	1	61
Recordkeeping/Testing	29	26	1	0	0	56
Permit/Certificate	9	23	6	2	0	40
Total	70	87	10	4	1	174*

TABLE 4. ODA ENFORCEMENT BY CATEGORY OF VIOLATION AND YEAR (THROUGH JULY 31, 2006)

Year	Land Application	Manure Storage	Recordkeeping/ Testing	Permit/Certificate	Total
2002	0	1	0	1	2
2003	0	4	1	4	9
2004	12	19	8	20	59
2005	5	24	38	11	78
2006	0	13	9	4	26
Total	17	61	56	40	174*

* Because ODA enforcement actions may involve more than one type of violation, the totals in the above charts do not match.

OEPA

Within OEPA's Division of Surface Water, the PTI, Compliance Assistance, and CAFO Unit has two inspectors who use permits, inspections, technical assistance, and enforcement to regulate the compliance of livestock facilities with

the Clean Water Act.⁸² OEPA administers federal NPDES permits for CAFOs pending transfer of authority to ODA. As part of its NPDES program, OEPA investigates water quality degradation and incidents at livestock facilities involving discharges to "waters of the State." The agency often works with ODNR and local SWCDs

to resolve complaints at unpermitted facilities.

Between October 30, 2001 and June 30, 2005, OEPA engaged in at least 107 enforcement actions, consisting of 96 notices of violation and 11 final orders. Six of these final orders resulted in penalties or settlements, in the amounts of \$60,000, \$15,000, \$10,000, \$5,000, \$5,715, and \$5,000 — or an average penalty of

\$16,785.⁸³ OEPA has issued notices of violation for discharges from at least 63 CAFOs,⁸⁴ which corresponds fairly closely with the total of 60 facilities that have either applied or been issued NPDES permits.⁸⁵ However, the number and timing of final NPDES permits issued — only 1 permit issued prior to 2005 — show that OEPA has failed to keep pace with violators.

**TABLE 5. OEPA INSPECTION AND ENFORCEMENT ACTIVITY
(10/1/2001–6/30/2005)**

Reporting Period*	FY 2002	FY 2003	FY 2004	FY 2005**	Totals
Complaints	182	52	103	80	417
Investigations	155	46	74	78	353
Compliance Inspections	35	73	35	20	163
Notices of Violation	39	13	38	6	96
Enforcement Orders	4	1	3	3	11

* SOURCE: OEPA Annual Summary Reports for FY 2002 to FY 2005, provided to EIP in response to July 28, 2005 public records request.

** Beginning with the 2005 annual report, OEPA switched from a federal fiscal year (October 1–September 30) reporting period to a state fiscal year (July 1–June 30) reporting period.

**TABLE 6. OEPA-VERIFIED DISCHARGES FROM ANIMAL FEEDING OPERATIONS
(7/26/2000–5/18/2004)**

Discharge Source	Manure Storage/ Production Area	Land Application	Other/Unknown	Total
2000	3	2	1	6
2001	6	8	2	16
2002	21	9	3	33
2003	10	14	5	29
2004	1	9	2	12
Total	41	42	13	96

SOURCE: Disk 3 from EIP Records Request, (Microsoft Excel File) "AFOdischarges."

TABLE 7. OEPA-ISSUED NPDES PERMITS

NPDES Permit Status at OEPA	2002	2003	2004	2005	2006	Total
General Permit*	0	0	0	5	7	12
Individual Permit*	1	0	0	6	15	22
Pending Permits (Application Complete) **	0	17	14	5	N/A	36
Total	1	17	14	16	22	60

* List of CAFOs with General and Individual NPDES Permits available at http://www.epa.state.oh.us/dsw/cafo/permit_lists.html (last checked October 13, 2006).

** Source: Data provided by OEPA to EIP in response to July 28, 2005 public records request (Microsoft Excel file), "Melinda's Status on Individual NPDES Permits for CAFOs" as of June 20, 2005.

ODNR

Within ODNR, the Division of Soil and Water Conservation takes the lead in regulating pollution from unpermitted livestock operations. ODNR has power to issue chief's orders for abatement of agriculture pollution at such facilities, but these orders are rare, with only three operations targeted since 2002.⁸⁶ The main purpose of these orders is to require compliance with standards developed by the U.S. Department of Agriculture in the "Field Office Technical Guide"⁸⁷ and, as applicable, the "Ohio Livestock Manure and Wastewater Management Guide," which are available to all county Soil and Water Conservation Districts (see next section). Chief's orders are backed by imposition of misdemeanor criminal penalties for continued noncompliance. Also within ODNR, the Division of Wildlife may investigate and issue fines for fish kills and degradation of wildlife habitat that result from manure spills.

During the July 31, 2003 to August 1, 2005 period, ODNR received notification of 163 complaints related to livestock operations or cropland applying manure, with reports of at least 10 fish kills.⁸⁸ Reflecting Ohio's interagency approach, 9 complaints were referred internally by the Ohio Division of Wildlife, 60 came from SWCDs, 87 from OEPA, and 3 by ODA.⁸⁹ ODNR determined in 81 of 147

of those complaints that a violation of ODNR agriculture pollution abatement rules had occurred.⁹⁰ Among confirmed violations, at least 37 resulted from land application of manure, with 19 incidents tied to overflow/discharge, 4 to seepage, 15 to rainwater runoff, and 6 to other or unknown wastewater.⁹¹ At least 10 large CAFOs and 36 medium CAFOs committed violations. Nine of these medium dairy CAFOs had 699 cows — exactly one cow below the large CAFO threshold, yet still equivalent to the human waste production of a city of 15,000⁹² — and 7 CAFOs had 2,000 or more 55-pound-plus hogs.⁹³

SWCDs

The 88 Soil and Water Conservation Districts (SWCDs) in Ohio function as independent subdivisions of ODNR and work on a cooperative basis to encourage responsible manure management practices at unpermitted facilities or on cropland receiving manure transferred from CAFOs.⁹⁴ When a recipient landowner takes and land applies CAFO-produced manure, then according to ODA policy, "the local soil and water conservation district is responsible for investigation and enforcement of pollution attributable to land application of manure."⁹⁵

Case Studies: The Dirty Half-Dozen

The following facilities illustrate a range of regulatory challenges and failures in Ohio:

1. Ohio Fresh Eggs (Buckeye Egg Farm)

After flouting environmental regulations for nearly two decades beginning in the early 1980s, Buckeye Egg Farm and its owner Anton Pohlmann earned one of the most notorious reputations among the nation's CAFOs.¹⁰⁵ These exploits included numerous pollution incidents, such as a large manure spill into Otter Creek in 1983 that killed 150,000 fish.¹⁰⁶ According to former OEPA Director Chris Jones, Buckeye Egg's "failure to properly manage the large volume of manure generated by its 15.5 million chickens has resulted in severe fly infestation on several separate occasions," citing court documents that described Buckeye Egg's fly problem as reaching "Biblical proportions."¹⁰⁷ Former Attorney General Betty Montgomery called the company "the most recalcitrant corporate polluter" her office had ever seen.¹⁰⁸

OEPA revoked BEF's operating permits with a May 2002 final order, but ODA had to restart the revocation process after the handover of permitting authority in August 2002. ODA issued a notice of hearing to Buckeye Egg on August 19, 2002 and

pulled its permits with a final order on October 15, 2003.¹⁰⁹ Two months later, however, Ohio Fresh Eggs purchased Buckeye Egg Farm facilities, and ODA re-permitted the 12.4-million-chicken operation under a new name in December 2003. Ohio Fresh Eggs has subsequently accounted for over half of ODA's complaint investigations, comprising 109 out of a total 210 reports, and over a quarter of ODA's enforcement actions, nearly all of which relate to high manure moisture levels and failure to follow the Insect and Rodent Control Plan — strikingly similar to violations committed when the facility was owned by Pohlmann.

Although ODA's 36 notices of deficiencies threatened penalties as large as \$1,131,000 if Ohio Fresh Eggs did not return to compliance,¹¹⁰ ODA has not levied a single fine against Ohio Fresh Eggs to date. ODA did issue a proposed revocation of Ohio Fresh Eggs's operating permits in September 2005, but that was for Ohio Fresh Eggs's failure to disclose on its permit application the person who would really control new-and-improved management of the facility: Austin "Jack" DeCoster, blacklisted as a "habitual violator" in Iowa for his "substantial history of [environmental] noncompliance."¹¹¹ ODA had turned over the reins of one of the nation's most disreputable CAFOs to one of the nation's most disreputable CAFO owners.

2. Ohio Valley Farms

While ODA "conservatively" estimated the total design capacity of this facility at 10,250 hogs,¹¹² *over four times* the threshold requirement for a state operating permit, Ohio Valley Farms has successfully evaded attempts by OEPA and ODA to bring it under a permit since its first documented fish kill in November 2001. ODA issued an NOD to Ohio Valley Farms for operating a CAFO without a permit in May 2004 and another NOD for the same violation in June 2004, but Ohio Valley Farms escaped sanction by promising to divide its operations into separate 2,400-hog sites (100 hogs below the PTO threshold).¹¹³ Even this dubious resolution was thwarted when an ODA inspection in February 2005 revealed Ohio Valley Farms had continued operation as a single facility contrary to its pledge. ODA then issued a third NOD for operating without a permit in April 2005.

A new complaint of manure and odor problems at Ohio Valley Farms arrived at OEPA in April 2006, and OEPA referred the complaint to ODA. Despite Ohio Valley Farm's egregious history of non-compliance and broken promises, ODA declined to investigate and re-referred the complaint to ODNR, since Ohio Valley Farms was "not permitted facility."¹¹⁴ ODNR then turned over the site investigation to the Champaign County SWCD, which determined the following day that it was an odor rather than a pollution problem and that no violation of ODNR rules had therefore occurred. This sequence of events reveal a serious flaw in Ohio's interagency approach to CAFO regulation. A facility defied regulatory attempts by OEPA and ODA for five years, yet investigations fell from ODNR to a local SWCD, the weakest player on the regulatory scene.

Ohio Valley Farms still has no permit and faced no penalty from any agency, yet problems at this factory farm continue. In August 2006, the Ohio Division

of Wildlife notified OEPA of discharge/runoff of manure from Ohio Valley Farms into a stream,¹¹⁵ an environmental violation which should result in immediate imposition of an NPDES permit requirement.

3. Vreba-Hoff Dairy Development

Without question, the largest contributor to Ohio's factory farming boom is Vreba-Hoff Dairy Development, which has sponsored approximately 36 current or proposed dairy operations in Ohio.¹¹⁶ Vreba-Hoff designs many facilities to house just under 700 cows in order to avoid the state permitting requirement,¹¹⁷ although the company purportedly reached an informal agreement with ODA Director Fred Dailey to stop this practice.¹¹⁸ For example, 10 of 15 Vreba-Hoff facilities investigated by U.S. EPA did not have state operating permits, but did have average herd sizes of 641 cows.¹¹⁹ These strategically undersized facilities then either continue operating under regulatory radar or apply for permit to expand to 2,000 or more cows after a few years in operation.¹²⁰

Vreba-Hoff-sponsored CAFOs have amassed a staggering record of environmental violations in Ohio over the last five years, with at least 48 complaints or reports of manure discharges and approximately 60 enforcement cases.¹²¹ Nineteen different Vreba-Hoff-associated facilities have committed violations since 2002: (1) between January 2003 and July 2006, ODA issued 33 enforcement actions against these CAFOs; (2) between January 2002 and January 2005, OEPA issued 21 notices of violations; (3) between 2001 and 2004, Ohio Division of Wildlife linked 15 manure spills to Vreba-Hoff facilities;¹²² and (4) in 2004-2005, U.S. EPA issued administrative orders against 15 Vreba-Hoff facilities.¹²³

ODA has taken 8 enforcement actions against Arts Dairy alone, including the

largest ODA-levied penalty on record: a \$5,760 fine for freeboard violations. Another Vreba-Hoff facility, Nine Mornings Dairy, never obtained a Review Compliance Certificate from ODA despite receiving an NOD and notice of hearing. After racking up a total of 14 manure spills, discharges, and runoffs between May 2002 and September 2004, ODA issued only a warning letter upon discovery of three new violations at Nine Mornings in May 2005. This CAFO has since been sold and renamed as Oolman Dairy, and having reduced its dairy herd below the 700-cow permitting threshold, disappeared from ODA's radar screen.

4. Stoll Farms

Four years after the transfer of state operating permit authority, ODA is apparently still putting the finishing touches on an RCC for Stoll Farms,¹²⁴ despite its status as one of the largest dairies in the state with 3,840 cows (over five times the state permitting threshold) and a repeat violator of ODA rules. OEPA issued a notice of violation to Stoll in July 2004 for failure to submit an annual report as required by its original operating permit,¹²⁵ but ODA removed this annual reporting requirement after it took over the state program – instead requiring Stoll to enter the information into its operating record.¹²⁶ Stoll has inched up and down the ladder of ODA enforcement options, ever since, going from (1) a warning letter for manure runoff after land application to corn stubble fields in February 2004; to (2) a notice of deficiency in September 2004 for failure to obtain an RCC; to (3) a notice of hearing in November 2004 after

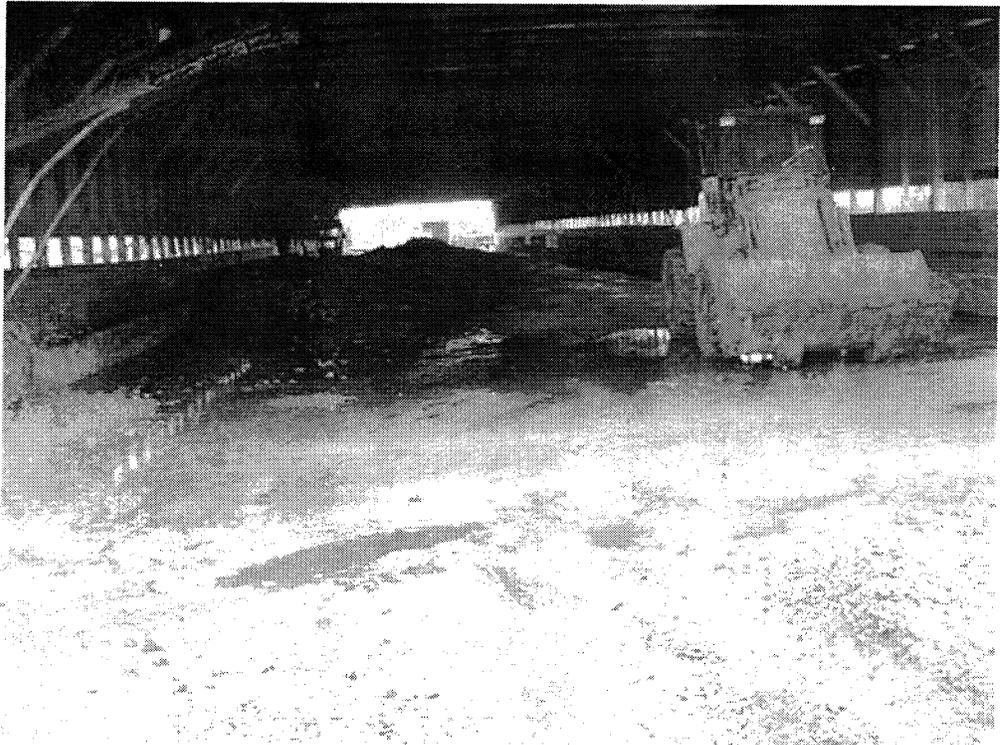
ODA proposed to deny Stoll's application for an RCC; back to (4) a warning letter in January 2005 for insufficient setbacks during a manure application; to (5) a notice of deficiency in March 2005 for over-application of manure; and finally to (6) another warning letter in May 2005 for not following setbacks during a land application.¹²⁷

5. Newberry Hog Farm

SWCDs in Miami and Shelby counties failed to abate chronic overflow and runoff problems from manure pits at this unpermitted, medium CAFO designed for 1,900 hogs, with continuing violations recorded in 2003, 2005, and 2006.¹²⁸ A water sample taken five days after a complaint revealed ammonia levels nearly four times greater than the fish kill threshold.¹²⁹ Taking the lead at the written request of the SWCDs in May 2005, ODNR issued a chief's order to Newberry Farms in June 2006 demanding either closure or a plan to implement best management practices. On a separate track, OEPA issued a notice of violation in May 2005 with a requirement to apply for an NPDES permit, but reported in April 2006 that the operator had completed no corrective action to any adequate degree.¹³⁰ No agency has yet assessed a penalty.

6. The UNKNOWN Polluter

Complaint entry logs provided by ODNR and OEPA attribute over 30 manure-related pollution incidents since 2001 to "unknown" sources. These incidents have resulted in at least eight fish kills.



Top: Overflow from egg wash water lagoons.

SOURCE: OEPA NOTICE OF VIOLATION TO SUNNY SIDE FARMS (OCTOBER 8, 2003)

*Bottom: Manure storage building, with OEPA inspector noting
"ponded contaminated storm water and no containment."*

SOURCE: OEPA NOTICE OF VIOLATION TO SUNNY SIDE FARMS (OCTOBER 8, 2003)

Analysis of Ohio Program

The mission statements of ODA and OEPA reveal divergent policy orientations, casting doubt on the wisdom of the current plan to transfer an environmental permitting program to ODA. For ODA, which provides marketing and loan assistance, among other programs, to farmers, "[t]he mission ... is to provide regulatory protection to producers, agribusinesses, and the consuming public; to promote Ohio agricultural products in domestic and international markets; and to educate the citizens of Ohio about our agricultural industry."¹³¹ At the outset, most of ODA's self-described priorities – protecting producers and agribusiness, promoting Ohio agricultural products, using public education on behalf of the agricultural industry – signal potential conflict of interests in regulating environmental violations at livestock operations.

In contrast, OEPA identifies its mission as "protect[ing] the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship."¹³² For OEPA's Division of Surface Water, which currently administers NPDES permitting for CAFOs, the mission is "[t]o protect, enhance and restore all waters of the state for the health, safety and welfare of present and future generations."¹³³

ODA has had authority to regulate the livestock industry under its Livestock Environmental Permitting Program and

a review of the program's history reveals that ODA has taken a number of positive steps toward more effective regulation of CAFOs, but that the program still has fundamental flaws.

To ODA's credit, state-issued permits exceed federal laws in the areas of siting criteria, geological explorations, water quality monitoring, insect and rodent control plans, and construction specifications.¹³⁴ The stand-out feature of the program is frequency of on-site inspections, which are conducted twice a year on a routine basis and as follow-up to reports of violation. ODA reported conducting 885 inspections as of June 2006,¹³⁵ nearly six times the annual average of CAFO inspections completed by OEPA over a similar time period.¹³⁶

In addition, ODA's development of the Certified Livestock Manager (CLM) program offers promise. Under the rules, anyone responsible for handling manure at a major Confined Animal Feeding Facility¹³⁷ or who transports or applies at least 4.5 tons (dry) or 25 million gallons (liquid) of manure annually must be a CLM or "under supervision" of a CLM who is "reasonably available, but not necessarily physically present."¹³⁸ ODA has so far certified 86 persons, who have completed required training and passed an examination.¹³⁹ Once certified, these individuals are obligated to attend continuing education classes in order to maintain certification.

the timing of the handover of state permit authority in 2002, permit renewals will spike in 2008-2009, a two-year period in which ODA will likely have to review seven or eight times the number of permits that it annually reviewed during the preceding three-year period. To the extent that 2008-2009 coincides with ODA's assumption of NPDES permitting authority, the quality of both permit review and enforcement, on both state and federal fronts, could significantly deteriorate as ODA's attention is distracted and its resources strained. For example, in the first 17 months after assuming state permit authority, ODA issued only eight enforcement actions, two of which originated with OEPA's revocation of Buckeye Egg Farm's permits. A similar lull in enforcement activity would pose far graver risks the next time around, given the increased number of facilities (a greater potential for harm) and removal of OEPA's remaining authority over CAFOs (a weakened safety net).

2. ODA fails to effectively regulate manure transfer from permitted farms.

ODA authorizes CAFOs to transfer manure for land application manure off-farm (also known as distribution and utilization).¹⁵⁰ Eleven of the 12 most recently permitted CAFOs plan to use distribution and utilization for their manure.

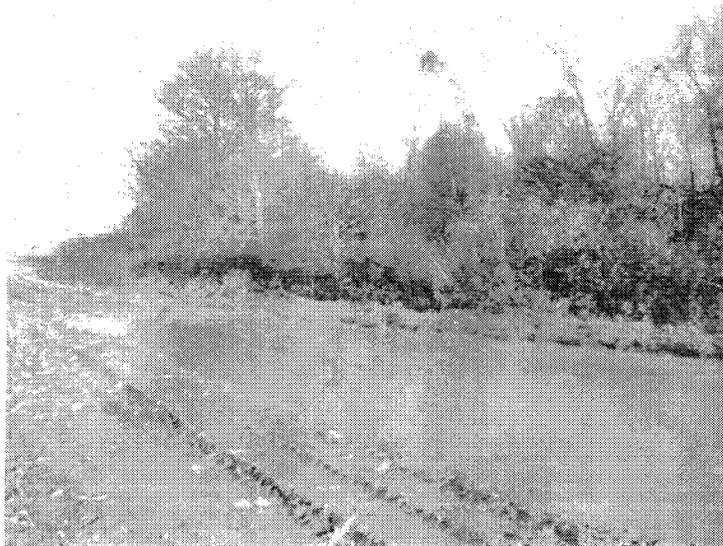
If an ODA permitted facility employs distribution and utilization, the CAFO simply provides the recipient with an analysis of the nutrient content of the manure and copies of technical requirements on how to apply manure in accordance with ODA rules and obtains a signed acknowledgment from the recipient that it has received this information and will use best management practices.¹⁵¹ If the permitted facility retains control over the land application of the manure, it may be liable for subsequent spills and discharges.¹⁵² Commonly, however, the permitted facility simply

sells the manure to a manure broker, thus washing its hands of the often dirty business of land application and responsibility for environmental impacts. Although this practice is allowed by federal Clean Water Act regulations, ODA could have closed this loophole through state regulations. Instead, the practice is increasingly common. Worse still, as the number of manure transfers increases, ODA has diminished its own oversight capability, evidenced by its decision to eliminate manure bills of sale from CAFOs' operating record.¹⁵³

Because of the potential environmental and public health impacts of the manure transfer loophole, it is especially critical that the public have access to information on potential land application of transferred manure. However, ODA's actions in three recent permit proceedings indicate a resistance to disclosing crucial information necessary for public participation. During the public comment period for Naomi Dairy, Green Dairy, and Hillbex Dairy, ODA refused requests to make land application maps available to the public due to purported trade secrecy issues.¹⁵⁴ ODA eventually reversed its trade secrecy determination,¹⁵⁵ but before it could disclose the maps, the dairies sued ODA in Ohio state court.¹⁵⁶ The dairies recently dismissed that lawsuit,

Another example of ponded liquid manure after over-application. "The substrate of this entire tributary had grey growth (sewage fungus) that is indicative of chronic impairment."

SOURCE: OEPA NOTICE OF VIOLATION TO RINGLER HOG FARM (JANUARY 27, 2004)



after concerned neighbors intervened in the lawsuit, and ODA now must make the land application maps available to the public.¹⁵⁷ However, ODA refused to extend the public comment periods until the public could review the maps, which eviscerates effective public participation. ODA has also decided not to request land application maps from future permit applicants who employ distribution and utilization.¹⁵⁸

Other issues surrounding manure transfer demand more sunlight. For instance, while ODA rules require application only on land with available water holding capacity in order to avoid application and discharge from saturated land, an operator of a Vreba-Hoff facility disclosed to U.S. EPA that his "agreement with the crop farmer states that the crop farmer must take his manure even if the ground is too wet to apply it."¹⁵⁹

Finally, "[i]f a recipient landowner takes and land applies the manure and is not large enough for ODA jurisdiction,

then the local [SWCD] is responsible for investigation and enforcement of pollution attributable to land application of manure."¹⁶⁰ Under this division of labor, SWCDs are supposed to monitor disposal¹⁶¹ of what appears to be upwards of 90 percent of manure produced ODA-permitted CAFOs but distributed to non-permitted facilities for land application.¹⁶² This task is all the more impossible for SWCDs given ODA's new policy of not requesting land application maps as part of manure management plans.¹⁶³ "If a recipient landowner takes and land applies the manure and is not large enough for ODA jurisdiction, then the local [SWCD] is responsible for investigation and enforcement of pollution attributable to land application of manure."¹⁶⁴ Even under ideal conditions, SWCDs are ill-suited to implement effective, uniform environmental regulation because they have no penalty authority and depend solely on the voluntary cooperation of polluters, which is tantamount to non-regulation.

Manure applied during winter within 50 feet of a stream, although rules require a minimum 200-foot setback.

SOURCE: ODA, 5C'S FARM COMPLAINT INVESTIGATION REPORT (FEBRUARY 4, 2005)



ODA inspector notes approximately a quarter-inch of manure applied on top of snow cover.

SOURCE: ODA, 5C'S FARM COMPLAINT INVESTIGATION REPORT (FEBRUARY 4, 2005)



3. ODA places inadequate restrictions on winter manure applications

The record of wintertime applications of manure on frozen or snow-covered ground is another example of a weakness in ODA's program. Winter manure application is permitted within ODA rules "only if absolutely necessary and only under numerous restrictions," and applicators must obtain prior approval from ODA.¹⁶⁵ Yet where ODA has been aggressive in enforcement, such as the flurry of notices sent out for inadequate freeboard in winter 2003 or strict rules adopted to restrict wintertime application to emergency disposal, the absence of any restrictions on wintertime transfer of manure negates many of ODA's efforts. Manure applied in winter serves no agronomic purpose. There is no chance of crop uptake, and manure on frozen or snow-covered ground is prone to runoff upon thaw. ODA's warning letter to the

perpetually noncompliant Ohio Fresh Eggs — suggesting “while you are not responsible for these violations” that the facility should apprise manure recipients of winter application rules — illustrates the shortcomings of unenforceable promises.¹⁶⁶ As ODNR stated in a newsletter for soil and water conservation districts, “Protecting water quality would be a lot easier if farmers never needed to apply manure when fields are frozen or covered with snow.”¹⁶⁷

4. ODA has reduced permit coverage and reporting requirements.

One danger in transferring NPDES authority to ODA is that the universe of permitted facilities may contract in size, just as occurred during the transfer of state permitting authority.¹⁶⁸ ODA and OEPA records reveal a significant disparity in the number of state permits handed over in 2002. At the time of transfer, OEPA reported passing oversight of 144 permitted facilities to ODA,¹⁶⁹ while ODA reported that OEPA had 125 permitted livestock operations.¹⁷⁰ A further disparity is that of 156 ODA-issued permits, only 109 appear to be RCCs (84), PTOs (15), or PTI/PTOs (10) for formerly permitted facilities.¹⁷¹ Therefore, up to 35 facilities — or a quarter (24.3 percent) of original OEPA-permitted factory farms — fell off the regulatory radar with the transfer of state permitting authority. ODA declined to account fully for these “missing” facilities, so there is no definitive explanation for how or why such a drop-off in regulated population

occurred. Records show some of these facilities continue to operate in violation of permitting requirements.¹⁷²

In addition to the unexplained dropoff in permitted facilities, there are other indications that the 2002 authority transfer to ODA left the public less protected. For example, although ODA rules require facilities to submit a written report to the agency within five days of any manure spill,¹⁷³ ODA has not been vigilant in enforcing this reporting requirement. ODA has stated that it does not track or keep a list of such reports.¹⁷⁴ The record indicates that ODA has simply not enforced the reporting requirement. ODA estimated that it had received approximately 5 written reports,¹⁷⁵ but complaint investigations by ODA inspectors reveal at least 20 incidents involving manure spills or discharges at ODA-permitted facilities.¹⁷⁶ And there is no record of any ODA enforcement action against a facility for failure to submit a written report.

Furthermore, while OEPA included an annual reporting requirement for the first three years of newly issued PTIs, ODA limits annual reporting requirement only to NPDES permits.¹⁷⁷ OEPA viewed this three-year annual reporting period as a key means to make sure that the assumptions underlying a particular facility's design turned out to be correct.¹⁷⁸ ODA still requires CAFOs to place the annual reporting information in their operating record, but this information is kept on-site at facilities and is far less accessible to ODA permit-writers and concerned citizens.

Recommendations

Given the urgent need for effective permitting and enforcement for CAFOs, EIP recommends the following improvements to ODA's program before considering any transfer of further authority to ODA.

Accelerate, streamline, and toughen up enforcement.

The record of enforcement against recalcitrant polluters shows an unacceptable lag of time between violations and compliance, and too much reluctance on ODA's part to engage in formal enforcement actions. ODA should eliminate warning letters and off-the-record notices altogether as steps in the enforcement process. While cooperation between livestock producers and regulators can facilitate compliance, the rules require ODA to issue an NOD after an inspection report indicates a violation. Further, there are so few instances of actual penalties being levied — only 3 final orders with penalties in four years — and such slow escalation in enforcement that facilities are far likelier to opt for the economic benefits of either long-delayed compliance or outright noncompliance. Without the “stick,” or the credible threat of escalation and penalty, compliance is left to the honor system. ODA must demonstrate with greater conviction that it takes its responsibilities as a protector of the environment seriously.

Close manure transfer loophole by establishing producer-based liability.

For transferred manure, ODA should adopt a policy presumption that clearly assigns liability for discharges and spills to manure producers. ODA's case-by-case approach to assigning responsibility for pollution incidents maximizes the incentive for producers to shell-game waste, drawing in third parties wherever possible in order to dilute the producers' own exposure to liability. The more parties involved, the less likely any one party will be held responsible. ODA's approach also minimizes the incentive for responsible producers to take an active role in monitoring where waste goes and how it is applied, since greater oversight indicates greater control and results in greater likelihood of liability. OEPA has noted the difficulty in determining responsibility and liability for manure once it leaves a CAFO due to use of “numerous methods and contracts.”¹⁷⁹

ODA policy should foster the centralized and transparent transfer of manure, and ODA resources should not be diverted with every pollution incident into playing referee in a blame game. Other states, such as Wisconsin offer Ohio a more appropriate model of producer-based liability. For example, the Wisconsin Department of Natural Resources (WDNR) holds producers liable for all manure discharges and spills, including spills of manure land applied by a third

party. In order for a producer to transfer liability, they must obtain written approval from WDNR, and only may do so in enumerated circumstances.¹⁸⁰

Bring medium CAFOs under state operating permits.

To supplement ODNR regulation of unpermitted CAFOs, ODA should work to bring more existing facilities under state operating permits. A pragmatic policy could leave existing permitting thresholds in place as a baseline requirement, while imposing a new requirement on medium CAFOs to obtain state operating permits if they violate best management practices as established under Ohio's agricultural pollution abatement rules.¹⁸¹ This requirement would parallel federal rules that place NPDES permit requirements on medium CAFOs that discharge to state waters. Since few unpermitted facilities wish to face the permit review and application process, a violation-based permit requirement would motivate more facilities to comply with best management practices. ODA could then focus on the medium-sized operations most deserving of its attention and bring an end to the cat-and-mouse game of manipulating facility sizes as a means of avoiding inspection and enforcement.

Require annual reports for ALL facilities.

The annual reporting requirement under NPDES should extend to all permitted facilities and all certified manure brokers. When an SWCD or any other state agency receives a location-based report of a manure discharge, an investigator should have immediate access to a master map that identifies any nearby fields that receive manure, the brokers who apply it, and the facilities that produce it. At the very least, OEPA's three-year reporting

requirement for new facilities should be re-implemented. More reports will also create more information on appropriate design standards and changes to future rules. As an initial step, ODA must begin enforcing its own manure spill reporting requirement and follow the lead of OEPA and ODNR in tracking known pollution incidents in an ODA-specific database. The current absence of such a list at ODA is unacceptable. The agency should have ready access not only to information about where manure is produced, but to where it is going and where it has most often caused environmental problems.

Restrict wintertime manure transfers.

Restrictions on wintertime application of manure must by definition extend to wintertime distribution and utilization of manure. Distribution and utilization is a code phrase for land application at fields not under a permitted facility's control. It is a self-defeating exercise for ODA to place restrictions on manure application to frozen or snow-covered ground while placing no restrictions on the amount of manure that facilities can transfer during winter months. Indeed, ODA's relatively aggressive enforcement of freeboard violations in the winter may often have the unintended consequence of increasing winter applications by third-party brokers or applicators. Oversight of manure brokers is minimal. They sign an agreement with the manure-producing facility promising to use best management practices, without facing any enforceable permit terms.

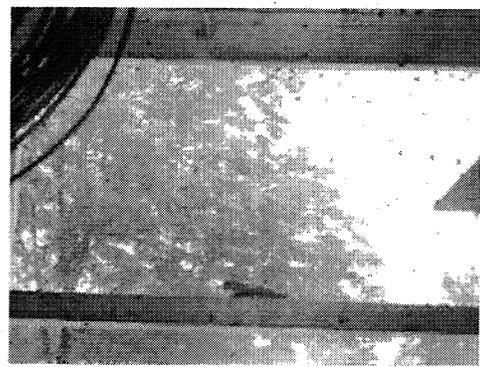
Hone inter-agency tools.

State agencies should develop a common database to log complaints, compile environmental violations, and track compliance at CAFOs. In addition, for every manure-related entry in the common

database, agencies should identify the original source facility producing the manure – whether or not the agency has determined that the source facility is “at fault.” Tracking manure-related incidents on a source-facility basis will enable speedy, targeted investigations of repeat violators. A more definitive inventory of existing AFOs needs to be taken in Ohio. State officials estimate the total number of AFOs at 25,000 to 30,000,¹⁸² but these “ballpark” figures do not shed light on how many existing facilities may be operating above permitting thresholds. The absence of accurate information on the universe of unpermitted livestock operations deprives both regulatory agencies and the public of a key measuring stick to assess the effectiveness and true scope of coverage of the state and federal permitting programs.

Learn from past missteps.

Prior to any final transfer of NPDES permitting authority, ODA and OEPA should prepare comprehensive reports to identify problems that occurred during the state-permit handover in 2002. While EIP has found certain areas of weakness and raised questions about this transfer, the affected state officials and state agencies are in a better position to apply these lessons to any further transfer of authority.



Fly infestation inside a home located near livestock operation.

SOURCE: ODA, LONGVIEW CATTLE COMPLAINT INVESTIGATION REPORT (MAY 31, 2006)

Report to citizens.

The unavailability of this basic enforcement and compliance information has broad implications. Public access is critical because it allows citizens to make informed decisions regarding environmental issues that affect their communities. Citizens also need compliance data in order to assist U.S. EPA and the states in ensuring that environmental violations are resolved. Moreover, the public's direct access to compliance information provides incentives for regulated entities to comply with the law.

Finally, providing information on the internet will free up more resources for core permitting and enforcement activities. ODA should post key enforcement information on its website, and all agencies should post their CAFO databases related to discharges on their website.

NOTES

- ¹ According to the U.S. Department of Agriculture (USDA) report, "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States" (December 2000) p. ii, available at <http://www.nrcs.usda.gov/technical/land/pubs/mannr.html>: "[T]he structure of animal agriculture has changed dramatically over the last two decades. Small and medium-sized livestock operations have been replaced by large operations at a steady rate. The total number of livestock has remained relatively unchanged, but more livestock are kept in confinement. The number of confined animals per operation has increased for all major livestock types."
- ² USDA Agriculture Research Service, "National Program 206: Manure and Byproduct Utilization Action Plan" (2005), p.1, available at <http://www.ars.usda.gov/SP2UserFiles/Program/206/206ActionPlan2004/NP206ActionPlanOctober2004Revisedwosynames.pdf>.
- ³ See "Outline of Environmental Impacts" in Part I, below.
- ⁴ The Animal Feeding Operation (AFO) industry is big business. The poultry industry alone generated over \$21 billion in on-farm revenue in 1997, with much of the production coming from corporate producers operating large AFOs. EPA, Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations, EPA-821-R-03-001 at 4-35 (2002) ("Development Document"), available at <http://cfpub2.epa.gov/npdes/afo/cafodocs.cfm>. Similarly, the swine industry generates roughly \$10 billion per year at the production level; revenue from consumer sales often exceeds \$20 billion. Development Document at 4-2. Large agribusinesses realize the lion's share of the profits. For instance, Tyson Foods, the world's largest meat producer, enjoyed \$26.4 billion in sales and realized \$1.9 billion in gross profits in 2004. Tyson, Annual Report 2004, available at http://media.corporate-ir.net/media_files/irol/65/65476/reports/ar04.pdf. Smithfield Foods, the nation's largest hog producer, generated \$9.3 billion in sales and \$227 million in net income in the same year. Revenues and profits continue to grow each year. Smithfield, Annual Report 2004, available at <http://www.rkconline.net/AR/SmithfieldAR2004/>.
- ⁵ See, e.g., Congress Daily, "Republicans Aim to Block EPA Regulations on Manure" (July 10, 2006) (mentioning that the American Farm Bureau, Tyson Foods and other livestock, poultry and dairy companies have hired the Livingston Group to lobby Congress in support of legislation that would exempt CAFOs from hazardous waste laws); Letter from Saxby Chambliss, Chairman of the Senate Committee on Agriculture, Nutrition and Forestry and James Inhofe, Chairman of the Senate Committee on Environment and Public Works to Stephen Johnson, Administrator of U.S. EPA (March 3, 2006) (implying that five of the six states in Region 5 have Clean Water Act requirements for CAFOs that are more stringent than the Act allows, and requesting that EPA Headquarters "clarify" the law for the Regions and states); Des Moines Register, "What about property rights for hog lots' neighbors?" (July 26, 2006) ("[L]egislators voted for laws that prevent Iowans from having a say in decisions made hundreds of times a year by neighbors and corporations to build large-scale confined animal feeding operations (CAFOs) near their properties."); see also Dayton Daily News, "Ohio Farm Bureau Keeps Agribusiness at Forefront," (December 2, 2002), available at <http://www.daytondailynews.com/project/content/project/farm/1202farmbureau.html> (quoting Columbus-based attorney Rick Sahli's view that "Farm Bureau uses its clout to keep farm regulations to a minimum.").
- ⁶ Dayton Daily News, "Lucrative Megafarm Market Lures Europeans" (December 6, 2002), available at <http://www.daytondailynews.com/project/content/project/farm/1206future.html>.
- ⁷ Id.
- ⁸ USDA, 2002 Census of Agriculture, available at http://www.nass.usda.gov/census/census02/volume1/oh/st39_1_001_001.pdf.
- ⁹ USDA, "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States" (December 2000), available at <http://www.nrcs.usda.gov/technical/land/pubs/mannr.html>.
- ¹⁰ Nationally, a Cornell University study projects that the number of dairy farms will decline from over 105,000 in 2000 to about 15,000 in 2020, with 84.6 percent of farms containing 500 or more cows, as cited in the dairy trade newsletter New World News (January/February 2004), available at http://www.vrebahoff.com/HTML/Newsletter_0401.pdf.
- ¹¹ See Dayton Daily News, "The Supersizing of America's Livestock Farms" (December 1, 2002), available at <http://www.daytondailynews.com/project/content/project/farm/1201overview.html>. ("The Ohio Farm Bureau, the lobbying voice of agriculture and a generous contributor to state candidates, pushed hard for the bill [that transferred permitting authority to ODA]. It was something that was extremely important to us and perhaps was one of the most important bills that we've worked on," Farm Bureau lobbyist Larry Gearhardt said. "We spent a tremendous amount of time trying to massage the bill and have it drafted the way it should be to run a good program.").
- ¹² Ohio Governor Bob Taft signed permitting authority transfer into law ("SB 141") on December 14, 2000. S.B. 141, 123rd Gen. Assem., (Ohio 2000). In addition to transferring state and federal permitting authority from

OEPA to ODA, the bill created extensive, new regulations for CAFOs and appropriated \$1.7 million to fund the Livestock Environmental Permitting Program.

¹³ Although the 1,000 animal unit measure is used in this report as shorthand, U.S. EPA and Ohio adopted animal-specific thresholds with the release of new rules from the Clean Water Act in 2002. The term "animal unit" is no longer officially used for permitting thresholds. 2003 CAFO Rule, 68 Fed. Reg. 7176 (February 12, 2003). One thousand animal units is equivalent to 700 mature dairy cows; 1,000 beef cattle or heifers; 2,500 swine weighing more than 55 lbs.; 10,000 swine weighing less than 55 lbs.; 30,000 ducks (other than liquid manure systems); 5,000 ducks (liquid manure handling systems); 30,000 chickens (liquid manure handling systems); 125,000 chickens except layers (other than a liquid manure system); 82,000 laying hens (other than liquid manure systems); 1,000 veal calves; 500 horses; 10,000 sheep or lambs; or 55,000 turkeys. See large CAFO definition under U.S. EPA's NPDES glossary at <http://cfpub.epa.gov/npdes/glossary.cfm#L>.

¹⁴ The Clean Water Act prohibits the "discharge of any pollutant" except in compliance with specific provisions of the Act. Federal Water Pollution Control Act, 33 U.S.C. § 1311(a). In particular, the discharge of any pollutant into navigable waters is illegal unless authorized by a permit issued pursuant to section 402 of the Act. Id. § 1342. Section 402 established the NPDES permit program, and requires dischargers to obtain a permit from EPA or an authorized State. Id. § 1342(a)(1). (b). NPDES permits prohibit or limit the amount of pollutants that may be discharged to waters and contain monitoring and reporting requirements, as well as other provisions necessary to ensure that discharges do not harm water quality or human health.

¹⁵ On August 19, 2002, ODA finalized the Livestock Environmental Permitting Program, as required under ORC § 903.02(A)(1) and ORC § 903.03(A)(1), and assumed enforcement authority over 161 permits to install formerly issued by Ohio EPA.

¹⁶ Submission of ODA's implementation plan to U.S. EPA appears imminent, as Kevin Elder, Livestock Environmental Permitting Program Executive Director, recently reported that "[t]he delegation document is almost complete and has been sent to the [Ohio Attorney General]'s office for review." Approved minutes from Concentrated Animal Feeding Facility Advisory Committee (June 8, 2006), available at <http://www.ohioagriculture.gov/pubs/divs/lepp/curr/mrgs/documents/Minutes-approved.6-08-06.pdf>.

¹⁷ In 2001, a second state, Oregon, also passed legislation to transfer the authority to administer the CAFO portion of its NPDES program to the Oregon Department of Agriculture. See "Oregon Department of Environmental Quality NPDES Program Review (January 12, 2005), p.14, available at <http://yosemite.epa.gov/r10/homepage.nsf/d7b03c222bcb0843588256464006a2ff4/>

b0e3582d387d4b1f882564c800026f1c/\$FILE/OR%20NPDES%20Report%20Final%202005.pdf. According to U.S. EPA Region 10, however, Oregon has not formally applied for, nor has EPA granted, an NPDES program revision (per 40 CFR § 123.62) reflecting a transfer of NPDES authority to the Oregon Dept. of Agriculture. (Email correspondence to EIP from U.S. EPA Region 10 (October 10, 2006)).

¹⁵ Statement from U.S. EPA National Agriculture Compliance Assistance Center on best management practices, available at <http://www.epa.gov/oecaagct/anafobmp.html>.

¹⁹ U.S. EPA and USDA, section 2.2 of "Draft Unified National Strategy for Animal Feeding Operation" (September 11, 1998), available at <http://water.usgs.gov/owq/cleanwater/af/>.

²⁰ U.S. EPA and USDA, "Clean Water Action Plan: Restoring and Protecting America's Waters", at 56 (February 1998), available at <http://water.usgs.gov/owq/cleanwater/action/cwap.pdf>.

²¹ Ohio Environmental Council, "CAFO Fact-sheet," available at http://www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafosheet.pdf or http://72.14.209.104/search?q=cache:tv6hFmzOK94J:www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafosheet.pdf+ohio+environmental+council+cafo+fact+sheet&hl=en&gl=us&ct=clnk&cd=1.

²² One dairy cow produces 21 times more waste than an average human. "The Meatrix," produced by GRACE Factory Farm Project, available at <http://www.themeatrix.com/learnmore/waste.html> ("This figure was calculated using dairy and human waste characteristics reported in the USDA's Agricultural Waste Management Field Handbook (1992) ... assuming an average lactating dairy cow weight of 1,400 lbs., and an average human weight of 175.8 lbs. ... Weight of waste excreted by lactating dairy cow: 80.00 lbs./day/1,000 lbs. of live weight.a (Weight of waste excreted by a 1,400 lb. lactating dairy cow: 112.0 lbs./day.) Weight of waste excreted by human: 30.00 lbs./day/1,000 lbs. of live weight.a (Weight of waste excreted by a 175.8 lb. human: 5.274 lbs./day.) Thus a 1,400 lb. lactating cow excretes 21.24 times as much waste per day as a 175.8 lb. human.").

²³ Ohio – City Population, available at <http://www.citypopulation.de/USA-Ohio.html>.

²⁴ E.g., Van Deurzen Dairy will have two 22.5 million gallon earthen manure lagoons to contain an estimated 47 million gallons of annual liquid manure production. ODA factsheet available at <http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-vandeurzenfactsh-111204.stm>.

²⁵ Land application is the primary method of waste disposal with roughly 90 percent of all CAFO-generated waste being applied onto fields. U.S. EPA, State Compendium; Programs and Regulatory Activities Related to Animal Feeding Operations at 13 (May 2002), available at <http://www.ars.usda.gov/sp2UserFiles/Place/19020500/PhosphorousImages/compendium.pdf>.

- ²⁶ Winter applications of manure, for example, serve no agronomic benefit to soils, but are routinely used as a waste disposal method by livestock operations to mitigate overflows in lagoons or storage pits. See, e.g., ODNR, "Winter Weather Complicates Manure Application," link available at <http://www.dnr.ohio.gov/soilandwater/swcdfs/swcdresources.htm> ("Protecting water quality would be a lot easier if farmers never needed to apply manure when fields are frozen or covered with snow. But the fact is, some farmers don't have enough storage capacity to get through the winter. Sometimes, even farmers with storage facilities need to apply manure in the winter because wet fall weather or other problems delayed application. Unfortunately, uncooperative winter weather can lead to pollution, even for farmers who follow winter manure application guidelines. Last winter, for example, a quick thaw led to a rash of pollution complaints in early March. Manure applied earlier in the winter had remained frozen on fields for weeks or even months, but after the thaw surface flow carried it into streams.... Although some other states have prohibited manure application to frozen or snow-covered ground, it's still permitted under very careful management in Ohio.").
- ²⁷ Of the 12 facilities most recently issued final permits by ODA, only one indicated in its draft or final permit notice that it would apply waste manure exclusively to its own land. ODA, Livestock Environmental Permitting Program, "Recent Final Permits", available at <http://www.ohioagriculture.gov/lepp/lepp-recent.stm>.
- ²⁸ Bill Weida, formerly an economics professor at Colorado College, has noted: "[P]ollution shopping companies [such as CAFOs] ... look for counties or regions where the permitting of potentially polluting activities is easiest and where environmental laws are seldom or loosely enforced." "Pollution Shopping in Rural America: The myth of economic development in isolated regions" (November 16, 2001), available at http://factoryfarm.org/docs/Pollution_Shopping_Update.pdf.
- ²⁹ USDA Agriculture Research Service, "National Program 206: Manure and Byproduct Utilization Action Plan" (2005), p. 1 ("Transportation costs inhibit distribution of manure at sites distant from where it is generated. Most manure, therefore, is usually land-applied within about 10 miles of beef cattle feedlots, dairy barns, poultry houses, or swine facilities."), available at <http://www.ars.usda.gov/SP2UserFiles/Program/206/206ActionPlan2004/NP206ActionPlanOctober2004Revisedwosynames.pdf>; USDA, "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States", p. 1 (December 2000) ("With fewer, but larger operations, the amount of animal manure has become more concentrated in local areas. Because the distance that manure can be hauled for land application has practical limits, manure loadings per acre must either increase or alternative methods of utilization be adopted."), available at <http://www.nrcs.usda.gov/technical/land/pubs/mannt.html>.
- ³⁰ U.S. EPA has identified the pollutants in CAFO waste as: "nutrients (particularly nitrogen and phosphorus), organic matter, solids, pathogens, and odorous/volatile compounds. Animal waste is also a source of salts and trace elements and, to a lesser extent, antibiotics, pesticides, and hormones...." 2003 CAFO Rule, 68 Fed. Reg. 7176, 7235 (Feb. 12, 2003).
- ³¹ 2003 CAFO Rule, 68 Fed. Reg. at 7236-37 ("Runoff of animal wastes is more likely when rainfall occurs soon after application (particularly if the manure was not injected or incorporated) and when manure is overapplied or misapplied. ... Dry weather discharges to surface waters associated with CAFOs have been reported to occur through spills or other accidental discharges from lagoons and irrigation systems, or through intentional releases.").
- ³² See figures 1 and 2 in Ohio Environmental Council, "Dead in the Water: A Comprehensive Analysis of Fish Kills in Ohio" (December 2003), p. 7 ("Livestock agricultural related incidents, including manure lagoon overflow, the misapplication of manure on land, cattle wading in streams and other manure incidents account for 72% of all agricultural sources of fish kills.").
- ³³ Id.
- ³⁴ Dayton Daily News, "The Supersizing of America's Livestock Farms" (December 1, 2002), available at <http://www.daytondailynews.com/project/content/project/farm/1201overview.html>.
- ³⁵ Ohio EPA tested for fish quality, bacteria and other contaminants during 18 months in 1999 and 2000. Information available at http://www.epa.state.oh.us/dsw/documents/wabash2001_infographic.pdf.
- ³⁶ Dayton Daily News, "The Supersizing of America's Livestock Farms" (December 1, 2002), available at <http://www.daytondailynews.com/project/content/project/farm/1201overview.html>.
- ³⁷ 2003 CAFO Rule, 68 Fed. Reg. at 7237 ("[Groundwater contamination] occurs as a result of water traveling through the soil to the ground water and taking with it pollutants such as nitrate from livestock and poultry wastes on the surface. Leaking lagoons are also a potential source of manure pollutants in ground water, based on findings reported in the scientific and technical literature.").
- ³⁸ Ohio Environmental Council, "CAFO Fact-sheet," available at http://www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafosheet.pdf or http://72.14.209.104/search?q=cache:tv6hFmzOK94J:www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafosheet.pdf+ohio+environmental+council+cafo+fact+sheet&hl=en&gl=us&ct=clnk&cd=1.
- ³⁹ Id.

⁴⁰ 2003 CAFO Rule, 68 Fed. Reg. at 7236 ("These organisms are: *Campylobacter* spp., *Salmonella* spp. (non-typhoid), *Listeria monocytogenes*, *Escherichia coli* O157:H7, *Cryptosporidium parvum*, and *Giardia lamblia*. All of these organisms may be rapidly transmitted from one animal to another in CAFO settings. An important feature relating to the potential for disease transmission for each of these organisms is the relatively low infectious dose in humans. The protozoan species *Cryptosporidium parvum* and *Giardia lamblia* are frequently found in animal manure. Bacteria such as *Escherichia coli* O157:H7 and *Salmonella* spp. are also often found in livestock manure and have been associated with waterborne disease. The bacteria *Listeria monocytogenes* is ubiquitous in nature and is commonly found in the intestines of wild and domestic animals.").

⁴¹ David Wallinga, M.D., Institute for Agriculture and Trade Policy, "Concentrated Animal Feeding Operations: Health Risks from Water Pollution", (November 2004), available at <http://www.iatp.org/iatp/publications.cfm?accountID=421&refID=37390>.

⁴² Id.

⁴³ Id.; see e.g., Chapin, et al., "Airborne Multidrug-Resistant Bacteria Isolated from a Concentrated Swine Feeding Operation", 113 Environmental Health Perspectives 137 (February 2005), available at <http://www.ehponline.org/members/2004/7473/7473.pdf>.

⁴⁴ 2003 CAFO Rule, 68 Fed. Reg. at 7238. See also U.S. EPA, Office of Children's Health Protection, "Drinking Water Contaminants—America's Children and the Environment: A First View of Available Measures", available at http://yosemite.epa.gov/ochnp/ochpweb.nsf/content/drinking_water_contam.htm; Centers for Disease Control and Prevention, "Spontaneous Abortions Possibly Related to Ingestion of Nitrate-Contaminated Well Water—La Grange County, Indiana 1991–1994", Morbidity and Mortality Weekly Report 45 (26) (1996), at 569–571 (linking high nitrate levels in Indiana well water near confinement operations to spontaneous abortions in humans), available at <http://www.cdc.gov/mmwr/PDF/wk/mm4526.pdf>.

⁴⁵ 33 U.S.C. § 502(14).

⁴⁶ Id. § 402(a).

⁴⁷ 40 C.F.R. § 122.23(b)(2).

⁴⁸ Id. § 122.23(b)(1)(i).

⁴⁹ Id. § 122.23(b)(1)(ii).

⁵⁰ Id. § 122.23(b)(3).

⁵¹ Id. § 122.23(c)(2).

⁵² Id. § 122.23(b)(3).

⁵³ Id. § 122.23(b)(3).

⁵⁴ 2003 CAFO Rule, 68 Fed. Reg. at 7176.

⁵⁵ 40 C.F.R. § 122.23(b)(4).

⁵⁶ Id.

⁵⁷ Id. § 122.42(e).

⁵⁸ 2003 CAFO Rule, 68 Fed. Reg. at 7246–47. EPA estimates that approximately 3 percent of all Large CAFOs and about 4 percent of all affected small business CAFOs nationwide may be vulnerable to closure.

⁵⁹ 399 F.3d 486 (2d Cir. 2005).

⁶⁰ Id. at 505–06.

⁶¹ U.S. EPA, Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations in Response to Waterkeeper Decision; Proposed Rule, 71 Fed. Reg. 37744, 37774 (2006).

⁶² 40 C.F.R. § 122.21(a).

⁶³ See explanation of animal unit in note 13, above.

⁶⁴ Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.

⁶⁵ Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.

⁶⁶ HB 152 began as a bill to change Ohio law to conform to federal rules about large livestock operations. By the time the law went into effect November 5, 2005, however, it included a "preclusion against local regulation of animal feeding facilities" amendment circulated by the Ohio Farm Bureau: "An owner or operator of an animal feeding facility who holds a permit to install, a permit to operate, a review compliance certificate, or an NPDES permit or who is operating under an operation and management plan... approved by the chief of the division of soil and water conservation in the department of natural resources... or by the supervisors of the appropriate soil and water conservation district... shall not be required by any political subdivision of the state or any officer, employee, agency, board, commission, department, or other instrumentality of a political subdivision to obtain a license, permit, or other approval pertaining to manure, insects or rodents, odor, or siting requirements for installation of an animal feeding facility." Ohio Rev. Code Ann. § 903.25.

⁶⁷ ODA Response to Oral Comments of Jenny Smith, Public Hearing (May 25, 2005), cmt. 8. Pollution investigation reports and complaint logs from OEPA and ODNR also evidence extensive cross-reporting among ODA, ODNR, OEPA, and SWCDs and joint responses to spills that include ODNR, OEPA, and SWCD staff.

⁶⁸ ODA list of permitted farms, available at <http://www.ohioagriculture.gov/lepp/curr/otr/lepp-ot-permittedfarms.stm> (last updated August 3, 2006). These facilities are known as "Concentrated Animal Feeding Facilities" in Ohio but for ease of reference are referred to in this report as CAFOs.

- ⁶⁹ See explanation of animal unit in note 13, above.
- ⁷⁰ Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.
- ⁷¹ Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.
- ⁷² Minutes from CAFF Advisory Committee Meeting (June 8, 2006), available at <http://www.ohioagriculture.gov/pubs/divs/lepp/curr/mtgs/documents/Minutes-approved.6-08-06.pdf>.
- ⁷³ Ohio Admin. Code § 901:10-5-04(k).
- ⁷⁴ Enforcement procedures are described in Section 903.16 to 903.18 of the Ohio Revised Code. In addition, rules in OAC Chapter 901:10-5 address enforcement, including procedures for enforcement in Rule 901:10-5-03 and penalties in Rule 901:10-5-04.
- ⁷⁵ ODA, Responsiveness Summary to Reyskens Dairy permit, pp. 9-10 (July 30, 2004), available at <http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-reyskensrespsum-080604.pdf>.
- ⁷⁶ Ohio Rev. Code Ann. § 903.16(A)(1); Ohio Admin. Code § 901:10-5-03(D)(2).
- ⁷⁷ Ohio Rev. Code Ann. § 903.16(A)(2); Ohio Admin. Code § 901:10-5-03(D)(3).
- ⁷⁸ Ohio Rev. Code Ann. § 903.16(A)(3); Ohio Admin. Code § 901:10-5-03(D)(5).
- ⁷⁹ Ohio Rev. Code Ann. § 903.18; Ohio Admin. Code 901:10-5-05.
- ⁸⁰ Compilation of records provided by ODA.
- ⁸¹ Id.
- ⁸² OEPA, FY2005 Annual Summary Report.
- ⁸³ Data compiled from final orders provided by OEPA to EIP in response to July 28, 2005 public records request.
- ⁸⁴ Data compiled from materials on Disks 1, 2, and 3 (NOV file folders) provided by OEPA to EIP in response to July 28, 2005 public records request.
- ⁸⁵ See Table 7.
- ⁸⁶ Copies of chief's orders provided by ODNR to EIP in response to September 5, 2006 public records request (Order # 2003-1 issued to J. Scott Thomas (April 23, 2003); Order #2005-1 issued to Monte Tuck (June 23, 2005); and Order #2006-1 issued to Terry Miller (June 9, 2006)).
- ⁸⁷ See definitions under ODNR's pollution abatement rules, Ohio Admin. Code 1501:15-5-01(B)(21): "Field Office Technical Guide" means the localized document used by the soil and water conservation district and developed (current edition) by the natural resources conservation service, United States department of agriculture, which is available to all Ohio County Soil and Water Conservation Districts, and which provides: (a) Soil descriptions; (b) Sound land use alternatives; (c) Adequate conservation treatment alternatives; (d) Standards and specifications of conservation practices; (e) Conservation cost-return information; (f) Practice maintenance requirements; (g) Erosion prediction procedures."
- ⁸⁸ Figures based on data in ODNR complaint entry log (Microsoft Excel files), provided to EIP in response to July 27, 2005 and August 21, 2006 public records requests.
- ⁸⁹ Id.
- ⁹⁰ Id.
- ⁹¹ Id.
- ⁹² See note 22, above, for explanation of dairy cow's human waste equivalence.
- ⁹³ Id.
- ⁹⁴ For historical background on SWCDs, see http://ofswcd.org/artman/publish/article_147.shtml (tracing SWCDs' broadening mission from assisting farmers with cropland erosion in the 1940s to coordinating with OEPA's Nonpoint Source Management Plan in the 1980s).
- ⁹⁵ ODA responsiveness summary for Reyskens Dairy, p. 9.
- ⁹⁶ Ohio Admin. Code § 1501:15-5-15(B).
- ⁹⁷ Ohio Admin. Code § 1501:15-5-15(D); see also Ohio State University Extension's EQIP factsheet, available at <http://ohioline.osu.edu/ae-fact/0002.html>.
- ⁹⁸ Information available at http://ofswcd.org/artman/publish/article_153.shtml.
- ⁹⁹ See, e.g., Letter from Dan Batdorf, Chairman of Miami SWCD, to David Hanselmann, Chief of ODNR-DSWC (May 13, 2005) ("The Miami SWCD has received four separate complaints from various agencies since 1998 concerning this facility.... Since the summer of 2003, the neighboring community continues to complain about the overflow of manure and the lack of management that is needed for a facility of this age. However, the Miami [SWCD] does not have the authority to enforce upon the operator the type of management that is needed to comply with the Clean Water Act, nor can we convince the operator to discontinue his use of this old and outdated facility.... [We] would like [ODNR] to take corrective action and try to resolve this pollution problem.").
- ¹⁰⁰ See discussion of ODNR in subsection 3, above.
- ¹⁰¹ U.S. EPA, "NPDES Profile: Ohio" (last updated May 3, 2005), available at http://www.epa.gov/npdes/pubs/ohio_final_profile.pdf.
- ¹⁰² Data compiled from U.S. EPA's Enforcement & Compliance History Online (ECHO) database, available at <http://www.epa.gov/echo/>. The total is based on the number of facilities with an administrative or judicial order entered through ECHO's Integrated Compliance Information System.
- ¹⁰³ Id.

¹⁰⁴ Id. See also section on "Dirty Half-Dozen" below for more historical background on Ohio Fresh Eggs and its decades' long record of noncompliance.

¹⁰⁵ See, e.g., The Columbus Dispatch, "State Crackdown: Buckeye Egg Rotten To Its Corporate Core" (April 23, 2002) ("Buckeye Egg, which mismanages massive egg-producing farms in four Ohio counties, is a corporate outlaw that for years has polluted the state's air and water, employed illegal aliens and afflicted its neighbors with hellish plagues of flies and beetles.") available at <http://libpub.dispatch.com/cgi-bin/documentv1?DBLIST=cd02&DOCNUM=17567&TERMV=302:3:305:4>; Dayton Daily News, "Buckeye Egg Farm Violations Among Worst In Country" (December 4, 2002) available at <http://www.daytondailynews.com/project/content/project/farm/1204buckeyeegg.html> ("Following an April fly outbreak of 'Biblical proportions,' Attorney General Betty Montgomery called the company "the most recalcitrant corporate polluter" her office has seen.") .

¹⁰⁶ Ohio Environmental Council, "Dead in the Water," p. 13.

¹⁰⁷ The Columbus Disptach, "State Crackdown: Buckeye Egg Rotten To Its Corporate Core" (Apr. 23, 2002) available at <http://libpub.dispatch.com/cgi-bin/documentv1?DBLIST=cd02&DOCNUM=17567&TERMV=302:3:305:4>.

¹⁰⁸ Id.

¹⁰⁹ Documents provided by ODA in response to EIP records request.

¹¹⁰ ODA Notice of Deficiency issued to Ohio Fresh Eggs (April 5, 2006).

¹¹¹ Letter from ODA Director Daily to Donald Hershey, et al. "Re: Proposed Action to Issue a Revocation Order" (Sept. 30, 2005).

¹¹² Letter from Kevin Elder to Ohio Valley Farms (April 6, 2005) ("ODA conservatively estimates that the seven hog barns at [OHV] have a total design capacity of 10,250 hogs qualifying [Ohio Valley Farms] as a concentrated animal feeding facility.") .

¹¹³ Id. (referencing Ohio Valley Farms' failure to operate as separate facilities as it promised to do in a June 15, 2004 letter to ODA).

¹¹⁴ ODNr "Complaints" database (Microsoft Excel file) provided to EIP in response to August 22, 2006 public records request.

¹¹⁵ Id.

¹¹⁶ Comments from Cecelia Conway, Vreba-Hoff spokesperson, to Concentrated Animal Feeding Facility Advisory Committee (March 10, 2006); Ben Sutherly, "Dairy Dilemma: Debate may last until cows come home" (July 11, 2004), available at <http://www.greenlink.org/public/hotissues/dairy.html>.

¹¹⁷ Dayton Daily News, "Lucrative Megafarm Market Lures Europeans" (December 6, 2002) ("Virtually all the Ohio dairies are built to house just under 700 cows... Environmentalists also believe the Vreba-Hoff dairies intentionally kept their farms below

700 cows until [ODA] assumed [state permitting] authority.") available at <http://www.daytondailynews.com/project/content/project/farm/1206future.html>.

¹¹⁸ Notes from telephone conversation between ODA staff and EIP (October 10, 2006).

¹¹⁹ Data compiled from U.S. EPA Administrative Orders, provided to EIP in Sept. 28, 2006 response to FOIA request.

¹²⁰ Vreba-Hoff's staff "assisted [dairies] in obtaining from the [ODA] permits to install and operate the new dairy farms." Affidavit of Cecelia Conway in *Naomi Dairy v. ODA*, Civ. No. 06-6473 (Ohio Court of Common Pleas 2006). U.S. EPA administrative orders detail some of the permitting advice and support. For example, in response to the question of "[w]hat promises were made by Vreba-Hoff Dairy Development regarding environmental permitting," "[t]he owner said that Vreba-Hoff told him environmental permits were not necessary for a dairy of this size in Ohio." U.S. EPA Administrative Order, Schilderink Dairy, Attachment B, p. 4 (Sept. 10, 2004) (the dairy had 670 cows at the time, but ODA has since authorized it to expand to 2,990 cows). Other owners and operators have said: (1) Vreba-Hoff promised "environmental support," U.S. EPA Administrative Order, Corey Dairy, Attachment p. 4 (Sept. 30, 2004); (2) "Prior to construction, the owner requested from Vreba-Hoff a larger lagoon than Vreba-Hoff planned" U.S. EPA Administrative Order, DeVries Dairy, Attachment, p. 4 (Dec. 20, 2004) (3) "Vreba-Hoff told the operator that the original lagoon and manure pit provided one year of storage. The operator found that the capacity was in fact closer to 4 months of storage." U.S. EPA Administrative Order, Olsthoorn Dairy, Attachment p. 3 (Sept. 24, 2004).

¹²¹ Combined figures from ODA, OEPA, ODNR, and U.S. EPA data sources.

¹²² Data compiled from U.S. EPA Administrative Orders, provided to EIP in Sept. 28, 2006 response to FOIA request

¹²³ U.S. EPA, data available from Enforcement & Compliance History Online (ECHO) database.

¹²⁴ Although Stoll Farms is included on ODA's published list of 156 permitted facilities, Stoll's entry is the only one on the list that does not include a permit type or a permit renewal date. Information available at <http://www.ohioagriculture.gov/lepp/curr/othr/lepp-ot-permittedfarms.stm>.

¹²⁵ Letter from OEPA to Stoll Farms (July 24, 2002).

¹²⁶ Email from ODA legal counsel to EIP (October 11, 2006) ("All of the information required by the original PTI is in the Stoll manure management plan of the facility's RCC. With the exception of information on manure sales records, the information is maintained in the operating records and is not submitted in an annual report. Ohio Rev. Code Ann. 903.04(T): "An existing facility that is issued a review compliance certificate shall comply with the previously issued installa-

tion permit, as amended by the certificate." With this in mind, ODA has not pursued an enforcement action against Stoll for failure to submit an annual report. The information required by the special condition of the OEPA PTI has been filed with ODA, but in the form of the Manure Management Plan (and the corresponding operating records) and not an annual report.¹²⁷

¹²⁷ Documents provided by ODA to EIP in response to July 27, 2005 public records request.

¹²⁸ ODNR Chief's Order #2006-01 (June 9, 2006), pp. 4-8.

¹²⁹ Id., p. 5 ("The water analysis report indicated an ammonia concentration of 30.15 ppm.")

¹³⁰ Id., pp. 8-9.

¹³¹ Available at <http://www.ohioagriculture.gov/pubs/aboutus.stm>.

¹³² "Getting to know Ohio EPA", available at <http://www.epa.state.oh.us/pic/facts/get2know.pdf>.

¹³³ Available at <http://www.epa.state.oh.us/pic/facts/AR/dsw.html>.

¹³⁴ ODA, "Responsiveness summary to public comments on the Wezbra Dairy draft permit" (August 18, 2004), available at <http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-wezbrarespsum-082004.stm>.

¹³⁵ Minutes from CAFF Advisory Committee Meeting (June 8, 2006), available at <http://www.ohioagriculture.gov/pubs/divs/lepp/curr/mtgs/documents/Minutes-approved.6-08-06.pdf>.

¹³⁶ Comparison based on averaging 885 ODA inspections over 3.75 years (August 2002-May 2006) v. 163 OEPA compliance inspections over 4 years (FY2002-FY2005).

¹³⁷ "Major concentrated animal feeding facility" means a Concentrated Animal Feeding Facility with a total design capacity of more than ten times the number of animals specified as operating-permit thresholds. Ohio Rev. Code Ann. § 903.01(N).

¹³⁸ Ohio Rev. Code Ann. § 903.7(A)(1).

¹³⁹ "Certified CLMs" (Microsoft Excel file) provided by ODA to EIP in response to August 3, 2006 public records request.

¹⁴⁰ Warning letters issued February 9, 2005 to manure applicators Mike Grand and Joe Beam. As of August 3, 2006, 18 months later, neither person had obtained a certificate. ODA actually provided the names of non-certified manure applicators to Arts Dairy in 2004, in order to help the facility deal with insufficient storage capacity and anticipated land application problems. A trade newsletter for dairy CAFOs also gave readers contact information of a non-certified manure hauler, "[f]or help with cleaning your manure pit."

¹⁴¹ ODA Complaint investigation report for Vissers Dairy (May 9, 2006). As of July 31, 2006, ODA had issued no warning letter against the ODA-certified applicator, Todd Hoffman.

¹⁴² ODA Factsheet, "What is a Background Check?" (emphasis added), available at <http://www.ohioagriculture.gov/lepp/curr/fact/lepp-fs-backgroundcheck-120103.pdf>.

¹⁴³ See discussion of Ohio Fresh Eggs in Part IV above.

¹⁴⁴ See note 84, above.

¹⁴⁵ Letter from Kevin Elder to Willem Zylstra (June 17, 2004).

¹⁴⁶ Id.

¹⁴⁷ Letter from Kevin Elder to Willem Zylstra (February 4, 2005).

¹⁴⁸ ODA, Complaint investigation report for DeVries Dairy (March 27, 2006).

¹⁴⁹ ODA, Final Order against DeVries Dairy (April 19, 2004), provided to EIP in response to July 27, 2005 public records request.

¹⁵⁰ Ohio Admin. Code § 901:10-2-11.

¹⁵¹ Id.

¹⁵² Ohio Admin. Code § 901:10-1-01(UU).

¹⁵³ See ODA, Operating Record (Form 3900-013), p. 1, available at <http://www.ohioagriculture.gov/pubs/divs/lepp/frms/lepp-Operating%20Records.pdf> ("Manure Bills of Sale are no longer required to be kept in the Operating Record so you may wish to use a separate notebook.")

¹⁵⁴ E.g., Letter from William Hopper, ODA Chief Legal Counsel, to David Gerdeman granting trade secrecy request over land application maps (May 1, 2006) ("The information in the fields identification map shall be maintained by ODA in a separate file labeled 'Confidential'").

¹⁵⁵ Letter from William Hopper, ODA Chief Legal Counsel, to Jack Van Kley (June 21, 2006) ("After discussions with the Office of Attorney General and further review of Ohio law, ODA has revisited its determination..., wherein ODA determined that the fields identification map or land application site maps should be labeled as 'trade secret' [, and it now] intends to release the requested information.")

¹⁵⁶ *Naomi Dairy v. ODA*, Civ. No. 06-6473 (Ohio Court of Common Pleas 2006).

¹⁵⁷ Plaintiffs' Voluntary Dismissal, *Naomi Dairy v. ODA*, Civ. No. 06-6473 (Ohio Court of Common Pleas Oct. 11, 2006).

¹⁵⁸ Email from ODA legal counsel to EIP (June 26, 2006).

¹⁵⁹ U.S. EPA, Administrative Order to Olsthoorn Dairy (Sept. 24, 2004).

¹⁶⁰ ODA response to oral comments of Jenny Smith (May 25, 2005).

¹⁶¹ See, e.g., Letter from ODA inspector to Logan SWCD (January 15, 2004) (responding to SWCD's inquiry to find out who in ODA's office was responsible for Weaver Brothers' Heartland Egg facility following land application complaints): "I am the inspector in charge of Heartland, but they sell all of their manure. Since they sell it (using what we

refer to as Distribution and Utilization), the responsibility for manure application falls back to the farmer land applying the manure [and] the county SWCDs. ... [U]nless a farmer that has a certified livestock manager certificate from us (or should have) applied the manure (or Weaver's themselves) there is not much we can do."

¹⁶² Of the 12 facilities most recently issued final permits by ODA, only one indicated in its draft or final permit notice that it would apply waste manure exclusively to its own land. Information available at <http://www.ohioagriculture.gov/lepp/lepp-recent.stm>.

¹⁶³ Email from ODA legal counsel to EIP (June 26, 2006) ("Naomi Dairy and other proposed dairies in the general area plan to transfer manure, 40 CFR 122.42(e)(3). Land application site maps will no longer be submitted to ODA"). Without land application maps or other information identifying the location of fields slated for manure application, even OEPA had a difficult time determining whether an MMP complies with the law. See Letter from Melinda Harris, OEPA inspector, to Johannes Van Rooijen, Naomi Dairy (June 14, 2006) ("[A] few of the planned land application fields may not be acceptable due to the location in the Village of Cygnet's source water protection area. . . . [P]lease notify this office if any land application fields are located in the protection area, identify those fields by field number, and provide an expected submittal date of a revised [MMP]."

¹⁶⁴ ODA response to oral comments of Jenny Smith (May 25, 2005).

¹⁶⁵ ODA, Responsiveness Summary to Reyskens Dairy permit, p. 11 (July 30, 2004), available at <http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-reyskensrespsum-080604.pdf>. See Ohio Admin. Code § 901:10-2-14.

¹⁶⁶ Letter from ODA to Ohio Fresh Eggs (March 3, 2004).

¹⁶⁷ ODNR, "Winter Weather Complicates Manure Application," link available at <http://www.dnr.ohio.gov/soilandwater/swcds/swcdresources.htm>.

¹⁶⁸ ODA declined to offer an explanation or account after EIP provided it with a list of facilities permitted according to OEPA records, but not clearly permitted in ODA records. An unknown number of these farms may have changed names, stopped operating, or reduced herd size below the permitting threshold.

¹⁶⁹ OEPA, FY 2002 Annual Report ("The State of Ohio has approximately 144 permitted livestock facilities."). Also, OEPA had previously permitted as many as 161 facilities, but about 15 permits apparently corresponded to facilities that closed or were never built. "All AFOs" spreadsheet (Microsoft Access file) provided by Ohio EPA in response to July 28, 2005 records request

¹⁷⁰ ODA Factsheet, "Once ODA is in Charge, What Will Happen with Ohio EPA Permitted Facilities?" (July 2002) ("Ohio EPA has approximately 125 permitted livestock operations."),

available at <http://www.ohioagriculture.gov/lepp/curr/fact/lepp-fs-rcc-120103.pdf>.

¹⁷¹ Within two years, or by August 2004, all OEPA-permitted facilities were required to submit an application and supporting documentation to ODA to obtain a Review Compliance Certificate (RCC) or PTO. It is possible that more than 99 formerly-permitted facilities are included in ODA's current list, but ODA officials declined requests to account for this disparity. EIP initially identified 77 facilities on OEPA's 2002 permit list that were missing on ODA's August 5, 2006 permit list, available at <http://www.ohioagriculture.gov/lepp/curr/othr/lepp-ot-permittedfarms.stm>.

¹⁷² For example, ODA issued a notice of deficiency in August 2004 to the Nave-Field farm, formerly permitted by OEPA, for failure to obtain an RCC prior to the 2-year deadline. Nave-Field had not obtained an RCC as of August 2006, with no escalation of enforcement by ODA. However, OEPA issued a Notice of Violation for a manure discharge to waters of the State in January 2005, showing that the facility's "demonstrated negligence and failed manure management" continue.

¹⁷³ Ohio Admin. Code § 901:10-2-17 ("The owner or operator shall also file a written report of [a discharge or manure spill] in letter form within five days following first knowledge of the occurrence.").

¹⁷⁴ Information based on conversation between ODA staff and EIP (October 13, 2006).

¹⁷⁵ Id.

¹⁷⁶ Data compiled from copies of complaint investigations provided by ODA to EIP in response to July 27, 2005 public records request.

¹⁷⁷ Ohio Admin. Code § 901:10-2-20 ("[T]he owner of a [CAFO] with an NPDES permit must submit an annual report.").

¹⁷⁸ Telephone conversation between OEPA permitting staff and EIP (October 10, 2006).

¹⁷⁹ OEPA, Response to Public Comments on Revised Draft General NPDES Permit for CAFOs (January 21, 2005), available at http://www.epa.state.oh.us/dsw/cafo/CAFO_Response%20to%20Comments%20on%20Revised%20GP2.pdf.

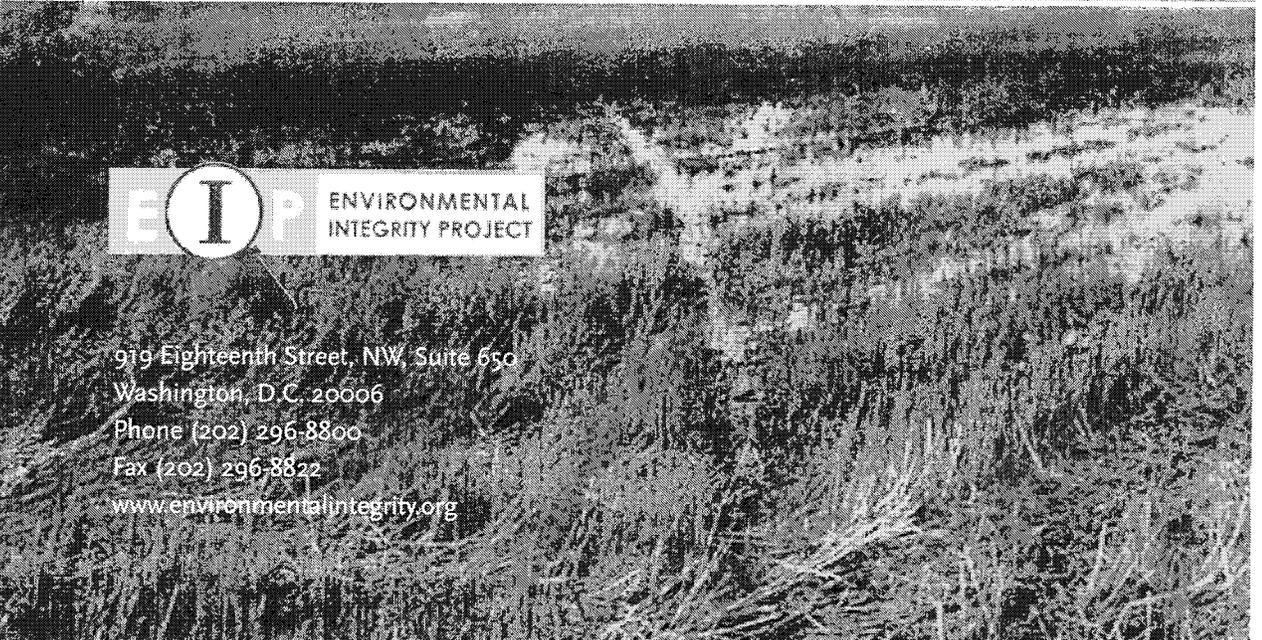
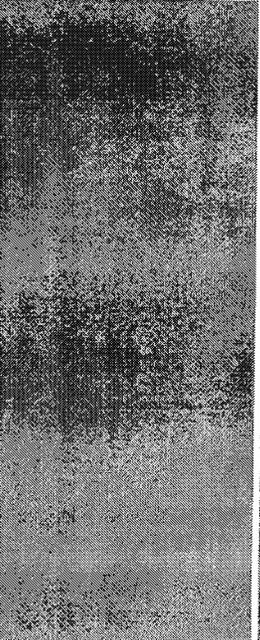
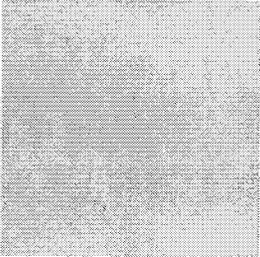
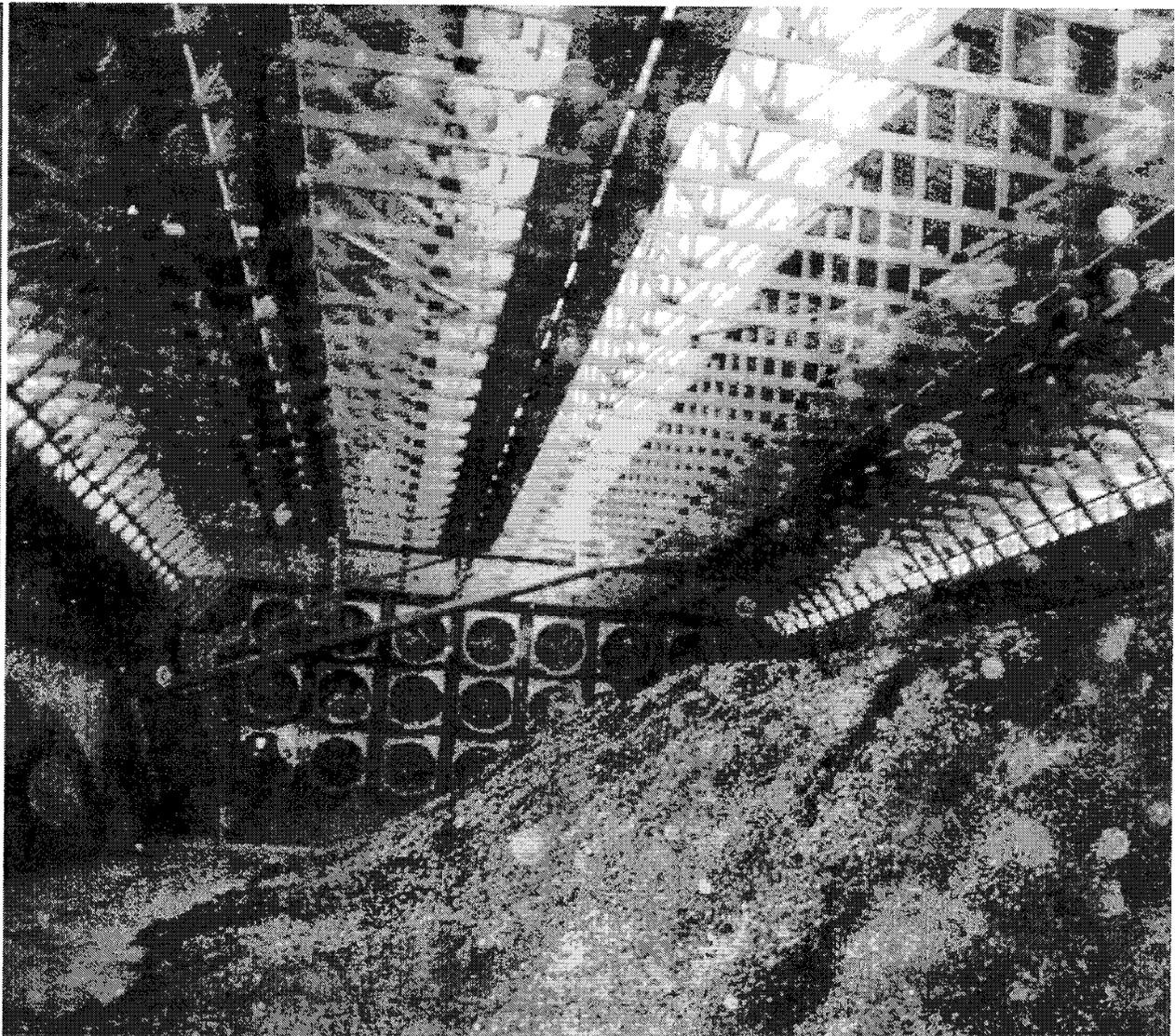
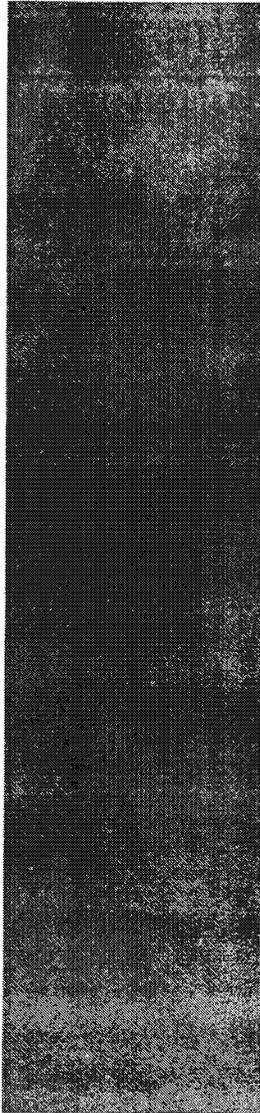
¹⁸⁰ Wis. Admin. Code § NR 243.14(4); *Maple Leaf Farmers, Inc. v. WDNR*, 633 N.W.2d 720 (Wisc. 2001)(holding WDNR's enforcement of permit provisions is valid even when the the manure was landspread offsite). WDNR is currently proposing amending these rules. The proposed rule maintains producer-based liability, but expands the circumstances in which liability can be transferred and specifies how to transfer liability. WDNR must still approve of the transferred liability, and can only do so if certain requirements are met. The proposed rules explicitly state that the producer maintains liability if WDNR approval is not obtained in writing. Proposed Rule § NR 243.142 "Responsibility for large CAFO manure and process wastewater," available at

<http://www.dnr.state.wi.us/org/water/wm/nps/rules/nr243/NR243.htm>.

¹⁰¹ Ohio Admin. Code § 1501:15-5-01.

¹⁰² Estimates drawn from telephone conversations with ODA staff (July 2006) and OEPA staff (August 24, 2006). See also Ohio Live-

stock Coalition, "Guidelines for Livestock Operations," (November 2003) p. 4, available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf ("Slightly less than half of Ohio's 78,000 farms have some type of livestock operation.").



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