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OHIO COASTAL RESOURCE MANAGEMENT PROJECT

P.O. Box 3160
Kent, OH 44240
330/673-1193

November 18, 2008

To: Mr. Matthew Gluckman
USEPA Region 5, NPDES Programs Branch, WN-16J
77 West Jackson Blvd., Chicago, IL 60604
Re: Application to administer the NPDES Program for CAFOs—Ohio

The Ohio Coastal Resource Management Project (OCRMP), a nonprofit organization, urgently requests USEPA Region 5 to extend the public comment period for 60-90 days beyond the stated December 16, 2008 date, for the following reasons:

1. Citizens need more time to review the more than 1000 pages on EPA's website in order to submit comments pertinent to the issues.
2. Since EPA has revised portions of the NPDES permitting requirements and Effluent Limitations Guidelines and Standards for CAFOs, in response to the order issued by the U.S. Second Circuit Court of Appeals (according to the Federal Register), Ohio may need to further review and revise its NPDES program to implement these federal revisions. It would therefore simplify this entire process to delay final action on Ohio's application until at least Feb. 27, 2009.
3. OCRMP also strongly recommends that a second public hearing be held in Lima or Bowling Green, where there actually are CAFOs in the area. That will facilitate input from stakeholders and people who have first-hand knowledge of CAFO issues.

OCRMP strongly opposes USEPA Region 5 approval of the transfer of NPDES permitting authority from Ohio EPA to the Ohio Department of Agriculture (ODA) because all federal Clean Water Act requirements have not been met—for both the permit to install and the permit to operate a CAFO. No effective enforcement structure is in place to ensure proper manure management and protection of public health and the environment.

We are increasingly concerned that untreated animal wastes, collected in open-air lagoons, are sprayed as liquid manure onto fields as 'fertilizer,' which can foul the air as well, but without adequate regulation and enforcement that protect Ohio's water resources, including Lake Erie.

The Ohio Lake Erie Commission's report, Lake Erie Protection & Restoration Plan 2008, calls for anaerobic digester technology to utilize waste on livestock farms. Please investigate this and other technologies and alternative farming practices to reduce energy use, resource consumption, and pollution. Ohio must take steps to ensure that each CAFO is a good neighbor to nearby residents and communities.

In addition, OCRMP is very concerned that USEPA's decision on this transfer of authority from Ohio EPA to ODA may set a precedent for transferring authority from the agency with the expertise and trained staff on NPDES permitting and environmental impacts to another agency that promotes the activity that they would also like to regulate. This appears to be a built-in conflict of interest.

SPECIFIC COMMENTS

The Environmental Integrity Project's October 2006 report, Giving Away the Farm, describes four crucial problem areas of ODA's current program. These must be addressed by ODA, with monitoring and enforcement by Ohio EPA, 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. The Environmental Integrity Project (EIP) reports that ODA had only assessed three penalties in four years—two in the negligible amounts of \$200 and \$700—while over a similar time period, Ohio EPA had assessed double the number of penalties and in amounts averaging \$16,786. For example, Ohio Fresh Eggs bought Buckeye Egg Farm in 2003 and it has since amassed 36 ODA notices of deficiencies without a single fine. USEPA must consider ODA's track record and the number of trained and experienced staff. ODA does not have an effective and credible enforcement structure in place. Therefore, facility operators have an incentive to delay or ignore compliance.

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 any resulting environmental harm. Increasingly, Ohio facilities circumvent this liability by transferring manure for land application elsewhere, with little accountability. ODA must adopt a policy presumption that holds manure producers liable, including spills of manure land applied by a third party.

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. ODA must restrict the quantity of untreated manure that CAFOs can transfer during the winter months.

4. ODA has reduced permit coverage and reporting requirements. When ODA assumed the state operating permit program, up to 35 facilities—a quarter of original Ohio EPA-permitted factory farms—were omitted from regulation. All permitted facilities and all certified manure brokers must be required to file annual reports. More reports should facilitate problem identification and any needed changes to rules.

State agencies should develop a common database to log complaints, compile environmental violations, and track compliance at CAFOs. 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 responsible. This should speed up investigation of repeat violators.

Basic enforcement and compliance information must be made available to the public on the internet. Then citizen can make informed decisions regarding environmental issues that affect their communities. Citizens also need compliance data in order to assist USEPA and state agencies to ensure that environmental violations are corrected. ODA should post key enforcement information on its website. All state agencies should post their CAFO databases related to discharges and fish kills on their websites.

When I asked an ODA person about problems with CAFOs, he said that small farms are not regulated at all. Actually, smaller livestock farms receive oversight and assistance from ODNR Soil & Water Conservation District offices. A number of programs encourage Best Management Practices, wetland conservation, stream corridor protection, and stormwater management, most of which depend on cost-sharing.

We recommend expanding ODA's program to cover medium-sized CAFOs, which are already defined in Ohio Revised Code Sec. 903.01. EIP suggests that existing permitting thresholds could continue in place, while imposing a new requirement for 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. A violation-based permit requirement would be an incentive to comply with Best Management Practices. If more facilities comply, that should free up more ODA staff time to focus on those that don't.

In conclusion, OCRMP opposes this transfer of authority because ODA has not deterred noncompliance through effective enforcement. See ODA's track record. We recommend strict regulation of manure management to meet the new court-ordered requirements; additional reporting requirements, disseminating information to the public; and covering medium-sized CAFOs. We are very concerned that transfer of authority to ODA from Ohio EPA will set a precedent for other applications because of built-in conflicts of interest.

References

Environmental Integrity Project, Giving Away the Farm: Why USEPA should reject the Ohio Department of Agriculture's bid to administer the Clean Water Act (October 2006).

Union of Concerned Scientists, CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations (April 2008).

Pew Commission on Industrial Farm Animal Production (April 2008).

Edith Colson
President



#3

Forging a partnership between farmers and consumers
• Working together for Ohio's farmers •

PROPONENT TESTIMONY

**RE: [FRL-8728-5]
State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio**

The State of Ohio has submitted a request for the Environmental Protection Agency (EPA) to approve a revision to the Ohio National Pollutant Discharge Elimination System (NPDES) program to allow the Ohio Department of Agriculture (ODA) to administer the parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio. The Ohio Environmental Protection Agency (Ohio EPA) currently administers the Ohio NPDES program in its entirety. Under the proposed revision, Ohio EPA would continue to implement all other aspects of the State's approved NPDES program. EPA is requesting comment on the State's application to have ODA administer the NPDES program for CAFOs and for storm water associated with construction activity at AFOs, and is providing notice of a public hearing and comment period on the Agency's proposal to approve Ohio's application.

Good evening! My name is Bob Peterson, and I serve as president of the Ohio Farm Bureau Federation, the state of Ohio's largest general farm organization with more than 234,000 members. I farm with my father and brother's families in Fayette County. Tonight it is my pleasure to provide proponent testimony to support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations, commonly known as CAFOs, and storm water associated with construction activity at animal feeding operations, commonly known as AFOs, here in Ohio. Approval would transfer the authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture as authorized by Ohio Senate Bill 141.

Efforts to bring about this change first began with the issuance of the Livestock Task Force Report's recommendations more than ten years ago. Nearly eight years ago, Senate Bill 141, which authorized that Ohio's state permitting program for large livestock farms be transferred from the Ohio EPA to the Ohio Department of Agriculture, was signed into law. This piece of legislation also called for Ohio's NPDES permitting program pertaining to CAFOs and construction activity at animal feeding operations to be transferred, too.

The Ohio Department of Agriculture has administered the state permitting program beginning in August 2002. Since that time, Ohio's General Assembly has twice passed legislation (signed into law) to update Ohio's statutes to enable NPDES delegation authority being transferred from Ohio EPA to the Department of Agriculture. Additionally, the Department has amended its rules numerous times to reflect changes made in state statutes, in federal rules, and to address issues identified by US EPA Region 5 that needed to be clarified to be consistent with the Code of Federal Regulations.

Prior to the Ohio Department of Agriculture taking over the regulatory responsibility for the state permitting program, the Ohio EPA issued only permits to install for concentrated animal feeding operations, had no permit to operate and had no routine inspection program. Now, under the Department of Agriculture, the state requires both a permit to install and a permit to operate, and conducts two on-site inspections each year. Additional inspections are conducted if warranted.

As a matter of fact, the Department of Agriculture's Livestock Environmental Permitting Program staff has conducted more than 1,200 inspections since the department began regulating large livestock farms in August 2002. The Department's Livestock Environmental Permitting Program officials conduct a full inspection of each permitted farm every six months, which is 10 times the federal requirement. Additionally, the state permitting program is an overall environmental permitting program designed to protect both ground and surface waters, which makes it twice as stringent as the federal NPDES program as it is designed only to protect surface water.

Few states have permitting programs for large livestock farms that include a permit to install and a permit to operate, and none are as comprehensive and stringent as Ohio's permitting program. Ohio is the only state that requires an environmental background check of the farm's owners and operators and the only state with a Certified Livestock Manager's program.

Furthermore, Ohio law does not allow any operation to discharge into surface or ground waters, regardless of the size. Ohio's permitting program for large livestock farms prohibits any discharge into waterways throughout the state and requires all manure and potentially contaminated runoff to be contained and applied to crop land.

Actions taken over the past six years clearly demonstrates that the Department of Agriculture has the expertise and ability to issue permits and enforce regulatory compliance for livestock farms in the state of Ohio that will be required to apply for and obtain a NPDES permit. The Department has operated the state permitting program in an effective and knowledgeable manner. That was the main goal of this effort since the beginning. We are confident that the Department of Agriculture can and will operate the NPDES program in a similar manner. We have already witnessed the Department doing a better job of protecting the environment and precious natural resources through operating one of the nation's most stringent state permitting and compliance programs for large livestock farms. This is a win-win agreement for the environment, communities, citizens, neighbors and animal agriculture in the Buckeye State.

An example of the responsible manner in which the Department of Agriculture operates is how it responds to complaints. State and federal law requires that permitting program staff respond to all written complaints. The Department's livestock permitting program staff have exceeded this requirement by responding not only to all written complaints it has received, but also responding to oral complaints filed with it as well. This fully demonstrates that the Department of Agriculture is responsible and accountable to all stakeholders involved in protecting the environment, communities and neighbors.

Make no doubt about it – the Ohio Department of Agriculture is a regulatory agency. Unlike other state departments of agriculture, its primary function is not to promote agriculture, but to regulate it. Only seven percent of the Department's budget is allocated towards promoting agriculture, while 93 percent of its budget goes towards enforcing regulations. The Department of Agriculture is dedicated to protecting producers, agribusinesses and the consuming public by enforcing clearly written, scientific-based regulations as stipulated in Ohio's laws. These regulations apply to dairy production and processing to amusement rides, pesticides, animal health auctioneers, feeds, fertilizers, food safety, grain warehouses, meat and poultry slaughtering and processing weights and measures, and more. By doing so, Ohioans get soundly regulated businesses that add value to neighborhoods and communities, and both farmers and consumers are protected.

The Department of Agriculture submitted its NPDES delegation authority application to US EPA Region 5 in January 2007. Even though Region 5 promised that it would complete its review within six months, it actually took longer than this for Region 5 to complete the review process. Therefore, it's time to get the job done and approve the Department of Agriculture's application seeking NPDES delegation authority as it pertains to concentrated animal feeding operations and construction activities at animal feeding operations here in the Buckeye State.

Please do not extend the comment period, we have waited far too long for this vital transfer.

Sincerely,



Bob Peterson, President
Ohio Farm Bureau Federation
5564 Grassy Branch Road
Sabina OH 45169

#4

~~BRAD WELCH~~

Factory farms produce an estimated 500 million tons of manure every year - three times the amount of waste the human population of the U.S. produces. In Ohio, CAFOs generate over 10.5 million tons of manure per year, with some individual facilities creating more waste than medium-sized cities.

According to the EPA, hog, chicken and cattle waste has polluted 35,000 miles of rivers in 22 states and contaminated groundwater in 17 states.

Meanwhile, the livestock industry has effectively lobbied to move regulatory oversight to the Ohio Department of Agriculture. I do not believe that the ODA should have environmental regulatory oversight of CAFOS, particularly when it comes to protecting our waterways. I do not believe that ~~the~~ granting ~~water~~ ~~permits~~ ~~of~~ ~~CAFOS~~ ~~to~~ ~~ODA~~ ^{TO THE ODA} oversight will ~~not~~ provide the appropriate level of scrutiny or protection of our waters. The ODA's mission is "to provide regulatory protection to producers, agribusinesses, and the consuming public; to promote Ohio agricultural products in domestic and international markets"

The Ohio EPA has as its mission listed as "protect[ing] the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." The Ohio EPA is an independent source of oversight that is sorely needed.

Use This Space to Write Your Comments

EPA is interested in your comments. You may use the space below to write your comments. You may submit this at the Ohio CAFO Program hearing, or detach, fold, stamp and mail. Comments must be postmarked by December 16. If you have any questions, please contact Matthew Gluckman directly at 312-886-6089, or toll free at 800-621-8431 x. 66089. Comments may also be sent by the internet at http://www.epa.gov/region5/water/npdestek/odacafo_pubcomment.htm.

#6

① Good evening! My name is [redacted] representing Wolfinger Farms and the Ohio Cattlemen Association. I farm full time with my brother and father 1300 acres of corn, soybeans hay and wheat along with 150 cows and annually feed 450 feeders and replacement heifers. goal

③ If ~~the~~ the ~~goal~~ is to collect fines the EPA should be in charge, however if we are trying to protect the environment the ODA should be in charge because the ODA already has a working relationship with Ohio farmers. In addition the ODA will be able to make 10 times the inspections the EPA currently does making it easier

② I believe allowing the ODA to administer these programs will make the paper work easier, as they will be able to apply for the 2 permits state & federal in one spot. In addition many farmers already have relationships with ODA through pesticide & fertilizer permits

Name [redacted]
Affiliation OHIO Cattlemen's Ass.
Address _____
City _____ State _____ ZIP _____

to ~~liberate~~ educate farmers.

Comments on the Ohio Department of Agriculture Clean-water Program for Concentrated Animal Feeding Operations

Submitted by:



Thomas Menke, Menke Consulting, Inc.
6070 Routzong Rd.
Greenville, OH 45331
937.447.4225

November 18, 2008

I have worked on a consulting basis with large animal feeding operations in Ohio since 1977, and with the permitting of such facilities since 1983. From 1983 until 2002, my business was involved in the permitting of over 90% of the permits for livestock facilities issued by the Ohio EPA during that period. Menke Consulting, Inc. has prepared nearly 70% of the confined animal feeding facility permit applications processed by the Ohio Department of Agriculture since they assumed that program in 2002. Our clients represent 60% of the NPDES permits for Concentrated Animal Feeding Operations in Ohio, many CAFO NPDES permits in Indiana and Illinois, as well as several NPDES permits for municipalities and industries in Ohio. Beyond permitting, we develop nutrient management programs and help clients implement and monitor these plans.

Over the past 6 years, the Ohio Department of Agriculture has administered a permitting program for livestock farms far and above US EPA CAFO NPDES requirements, which have just been recently revised at the Federal level. Even as amended, the US EPA NPDES requirements for CAFOs are still not as stringent as ODA's rules under Ohio's livestock permitting authority.

Those farms with Permits to Operate under the Ohio Department of Agriculture and who also have NPDES CAFO permits administered by the Ohio EPA are facing duplicative monitoring and reporting requirements, as well as some conflicting standards. This causes confusion, more opportunity for paperwork violations, and misunderstandings among animal feeding operations about "to whom is my farm accountable?"

There is no reason for two state agencies to administer essentially competing programs in Ohio, especially when this imposes an additional layer of unnecessary bureaucracy. This only adds to the regulatory burden to these extremely valuable businesses to Ohio, and costs the state scarce budget resources. The Ohio EPA needs to stretch their funds more efficiently into other important environmental areas where the vast majority of their authority lies.

Ohio enacted legislation in 2000 that was a culmination of many months of the legislative process, public meetings and continual revisions that has resulted in a livestock regulatory program that has set a high standard for the rest of the states. With my contacts around the country, I am still amazed about what other states "get away with" and how the livestock regulations that we have in Ohio are truly protective of water quality in addition to other social issues that NPDES programs simply cannot address.

The Ohio Department of Agriculture is clearly where the Federal CAFO NPDES program belongs. This would create a more stable business atmosphere for agriculture in Ohio along with bringing efficiency to the allocation of government funds while being fully protective of the environment. It all adds up to a good formula for public/private success.

Good evening. My name is [REDACTED]. My husband and I operate a grain farm in Madison County, Ohio. This evening I wish to provide proponent testimony to support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program. This would allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations and storm water associated with construction activity at animal feeding operations here in Ohio. Approval would transfer the authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture as authorized by Ohio Senate Bill 141.

In 2000, the Ohio General Assembly authorized the Ohio Department of Agriculture to become Ohio's delegated authority for issuing NPDES permits. This action was part of a broader piece of legislation, which transferred construction permitting for CAFOs to the Department of Agriculture from Ohio EPA. Because of the Department's pervasive knowledge of agriculture, legislators felt it made sense to shift responsibility for environmental oversight of CAFOs to the Department from Ohio EPA, an agency that had shown, despite its best efforts, that it was not suited to the task.

The Department of Agriculture took full authority for the state's permitting program in 2002. Ohio's Livestock Environmental Permitting Program, as it is known, exceeds federal standards for such programs and has become a model for the nation. It has been deemed by Ohio's Environmental Review Appeals Commission to be a comprehensive, proactive and effective approach to ensuring that livestock farms large enough to require permits attain and comply with stringent standards.

Decisions about the livestock sector of Ohio's agricultural economy and its regulation must not be made lightly. Livestock farms and the food processors dependent on them contribute almost \$11 billion annually to the state's economic output and employ more than 47,000 Ohioans, either on the farm or in processing dairy products, meat and eggs into consumer goods.

With that in mind, I wish to share the following with you about the proposed move of NPDES delegation authority to the Department of Agriculture:

Livestock farms of all sizes are vital for a thriving agricultural community and a healthy state economy. Agriculture, including large livestock farms, does not set market prices for its commodities, so the price of meat, milk and eggs has lagged far behind the rate of inflation. Increasingly, livestock farms have found it necessary to grow larger to survive thin profit margins. And farms must be economically sustainable in order to be environmentally sustainable.

Concentrated animal feeding operations in Ohio are designed as “no discharge” facilities, unlike factories and cities that are allowed to partially treat and then release tons of pollutants directly into waterways. The Department of Agriculture’s focus in the Livestock Environmental Permitting Program has been on compliance and inspection. Its program of stringent monitoring and enforcement is protective of the environment.

There is not a single documented case in Ohio of a livestock manure pond contaminating groundwater, especially when designed in accordance with the United States Department of Agriculture’s Natural Resources Conservation Service standards which are utilized by the Ohio Department of Agriculture’s livestock permitting program.

Large livestock farms are bound by manure management plans to apply only the amount of manure that is agronomically useful. Thus, manure from these facilities is applied on farm fields as fertilizer in a manner calculated to avoid discharging into waterways.

The regulatory portion of the Ohio Department of Agriculture’s mission – that portion devoted to protecting the public – occupies 93 percent of its time and resources, and it is paying off. Protecting the environment has much more to do with the proper management and recycling of manure, about which the Department knows a great deal.

Thank you.


Andra Troyer

London OH 43140



LEAGUE OF WOMEN VOTERS OF THE PERRYSBURG AREA

P.O. BOX 712 • PERRYSBURG, OHIO 43552

November 18, 2008

Mr. Matthew Gluckman
USEPA Region 5, Water Division, WN-16J
77 West Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman:

The League of Women Voters of the Perrysburg Area (LWVPA), located at the mouth of the Maumee River, whose watershed is the largest flowing into the Great Lakes and contributes almost half of the nutrients into Lake Erie, urges USEPA, Region 5 to delay any approval for transfer of the National Pollutant Discharge Elimination System (NPDES) permitting authority from the Ohio EPA to the Ohio Department of Agriculture until all federal *Clean Water Act* requirements are met. This includes prohibiting land application of untreated liquefied manure and untreated sludge from Concentrated Animal Feed Operations (CAFO) on fields within a Drinking Water Source Protection Area, **and ensuring that an enforcement structure is in place that is sufficient to deter noncompliance.**

As a result of our study, the LWV of Bowling Green, and the LWV Lake Erie Basin Committee study of CAFOs, we are increasingly concerned that untreated animal wastes, collected in open-air lagoons, are sprayed as liquid manure onto fields, as 'fertilizer,' which can foul the air as well as ground and surface water. CAFOs have proliferated in the name of 'economic development' but without adequate regulation and enforcement to protect Ohio's water resources, including Lake Erie. [Specific problems in Ohio are described in the Environmental Integrity Project report of October 2006, while national issues are described in reports issued in April 2008 by the Union of Concerned Scientists and the Pew Commission on Industrial Farm Animal Production.]

In 2007 the Ohio Legislature voted to authorize the transfer of the enforcement authority for the National Pollutant Discharge Elimination System (NPDES, 1972 Act) from the Ohio EPA to the Ohio Department of Agriculture (ODA). The NPDES is a permitting mechanism for the federal *Clean Water Act* and is enforced by state EPAs nationwide. Therefore, the Ohio legislative action to transfer enforcement authority to the ODA is subject to a decision by USEPA Region 5, Chicago.

The Federal Register, October 31, 2008, states that the USEPA has finalized **court-ordered federal rules** that place new restrictions on manure waste produced by livestock feeding operations; and that EPA expects these rules to go into effect on February 27, 2009. **We urgently request that the USEPA, Region 5, not make any decision until the new and revised rules are in place.**

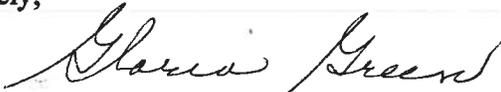
Based on this information and our research, the LWV of the Perrysburg Area opposes the transfer of enforcement authority from the Ohio EPA to the ODA for the following reasons:

1. **The Ohio EPA already has the expertise and trained staff!** According to the Environmental Integrity Project *Giving Away the Farm*, October 2006, the ODA does not deter noncompliance through effective enforcement. In order to maintain healthy checks and balances between governmental agencies, the Ohio Department of Agriculture should be subject to the Ohio EPA's oversight and enforcement.
2. **To avoid setting a significant precedent** in administering the federal *Clean Water Act*, USEPA Region 5 should not allow Ohio to transfer NPDES permitting and enforcement authority from the Ohio EPA to the Ohio Department of Agriculture.
3. **To protect the waters of the State, and Ohio's Great Lake, Lake Erie, from agricultural pollution caused by animal wastes from Concentrated Animal Feeding Operations, [November 15, 2008** Toledo Blade, by Tom Henry, *Mediator supports \$223,500 dairy fine 2 Michigan megafarms cited for problems (attached)] MaumeeR./Lake Erie watershed in S. Central MI!*
4. **Economic Cost: 'A U.S. analysis of nutrient pollution in freshwater reveals annual losses of at least \$4 billion, mostly from dips in lakefront property values and loss of recreational use' [American Chemical Society, November 12, 2008], plus \$2,894,012,238. in livestock farm subsidies, U.S. total 1995-2005. [EWG II].**

The LWV of the Perrysburg Area also urges USEPA Region 5 to extend the USEPA Region 5 comment period to February 27, 2009, when the new, court-ordered rules are in place; and, in addition, hold a second public hearing in Northwest Ohio to facilitate comments from citizens directly affected by this decision.

Thank you for your attention and this opportunity to express our concerns.

Sincerely,



Gloria Green, Clean Water, LWVPA Repr. to LEBC



Lois Bigelow, Co-President, LWVPA



Mary Clark Co-President, LWVPA

Attachments: 2



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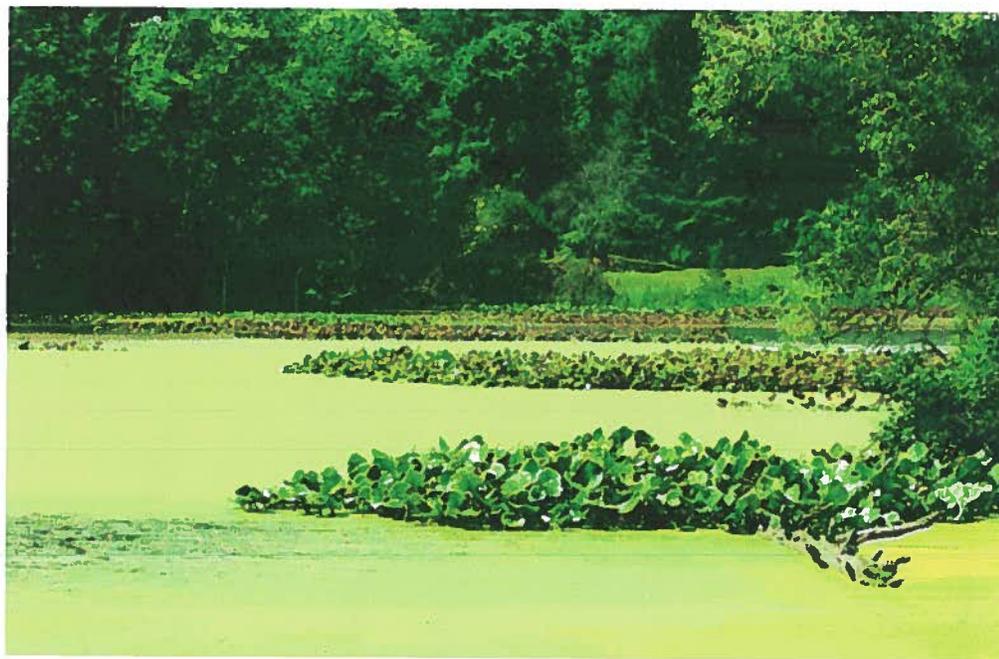
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Economic damages from nutrient pollution create a “toxic debt”

A U.S. analysis of nutrient pollution in freshwater reveals annual losses of at least \$4 billion, mostly from dips in lakefront property values and loss of recreational use.

Rhithu Chatterjee

Nutrient-rich, oxygen-starved dead zones in coastal areas have been [steadily growing](#) in the past few decades. But the problem is not restricted to coastal waters. As [a new study](#) published in *ES&T* (DOI 10.1021/es801217q) shows, freshwater bodies throughout the U.S. are also polluted with excess nitrogen and phosphorus. Such pollution is costing the country a significant amount of money: at least \$4 billion is lost annually as a result of the degradation of freshwater sources, the authors conclude.



ISTOCKPHOTO

Too many nutrients in water bodies cause algae to flourish and cover the surface, depriving life below of sunlight and oxygen and creating dead zones.

To understand the true extent of nutrient pollution in freshwater bodies, ecologist [Walter Dodds](#) and his

colleagues at Kansas State University examined the data on nitrogen and phosphorus levels in water bodies throughout the country collected by the U.S. EPA. Ecologists have broadly divided the U.S. by ecoregions on the basis of geography, geology, vegetation, and human impacts. The authors found that 90% of rivers in 12 out of the 14 regions contained excessive nitrogen and phosphorus, compared with reference nutrient levels calculated in several previous studies. The average total nitrogen was 5.5 times greater and the total phosphorus 3 times higher than median reference levels, Dodds found.

The environmental impacts of nutrient pollution are widely acknowledged by scientists and regulators. EPA has developed water-quality criteria for [nitrogen and phosphorus pollution](#), and states are working on plans to tackle the problem. But given that the major contributors to this pollution are nonpoint sources, individual states and EPA have had less success in regulating these sources than they have had with point sources of pollution. Nutrient pollution remains a persistent problem throughout most of the country, but its economic impacts are less studied.

The authors of the new study calculated the monetary damages of such pollution in the U.S. by looking at the following four factors: losses in lakefront property values, reduced fishing and other recreational activities on lakes, cost of biodiversity loss, and cost of purifying drinking water. Estimation of damages required an extensive data hunt—the authors gathered numbers from various federal and regional agencies, water-treatment facilities, and survey reports. For example, to calculate the cost of biodiversity loss, the authors traced the amount of money spent under the U.S. Endangered Species Act. Using previously published estimates that 25% of aquatic endangered and threatened species are imperiled because of eutrophication, the authors found that the U.S. spends \$44 million per year to protect species from the impacts of nutrient pollution.

Together, the potential losses amounted to more than \$4.3 billion every year, and these costs are borne by agencies, drinking-water facilities, and citizens. When clean drinking water is unavailable, people pay for bottled water. When lakes are closed because of odor or water-quality problems, local economies lose money because fewer people spend money on recreation.

“This analysis is extremely important because the U.S. is very limited by freshwater right now,” says [Stephen Carpenter](#), a zoologist with the University of Wisconsin. To use water wisely in the near future, we need to understand the costs associated with this scarce resource, he says. But the values in the study are “strikingly low,” he adds.

Dodds and his coauthors agree. “Our valuation is likely an underestimate,” they write. For example, they couldn’t assign economic costs to rivers, because “there is a much weaker link between the level of nutrients in the water and when people stop recreating,” or when property values drop, or taste and odor problems develop, Dodds says. Gaps in data also prevented them from calculating the economic damages from dead zones in the Great Lakes and in coastal areas, he adds.

These costs are usually disregarded as externalities, says [Jason Hill](#), a research associate in the University of Minnesota’s department of applied economics. Externalities or external costs are not directly borne by those creating the problem. For example, farmers or people making economic decisions about agricultural products regard the costs of environmental damage from agriculture as externalities. But, to compare alternative ways of producing food or fuel, for example, “you need to understand both direct costs that producers pay . . . and external costs absorbed by society,” says Hill. “What I really liked about this paper is that they are trying to quantify and value some of the externalities.”

The new study suggests that “it’s cheaper to prevent pollution than to clean it up,” says [Jules Pretty](#), an environmental scientist at the University of Essex’s Center for Environment and Society (U.K.). It is a good reminder that “ecosystem services are the hidden value in the world economy, and the costs to the environment are a kind of toxic debt.” Today, the world is grappling with an enormous credit crunch, he adds. But “the real credit crunch is that we’re borrowing from the environment. [And] those costs will still have to be paid by our children and our children’s children,” he says.

Mediator supports \$223,500 dairy fine

2 Mich. megafarms cited for problems

By TOM HENRY
BLADE STAFF WRITER

HUDSON, Mich. — A retired judge has recommended that Vreba-Hoff Dairy LLC be fined another \$223,500 over pollution, storage, and record-keeping issues the Michigan Department of Environmental Quality has raised with the company's two megafarms south of Hudson.

6... The court is agreeing with our concern that this facility isn't operating properly and is posing a threat to our environment.

Bob McCann,
Michigan DEQ

Retired Ingham County Circuit Judge Lawrence M. Glazer, acting as the mediator for what would become the fifth settlement between Vreba-Hoff and state officials since 2003, said in a recent court filing he will recommend that Ingham County Circuit Judge James R. Giddings impose the \$223,500 fine in addition to the \$180,000 that Vreba-Hoff still owes for past violations.

Judge Giddings presided over earlier proceedings before assigning the case to a mediator.

Both sides have the right to appeal. Vreba-Hoff said it

was satisfied with the recommendation, while the Michigan DEQ said it is mulling it.

"I think what it shows is the court is agreeing with our concern that this facility isn't operating properly and is posing a threat to our environment," Bob McCann, Michigan DEQ spokesman, said. "They haven't been able to show it works up to this point."

A court brief filed by the Michigan Attorney General's Office in March said the state was seeking

See DAIRY, Page 2

Dairy

Continued from Page 1

at least \$286,000 for the latest infractions, plus an order forcing Vreba-Hoff to reduce its 6,050-animal herd by 350 cows.

The state later accepted Vreba-Hoff's voluntary reduction of 250 cows.

In the latest proceedings, Vreba-Hoff told the judge it cannot pay its fines on a 12-month installment plan without returning to a full-sized herd.

"You can't pay the bills if your barns are half full," company spokesman Cecilia Conway said.

"It's going to be a political issue, a [public relations] issue. But you have to be realistic," Ms. Conway said.

"Putting us into financial jeopardy is not going to be a benefit to southeast Michigan whatsoever."

Vreba-Hoff's attorney, Jack Van Kley of Columbus, said more cows are needed, in part, because of the collapse of global financial markets.

"With today's credit atmosphere, they depend on that cash flow for those operations," Mr. Van Kley said of Vreba-Hoff. "Unless they make more money by filling the barns, they're not going to have the cash flow."

Mr. McCann said that the Michigan DEQ has "been down this road several times with them."

"Putting the water resources at risk are not a benefit to southeast Michigan, either. They just haven't demonstrated a follow-through on their end up to this point," he said.

Vreba-Hoff earlier said it has spent nearly \$3 million on new equipment to treat its cow manure.

Contact Tom Henry at:
thentry@theblade.com
or 419-724-6079.

#11

My name is [REDACTED] and I am president of the Ohio Pork Producers Council (OPPC). I own and operate a grain, hog and cattle farm near Ashville Ohio.

The Ohio Pork Producers Council is very interested in the proposed transfer of control of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrate animal feeding operations (CAFOs) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). OPPC is a statewide organization representing 3,900 pork producers in Ohio that work together for the pork industry.

OPPC has worked with ODA on environmental rules and regulation. OPPC representatives attend the Concentrated Animal Feeding Facility (CAFF) meetings to stay active in the process at ODA as it relates to the permitted livestock facilities. ODA works positively with farms as they apply for both permits to install and permits to operate to ensure that the farm is conducted in the best interest of the environment, the neighbors and the livestock industry as a whole.

OPPC strongly recommends Ohio EPA transfer the NPDES program for concentrate animal feeding operations to the Ohio Department of Agriculture. Since the current LEPP is housed at ODA it seems a natural fit for the NPDES program to reside there also. This will make it easier for ODA to work with the livestock farmers in Ohio as they go through the permitting process.

OPPC appreciates the opportunity to comment on the proposed transfer of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA).

Thank you for your time.

#12

Testimony in support of transferring Federal NPDES permitting to Ohio Department of Agriculture By [REDACTED]

November 18, 2008

Good evening! My name is [REDACTED]. My farming operation is located in the hill country of eastern Ohio. My family runs a cow/calf herd on the steeper land and raises row crops and alfalfa on land more suitable for these crops. These we sell either as grain or thru beef from our feedlot.

I am here to provide proponent testimony to support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations, commonly known as CAFOs, and storm water associated with construction activity at animal feeding operations, commonly known as AFOs, here in Ohio. Approval would transfer the authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture as authorized by Ohio Senate Bill 141.

Please reference the following: [FRL-8728-5]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio

The State of Ohio has submitted a request for the Environmental Protection Agency (EPA) to approve a revision to the Ohio National Pollutant Discharge Elimination System (NPDES) program to allow the Ohio Department of Agriculture (ODA) to administer the parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio. The Ohio Environmental Protection Agency (Ohio EPA) currently administers the Ohio NPDES program in its entirety. Under the proposed revision, Ohio EPA would continue to implement all other aspects of the State's approved NPDES program. EPA is requesting comment on the State's application to have ODA administer the NPDES program for CAFOs and for storm water associated with construction activity at AFOs, and is providing notice of a public hearing and comment period on the Agency's proposal to approve Ohio's application.

I am sure others will discuss the legislative and rule making process that has brought us to the point of time of this hearing. Rather I wish to present the perspective of the animal agriculture producer. As a group those of us in agriculture production probably have one of the highest affiliations with protecting the environment. Land, water, and air are the basic elements of our production system. Allowing the Ohio Department Of Agriculture (ODA) to perform NPDES permitting and inspections supports this principle in a number of ways. ODA is a regulatory agency with minimal agriculture promotion responsibility. ODA has extensive regulatory compliance history and experience. One of the areas I am

very familiar with, after 30 years working as a food animal veterinarian in private practice, is ODA enforcement of the pasteurized milk regulations from the farm to consumer. They have done due diligence in assuring that the consuming public has a safe and wholesome dairy product supply.

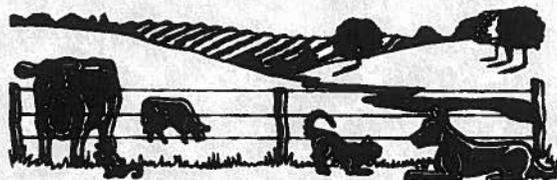
ODA has an understanding of Ohio agriculture, the issues, production and management systems, and environmental concerns created by Ohio weather and geology. ODA is obviously located in Ohio, which makes them accessible to citizens and producers with concerns.

Finally there is the matter of efficiency. If ODA is allowed to administer the parts of NPDES that pertain to concentrated animal feeding operations, then only one set of paper work will be needed to obtain both the state and federal NPDES permits. This will be less burdensome to the applicant and thus less of an impediment in sustaining a viable agriculture industry in Ohio. NPDES role should be to protect the environment and not have an unnecessary negative impact on the Ohio economy.

Thank you for allowing me to express my concerns and view on this very important matter.




Newcomerstown
Ohio 43832



#13

FEEDER CREEK VETERINARY SERVICES

12575 Millersport Road • Millersport, Ohio 43046

(740)467-2949 1-800-451-2746

November 18, 2008

To Whom It May Concern:

In my twenty-five years of practicing primarily food animal veterinary medicine in the central Ohio area I have personally witnessed the relationship between the Ohio Department of Agriculture's milk inspectors and local dairy farmers who together ensure a wholesome and sanitary milk supply. In addition to observing milk safety regulation I have also personally witnessed the Ohio Department of Agriculture or ODA and local farmers working together on the critical issue of environmental protection, while simultaneously addressing the vital need to maintain a cost effective, local, food production.

While I have witnessed countless instances of producers working with ODA there are a couple of examples that clearly demonstrate two specific points. First, that ODA does regulate without wavering from scientific principles and standards. Secondly, ODA and farmers working together can often reach a win/win situation for both the environment and agricultural enterprise.

The first situation occurred in response to an oral complaint received by the ODA. The ODA is required to respond to oral complaints, while the Environmental Protection Agency or EPA is only required to respond to complaints submitted in writing. The oral complaint was received from a property owner concerned that manure was being spread too close to his home. Since proper set backs from streams wells and property lines were being followed the ODA determined that the complaint was not valid. Also, during the investigation the ODA observed that ~~was~~ a nutrient spreader only had a single discharge pipe causing the organic fertilizer to be released in a narrow band. This method of application increased the chance for a runoff problem, and greatly decreased the effectiveness of the fertilizer. A simple plate was added which spread the fertilizer over a wider area, which improved absorption and reduced the chance of ground water contamination. The end result was a win for the environment by decreasing the possibility of runoff, and win for the farmer with better utilization of the nutrients being applied. There was a no adversarial situation and both parties benefited.

The second situation involved a dairy farm that wanted to expand. The barn had been built, but due to weather the lagoon had not been completed. I observed the ODA stand fast in their decision not to let the dairy fill the barn with animals until the lagoon was completed. This provided evidence to all involved that the permitting process was working, and that environmental protection was a key concern.

There are many other stories that I could share with you demonstrating how the ODA stands on scientific-not emotional ground, which protects both the farmer and the environment. Every farmer that I work with wants a clean environment, for their livestock, families, and generations to come. The ODA has demonstrated to me the resolve and knowledge to educate producers on how to efficiently implement necessary corrections to ensure that Ohio's environmental resources are protected.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. DeBruin', written in a cursive style.

Dr. Steven DeBruin

#15

US EPA Region 5 Water Division, NPDES Programs Branch
RE: Transfer of NPDES Permitting Authority to ODA
October 18, 2008

Thank you for allowing me to testify today about Ohio's application to transfer control of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFOs) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA).

Effective regulatory oversight is critical to protect public health and the environment because of the tremendous increase in the number of industrialized livestock operations in Ohio. In December of 2000, the powerful agribusiness lobby persuaded former Governor Bob Taft and the Ohio General Assembly to shift regulation of large-scale animal farms from the Ohio EPA to the ODA. Critics said this "law change was a legislative gift to the farm lobby, which sought a more reliably friendly oversight agency." These Ohio legislators also allowed the ODA to apply for authority to control the federal NPDES permits.

The Livestock Environmental Permitting Program rules were originally developed, reviewed and recommended by a diverse group of scientific professionals, including representatives from the ODNR, USGS, NRCS, and Ohio EPA. That's why I'm concerned that many of these important, scientifically-based regulations have either been rescinded or revised to include "Director's discretion" over the past few years. That's also why I'm concerned that some of the proposed rules we're discussing today seem to have nothing to do with the NPDES delegation. Under the pretext of adding regulations to meet the requirements of the Clean Water Act, the ODA is also unexplainably reducing their current regulations that protect aquifers, floodplains, and water source protection areas.

After studying the ODA's Program and their approved permits for almost five years, I believe the ODA has taken the position that all large CAFOs are good for Ohio and all applications for permits should be approved under all circumstances. What worries me the most is the apparent coziness between the CAFO developers and the ODA administration. This friendliness is unusual at best and dangerous at worst. We have found what appears to be fraudulently manipulated data in these approved ODA permits. The ODA replied to our concerns that they do not require documentation for some of the critical data in these permits, instead relying on questionable data prepared by the developer. I believe the ODA has gone so far as to revise and rescind aquifer and floodplain rules so they can approve more permits.

One has to wonder why the ODA doesn't deny permits if they don't comply with their regulations instead of changing their regulations to comply with the permits. One has to wonder why the ODA continues to rescind their current regulations when they're supposed to be adding amendments to comply with NPDES permitting program. One also has to wonder, why the U.S. EPA would grant them any additional authority when they're obviously not meeting the requirements of their own Program.

The mission of the Ohio EPA is to "protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." In contrast the Ohio Department of Agriculture's priorities are focused on protecting and promoting the agricultural industry – creating a conflict of interest in regulating the environmental violations of CAFO operations. The primary concern of the NPDES program is protection of water quality; while the ODA program focuses on facility construction and

management. The deficiencies found in the current ODA permitting program indicate that this agency is not prepared to assume more regulatory authority.

According to the EPA, over-enrichment of waters by nutrients is the biggest overall source of impairment of the nation's rivers, streams and lakes; animal waste is now the main contributor in water pollution caused by agriculture in Ohio and manure run-off has been linked to Lake Erie's 6,300 square-mile "dead zone". It would seem disingenuous for the EPA to give the ODA any further authority when the ODA's enforcement record is lax and has done little to promote compliance with their current regulations.

The ODA already has the permitting and regulatory authority over these CAFOs. Where would the "checks and balances" be if they are also granted authority of the NPDES permits? Former ODA Director Fred Dailey was quoted that they want to be a "one-stop shop for CAFOs". Please don't let this happen.

According to a recent newspaper article, the U.S. EPA has already decided to leave the fate of new coal-burning power plants for the Obama administration to resolve. If the EPA cannot resolve the disparity between a State agency which promotes agriculture with one that protects the environment and public health, then please do nothing and allow the next administration to decide this controversial issue.

Respectfully submitted,

 Cygnet, Ohio 43413

The following written comments substantiate my oral concerns about the ODA reducing environmental protections that were originally developed as part of their original LEPP regulations or part of the current Ohio EPA Program. I also reserve the right to submit additional comments after I receive information I have requested from the ODA under Ohio's Public Records Act.

1. AQUIFERS – The original LEPP regulations required **twenty-five** vertical feet of low permeability material, including the liner thickness, separation from an aquifer yielding one hundred gallons or more per minute sustained over twenty-four hour period. These regulations were reduced in 2005 to require **fifteen** vertical feet and now I see in the proposed regulations that "the manure storage pond... shall have a minimum of five vertical feet of low permeability material, between the waste placement surface and the uppermost aquifer." Apparently, the scientific and environmental professionals thought this 25' regulation was important when this Program was originally developed so it really concerns me that the ODA is drastically reducing these protections. It seems very questionable that the ODA would repeatedly reduce aquifer protections in order to obtain permitting authority over the NPDES Program.

2. FLOODPLAINS - There are currently floodplain regulations in both OAC 901:10-2-02 and 901:10-2-06. Just as the aquifer regulations I mentioned earlier appear to have nothing to do with the NPDES permitting program, these floodplain regulations also do not relate to the required NPDES delegation.

OAC 901:10-2-06 prohibits manure ponds in a 100-year floodplain unless they are built in accordance with FOUR stringent rules. I noticed in the proposed rules that the ODA moved three of these exceptions to 901:10-2-02, drastically changing one of them; but that they also very conveniently omitted ONE of these current regulations. This rescinded regulation requires that "a manure storage pond or manure treatment lagoon with unequal length

and width dimensions, the facility shall be oriented with the longest dimension parallel to the expected direction of floodwater flow.”

This manure pond orientation rule has been the basis for an ERAC appeal of one of these permits for almost two years! When we asked the ODA why they approved a manure storage pond did not comply with the orientation rule, they replied “The Director did not develop the plans and cannot explain the orientation.” They added that the manure pond is not in the floodway, therefore the flow direction will be directed perpendicular to the waterway and the pond’s longer dimension is parallel to the direction of water movement.” ***In other words, the Director didn’t design it, he couldn’t explain it, but he still approved it.***

The ODA is also reducing another floodplain regulation which currently requires that the elevation of the **lowest point** on the embankment of manure storage ponds shall be at the summation of the elevation of the one hundred year flood plus a minimum freeboard height of two feet. This is proposed to be changed to “the elevation of the **top of the manure storage**”. This is irrational – that means the entire embankment could be under the flood waters except the top two feet! Why would they reduce this stringent regulation? Apparently, the scientific and environmental professionals thought these regulations were important when this Program was originally developed. One has to wonder WHY the ODA is going to such great lengths to approve a permit with a dairy ~~facility and a manure pond in a 100-year floodplain instead of denying the permit because it doesn’t comply with their current regulations.~~

3. WATER SOURCE PROTECTION AREAS - The Ohio EPA currently has regulations to protect community water systems from manure applications – NPDES Permit No.: OHA000001 – Effective Date: February 1,2006, Expiration Date: January 31, 2010 Part VI B. LAND APPLICATION RESTRICTIONS 1. Land application of manure shall be conducted in accordance with the following: Public Drinking Water Wells – Land application shall not take place within a highly susceptible drinking water source protection area (as defined by Ohio EPA) for a community public water system using ground water and not within the inner management zone for all other community public water systems using ground water”. ***I did not see these Ohio EPA WSPA regulations in the drafted ODA regulations.*** Please note that the ODA has approved manure application fields in a WSPA in an approved permit in defiance of OEPA letters instructing them otherwise.

4. AGRONOMIC LIMITS - The ODA’s program does not require phosphorus applications to be applied in compliance with agronomic limits, which according to Ohio EPA forms for sludge application is 60 lbs. According to the USDA Economic Research Service AREI Chapter 4.5 – CAFOs must base their nutrient applications on agronomic rates. Instead, the ODA states they can apply up to 300 lbs/acre P205. They have also disregarded the multi-year phosphorus application regulation because they state that their permits are issued pursuant to state law not federal law so they do not have to “track” the Clean Water Act.

5. ALTERED DATA - We have uncovered “altered” soil test data in two ODA-approved permits. The ODA states that they do not require documentation for this critical data. According to responses we have received from the ODA – they do not check or require any documentation for: 1) soil test data, 2) manure analysis, 3) manure application fields, or 4) unrealistic yields. When our state senator asked the ODA to request documentation to verify this disputed data, Director Boggs replied that he reports to the Governor, not the legislators, and refused to request documentation. This typifies the ODA’s laissez-faire attitude when dealing with public concerns; whereas, the Ohio EPA has always been very responsive and understanding.

#16

I am here today to register my strong objection to the transfer of authority of the NPDES permitting program from Ohio EPA to the Ohio Department of Agriculture.

As a resident of Union County, I speak for families whose health will be directly affected as a result of this transfer. My community is already permitted by the ODA to house 3 million laying chickens. All of these birds are located in one 3 mile area. On Friday, the ODA issued a draft permit for an Iowa-based company's plan to build the largest single-site egg farm in the nation, also in this same area. When completed, there will be 11 million chickens all located within 3 miles. In the 3 mile radius surrounding this new facility there are 747 addresses. Thousands of people depend on the ability of regulatory agencies to protect their health and their environment after this facility is completed.

For a year, we have been trying to point out flaws in the ODA's permitting system. The two most concerning to us are, first, the lack of any meaningful local control over the siting of these mega farms and, second, the fact that there are presently no concentration limits on these mega farms. We were told by ODA that any change had to come from the Legislature. Yet, just last week, 35 rules were submitted for revision. Some of these revisions address this transfer request, but the rest are unrelated. None of these proposed changes address the siting and concentration issues. Since HB 152 was passed in 2003 many of the regulations have been revised to include the "director's discretion", yet none have been changed to address these two glaring flaws.

Make no mistake: ODA is not out to protect communities or the environment. ODA says its primary mission is: "to provide regulatory protection to producers, agribusiness, and the consuming public; to promote Ohio agricultural products in domestic and international markets; to educate the citizens of Ohio about our agricultural industry." How is ODA supposed to regulate environmental impact and environmental violations for an industry it is supposed to protect and promote? This doesn't make sense. ODA can't press on the brakes and the gas at the same time.

The Ohio EPA, on the other hand, was charged with the mission to "protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." Allowing both agencies to do their jobs assures that both the interests of agriculture and the community can be addressed. Eliminating this "checks and balance" from the system seems irresponsible, and, frankly, unnecessary.

Our community and our environment face a threat like no other before. As technology has advanced, the size and environmental impact of large-scale CAFOs has increased to an unprecedented level. Yet, the rules that regulate them have not kept pace. The concentration of these farms and their environmental impact on rural communities demands independent and disciplined oversight. It is vital for the health of our families that the agency charged with "environmental and health protection," not the agency charged with "agricultural protection and promotion," has this important responsibility. No other state allows their agricultural agency to have authority over the NPDES

program. How will the families in my community and our environment be protected if this is allowed?

The fact that the ODA would even consider 11 million chickens to be located in one 3 mile area of my community speaks volumes of their commitment to and their success in achieving their stated mission "of promoting and protecting agriculture". This fact also reveals that protecting our health and the environment ranks far lower on the priority list, if it even ranks at all. You need look no further than the recent economic meltdown to see what can happen when deregulation and corporate greed take precedence over common sense and public welfare. Let's learn something from those mistakes. The health of my community and others across this state should take priority when making this decision. Please deny this transfer request.


Raymond Ohio 43067


#17

Good Evening Ladies and Gentlemen,

Thank you for the opportunity to testify on this important issue.

My name is [REDACTED] I farm in Southwest Ohio. I wish to provide testimony in support of the United States Environmental Protection Agency approval of Ohio's application to revise the Ohio National Pollutant Discharge Elimination System (NPDES) program to allow the Ohio Department of Agriculture (ODA) to administer the parts of the program pertaining to Concentrated Animal Feeding Operations (CAFO) and storm water discharge associated with construction activity at Animal Feeding Operations (AFO) in Ohio. This transfer of authority is authorized by Ohio Senate Bill 141.

My farming operation is located in Warren County. I farm 850 acres and grow corn, soybeans, soft red winter wheat and commercial hay.

Some might wonder why I care about this issue when I do not raise livestock. As a corn and soybean producer, I understand that my largest customer is the livestock industry. Ohio's livestock industry used 701,000 tons of soybean meal in 2006. This is equivalent to 15% of the state's annual production of soybeans and over 75% of soybean meal produced in Ohio. Ohio corn producers grew 470 million bushels of corn in 2006. Ohio needs a large, modern and efficient livestock industry so that all of Ohio's agriculture has the opportunity for success.

Since the passage of Senate Bill 141, ODA has been responsible in its role as the permitting agency for the state. The rules for permitting have been transparent and effective in allowing the CAFO's to move forward with the construction and the operation of facilities. The rules are more comprehensive and stringent than is required by Federal Law. As a regulator, ODA has been effective in moving forward with the process of permitting. In the few cases of non-compliance, ODA has worked with the stakeholders toward resolution of the issues.

Ohio General Assembly has updated its statues and ODA has amended its rules several times to allow for the delegation of the NPDES authority to ODA. ODA has demonstrated its ability to be the regulator of CAFOs. Ohio has prepared for this change in administration of this program. This change will help streamline a livestock producer's process of building a CAFO without any risk of non-compliance being handled inappropriately.

Again, as an Ohio corn and soybean producer, Ohio needs a modern, efficient livestock industry. To accomplish this, ODA needs to administer the NDPEs program.

Thank You

[REDACTED]
Joseph A. Steiner
1284 Hanover Dr.
Mason, Ohio 45040

#18

FRL-8728-5
**State Program Requirements; Application to Administer the National
Pollutant Discharge Elimination System (NPDES) Program for
Concentrated Animal Feeding Operations (CAFOs); Ohio**

Public Hearing
The Fawcett Center

Proponent Testimony Presented by
Thomas J. Fleming, Chair
Ohio Dairy Producers Association

Telephone: (419) 358-4611; Email: tsfleming371@aol.com

Tuesday, November 18, 2008

Hello. Thank you for this opportunity to provide testimony to support the proposed transfer of control of the Clean Water Act National Pollutant Discharge Elimination System, or NPDES, program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA).

My name is [REDACTED], and I am a dairy producer from Allen County. My son and I milk 160 cows on our family farm. I stand before you today as both a dairy producer and as chair of the Ohio Dairy Producers Association, which represents hundreds of our state's dairy farmers.

As dairy producers, regardless of the size of our operations, we take caring for the environment very seriously. Because we live on or near the land that our families farm, we understand the importance of protecting our natural resources. We depend on this land for our business and our quality of life.

Dairy producers recognize that must operate our farms in the best interest of the environment, our neighbors and the livestock industry as a whole.

We believe the Ohio Department of Agriculture has the expertise to issue permits and enforce regulatory compliance for livestock farms in the state of Ohio that will be required to apply for and obtain an NPDES permit.

Ohio's permitting program is an overall environmental permitting program designed to protect both ground and surface waters, which makes it twice as stringent as the federal NPDES program which is designed only to protect surface water.

In fact, Ohio law does not allow any size operation to discharge into surface or ground waters. Ohio's permitting program for large livestock farms prohibits any

discharge into waterways throughout the state and requires all manure and potentially contaminated runoff to be contained and applied to crop land.

This is a win-win agreement for the environment, communities, citizens, neighbors and animal agriculture in our state.

On behalf of the Ohio Dairy Producers Association, we support the proposed transfer of control for the NPDES program for CAFOs from the Ohio EPA to the Ohio Department of Agriculture and urge you to approve Ohio's application.

Thank you.

A handwritten signature in black ink, which appears to be "Thomas A. Murray". The signature is written over a dark, rectangular redaction mark. The ink is somewhat faded and the signature is not perfectly straight.

#21

**PUBLIC COMMENT OPPOSING
TRANSFERRING NPDES-CAFO AUTHORITY TO
THE OHIO DEPARTMENT OF AGRICULTURE
November 18, 2008
Columbus, Ohio**

My name is Richard Sahli. I reside in Columbus where I have practiced environmental law for the past twenty-five years. For the past 13 years, I have represented a dozen or more communities impacted by CAFOs starting in 1995 with our state's disastrous encounter with Anton Pohlman and his AgriGeneral and Buckeye Egg operations and its successor, the scarcely less scandalous Ohio Fresh Eggs. I also worked with citizen groups in 2000 to oppose the agri-business lobbyists who succeeded in stripping Ohio EPA of its authority over CAFOs and awarding it to the industry's submissive pets at the Ohio Department of Agriculture.

Our main fear in that legislation¹ was that it uses the fox to guard the henhouse as ODA is utterly dominated by Ohio's agri-business associations and has an irreparable conflict of interest that prevents it from being an honest regulator due to its historic mission to promote the economic growth of agriculture. The resulting program for permitting CAFOs has fully realized these fears as it's every facet has been dictated by agri-business lobbies and provides very little substantive protection to the citizens of Ohio affected by these facilities.

I have come to know the mentality and ideology of the ODA only too well over the past 8 years and it is crystal clear to me and to every community where the ODA has permitted a CAFO that the Department has neither the will nor the desire to stand firm against its industry pals and effectively enforce the NPDES program. For this reason, I strongly urge the U.S. EPA to deny the requested transfer as the ODA has not seriously attempted to enforce its existing permit program, has not staffed itself in a manner adequate to do so, and does not have the independence or enforcement mentality equal to countering the environmental threat posed by modern industrial scale agriculture. Please do not condemn the Ohioans living near these facilities by entrusting their protection to an agency that does not care about them and thinks in a manner directly counter to their basic needs. Ohio EPA is far more experienced and likely to run a meaningful enforcement program than the ODA would ever be capable or willing to do.

The existing ODA program has done minimal enforcement work that consists almost entirely of merely notifying companies of their violations with no effort to seek effective sanctions. As a result, ODA's program has proven incapable of deterring noncompliance and has created an atmosphere within the industry that "anything goes." This fact is documented for you in ODA's Program Description which states that between 2002 and 2006, the Department received 281 citizen complaints and uncovered an unspecified number of violations during inspections, but made only 2 referrals to the Attorney General's office for enforcement and adopted only 4 enforcement orders. Numbers like these establish that there is only a token

¹ Senate Bill 141, effective March 15, 2001

enforcement program at ODA that is incapable of protecting Ohio's environment. The Department is also insufficiently staffed for anything more than a token effort as it has only four inspectors and therefore too few work hours for the court time and professional evidence gathering needed for a genuine enforcement program.

The only ODA enforcement case known to the general public has been their effort to revoke Anton Pohlman's permits for his chronic noncompliance. Even then, ODA's enforcement effort was ineffectual and desultory as the Department dragged the process out for months while citizens suffered because the ODA's only apparent objective was to find a new company to take over Pohlman's operations rather than compel a meaningful enforcement remedy. These haphazard efforts then blew up in the Agency's face when the new owner was found to have a silent partner that was another chronic environmental violator even though the ODA director had expressly forbade them to involve him by name. This episode demonstrates emphatically that the industry does not consider the Department to be a serious regulator and believes that it is free to do as it pleases.

This anything goes at CAFOs philosophy at ODA is also apparent in three major defects in the Department's permit program which further demonstrate its lack of any real concern for Ohio's environment. The first is that Ohio's water quality sampling and TMDL program has repeatedly demonstrated that animal manure is an increasing problem in surface waters across the state, but the ODA has pointedly ignored this data and has made no changes in its permitting program to address this well documented problem. Serious existing problems in the priceless Darby Creek watershed, the Scioto, Maumee, Wabash, and numerous other rivers are growing worse while ODA does nothing. The U.S. EPA cannot give NPDES authority to the ODA until there is a reliable system put into place that insures that surface waters impacted by livestock manure will improve through mandatory issuance and increasingly strict controls placed in NPDES permits for CAFOs.

One of the main causes for this worsening surface water quality is ODA's creation and encouragement of a barely regulated system of waste brokers that allows CAFOs a loophole to dispose of their waste with minimal oversight. When the legislation awarding CAFO permitting to the ODA was passed, the Department's position was that it would strictly control land application by requiring CAFOs to document each application and the nutrient assimilation capacity of each application area to protect surface water. However, the industry has dominated ODA's rule-making process and has snuck in a loophole whereby brokers who pay only a nominal licensing fee can take waste without documenting its destination or if the land used could take the waste. The ODA has established no program for policing these brokers; it is for all intents and purposes the lawless Wild West all over again for Ohioans living near application sites. U.S. EPA must address how the NPDES program will address these brokers before it can extend the program to ODA but I do not see anyway that your program can accommodate such a fundamental flaw.

The third loophole demonstrating ODA's lack of concern for water quality is its documented failure to implement its aquifer protection siting restrictions for livestock manure storage and treatment structures in a manner that recognizes even the most basic considerations

of hydrogeology. ODA's regulations² require a 15 foot separation between manure storage and an aquifer, but as documented in the Ohio Court of Appeals decision in Citizens Against Megafarm Dairy Development v. ODA,³ ODA's interpretation renders this rule a nullity by simply claiming that shallow aquifers can simply be ignored because they cannot be used as a drinking water source due merely to the 25 well-casing requirement for water wells under Ohio law. Accordingly, the ODA now permits manure pits to be built directly into aquifers without any restriction whatsoever. The Department's interpretation ignores the obvious reality that shallow aquifers act as conduits for contaminants to rapidly move into deeper aquifers and to surface waters which any regulator with the slightest environmental awareness would be deeply concerned about but which ODA ignores as a matter of its official policy. Unfortunately, due to the rule of Ohio law requiring deference by courts to an administrative agency's interpretation of its own rules, the court felt obliged to allow this ridiculous position to become Ohio law. U.S. EPA cannot approve NPDES authority to ODA without requiring a system to protect surface waters from contamination from manure stored in or close to shallow aquifers as ODA now allows.

In conclusion, we have a track record in Ohio establishing that the ODA will not meaningfully enforce the NPDES program if you transfer it to them and that it either does not understand or concern itself with basic concepts of environmental protection. The ODA is agribusiness's lapdog. It does not deserve this new authority and you will endanger the health and welfare of countless Ohioans if you extend it to them.

² Ohio Administrative Code 901:10-2-02(F)

³ Citizens Against Megafarm Dairy v. Dailey, 2007-Ohio-2649; Case No. 06AP-836, Franklin County, decided March 31, 2007.

WUEBKER FARMS LLC

11607 Versailles-Yorkshire Road

Versailles, OH 45380

#22

NPDES PUBLIC HEARING

November 18, 2008

Good evening! My name is [redacted] representing our farming operation, Wuebker Farms LLC, the Ohio Soybean Association and the Darke County Farm Bureau Federation. *I might also add that my brother & I live on our FAMILY Farm with 6 children ranging from 2-9.*

Our family farming operation consists of my brother, [redacted] and myself, we have 1000+ crop acres and an 1800 sow contract farrowing operation, meaning we produce about 40,000 - 12 pound baby pigs per year. *and how well it manages the manure resource*

This hearing, when you get right down to it tonight, is about poop. Well, we have used this poop on all of our cropping acres since the early 1990's, saving our operation thousands of dollars. *we also think this with thousands of pounds of Corn Fertilizer*

Over the years I have run our skid loader under hi-rise poultry barns to clean this nutrient dense poop from the barns and turn it into one of the best natural fertilizers in the world. We continue to use poultry manure on an as needed basis, this fall we spread about 240 tons of turkey manure from our neighbors operation on one of our rented farms. We also have about 3.5 million gallons of swine manure each year from our own swine operation that is dragline injected on our nearby farms and neighbors farms. So I guess what I am saying to the regulators in the room tonight, unless you have sat in the skid loader under the chicken house, carefully applied manure on fields like a valuable fertilizer, or run your Polaris Ranger up and down your creek making sure the liquid swine manure you are applying is not leaking into your underground drainage system, you really don't know poop like I do and the many farmers here tonight.

Before returning to the family farm in 2001, I worked for a company that worked closely with many livestock producers in our region. From that work ten years ago, I learned the value of having an agency that knows how to regulate agriculture and the staff to effectively communicate with farmers and ensure a safe and stable environment for all parties involved. That agency is the Ohio Department of Agriculture. Fifteen years ago I personally sat in the truck with another colleague as we educated state EPA employees on the differences between wheat, oats and corn and their nitrogen requirements and the importance of crop rotation and timing of manure applications. If EPA employees don't understand basic agricultural practices and their importance to the farmer, how will they be able to effectively understand the nutrient management plans and common best management practices associated with these practices? Ask any one of the *States of Ohio* permitted facilities that under go the twice a year inspections and they will tell you they are tough. ODA Inspectors look at all manure application records and application rates, check soil test levels carefully, watch for excessive nitrogen levels and high phosphorus levels. USEPA only requires an inspection once every five years, which is no comparison to Ohio's program.

With this said, I wish to provide proponent testimony to support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations, commonly known as CAFOs, and storm water associated with construction activity at animal feeding operations, commonly known as AFOs, here in Ohio. Approval would transfer the authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture as authorized by Ohio Senate Bill 141.

Respectfully submitted,

Jeff Wuebker

110607 Versailles-Yorkshire Road

Versailles, OH 45380



I would also like to remind you...

If you ate a good meal today...thank a farmer.

Joe Logan

#25

OEC's comments on USEPA's proposed delegation of NPDES authority to ODA

Ideally an environmental compliance system will properly balance the need for a healthy environment with our needs for a supportive business climate. Both interests are important. The proposed delegation being considered this evening is clearly driven by an intense desire within the agricultural business community for more business-friendly form of environmental regulation. That aspect of the proposed delegation could earn near universal support, provided that our interest in a healthy environment could also be maintained.

Governor Strickland along with virtually all of his agency directors has pledged his support for an added measure of attentiveness to the interests of business, especially during this economic down turn. During this Governor's administration, the various agency heads have cooperated especially well to address the various regulatory issues in support of the business community.

The delegation being considered tonight however, represents more than an added measure of sensitivity and dedication to solving problems, it represents a profound restructuring of our national environmental compliance system. No one doubts that the delegation will result in a more user-friendly businesses environment for livestock producers –but what of the need we all share for healthy air and water? Reasonable people wonder if the decentralized system for environmental compliance represents the best structure for protecting the air and water quality upon which we all rely.

As USEPA finalizes its proposed delegation to the Ohio Department of Agriculture, our neighboring State is developing a plan to request a similar delegation of NPDES authority to their Department of the Indiana State Chemist. Setting aside the question of the level of devotion within these respective state departments to accomplish and environmental mission, reasonable people might wonder if such a fragmented compliance system is better able to oversee the important societal need for a clean environment.

Presuming this delegation goes forward, EPA will still oversee discharges of other industrial effluents, while Ag discharges may be the controlled by a varied array of agencies in various states, without the benefit of USEPA coordination. Reasonable people wonder if this is a better system for safeguarding our environment.

I am a livestock farmer and I count many others among my family and friends. I know that the livestock producing community has been vigorously supporting this delegation of authority, but I admonish my colleagues --“be careful what you wish for”. Reasonable people might worry that such a disjointed environmental compliance system might lead to less rigorous oversight of some massive livestock facilities, especially during times when state budgets are stretched thin. Less rigorous oversight might lead to more inadvertent or inappropriate discharges. The public perception of the livestock industry could be badly damaged by such an occurrence.

We hope that the sincere desire of Ohio's livestock industry to achieve a more farmer-friendly environmental compliance structure is not being misdirected toward support of a less effective system which could have unintended and unfortunate consequences for Ohio's livestock industry.

[Redacted], Director of Agricultural Programs –The Ohio Environmental Council

26

Nov. 18 2008

[REDACTED]
Ada, Ohio 45810

I am here as a private citizen. But, I am the [REDACTED] for the Jan 2nd term in 2008. I intend to work in the best interests for the constituents of Hardin County.

I would like to address Rule 901:10-2-02, Letter G number 1, letter b. "The elevation of the top of the manure storage or treatment facility shall be at the summation of the elevation of the 100 year flood plus a minimum freeboard height of two feet." Recent floods across the country have registered flood levels exceeding 10 or more feet above previous recorded maxim flood levels. To build a lagoon in a 100-year floodplain makes little sense to being with. To build a lagoon in a 100-year flood plain with the top of the lagoon 2 feet in excess of that level is unacceptable.

Also rule 901:10-2-14 letter E numbers 1 thru 4. Phosphorus application criteria. 4-d. "— for a single phosphorus application in a year, the application rate shall not exceed five hundred pounds per acre of phosphorus." I have taken the CLM training three times and have done other research on P levels in soil. The CLM training stated that at 300 hundred lbs the soil was full. The cup was overrunning. Why are we allowing 500 lbs of phosphorus to be applied at one time on soil that already has 299 lbs? According to the ODNR presentation at CLM training, the soil does not have the capability to hold more than 300 lbs. These rates are especially disturbing when we consider that at 50 lbs per acre yield potential stops increasing. It takes only 50 lbs of P to grow the best crop you can grow. 500 lbs is 10 times the amount needed to grow the best crop possible and 16 times if you include the 299 lbs already there. This could easily be interpreted to be approved nutrient dumping. Either plan is unacceptable.

Scientific data collected all over the United States indicates increasing agricultural runoff resulting in increasing nutrient loads that are degrading our rivers, lakes, streams and bays. Data presented by Dr David Baker of National Center for Water Quality Research clearly indicates the rising P levels in Lake Erie and the direct connection of agricultural runoff. The gross over application of Phosphorus and the poorly timed application of N approved by the USEPA and The ODA make little sense in light of this information. Change the rules to allow maximum allowable P levels of 100 lbs per acre. The P index is little more than a tool to allow over application of P. Douglas Beagle stated at The Conservation Tillage Conference 2008 that P index was not a solution to the P overload problem. It is only building a moat around the problem and delaying the response the issue. Change the rules to allow no more than the current crop requirements and at a time that the crop can utilize the N. It is time to use some common sense in writing rules governing manure application.

I have witnessed in Hardin County many apparent violations of the rules. I have witnessed non-compliance of setbacks, lack of incorporation and what appeared to be over application. There has not been a documented case of over application according to

the ODA. At the most recent CLM training, Kevin Elder coached the attendees by saying. "He with the most records wins—in court." What chance of having a complaint addressed do citizens have when the manure applicator and the ODA write and control all the records?

I urge you not to give even more authority to an organization that has a direct conflict of interest.

Respectfully submitted,



#28

Ryan McClure
2337 Rd 13

Grover Hill, OH 45849

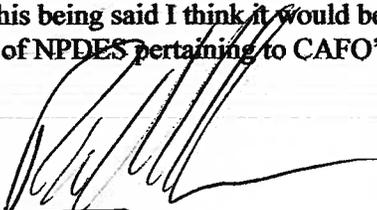
Good evening. My name is [REDACTED]. I'm a fifth generation farmer in southeastern Paulding county in the northwest corner of the state. My family and I were primarily a grain farm up until 2 ½ years ago when my family and I built a 2,000 head wean to finish barn. One year later we made the decision to construct a second building which would double our capacity. At that point we filed for a permit to install. This took us around 12 months to obtain, and was a very thorough process. In that time, we learned a lot about the facility we were about to build and also about the value of the manure that would be used instead of commercial fertilizer on our fields. After the permit to install we then obtained the permit to operate.

I am here tonight to provide testimony to support the US EPA's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations, and storm water associated with construction activity at animal feeding operations, commonly known as AFO's in Ohio. Approval would transfer the authority from the Ohio EPA to the ODA as authorized by SB 141.

Being a permitted facility I would like to take time to explain a small part of the permit to operate. When ODA took over the CAFO regulations they installed many safe guards to prevent potential problems with the facilities. There are two mandatory inspections where any and all records from water usage to composting facilities to proper manure application on the land are reviewed. When we approach the time to apply our manure we first look to an approved weather source and confirm that there is not more than a fifty percent chance of a half inch of rain forecasted within the next 24 hours. If there is such a forecast we are not allowed to apply. After we get a window of good weather to apply the manure, there are forms that are to be filled out. These forms consist of field drawings, weather reports, manure analysis, projected next crop withdraw of nutrients, and mandatory tile checks for the following days.

We have been very impressed with our time spent with the inspectors, and their willingness to help defuse potential problems. With our ODA inspector having a ag background, I feel we can work better together to raise a good product and also to be good stewards of the land.

With this being said I think it would be very beneficial for the ODA to obtain full regulating power of NPDES pertaining to CAFO's.


[REDACTED]
Hillside Acres

#29

FRL-8728-5
**State Program Requirements; Application to Administer the National
Pollutant Discharge Elimination System (NPDES) Program for
Concentrated Animal Feeding Operations (CAFOs); Ohio**

Public Hearing
The Fawcett Center

Proponent Testimony Presented by

Chris Weaver

Telephone: (419) 485-8157; Email: ccweaver@williams-net.com

Tuesday, November 18, 2008

Good evening. Thank you for the opportunity to provide testimony in support of transferring the control of the Clean Water Act National Pollutant Discharge Elimination System, or NPDES, program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA).

My name is [REDACTED]. My parents, [REDACTED] and [REDACTED] and I operate Bridgewater Dairy, LLC in Montpelier, Ohio. At our family farm, we milk 3,000 dairy cows and are permitted for 3,900 cows. We also raise about 1,000 acres of alfalfa, 2,400 acres of corn for both grain and silage, 300 acres of soybeans and 300 acres of wheat.

My family and I moved here from California and began our Ohio dairy operation in 1998. We are part of Continental Dairy Products, a dairy marketing cooperative with 50,000 milk cows. *on dairy farms built in the last 10 years.*

As dairy producers, we take pride in being good stewards of our land. Our farm is permitted by ODA's Livestock Environmental Permitting Program, and we have worked closely with their staff to protect our natural resources.

We can personally attest to the fact that Ohio has one of the most rigorous state environmental permitting programs in the nation. In fact, our farm is the only Ohio member of Continental Dairy Products - the others are located in Michigan and Indiana.

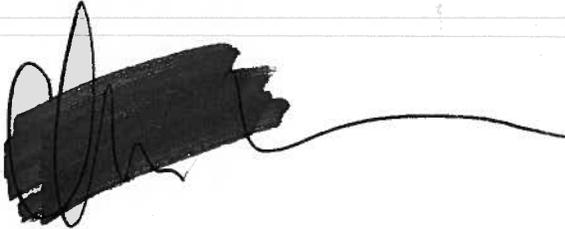
Few states have permitting programs for large livestock farms that include a permit to install and a permit to operate, and none are as comprehensive as Ohio's permitting program. Ohio is the only state that requires an environmental background check of the farm's owners and operators, and the only state with a Certified Livestock Managers certification program.

ODA officials conduct a full inspection of each permitted farm every six months, which is 10 times the federal requirement. Bridgewater Dairy is no exception to this rule, and we welcome the opportunity to demonstrate how we take care of our land and our animals in a responsible way.

Furthermore, state and federal law requires that permitting program staff respond to all written complaints. ODA's livestock permitting program staff has exceeded this requirement by responding to all oral complaints filed with it as well. This demonstrates that the Department of Agriculture is accountable to all stakeholders involved in protecting the environment, our communities and neighbors.

The Ohio Department of Agriculture operates the state permitting program in an effective and knowledgeable manner. I believe that ODA can also operate the NPDES program in a similar manner and encourage you to approve the NPDES delegation authority from the Ohio EPA to ODA.

Thank you.

A handwritten signature in black ink is visible, partially obscured by a large, thick black redaction mark. The signature appears to be a cursive name, possibly "John" or "James".

#30

11-18-2008

RE: [FRL-8728-5]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio

The State of Ohio has submitted a request for the Environmental Protection Agency (EPA) to approve a revision to the Ohio National Pollutant Discharge Elimination System (NPDES) program to allow the Ohio Department of Agriculture (ODA) to administer the parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio. The Ohio Environmental Protection Agency (Ohio EPA) currently administers the Ohio NPDES program in its entirety. Under the proposed revision, Ohio EPA would continue to implement all other aspects of the State's approved NPDES program. EPA is requesting comment on the State's application to have ODA administer the NPDES program for CAFOs and for storm water associated with construction activity at AFOs, and is providing notice of a public hearing and comment period on the Agency's proposal to approve Ohio's application.

Good evening. My name is [REDACTED] I am a farmer and livestock producer from northwest Ohio, Paulding County to be exact. I began my farming career upon graduation with my father in the late seventies; I farmed with my dad as a cash grain operation until his retirement in the earlier nineties. My wife and I were blessed with four boys and looking for expansion opportunities, we became a feed provider for a large dairy farm in 2003. This past January we became a partner in the dairy and have since become a permitted facility with an expansion to be completed by the year's end. We consider our experience, our probably better stated, partnership with the Ohio Department of Agriculture an important part of our success, not just myself but the next generation of producers, my children.

I wish to provide proponent testimony to support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations, commonly known as CAFOs, and storm water associated with construction activity at animal feeding operations, commonly known as AFOs, here in Ohio. Approval would transfer the authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture as authorized by Ohio Senate Bill 141.

I will limit my thoughts to what I have experience with and what has directly affected my operation. Few states have permitting programs for large livestock farms that include a permit to install and a permit to operate, and none are as comprehensive and stringent as Ohio's permitting program. Ohio is the only state that requires an environmental background check of the farm's owners and operators and the only state with a Certified Livestock Managers certification program.

I hold Certificate number seventeen in the Certified Livestock Mangers certification program. This program is an extremely important one for the continuing education of livestock producer in following state permit guidelines. This program administrated by the Ohio Department of Agriculture and shows a commitment to success by the agency in pursuing NPDES authority.

Prior to the Ohio Department of Agriculture taking over the regulatory responsibility for the state permitting program, the Ohio EPA issued only permits to install for concentrated animal feeding operations, had no permit to operate and had no routine inspection program. Now, under the Department of Agriculture, the state requires both a permit to install and a permit to operate, and conducts two on-site inspections each year. Additional inspections are conducted if warranted

The Department of Agriculture is a regulatory agency. Unlike other state departments of agriculture, its primary function is not to promote agriculture, but to regulate it. The Department of Agriculture is dedicated to protecting producers, agribusinesses and the consuming public by enforcing clearly written, scientific-based regulations as stipulated in Ohio's laws. These regulations apply to dairy production, which we are familiar with and directly affected by.

With the NPDES delegation authority being transferred to the Department of Agriculture, livestock farmers that need to obtain both a state permit and a federal permit will now only need to file paperwork with one agency. This will be more efficient for livestock producers, and will better utilize taxpayers' dollars as one agency instead of two will be responsible for inspecting and enforcing regulatory compliance.

In closing, transferring NPDES authority to the Ohio Department of Agriculture provides Ohioans with soundly regulated businesses that add value to neighborhoods and communities, and both farmers and consumers are protected.

Thank you.



Haviland, Ohio 45851

#32

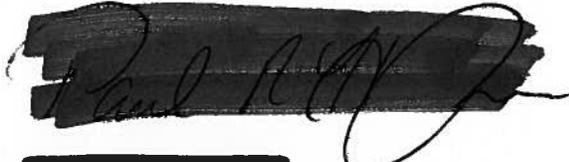
November 18, 2008

Good evening my name is [REDACTED] and I am from Bowling Green, Ohio in Wood County. I farm 15-hundred acres and raise corn, wheat, soybeans and alfalfa and provide silage and haylage to a 700 cow dairy facility that is permitted by the Ohio Department of Agriculture to expand to 22-hundred cows. I wish to testify in support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to animal feeding operations.

I witnessed the permitting process for the dairy I provide silage and haylage to in its effort to expand their operation to 22-hundred cows. I have seen how the Ohio Department of Agriculture works and what their priorities are concerning concentrated animal feeding operations, commonly known as CAFO's. The Ohio Department of Agriculture works to protect the environment and the citizens of Ohio while at the same time provide regulations that are reasonable and sensible. The dairy not only keeps detailed records of where they apply manure but records of weather conditions and weather forecast so as not apply manure if a significant rain event is forecasted. In addition they keep track of the number of applications and the gallons applied per application. These rules are not only for the protection of neighbors in the area but they are designed to be workable for the dairy. The dairy and I work together to test my soils and the manure so we both know what is happening so my fields are not over fertilized and the water ways of Ohio are protected as well. In addition ODA requires two inspections per year for each CAFO operation which is stricter than EPA rules.

The Ohio Department of Agriculture has proven they are very capable to handle the task. By approving the transfer of this portion NPDES permitting process to the Ohio Department of Agriculture the interest of Ohio will be better served. Not only will the environment be protected but animal operations such as the dairy that I work with will now deal with just one agency that has a proven track record of reliable and sensible regulation. This should create an additional benefit for the citizens of Ohio in the efficient use of citizen's tax dollars as only one agency will be involved in the permitting process instead of two. It is time to move forward.

Respectfully Submitted,





Bowling Green, OH 43402

RE: [FRL-8728-5]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio

#33

My name is [REDACTED], livestock producer from Mercer County.

I sit on the Advisory Board for the Permitting Process for the Department of Agriculture.

Ohio's program is one of the best in the country, other states look at Ohio for direction.

Ohio has a program that livestock producers know what is expected of them.

CAFOs are inspected twice a year. Due to the inspections there are constant improvements on the farmers' part that go above regulations.

For what I see there is an excellent working relationship between Ohio EPA and Department of Agriculture.

It makes sense that one department enforces the same rules, the Ohio Department of Agriculture and U.S. and Ohio EPA rules are consistent.

34

Proponent testimony concerning the NPDES application from ODA to the US EPA.

Lane E. Osswald, 7391 Monroe Central Rd, Eldorado, Ohio 45321

November 18, 2008

Good evening! My name is [REDACTED]. Our family farms in Preble County, located in West central Ohio. We are a diversified farming operation consisting of grains, vegetables and swine production. I am thirty-three years old, the father of three, soon to be four children, a husband and a full-time farmer.

I am here this evening to provide proponent testimony to support the United States Environmental Protection Agency's approval of Ohio's application to revise the Ohio NPDES program to allow the Ohio Department of Agriculture to administer the parts of the program pertaining to concentrated animal feeding operations, commonly known as CAFOs, and storm water associated with construction activity at animal feeding operations, commonly known as AFOs, here in Ohio. Approval would transfer the authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture as authorized by Ohio Senate Bill 141.

As a relatively young farmer I am constantly looking up the road to see what is coming next in agriculture. With the current economic situation, that looking is generally narrowed to ideas that will maintain or improve the profitability of our farming operation. Recently, the opportunity to build contract finishing barns for swine presented itself in our community. When I started to research this enterprise I realized that the permit process would be one of the slower more challenging parts of the venture. I would have to be approved by the Ohio Department of Agriculture and by the Ohio Environmental Protection Agency. Even though I was sure we could meet all of the regulations, it would be very cumbersome to try to keep both department's requirements and deadlines straight. (Even though this opportunity dried up before I started building, it gave me an understanding of why the authority being requested by ODA is so important.)

Animal agriculture, like many other industries, has determined that large numbers of animals per unit is required to remain profitable. Expansion by existing farms like ours or by new operations should not be hindered by being required to work with two different agencies with two different time schedules to accomplish the same goal when the Ohio Department of Agriculture can be a one stop shop. The department has proven it can establish and enforce regulations that go above and beyond the EPA requirements. It can also expedite permits and services by having all of the needed information in one office. Respectfully, please consider transferring the authority soon to insure livestock agriculture in Ohio remains viable and growing

PE: [FRL-8728-5]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio *The State of Ohio has submitted a request for the Environmental Protection Agency (EPA) to approve a revision to the Ohio National Pollutant Discharge Elimination System (NPDES) program to allow the Ohio Department of Agriculture (ODA) to administer the parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio. The Ohio Environmental Protection Agency (Ohio EPA) currently administers the Ohio NPDES program in its entirety. Under the proposed revision, Ohio EPA would continue to implement all other aspects of the State's approved NPDES program. EPA is requesting comment on the State's application to have ODA administer the NPDES program for CAFOs and for storm water associated with construction activity at AFOs, and is providing notice of a public hearing and comment period on the Agency's proposal to approve Ohio's application.*

[REDACTED SIGNATURE]
Lane E. Osswald

#36

My name is [REDACTED] and I'll be representing the Ohio Cattlemen's Association and I wish to testify for the transfer of the NPDES permitting from the Ohio EPA to the Ohio Department of Agriculture.

My operation is in Crawford County where I farm over 900 acres and feed out over 300 head of cattle.

As President of the Ohio Cattlemen's Association in 2001, I wrote an article about Senate Bill 141 in which some people said the permitting process moving from the Ohio EPA to ODA was like putting "the fox in charge of the hen house." That was not the case then and will not be the case with NPDES now. Serving on the Concentrated Animal Feeding Facility rules advisory committee of the Livestock Environmental Permitting Program, I have watched Kevin Elder and his staff go above and beyond to insure the environmental integrity of the program.

The general public does not have to worry about this transfer as the permitting process transfer has worked and I see no reason the NPDES transfer won't work just as well.

[REDACTED]

[REDACTED]

NEW WASHINGTON OH 44854

[REDACTED]