Ohio | Department of Agriculture
Governor Ted Strickland • Lt. Governor Lee Fisher
Director Robert J. Boggs

Livestock Environmental Permitting Program
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

May 14, 2009

Chesterfield Dairy, LLC
Karel and Ada Vande Kolk
15710 County Road 14
Lyons, Ohio 43553

Certified Mail Return Receipt Requested
91 7108 2133 3935 5344 9826

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Storage of Manure Outside Containment Areas and Storage of Manure in Unapproved Manure Storage Pond

Dear Mr. and Mrs. Vande Kolk:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Chesterfield Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Chesterfield Dairy, LLC has violated Permit to Operate (PTO) CHE-0001.PO001.FULT. ODA has determined that Chesterfield Dairy, LLC has failed to comply with Rules 901:10-2-04 and 901:10-2-06 of the Ohio Administrative Code (O.A.C.).

VIOLATION: STORAGE OF MANURE OUTSIDE OF CONTAINMENT AREAS

ODA has determined that O.A.C. 901:10-2-04 and the terms and conditions of your Permit to Operate have been violated. Specifically, O.A.C. 901:10-2-04(E)(1) requires that the facility "maintain separation of uncontaminated stormwater runoff from contaminated water with designs and installations that include, but are not limited to, settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions." Further, the manure management plan in your PTO identifies all approved manure storage and treatment facilities located at the facility. The PTO also provides, in General Condition 15, as follows: "The permittee shall at all times properly operate and maintain all facilities (and related appurtenances) which are installed or used by the permittee." Based on my staff's inspection on May 11, 2009, manure was present in areas of the production area outside of the approved manure storage and treatment facilities. The presence of this manure outside of these areas caused contaminated runoff to be collected in the "clean" stormwater pond on the south side of your facility. Specifically, manure and/or waste feed were found to be present in the following unapproved areas:

1. Outside the concrete curbing on the east side of the northern freestall barn;
2. Outside the concrete curbing at the mortality composting site;
3. Outside the concrete curbing northeast of the commodity barn;
4. Outside the south wall of the waste feed bunker and/or silage bunkers;
5. Multiple areas on the north side of the silage bunker;
6. Outside the (earthen) Settling Basin #2 concrete pump-out basin;
7. Outside the west edge of the manure separation pad;
8. Adjacent to the milking parlor line clean-out port, southeast of the office; and

9. Other areas not noted here, but still in violation of O.A.C.901:10-2-04(E)(1) and the Permit to Operate.

These areas are not approved manure storage or treatment facilities in your PTO, and therefore should be free of manure. The presence of manure in these areas is a violation of O.A.C. 901:10-2-04(E)(1) and your PTO.

CORRECTIVE ACTIONS REQUIRED

Chesterfield Dairy, LLC shall eliminate these unapproved manure storage areas around the production area by removing and cleaning up all of the manure in these areas and either placing the manure into the approved manure storage or treatment facilities at the facility or land applying the manure in compliance with O.A.C. 901:10-2-14. These corrective actions shall be completed by no later than May 22, 2009.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Chesterfield Dairy, LLC fails to comply with the Corrective Actions required above, Chesterfield Dairy, LLC will be subject to the assessment of a civil penalty in the amount up to $1,600.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION: STORAGE OF MANURE IN UNAPPROVED MANURE STORAGE POND

ODA has determined that O.A.C. 901:10-2-06 and the terms and conditions of your PTO have been violated. Specifically, O.A.C.901:10-2-06(A) requires that "A manure storage pond or manure treatment lagoon subject to this rule shall be designed and the plans stamped by a professional engineer." O.A.C. 901:10-2-04(E)(1) also requires that the facility "maintain separation of uncontaminated stormwater runoff from contaminated water with designs and installations that include, but are not limited to, settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions." The manure management plan in your PTO identifies all approved manure storage and treatment facilities located at the facility. These facilities do not include the clean stormwater pond located on the south side of your facility. The PTO also provides, in General Condition 15, as follows: "The permittee shall at all times properly operate and maintain all facilities (and related appurtenances) which are installed or used by the permittee."

During an inspection on May 11, 2009, two inspectors from ODA's Livestock Environmental Permitting Program (LEPP) found that the clean stormwater pond had been contaminated with manure, as a result of manure runoff caused by the presence of manure in unapproved areas. The clean stormwater pond is not approved to be used as a manure storage or treatment facility in your PTO. Using the clean stormwater pond to collect manure runoff is a violation of your PTO and the rules.

CORRECTIVE ACTIONS REQUIRED

Chesterfield Dairy, LLC must remove all of the contents of the unapproved manure storage pond, previously known as the clean stormwater pond, by June 1, 2009 through land application of the manure in compliance with OAC 901:10-2-14 or removal of the manure to another facility. Contaminated runoff into this pond shall be eliminated in such a manner as to ensure that no future unapproved discharge of contaminated runoff enters this pond. Upon complete removal of all contaminated effluent in this pond, ODA will inspect to evaluate the need to remove any manure solids from the pond. If it is determined that manure solids must be removed, removal of solids shall be completed by no later than June 15, 2009.

A plan shall be submitted to ODA by May 22, 2009 detailing how all approved manure storage structures at the facility will be kept below their maximum operating levels as required by the PTO, and how contaminated runoff into the unapproved manure storage pond, previously known as the clean stormwater pond, will be eliminated. This plan shall include detailed calculations on manure production volume, including production from 1,750 mature cows, associated wash/waste water, and predicted rainfall/runoff. The plan shall detail the land application areas, the planned cropping rotation of these areas, and the availability of these areas for manure application. It shall also provide estimated volumes of manure to be removed in order to allow the facility to remain in compliance with maximum operating levels through the wheat and silage harvest seasons.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Chesterfield Dairy, LLC fails to comply with the Corrective Actions required above, Chesterfield Dairy, LLC will be subject to the assessment of a civil penalty in the amount up to $800.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the LEPP Inspector and the review of your required plan will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If Chesterfield Dairy, LLC fails to comply with any of the corrective

actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

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

Sincerely,

Robert J Boggs

Robert Boggs
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineer
Mark Fritz, LEPP Inspector
Kristina Erlewine, Legal Counsel
Tracy Bleim, ODNR DSW
Aaron Farmer, Assistant Attorney General
Monte Tucker, VrebaHoff Dairy Development

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January 26, 2010

William A. Cleland, Jr.
5C's Farm, Inc.
06383 Cicero Rd.
Hicksville, OH 43526

Certified Mail: Return Receipt Requested

Re: Warning Letter - Failure to Observe Required Phosphorus Application Criteria for Manure
Failure to Record and Maintain Required Records of General Weather Conditions at Time of Manure Application

Dear Mr. Cleland:

This letter serves as a warning letter for failure to observe the required phosphorus application criteria for manure application, as found in Appendix E Table 2 of rule 901:10-2-14; and for failure to record and maintain required records of general weather conditions at time of manure application, as required in rule 901:10-2-16 (A) (1) (c) (xvii).

On October 28th, 2009, Mark Fritz, ODA-LEPP inspector conducted a routine inspection of your facility and operating records. This inspection revealed that you had applied manure August 10th, 2009 on the Nell farm which has soil phosphorus levels above 150 ppm. In addition, it was noted that the P-Index Risk Assessment Procedure had not been completed for those acres and therefore you were not allowed to be land applying on those acres. The inspection also found that records of general weather conditions – including, but not limited to, rainfall forecast records – were not recorded for manure applied through the center pivot.

According to your Permit to Operate, all manure applications must be made in accordance with Appendix E, Tables 1 and/or 2 and with Rule 901:10-2-16. Continued failure to observe these rules will lead to enforcement action against your facility.

Sincerely,

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Mark Fritz, LEPP inspector
Kristina, Erlewine, Legal Counsel, Ohio Department of Agriculture
Andy Ety, LEPP Engineer
Cathy Alexander, Ohio EPA
Defiance SWCD

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May 10, 2010

Springfield Dairy, LLC
Arno DeKeijne
17495 County Road C
Bryan, OH 43506

Certified Mail: Return Receipt Requested 91 7108 2133 3935 5345 1898

Re: Warning Letter – Failure to Maintain Separation of Contaminated and Uncontaminated Facility Runoff

Dear Arno:

This letter serves as a warning letter for failure to "Maintain separation of uncontaminated stormwater runoff from contaminated water" as defined in Ohio Administrative Code 901:
10-2-04 (E)(1)(d).

On April 29th, 2010, while on a routine inspection, my staff discovered contaminated runoff from the feed storage area had migrated to a facility ditch designed for uncontaminated stormwater runoff. Specifically, leachate from the silage storage pad had migrated underneath the north and west pad walls, and flowed downslope and entered the adjacent clean stormwater ditch. The leachate then flowed approximately 150 – 200 feet west and south in the ditch, as was evident by small pools of contaminated runoff and dead vegetation. There is no evidence that the leachate left the facility or production area, or entered the facility's clean stormwater pond system or waters of the State.

Therefore, the following Corrective Actions must be taken:

1. Maintain the dam placed in the clean stormwater ditch on April 30th, 2010 and continue pumping this contaminated liquid from the ditch into manure storage as long as there is evidence of continued contaminated liquid migrating from the silage pad.
2. Identify the pathway and cause of the migration of the leachate from the silage pad and appropriate measures to prevent a reoccurrence. These proposed measures shall be provided to ODA-LEPP by June 1st, 2010, for review.

Sincerely,

Kevin Elder
Executive Director
Livestock Environmental Permitting Program

Cc: File
Mark Fritz – Inspector, ODA-LEPP
Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture
Andy Ety/Gary Zwolinski, LEPP Engineers
Cathy Alexander, Ohio EPA
Jon Bernstein, Ohio EPA
Williams SWCD

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June 15, 2010

Arts Dairy LLC
Henk and Helma Arts
5624 Elm Sugar Road
Convoy, OH 45832

Certified Mail Return Receipt Requested

91 7108 2133 3935 5345 1881

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Freeboard Maintenance in Manure Storage or Treatment Facilities

Dear Mr. and Mrs. Arts:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Arts Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Arts Dairy has violated Permit to Operate (PTO) ART-0001.PO001-VANW and the Renewed PTO 81-089-PTO-002 by failing to comply with Rule 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

VIOLATION: FREEBOARD MAINTENANCE IN MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that "[t]he operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the [O.A.C.], plus an additional one foot of freeboard." Rule 901:10-2-08(A)(4) further requires that equipment and manure storage or treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record.

During an inspection on June 10, 2010, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that three of your existing manure storage or treatment facilities were out of compliance with these requirements. These structures included the contaminated stormwater pond, the large manure storage pond (pond #1) and the small manure storage pond (pond #2).

CORRECTIVE ACTIONS REQUIRED

Due to the critical manure levels in these three structures, Arts Dairy, LLC must investigate and provide a written report to ODA-LEPP, by no later than June 21, 2010 explaining the plan for lowering the pond levels to return to compliance. This plan shall include methods for lowering the operating levels of all manure storage or treatment facilities that will allow Arts Dairy to return to compliance by no later than June 25, 2010. In this written report, you must also

describe your plan to achieve and maintain acceptable levels in all manure storage or treatment facilities to provide storage until the next available application window after wheat harvest and fall harvest. In this description, you must calculate the manure and rainfall production for this period and the levels required in the ponds to store this volume and the land available to you for application. This volume must be removed prior to November 15, 2010. You must maintain all required records of manure application or distribution and make these records available to the LEPP Inspector. The Department expects Arts Dairy to explore all necessary means for lowering these levels, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, removal of cows, etc.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the third cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Arts Dairy fails to comply with the Corrective Actions required above, Arts Dairy will be subject to the assessment of a civil penalty in the amount up to $1,600.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the LEPP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

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

Sincerely,

Robert J. Boggs
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineer
Chris Rodabaugh, LEPP Inspector
Kristina Erlewine, Legal Counsel
Tracy Bleim, ODNR DSW
Timothy McNamara, Agstar Financial

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June 18, 2010

Van Ham Dairy, LLC
Jan and Anja Van Ham
7089 Road 22
Continental, Ohio 45861

Certified Mail Return Receipt Requested 91 7108 2133 3935 5345 1867

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Freeboard Maintenance in Manure Storage or Treatment Facilities

Dear Mr. and Mrs. Van Ham:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Van Ham Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Van Ham Dairy, LLC has violated Permit to Operate (PTO) VAN-0001.PO001-PUTN by failing to comply with Rule 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

VIOLATION: FREEBOARD MAINTENANCE ON MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that "[t]he operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. rules 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard." O.A.C. rule 901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record.

During an inspection on June 8, 2010, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that two of your existing manure storage or treatment facilities were out of compliance with these requirements. These structures included the contaminated stormwater pond and the large manure pond (Pond #2).

CORRECTIVE ACTIONS REQUIRED

Due to the critical manure levels in these two structures, Van Ham Dairy, LLC must investigate and provide a written report to ODA-LEPP, by no later than June 25, 2010, explaining the plan for lowering the levels to return to compliance. This plan shall include methods for lowering the operating levels of all manure storage or treatment facilities that will allow Van Ham Dairy, LLC to return to compliance by no later than July 1, 2010. In this written report, you must also describe your plan to achieve and maintain acceptable levels in all manure storage or treatment facilities to provide storage until the next available application window after wheat harvest and fall harvest. In this description, you must calculate the manure and rainfall production for the period and the levels required in the ponds to store this volume and the land available to you for application. This volume must be removed prior to November 15, 2010. You must maintain all required records of manure application or distribution and make these records available to the LEPP Inspector. The Department expects Van Ham Dairy, LLC to explore all necessary means for lowering manure levels, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, removal of cows, etc.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G).

Based upon this review, ODA has determined that Van Ham Dairy, LLC has previously been cited for violations of freeboard. The category of seriousness of this violation is moderate or Category II, and the gravity of the violation is low. Therefore, if Van Ham Dairy, LLC fails to comply with the Corrective Actions required above, Van Ham Dairy will be subject to the assessment of a civil penalty in the amount up to $1,600 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the LEPP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

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

Sincerely,

Robert J. Boggs
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineer
Mark Fritz, LEPP Inspector
Kristina Erlewine, Legal Counsel
Tina Ray, ODNR DSW
Aaron Farmer, Assistant Attorney General
John Roach, Roach and Associates
Van Ham Dairy Leasing LLC

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July 23, 2010

Hatfield 7 Dairy, Inc.
Hatfield Ag Service LLC
6642 Bennington Chapel Road
Centerburg, Ohio 43011

Certified Mail
91 7108 2133 3935 5345 1874

Bath State Bank
C/o Brian Bischoff
3095 Bath Road
Bath, Indiana 47010

Certified Mail
91 7108 2133 3935 5344 9901

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Hatfield 7 Dairy, Inc.

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiencies (NOD) resulting in noncompliance. Hatfield 7 Dairy, Inc. has violated Permit to Operate (PTO) HAT-0001.PO001.LICK. ODA has determined that Hatfield 7 Dairy, Inc. has failed to comply with Rules 901:10-2-08, 901:10-2-16, and 901:10-2-19 of the Ohio Administrative Code (O.A.C.).

I. INSPECTIONS/RECORD KEEPING

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08, O.A.C. 901:10-2-16, and the PTO have been violated. Specifically, O.A.C. 901:10-2-08(A)(4) provides, in pertinent part, that the manure storage and treatment facilities, vegetation around the facility, and stormwater conveyances must be inspected, monitored, and maintained, and that these activities must be documented in the operating record. Ohio Administrative Code 901:10-2-16(A) states that an owner or operator shall maintain an operating record, and that the operating record shall record and document the information required by rule.

During a routine inspection on August 27, 2009 and on April 19, 2010, in the presence of bank representatives, the LEPP inspector noted the following violations:

1. No weekly manure storage pond volume records documented in the operating record from on, or about, March 10, 2009 to July 16, 2010. This is a violation of O.A.C. 901:10-2-08(A)(4)(f), O.A.C. 901:10-2-16(A)(1)(a)(i) and (iii), and the facility's PTO.

2. OAC 901:10-2-08 (A)(4)(e),(j),(k),(q) and the PTO require the owner or operator to inspect for excessive vegetation around the facility, in particular the manure storage or treatment facilities on a weekly basis, and that any deficiencies be corrected as soon as possible and listed in the facility's operating record. OAC 901:10-2-16(A)(1)(a)(v) and the PTO require records to be maintained of the inspections of protective vegetative cover around the facility. The vegetation at Hatfield 7 Dairy has not been maintained and has been excessive from at least April 19, 2010 to July 16, 2010. There are no records of weekly vegetation inspections having taken place from March 10, 2009 to July 16, 2010.

3. No records of weekly inspections of stormwater conveyances documented in the operating record from on or about March 10, 2009 to July 16, 2010. This is a violation of O.A.C. 901:10-2-08(A)(4)(i), O.A.C. 901:10-2-16(A)(1)(a)(iv) and the PTO.

4. No weekly inspection records for the Insect & Rodent Control Plan documented in the operating record since March 10, 2009 to July 16, 2010. This is a violation of O.A.C. 901:10-2-19(B)(3)(a)(i), O.A.C. 901:10-2-16(A)(1)(a)(viii), and the PTO.

B. CORRECTIVE ACTION REQUIRED

1. Immediately upon the date of receipt of this NOD, Hatfield 7 Dairy, Inc. or another responsible party, shall correct the violations by conducting the required inspections and recording the required information in the Hatfield 7 Dairy, Inc. operating record. Pursuant to O.A.C. 901:10-2-16(A), this information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.
2. Any deficiencies noted during the required inspections must be addressed as soon as possible, as required by OAC 901:10-2-08(A)(4)(q), with the actions taken and noted in the operating record. In particular, the obvious deficiency noted above of excessive vegetation around the facility must be addressed immediately. By no later than August 1, 2010, all vegetation around the facility must be mowed or reduced to a height that will allow proper inspection of all necessary structures, including, but not limited to, the areas around all barns, the outer and top of all embankments around the manure storage ponds, the areas around all commodity and silage storage areas and all surface inlets. The vegetation height shall be maintained at 6 inches or less. All areas not accessible with typical mowing equipment shall have vegetation maintained by other means. Given the extreme vegetation and overgrowth present currently at the site, extreme caution must be used to mow or reduce the vegetation at all times.

   A LEPP inspector will conduct a re-inspection on or about August 1, 2010 to determine if Hatfield 7 Dairy, Inc. has returned to compliance.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as minor or Category III, and the gravity of the violation as low. Therefore, if Hatfield 7 Dairy, Inc. fails to comply with the Corrective Action required above, Hatfield 7 Dairy, Inc. will be subject to the assessment of a civil penalty in the amount of $200.00 per day per violation from March 10, 2009 to the date of this Notice of Deficiencies letter, or July 16, 2010, for a total of $394,400.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

II. INSECT AND RODENT CONTROL PLAN

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-19 and the PTO have been violated. Specifically, O.A.C. 901:10-2-19(B)(3)(b) provides, in pertinent part, for the maintenance of sanitary procedures designed to minimize the activity and reduce the presence of insects and rodents that include, but are not limited to, the maintenance of vegetation around the buildings and the removal of unused feed commodities. The Hatfield Dairy, Inc. PTO provisions in the Insect and Rodent Control Plan require daily inspections of feed storage areas and that waste feed and spilled feed be cleaned up daily.

During a routine inspection on April 19, 2010, in the presence of bank representatives, and again on July 16, 2010, the LEPP inspector noted the following violations:

1. The facility has not maintained sanitary procedures designed to minimize the activity and reduce the presence of insects and rodents that include, but are not limited to, the maintenance of vegetation around the buildings and the removal of unused feed commodities. This is a violation of O.A.C. 901:10-2-19(B)(3)(b), and the PTO, and has been ongoing since April 19, 2010, particularly in regard to the failure to maintain vegetation and the removal of feed commodities.

2. The vegetation at the facility has not been maintained and has been excessive from at least April 19, 2010 to July 16, 2010. The facility has not maintained inspections of the feed storage areas on a daily basis since the cows were removed from the farm even though feed continues to remain stored at the farm. This is a violation of O.A.C. 901: 901:10-2-19(B)(3)(b) and the facility's PTO. There are two piles of commodities stored under roof near the area of the silage bunkers. The continued presence of these two piles of commodities is an open invitation to rodents, and the necessity of their removal was discussed with bank representatives on April 19, 2010.

B. CORRECTIVE ACTION REQUIRED

1. By no later than August 1, 2010, all vegetation around the facility must be mowed or reduced to a height that will allow proper inspection of all necessary structures and the minimization of insect and rodent activity, including, but not limited to, the areas around all barns, the outer and top of all embankments around the manure storage ponds, the areas around all commodity and silage storage areas and all surface inlets. The vegetation height shall be maintained at 6 inches or less. All areas not accessible with typical mowing equipment shall have vegetation maintained by other means. Given the extreme vegetation and overgrowth present currently at the site, extreme caution must be used to mow or reduce the vegetation at all times.

2. All old commodities shall be removed from the site by no later than September 1, 2010. If the silage on the site is intended to be used by potential buyers, it needs to be properly covered by no later than August 15, 2010 and a written request to ODA for permission to keep the silage on site must be submitted to, and approved by, ODA-LEPP by no later than August 15, 2010.

   A LEPP inspector will conduct a re-inspection on or about September 1, 2010 to determine if Hatfield 7 Dairy, Inc. has returned to compliance.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (H). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Hatfield 7 Dairy, Inc. fails to comply with the Corrective Actions required above, Hatfield 7 Dairy, Inc. will be subject to the assessment of a civil penalty in the amount of $500.00 for each seven days of violation from the date of the first inspection (April 19, 2010) to the date of this Notice of Deficiencies letter, or July 16, 2010, for a total of $6000.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

III. FREEBOARD AND DISCHARGE

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and the PTO have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(b) states that the operating level of fabricated structures must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06, plus an additional six inches of freeboard. O.A.C. 901:10-2-

08(A)(4)(a) states that the operating level of manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard. O.A.C. 901:10-2-08(A)(4)(e) states that any manure storage or treatment facility under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage, cracking, excessive vegetation, or discharge. Any deficiency found in these areas is required by O.A.C. 901:10-2-08(A)(4)(q) to be corrected as soon as possible, with the actions taken listed in the operating record. The PTO for the facility sets forth specific freeboard requirements for manure storage and treatment facilities.

During a routine inspection on April 19, 2010, in the presence of bank representatives, and again on June 8, 2010 and July 16, 2010, the LEPP inspector noted the following violations:

1. The pump station that outlets into Pond #1 is completely full and exceeds the Maximum Operating Level (MOL). Effluent is actually leaching from this pump station and over the embankment near a tributary. This is a violation of O.A.C. 901:10-2-08(A)(4)(b) and (e). The July 16, 2010 inspection was the third instance in 2010 in which this violation was observed. The pump station was also in violation during site visits made on April 19 and June 8, 2010.

2. Manure Storage Pond #1 is above MOL. This is a violation of O.A.C. 901:10-2-08(A)(4)(a) and was observed at the most recent July 16, 2010 inspection.

B. CORRECTIVE ACTION REQUIRED

1. Upon immediate receipt of this NOD, the pump station level shall be lowered and maintained at a level that will not cause any concern.
2. Pond #1 shall be lowered below the Maximum Operating Level by no later than August 15, 2010.
3. By no later than August 15, 2010, a manure removal plan shall be provided to ODA-LEPP that identifies the levels of all liquid manure storage structures currently and how much manure will need to be removed before November 1, 2010 from each liquid manure storage structure in order to allow the facility to remain in compliance with the PTO's freeboard requirements until May 1, 2011. This plan shall also identify the acres that are available to land apply this manure. Before manure is to be land applied, current manure samples must be taken, as well as soil samples for the application fields. These results must be maintained in the Operating Record. The levels in the manure storage ponds must be lowered to the identified levels by no later than November 1, 2010.

   A LEPP inspector will conduct a re-inspection on or about November 1, 2010 to determine if Hatfield 7 Dairy, Inc. is in compliance.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Hatfield 7 Dairy, Inc. fails to comply with the Corrective Action required above, Hatfield 7 Dairy, Inc. will be subject to the assessment of a civil penalty in the amount of $800.00 per day per violation from April 19, 2010 to the date of this Notice of Deficiencies letter, or July 16, 2010, for a total of $3200.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

IV. STORMWATER

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and the PTO have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(h) and (q) requires inspections to determine that all stormwater conveyances are maintained and that actions are taken to correct any deficiencies found as a result of the inspections. The PTO requires the maintenance of stormwater conveyances at the facility.

1. Runoff of stormwater on the east side of the silage pad still is an issue from what appears to be a plugged outlet pipe. This is causing improper drainage from the area and not allowing water to freely drain away from the site, in violation of the PTO and O.A.C. 901:10-2-08(A)(4)(h) and (q). This has been an ongoing issue at the site from March 10, 2009 to July 16, 2010. This issue was discussed during a routine inspection on April 19, 2010, in the presence of bank representatives. The same observation was made on July 16, 2010.

B. CORRECTIVE ACTION REQUIRED

1. By no later than August 15, 2010, the drainage issue on the east side of the silage bunker shall be corrected. In addition, no contaminated runoff from the silage pad shall be allowed to cross the driveway on the east side of the pad.

   A LEPP inspector will conduct a re-inspection on or about August 15, 2010 to determine if Hatfield 7 Dairy, Inc. is in compliance.

C. PENALTY ASSESSMENT

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

is the first cited violation with the category of seriousness of the violation as minor or Category III, and the gravity of the violation as low. Therefore, if Hatfield 7 Dairy, Inc. fails to comply with the Corrective Action required above, Hatfield 7 Dairy, Inc. will be subject to the assessment of a civil penalty in the amount of $200.00 per day per violation from April 19, 2010 to the date of this Notice of Deficiencies letter, or July 16, 2010, for a total of $17,600.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

V. GROUND WATER SAMPLING

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08, O.A.C. 901:10-2-16, and the PTO have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(l) requires annual sampling and analysis of ground water for nitrates and total coliform from a well at the facility. Results of the samples must be documented in the operating record pursuant to O.A.C. 901:10-2-08(A)(4)(l) and O.A.C. 901:10-2-16(A)(1)(a)(vii).

1. No new groundwater sampling results have been recorded in the facility Operating Record since September 9, 2008. The need for this sampling was noted at the August 27, 2009 inspection. New water samples are required to be taken and the results recorded in the Operating Record on a yearly basis as required by O.A.C. 901:10-2-08(A)(4)(l), 901:10-2-16(A)(1)(a)(vii), and the facility's PTO.

B. CORRECTIVE ACTION REQUIRED

1. By no later than August 15, 2010, a ground water sample must be taken for nitrates and total coliform from the facility's well, with the results placed in the facility's operating record.

   A LEPP inspector will conduct a re-inspection on or about August 15, 2010 to determine if Hatfield 7 Dairy, Inc. is in compliance.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Hatfield 7 Dairy, Inc. fails to comply with the Corrective Action required above, Hatfield 7 Dairy, Inc. will be subject to the assessment of a civil penalty in the amount of $800.00 per day per violation from September 9, 2009, to the date of this Notice of Deficiencies letter, or July 16, 2010, for a total of $248,000.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

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

Sincerely,

Robert J. Boggs/MAC

Robert J. Boggs
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture
Aaron Farmer, Assistant Attorney General
Jim Young, LEPP Inspector
Jim Kiracofe, Licking SWCD

Ohio | **Department of Agriculture**

Governor Ted Strickland • Lt. Governor Lee Fisher
Director Robert J. Boggs

Livestock Environmental Permitting Program
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www.ohioagriculture.gov • lepp@agri.ohio.gov

October 22, 2010

Ohio Fresh Eggs, LLC
Attn: John Glessner
P.O. Box 247
Croton, Ohio 43013

RE: Warning Letter - Delay of Construction on Manure Storage Barn Repairs

Mr. Glessner:

This letter serves as a Warning Letter based on ODA-LEPP's concern with the construction progress on the repair work of the manure storage barns at Croton. The original schedule provided by your staff indicated that all the buttresses would be constructed by August 20, 2010 and that the replacement of the wall and roof at the east manure storage barn at Layer 4 would be completed by September 6, 2010. On August 23, 2010, you requested an extension for completion of this work until October 15, 2010, which was granted by ODA-LEPP on September 13, 2010. Then, OFE again requested an extension of this work on September 29, 2010 to allow for completion by November 15, 2010. ODA-LEPP decided not to grant this extension given the fact that it had been almost 7 months since the collapse and there had been ample time to make the necessary repairs.

Based on these circumstances listed above and my staff's visit on October 19, 2010, all work on the buttresses must be completed by no later than November 15, 2010. In addition, the entire roof must be installed on the east manure storage barn by no later than November 15, 2010. In addition, all electrical and conveyor work needs to be completed by December 15, 2010. If these items are not completed by the dates provided, then additional enforcement action may be taken.

Sincerely,

Kevin Elder
Executive Director, ODA-LEPP

cc: Sheryl Logue, OFE-Croton
Dick Rowley, OFE-Croton
Ron Goldsberry, OFE-Croton
Jim Young, ODA-LEPP
Andy Ety, ODA-LEPP
Kristina Erlewine, ODA-LEPP
Aaron Farmer, Ohio Attorney General's Office

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November 9, 2010

Anderson Farms
Kenton Anderson
5181 Hardin-Wapak Road
Sidney, Ohio 45365

Re: Warning Letter

Mr. Anderson:

I am writing to you as a result of an inspection conducted by my staff on September 27, 2010. The Inspector from the Livestock Environmental Permitting Program (LEPP) found during this inspection that construction had begun for a 48 foot by 104 foot barn to house up to 80 head of beef cattle and store 10,400 cubic feet of pen-pack manure. Permit to Operate #75-025-PTO-001 does not authorize this new building. The manure storage structure and additional design capacity for the beef cattle appears to fall under the classification of a Major Operational Change (MOC) as described by OAC 901:10-1-09 (I). This rule specifically requires that the owner or operator submit to the director's authorized representative any planned major operational change, and receive written approval, prior to commencing construction.

Because construction has already begun without authorized approval, you violated the requirements of ODA rules as stated above. Therefore, by no later than **November 23, 2010**, you shall submit to ODA-LEPP, a request for an after-the-fact MOC in a letter which summarizes the proposed changes and the required revisions to the Manure Management Plan and Mortality Management Plan. With this request to ODA-LEPP, detailed engineering drawings and construction specifications of the proposed facility shall be submitted to demonstrate compliance with ODA rules.

Also, as reminders from the inspection, you are required to do the following:

- The 2010 Annual Report is due to be submitted no later than January 31, 2011.
- Forward the 2010 groundwater well nitrate test and the settling pond manure analysis results to Christine Pence immediately.
- Limit your manure applications to 250 lbs/acre of phosphate for any future applications and to annual crop removal of phosphorus when soil test values are between 100-150 ppm.

We take these violations very seriously and anticipate your prompt correction of the aforementioned violation.

Sincerely,

Kevin H. Elder, Executive Director

CC: Christine Pence, LEPP Inspector
Andy Ety, LEPP Engineer
Kristina Erlewine, Legal Counsel
Shelby SWCD
ODNR-DSWC

Ohio | **Department of Agriculture**

Governor John Kasich • Lt. Governor Mary Taylor
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February 4, 2011

Eastwood Dairy, LLC
Dirk Winkel
9235 Wildman Road
South Charleston, Ohio 45368

Certified Mail Return Receipt Requested

91 7108 2133 3935 5344 9970

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Eastwood Dairy Permit to Operate Requirements

Dear Mr. Winkel:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Eastwood Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Eastwood Dairy has violated Permit to Operate (PTO) EAS-0001.PO001.CLAR. ODA has determined that Eastwood Dairy has failed to comply with rules 901:10-2-04, 901:10-2-08, 901:10-2-11, 901:10-2-15, and 901:10-2-16 of the Ohio Administrative Code (O.A.C.).

I. FIRST VIOLATION: GROUNDWATER MONITORING WELLS SAMPLING/MAINTENANCE

During partial inspections conducted on November 1, 2010 and November 22, 2010 and a routine inspection on December 13, 2010, the LEPP staff noted the following violations:

1. The NE groundwater monitoring well was damaged in the fall of 2009 and has not been properly repaired. Efforts to repair the well were made on or about November 1, 2010; however, during a subsequent inspection on November 22, 2010, it was observed by a LEPP engineer that the steel casing on the NE groundwater monitoring well remained damaged. During the December 13, 2010 routine inspection, you were informed that the steel casing needed to be anchored in concrete and the locking cap repaired, with lock installed.

2. The three groundwater monitoring wells have not been properly sampled since the facility began operating in 2006. This is a violation of O.A.C. 901:10-2-08(A)(4)(l)(ii) and your Permit to Operate which requires you to conduct biannual sampling from the groundwater monitoring wells at Eastwood Dairy. On November 1, 2010, you were informed to follow the Groundwater Monitoring Procedures, which you also outlined in your pending PTO application submitted to ODA on June 8, 2009. This procedure includes testing semiannually from each of the three groundwater monitoring wells for nitrate, nitrite, total phosphorus, total coliform, E. coli, field pH, field specific conductivity and field temperature.

CORRECTIVE ACTION REQUIRED

You have **30** days from the date on this letter within which you must correct these deficiencies by:

(1) repairing and restoring to full function, the damaged groundwater monitoring well. The steel casing needs to be anchored in concrete and the locking cap repaired with lock installed and record the actions taken to repair the well in your operating record; and

(2) immediately hiring someone that is knowledgeable in the area of groundwater sampling, monitoring and reporting to collect samples from each of the three groundwater monitoring wells and have the samples tested for nitrate, nitrite, total phosphorus, total coliform, E. coli, field pH, field specific conductivity and field temperature. Once the groundwater quality results are received from the sampling event, the results shall be compared to background groundwater quality data and a report describing the sampling event shall be submitted to the ODA-LEPP within 30 days of the sampling event.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a repeat violation with the category of seriousness of the violation as Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty of up to $1,600.00 per day for each day from the date of the first inspection (November 1, 2010) to the date of this Notice of Deficiencies letter. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

II. SECOND VIOLATION: INSPECTIONS/RECORD KEEPING

During a routine inspection on December 13, 2010, the LEPP inspector noted the following violation:

> No daily records for water line inspections documented from on or about March 23, 2010. This is a violation of O.A.C. 901:10-2-08(A)(4)(n). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-1-2-16(A)(1)(a)(ix).

CORRECTIVE ACTION REQUIRED

You have 14 days from the date on this letter within which you must correct this deficiency by conducting the required inspections and recording the required information listed in O.A.C. 901:10-2-08(A)(4) and 901:10-2-16 in Eastwood Dairy's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a repeat violation with the category of seriousness of the violation as Category III and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of up to $400.00 for each day from the date of the initial failure to maintain the required records (March 23, 2010) to the date of this Notice of Deficiencies letter. You may

also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

III. THIRD VIOLATION: DISTRIBUTION & UTILIZATION RECORDS

During a routine inspection on December 13, 2010, the LEPP inspector noted the following violation:

> No records for transactions of manure removed from on or about March 23, 2010 using Distribution & Utilization. Although a significant amount of solid and liquid manure had been removed from the facility in 2010, there were no signed acknowledgements from the manure recipients and no records providing that such recipients received copies of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of the Administrative Code. This is a violation of O.A.C. Rule 901:10-2-11(A) which requires that:
>
> (1) The permitted facility operating record shall include copies of the acknowledgements between the owner and operator of the facility and manure recipient.
>
> (2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall provide a copy of appendices A and F of rule 901:10-2-14 of the Administrative Code, and a copy of the most recent analytical results that list the nutrient content of the manure based on an analysis consistent with the rules to the manure recipient. The permitted facility operating record shall include the name and address of the manure recipient, the date of distribution, and the approximate amount of manure in tons or gallons distributed on that date and an acknowledgement by the manure recipient as follows:
>
> (3) In addition to the information in paragraph (A)(2) of this rule, if the owner or operator decides to use distribution and utilization methods for liquid manure, then the owner or operator shall also provide a copy of appendix B, the available water capacity chart that illustrates how to comply with the requirements of rule 901:10-2-14 of the Administrative Code.

CORRECTIVE ACTION REQUIRED

You have **14** days from the date on this letter within which you must correct this deficiency by obtaining signed acknowledgements from the manure recipients and records providing that such recipients received copies of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of the Administrative Code.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of up to $200.00 for each day from the date of the initial failure to maintain the required records (March 23, 2010) to the date of this Notice of Deficiencies letter. You may

also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

IV. FOURTH VIOLATION: MORTALITY COMPOST

During a routine inspection on July 19, 2010, a partial compliance inspection on August 24, 2010, and a routine inspection on December 13, 2010, the LEPP inspector noted the following violation:

There had been dead animals exposed in the vicinity of the designated concrete mortality compost area. The animal carcasses were exposed and not covered. It appears that they had accumulated over more than a twenty-four hour period. There has been continual lack of sufficient cover over the mortality in the designated mortality compost pile. During each of these inspections, you were informed mortality must be properly covered within twenty four hours of placement of mortality in the pile. Since you have chosen composting as the method for mortality management, and you have obtained a certificate of course completion for mortality composting, your are required to follow Best Management Practices set forth in "Ohio's Livestock and Poultry Mortality Composting Manual." This is a violation of O.A.C. 901:10-2-15.

CORRECTIVE ACTION REQUIRED

You have **14** days from the date on this letter within which you must correct this deficiency by properly placing mortality in the mortality compost pile and covering it within twenty four hours of death. You then shall maintain timely and proper cover over the mortality or you will be prohibited from mortality composting in the future and will have to choose another disposal method.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a repeat violation with the category of seriousness of the violation as Category II and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of the first inspection (July 19, 2010) to the date of this Notice of Deficiencies letter. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

V. FIFTH VIOLATION: FREEBOARD/MAINTENANCE OF SAND SETTLING BASINS

During a routine inspection on July 19, 2010, a partial compliance inspection on August 24, 2010 and a routine inspection on December 13, 2010, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that the north sand settling pad containment wall had evidence of leaking leachate from the manure laden sand solids stacked against it. This leak was leaching into the clean water ditch next to it. The fact that manure laden sand solids were nearly overtopping the walls on the dates above demonstrate that Eastwood Dairy failed to maintain adequate storage capacity and did not properly monitor the storage areas.

In addition, during a partial inspection on November 1, 2010 and a routine inspection on December 13, 2010, the LEPP inspector discovered that there was a significant gaping hole in the geotextile liner, just

under the push off ramp of the north sand settling basin. It appears to have previously been damaged when using a loader to pull away solids from the push-off ramp. This liner was required as part of the Permit to Install for this basin and must be maintained for protection of groundwater at the site. The hole in the liner could allow manure to seep between the liner and concrete wall/floor. The damaged geotextile liner must be repaired/replaced.

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(b) requires that "[t]he operating level of fabricated structures must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-2-05(A)(2) and 901:10-2-05(A)(4) of the Administrative Code, plus an additional six inches of freeboard." O.A.C. 901:10-2-08(A) also requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record.

CORRECTIVE ACTIONS REQUIRED

You have **60** days from the date on this letter within which you must correct these deficiencies by:

1. Eliminating leachate from reaching cleanwater areas and making all necessary repairs to the sand settling containment walls to prevent a reoccurrence of this in the future. Record the actions taken to repair the sand settling walls in your operating record. You must make these records available to the LEPP inspector.

2. Repair or replace the damaged geotextile liner in the north settling sand basin.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II and the gravity of the violation as medium. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of the first inspection (December 13, 2010) to the date of this Notice of Deficiencies letter. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

VI. SIXTH VIOLATION: UNCONTAINED MANURE PILE

During a partial inspection on November 1, 2010 and a routine inspection on December 13, 2010, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that the contaminated manure solids that were scraped from the clean water detention basin and piled in the upper portion of the pool area of this pond had not been properly removed, transported to another contained area of the facility or land applied.

ODA has determined that O.A.C. 901:10-2-04 and 901:10-2-16 have been violated. Specifically 901:10-2-04 (E)(1)(c) requires that the owner or operator use spill prevention and good housekeeping techniques to ensure that stormwater discharges from the following areas comply with Ohio water quality standards. Additionally, O.A.C. Rule 901:10-2-16(A)(1)(a)(x) requires that records of actions be taken to correct any deficiencies found as a result of inspections conducted in the production area. If actions were not taken

within thirty days of discovery, then the operating record shall record the reasons explaining why corrections could not be made immediately.

CORRECTIVE ACTIONS REQUIRED

You have **30** days from the date on this letter within which you must correct this deficiency by properly removing the stacked manure solids from the clean water detention basin area and stockpile or land apply the manure in accordance with ODA rules or transport it to an area of the facility where the contaminated stormwater can be collected.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II and the gravity of the violation as medium. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of the first inspection (November 1, 2010) to the date of this Notice of Deficiencies letter. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

VII. SEVENTH VIOLATION: DEPTH MARKERS

No permanent depth markers have been installed in the stormwater pond or the manure storage pond since on or before October 29, 2007-August 8, 2008. You were previously issued a Notice of Hearing for this violation on December 2, 2008 followed by a Director's Order on January 27, 2009, after which a penalty of $29,700 was paid by you on August 25, 2010. You have been repeatedly informed of this violation and requirement during every facility inspection. In November, 2010, temporary stakes were installed in the manure pond with elevations verified by Gary Zwolinski, ODA-LEPP Engineer, on November 22, 2010. You were informed that these stakes were not acceptable as permanent markers since they are subject to heaving out of the ground during freeze/thaw conditions. You were advised that new permanent stakes/markers must be installed with elevations clearly marked.

During a routine inspection on December 13, 2010, the inspector noted that permanent depth markers had not been installed in either the manure storage pond or the contaminated stormwater pond.

ODA has determined that O.A.C. 901:10-2-08(A)(4)(o) has been violated, which requires that all liquid manure in manure storage or treatment facilities must have a depth marker or other appropriate device as approved by the director in accordance with rule 901:10-2-05 or 901:10-2-06 of the Administrative Code which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the twenty-five year, twenty four hour rainfall event, or, in the case of new sources subject to the requirement in paragraph (D)(1) of rule 901:10-3-06 of the Administrative Code, the runoff and direct precipitation from a one-hundred year, twenty-four hour rainfall event.

CORRECTIVE ACTIONS REQUIRED

You have **14** days from the date on this letter within which you must correct this deficiency by installing permanent stakes/markers with elevations clearly marked in the manure storage pond.

You have **60** days from the date on this letter within which you must correct this deficiency by installing permanent stakes/markers with elevations clearly marked in the contaminated stormwater pond.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a repeat violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of up to $3,200.00 for each day from the date from the previous enforcement action (January 27, 2009) to the date of this Notice of Deficiencies letter. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

Following each of the compliance deadlines noted above, a LEPP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If Eastwood Dairy, LLC and Mr. Dirk Winkel fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

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

Sincerely,

Jim Zehringer, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Gary Zwolinski, LEPP Engineer
Andy Ety, LEPP Engineer
Christine Pence, LEPP Inspector
Kristina Erlewine Legal Counsel
Aaron Farmer, Assistant Attorney General
Christopher Simpson, Clark SWCD
Cathy Alexander, OEPA

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director James Zehringer

Livestock Environmental Permitting Program
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8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
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May 12, 2011

Neal Kremer
9159 State Route 118
Ansonia, OH 45303

Certified Mail Return Receipt Requested
91 7108 2133 3935 5344 9949

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Freeboard Maintenance in Manure Storage Ponds and Barn Manure Pits

Dear Mr. Kremer:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that you have failed to comply with Permit to Operate (PTO) STA-0001.PO001.DARK and Rules 901:10-2-04, 901:10-2-06 and 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

VIOLATION: FREEBOARD MAINTENANCE ON MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 and PTO STA-0001.PO001.DARK have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that "[t]he operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. rules 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard." O.A.C. rule 901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record.

Rule 901:10-2-08(A)(4)(b) of the Administrative Code requires that the operating level of a fabricated structure must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional six inches of freeboard.

During an inspection on May 9, 2011, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that your existing manure storage or treatment facilities were out of compliance with these provisions. These structures included the West Lagoon (earthen manure storage pond on the north west side of facility site) and the East Lagoon (earthen manure storage pond on the north east side of facility site).

Also during this same inspection, the ODA-LEPP inspector was informed by an employee that the manure pits in Barns 1, 2, 3 and 4 were full.

CORRECTIVE ACTIONS REQUIRED

Due to the critical manure levels in all of these structures, you must investigate and provide a written report to ODA-LEPP, by no later than May 17, 2011, explaining your plan for lowering the manure levels to return to compliance. This plan shall include methods for lowering the operating levels of all manure storage or treatment facilities that will allow you to return to compliance by no later than May 20, 2011. You must maintain all required records of manure application or distribution and make these records available to the LEPP Inspector at the date of re-inspection, which will be on or by May 23, 2011. The Department expects you to explore all necessary means for lowering these levels, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, removal of hogs, etc.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the LEPP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

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

Sincerely,

James Zehringer
Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, LEPP
Andy Ety, LEPP Engineer
Tina Ray, ODNR DSW

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August 12, 2011

RNW Farms, LLC
Mr. Richard Breneman
710 A Apel Road
Franklin Furnace, Ohio 45629

Re: Warning Letter – Construction of New Manure Storage Barn
ODA Permit to Operate #73-052-PTO-001

Dear Mr. Breneman,

During a routine inspection on August 8, 2011 by my staff of RNW Farms, LLC, located on 710 A Apel Road, it was discovered that a new hoop type structure is being constructed to be used for the temporary storage of manure that is removed from the layer barns. Manure will then be loaded from this barn and transported by Parker Brothers Farms to fields for application.

The storage volume of the manure storage structure appears to be less than a 10% increase of the existing total storage volume and does not appear to require a Permit to Install (PTI). However, since this is a new manure storage structure, a request for a Major Operational Change (MOC) must be submitted to ODA for review and approval. The submittal must consist of a letter of request stating the use of the structure (including the approximate number of days manure will be stored in the barn per each cleanout event), a set of engineering plans for the structure, and a siting criteria map. The a complete MOC submittal must be received by ODA for review and approval by September 1, 2011. Until approval is given by ODA, construction shall not continue.

Please be advised that failure to produce the required information to ODA for review and approval by this deadline could result in enforcement proceedings that could result in penalties against RNW Farms, LLC. If you have any questions or concern, please feel free to contact me or any of my staff.

Respectfully,

Kevin Elder
Executive Director, ODA-LEPP

Cc: Tony Mollet, RNW Farms, Inc.
Jim Young, Livestock Inspector, ODA-LEPP
Andy Ety, Livestock Engineer, ODA-LEPP
Kristine Tonn, Legal Counsel, ODA-LEPP

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December 1, 2011

New Day Farms LLC
C/o Mark Meyer and Steve Bliesner
27322 State Route 739
Raymond, OH 43067

RE: Warning Letter – Land Application Violations

Dear Gentlemen:

Violations were discovered by Christine Pence, inspector for the Livestock Environmental Permitting Program (LEPP), during a complaint follow-up on November 18, 2011. The Inspector was investigating a complaint made to the Union County Health Department on November 14, 2011 which was forwarded to her on November 18, 2011. The complaint was made regarding the application of eggwash through the center pivot located at Farm 3 during high wind speeds and prior to precipitation exceeding 1/2 inch within a 24-hour period that was forecasted following the start of the application of manure. As the result of this complaint investigation, it was found that ODA requirements were not followed.

Ohio Administrative Code 10-2-14(B)(6) requires that land application of manure by means of surface application shall not occur if the forecast contains a greater than fifty per cent chance of precipitation as determined in "Managing Manure Nutrients at Concentrated Animal Feeding Operations, Appendix M, United States Environmental Protection Agency, EPA-821-B-04-006, August 2004," exceeding an amount of one-quarter inch for hydrologic soil group D soils and one-half inch for hydrologic soil group A, B, and C soils, for a period extending twenty-four hours after the start of land application. Record weather conditions in the operating record for conditions at the time of application and for twenty-four hours prior to and following application.

In a letter sent to ODA-LEPP on November 22, 2011 from New Day Farms, LLC initially responding to the complaint, the following actions have been, or will be taken:

- The facility manager, Farm 3 in this case, did communicate with the adjacent neighbor, prior to the start of center pivot application to verify that it was acceptable to apply over the weekend.
- The employee, who was not a facility manager, which operated the center pivot at Farm 3 on November 13, 2011 has been re-trained on the proper circumstances in which the pivot may be operated.
- In the future, the facility managers will be the only persons approving the operation of the center pivots.

ODA is requiring New Day Farms, LLC to take further efforts to avoid applying manure when wind speed and direction could affect nearby neighbors in order to maintain neighbor relationships. ODA is also requiring that all individuals that are involved with manure application at New Day Farms, LLC, Mad River and Farm 3 sites, attend the next upcoming CLM training course offered by ODA, which will be scheduled in April, 2012. Some of the topics covered in the CLM training session include nutrient management training, land application practices, calibrating application equipment, and a review of the rules and regulations concerning manure handling and application. Also recommended, is the installation of a tree barrier along the north field boundary along Davis Road in the future.

The ODA takes these violations seriously. Please be aware that future violations of land application may result in escalated enforcement.

Please take time to read the enclosed complaint investigation report. Please direct any questions concerning this Warning Letter to LEPP Inspector Christine Pence, at cpence@agri.ohio.gov or 614-778-4661 or myself. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder
Executive Director

Enclosure: Complaint Investigation Report

Cc: Marcia Dreiseidel, Union County Health Department
Jim and Twyla Elliott
Cathy Alexander, OEPA
Union County SWCD
ODNR-DSWR
Kristina Tonn, Legal Counsel, Ohio Depart. of Agriculture
Christine Pence, Inspector, Ohio Dept. of Agriculture

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December 23, 2011

Porky's Swine Farm
Kevin Katterhenry
6979 Laketree Court
Celina, OH 45822

Porky's Swine Farm
Brent and Kent Miller
1605 Celina Road
St. Marys, Ohio 45885

Certified Mail 91 7108 2133 3935 5344 9741

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Porky's Swine Farm Permit to Operate and Ohio Administrative Code Requirements

Dear Gentlemen:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate (PTO) 06-074-PTO-001 and have failed to comply with rule 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

VIOLATION: FREEBOARD MAINTENANCE FOR MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 and PTO 06-074-PTO-001 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard. O.A.C. 901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record. PTO 06-074-PTO-001 also requires the permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level stated in the permit.

During an ODA Livestock Environmental Permitting Program (LEPP) inspection on December 6, 2011, the two earthen manure storage or treatment facilities at Porky's Swine Farm were found to be above their Maximum Operating Levels. Specifically, the North Lagoon liquid level was within 1 foot of the top of bank and 1 foot over the Maximum Operating Level (MOL) required in your PTO. The South Lagoon liquid level was within 1 foot 6 inches of the top of bank and 6 inches over the MOL required in your PTO. It was also noted at the inspection that the finishing hogs at the facility were actively being removed and 4,000 pigs weighing less than 55 pounds are planned for stocking the week of December 28, 2011.

CORRECTIVE ACTIONS REQUIRED

1. Due to the critical manure levels in these two structures, you must immediately develop a plan for the removal of enough liquid from each of the two liquid storage structures to return to compliance with the PTO. This plan shall be submitted to ODA-LEPP by no later than January 6, 2012. The estimated amount of manure volume to be removed to return to compliance is approximately 945,000 gallons. Your plan shall demonstrate that all alternatives have been evaluated. Information to be included, but not limited to, is:
    a. Local waste water treatment plants (WWTP) shall be contacted to see if they will accept waste from your facility. A list of WWTPs contacted shall be provided to ODA along with a statement as to whether they can or cannot receive additional waste. If they can receive waste, a contract shall be provided that states the volume to be distributed and a timeframe for distribution.
    b. Satellite liquid storage facilities in the area shall be evaluated to determine if there is available storage volume that could be utilized. If so, then a contract shall be provided that states the volume to be distributed and a timeframe for distribution.
    c. A listing/map of fields that could be utilized for manure application provided the weather becomes suitable for land application. You shall also list the land application equipment you have available and the capacity of this equipment based on the number of gallons that can be removed in a specified amount of time. Application on frozen or snow-covered ground should be avoided and requires prior approval from ODA before any such application can take place. This NOD does **not** constitute prior approval for land application on frozen or snow-covered ground.
    d. A calculation of the number of gallons that need to be removed to lower levels in each lagoon to below Maximum Operating Level, as well as a volume to be managed between the date of this Order and May 1, 2012. The plan shall address how this volume of manure will be managed to allow for the facility to remain in compliance.
    e. An evaluation as to whether it is feasible to leave the facility empty of pigs until the manure storage situation is corrected.

2. You must lower the liquid levels to return to compliance with the Maximum Operating Levels for both lagoons, as provided in the PTO, by no later than January 23, 2012. You must maintain all required records of manure application or distribution and make these records available to the LEPP Inspector at the date of re-inspection on, or around, January 23, 2012.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation is a repeat violation, with a category of seriousness as moderate or Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above,

you will be subject to the assessment of a civil penalty in an amount up to $1600.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the LEPP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

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

Sincerely,

Tony M. Forshey/Atw

Tony Forshey, D.V.M., Interim Director
Ohio Department of Agriculture

Cc: Auglaize SWCD
Tracy Bleim, ODNR DSW
Aaron Farmer, Assistant Attorney General
Bill Knapke, Cooper Farms
Kevin H. Elder, Executive Director, LEPP
Andy Ety, LEPP Engineer
Christine Pence, LEPP Inspector
Kristina Tonn, LEPP Legal Counsel

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January 10, 2012

Wenning Poultry Farm
C/o Mr. and Mrs. James Wenning
1500 Union City Road
Ft. Recovery, Ohio 45846

Re: Warning Letter

Dear Mr. and Mrs. Wenning:

Violations of Ohio Department of Agriculture rules were discovered during a routine inspection of Wenning Poultry Farm by my staff on December 5, 2011. Based on this inspection, ODA has determined that Wenning Poultry Farm failed to comply with the following Ohio Administrative Code as it relates to Operating Record requirements:

OAC Rule 901:10-2-08 – Groundwater well sampling. This rule requires annual sampling and analysis of ground water for nitrates and total coliform from a well. The 2011 groundwater well analyses were due by June 24, 2011. You were emailed a request to send this information on December 30, 2011. After this inspection and before the final report was mailed out, the groundwater well analyses results were faxed to Christine Pence on January 9, 2012. The date on the sample was January 5, 2012. There was no result for Total Coliform on the #2 well. You must resample the wells for both nitrates and total coliform bacteria again by June 24, 2012 to remain on an annual sampling cycle.

OAC Rule 901:10-2-10 - At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids. No liquid washwater liquid sample done in 2011 prior to removal of liquid. After this inspection and before the final report was mailed out, the 2011 washwater analysis was faxed to Christine Pence on January 4, 2012. The date on the sample was December 8, 2011. You must sample at least once annually prior to removal in order to have accurate nutrient values of the manure being applied.

OAC Rule 901:10-2-11 – Distribution & Utilization (D&U) Methods. This rule requires specific D&U related documentation to be maintained in the operating record for each manure distribution made to a third party, including the name and address of the manure recipient, the date of distribution, the approximate amount of manure in tons or gallons distributed, and a written acknowledgement by the manure recipient that copies of manure sample analyses and relevant portions of the rules were received. During the inspection, there were no signed documents from the manure recipient for liquid manure that was removed in 2011. Also, there was no record that the Land Application Guidelines were provided to the recipient, nor was the most recent liquid manure sample provided to the recipient, as there were no records of liquid samples collected prior to removal in 2011. After this inspection and before the final report was mailed out, a D&U Agreement signed by the recipient on December 19, 2011 was faxed to Christine Pence on January 4, 2012.

In addition, these records are required to be maintained in the facility operating record as required by OAC 901:10-2-16.

The ODA takes these violations seriously. Failure to provide such records or any attempt to falsify such records in the future will lead to escalated enforcement action. Also, please be aware that future violations may result in escalated enforcement.

Please read the enclosed inspection report and direct any questions concerning this Warning Letter to LEPP Inspector Christine Pence, at cpence@agri.ohio.gov or 614-778-4661 or to my office. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder, Executive Director

Cc: Mercer SWCD
ODNR-DSWR
Jon Bernstein, Ohio EPA
Kristina Tonn, Legal Counsel
Christine Pence, Livestock Inspector

Ohio Department of Agriculture
State of Ohio

In re: Wezbra Dairy, LLC

Emergency Order No: 2012-040
Wezbra Dairy, LLC
Permit To Operate (PTO) No. 69-068-PTO-002

91 7108 2133 3935 5344 9727

Wezbra Dairy, LLC
15257 Road C
Continental, Ohio 45831

Emergency Order

The Ohio Department of Agriculture (ODA) Livestock Environmental Permitting Program (LEPP) completed an inspection of Wezbra Dairy on January 19, 2012. This facility is regulated by the ODA pursuant to Chapter 903 of the Ohio Revised Code (ORC) and under Permit to Operate (PTO) No. 69-068-PTO-002, which was issued to Wezbra Dairy, LLC on December 21, 2009. The current operating levels in the ponds, the constant production of manure, the unpredictability of the weather conditions, and the facility's failure to ensure adequate storage availability for the winter months as required in the permit, have created an emergency in light of the serious threat of overflows. Pursuant to ODA's authority under ORC 903.18, the Director has determined that an emergency exists requiring immediate action to protect public health or safety or the environment. Wezbra Dairy, LLC is hereby ordered to comply immediately with this Emergency Order.

Findings of Fact and Conclusions of Law

ODA-LEPP staff conducted an inspection at Wezbra Dairy on January 19, 2012 and found the following:

1. Both manure storage ponds were essentially full. Manure storage pond #1 was at Maximum Operating Level (MOL) and Manure storage pond #2 was approximately 1 foot over the Maximum Operating Level (MOL) and approximately 5 inches from overflowing the embankment.
2. The facility does not have enough storage capacity to avoid surface application of manure to frozen or snow-covered ground for the remainder of the winter months, unless the facility land applies significant amounts of manure immediately and/or makes other changes to its operation.

Based on the foregoing, and on the serious threat of manure overflows from the facility during winter conditions, I conclude as a matter of law that an emergency exists, that requires immediate action to protect the public health or safety or the environment.

By the authority vested in my office pursuant to ORC 903.18, it is hereby

ORDERED that:

1. Wezbra Dairy, LLC shall immediately commence corrective actions to return to compliance with maximum operating levels in all liquid manure storage ponds at the facility as required in the Permit to Operate. **This action shall be completed within 15 days of the receipt of these Emergency Orders.**

2. Wezbra Dairy, LLC shall immediately develop an Emergency Action Plan (EAP) to address daily manure production and runoff from the facility from the date of these Emergency Orders through May 1, 2012. The estimated manure volume generated by your facility for this time period that must be addressed is approximately 7.5 million gallons. **This action shall be completed within 7 days of the receipt of these Emergency Orders and shall include all of the action items listed below:**
   a. A plan to apply manure <u>at any time</u> that area weather and field conditions become suitable and meet the non-frozen/snow-covered land application criteria of OAC 901:10-2-14. This includes making arrangements in advance for land application equipment availability through contract or otherwise so that land application can take place as soon as conditions are favorable.
   b. Local waste water treatment plants (WWTP) shall be contacted to see if it is feasible for any of them to receive additional waste from your facility. A list of WWTPs contacted shall be provided to ODA along with a statement as to whether they can, or cannot, receive additional waste. If the WWTP can receive additional waste, a contract shall be provided that states the volume to be distributed and a timeframe for distribution.
   c. Satellite liquid storage facilities in the area shall be evaluated to determine if there is available storage volume that could be utilized by your facility.
   d. Any temporary alterations that can be made to the facility or facility practices either to eliminate clean stormwater discharging to the manure storage ponds or to lessen the amount of manure/contaminated stormwater being generated at the facility shall be made.

   In the event that your Emergency Action Plan cannot address, through the four measures listed above, the entire estimated manure volume to be produced by your facility between the date of these Emergency Orders and May 1, 2012, your Emergency Action Plan must evaluate the following:

   e. Whether a temporary manure storage structure or additional manure storage volume could be constructed in an environmentally secure manner at the facility. Evaluation of such a structure or practice shall immediately commence and siting and geological information shall be provided to ODA-LEPP for review and approval prior to commencing construction. If

constructed, any manure storage structure created under this Emergency Order is only authorized to be temporary and must be emptied and properly closed by no later than the expiration date of this Emergency Order, with a closure plan submitted for ODA-LEPP review by no later than April 1, 2012. A manure storage structure prepared under this Order can only be permanently authorized through the review and approval of a complete Permit to Install and Permit to Operate application.

f. The possible reduction or removal of the number of cows at the facility in order to reduce the amount of manure to be handled between the date of these Emergency Orders and May 1, 2012.

g. Possible sites for manure application on frozen or snow-covered ground. Manure application on frozen or snow-covered ground shall not be the only alternative provided in the plan. The facility shall obtain prior approval from ODA-LEPP before all manure application on frozen or snow-covered ground. **This Emergency Order does not, in itself, constitute prior approval for any land application on frozen or snow-covered ground.**

3. Wezbra Dairy, LLC shall comply with all terms and conditions contained in the permits and with all applicable laws and rules.

4. The Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.

5. Wezbra Dairy, LLC shall immediately comply with these orders.

6. A certified copy of this order shall be served upon Wezbra Dairy, LLC.

Effective Date of this Order: Upon journalization.

Tony M. Forshey / HW

Tony Forshey, D.V.M., Interim Director
Ohio Department of Agriculture

1-20-2012
Date

Entered, Ohio Department of Agriculture Journal this 20th day of January, 2012, by Crane Ellis.

Certification

STATE OF OHIO :
:
COUNTY OF LICKING, SS :

I, Tony Forshey, D.V.M., Interim Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No. 2012-040** which was entered upon the order journal of the Ohio Department of Agriculture on the 20th day of January, 2012.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 20th day of January, 2012.

Tony M. Forshey /AFW
Tony Forshey, D.V.M., Interim Director
Ohio Department of Agriculture

NOTICE OF APPEAL RIGHTS

This EMERGENCY ORDER takes effect immediately.

Pursuant to R.C. 903.18, this EMERGENCY ORDER may be appealed to the Ohio Department of Agriculture for an administrative hearing. The administrative hearing will be conducted in accordance with R.C. Chapter 119. Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the EMERGENCY ORDER. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: David D. Gorman, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty (30) days of the date of mailing of this notice. This notice is being mailed to you on January 20, 2012.

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

You may present evidence and examine witnesses appearing for and against you, to show cause why these Emergency Order should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Interim Director Tony Forshey, DVM

Division of Livestock Environmental Permitting
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February 2, 2012

Van Erk Dairy, LLC
8789 State Route 114
Haviland OH 45851

Craig Stoller
PO Box 15
Haviland OH 45841

Trent Stoller
14352 State Route 114
Haviland OH 45841

Haviland Energy, LLC
PO Box 97
Haviland OH 45841

Haviland Co.
PO Box 97
Haviland OH 45841

Jaap Van Erk
8789 State Route 114
Haviland OH 45841

Certified Mail:
91 7108 2133 3935 5344 9710

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Van Erk Dairy, LLC Permit to Operate and Ohio Administrative Code Requirements

Dear Sirs:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate 63-070-PTO-002 and have failed to comply with rule 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

VIOLATION: FREEBOARD MAINTENANCE FOR MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 and Permit to Operate 63-070-PTO-002 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. rules 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard. Further, O.A.C. rule 901:10-2-08(A)(4) requires that equipment and manure storage or treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record. Permit to Operate 63-070-PTO-002 also requires the

permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level specified in the permit.

During an inspection by the ODA Division of Livestock Environmental Permitting on January 27, 2012, the liquid level was determined to be a foot above the Maximum Operating Level (MOL) in Manure Storage Pond #1 and Manure Storage Pond #2.

CORRECTIVE ACTIONS REQUIRED

Due to the critical manure level in these storage structures, you must lower the liquid levels to return to compliance by no later than February 17, 2012. You must maintain all required records of manure application or distribution to others, and make these records available to the ODA Inspector at the date of re-inspection on, or before, February 17, 2012.

In addition, a long-term manure level maintenance plan must be provided to ODA by February 10, 2012. This plan must provide details on how manure levels in the ponds will be lowered and maintained below MOL through May 15, 2012, while keeping up with daily manure production. The plan must include analysis of alternatives in the event that manure transfer to other storage areas becomes unfeasible. A listing of fields suitable for application on frozen or snow-covered ground must also be included, in the event that permission is considered by ODA for such applications. Furthermore, the importation of digester feedstock materials from off-site sources is prohibited until such time that you can demonstrate an adequate capacity to store and land apply the additional volume.

The Department expects you to explore all necessary means for lowering manure levels in the ponds, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, and/or the removal of cows. Be reminded that land application on frozen or snow covered ground is prohibited without prior approval from ODA.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is a first-cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $800.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the ODA Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please direct any questions concerning this NOD to Kevin Elder, Chief of Division of Livestock Environmental Permitting. I look forward to your continuing cooperation in this matter.

Sincerely,

Tony M Forshey DVM

Tony Forshey, D.V.M.
Interim Director

Cc: Cathy Alexander, OEPA
Tracy Bleim, ODNR-DSWRKevin Elder, ODA
Aaron Farmer, Assistant Attorney General
Andy Ety, ODA
Mark Fritz, ODA
Kristina Tonn, ODA

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March 22, 2012

Rising Sun Dairy, LLC
Attn: Harry DeWitt and Pieter Assen
8500 Yankeetown Chenoweth Road
London, OH 43140

Re: Sand Lane Approval
Permit to Install No. 49-114-PTI-001

Gentlemen:

Our office has inspected the completed construction of the sand lanes for your facility, authorized by PTI No. 49-114-PTI-001. We have received your notarized letter and reviewed the as-built plans for this project, provided by Cottrill Surveying, LLC. This letter serves as your approval to commence operation of the sand lanes.

If you have any questions or concerns about this letter or any other aspect of your operation in regards to your permit, please feel free to contact Gary Zwolinski or Jim Young.

Sincerely,

Kevin Elder, Division Chief

Cc: Gary Zwolinski, Livestock Engineer, ODA-DLEP
Jim Young, Livestock Inspector, ODA-DLEP

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April 19, 2012

Rising Sun Dairy, LLC
Attn: Harry DeWitt
8500 Yankeetown Chenoweth Road
London, OH 43140

Assen Dairy, LLC
Attn: Pieter Assen
8500 Yankeetown Chenoweth Road
London, OH 43140

Re: Phase 1, Stock to 920 Mature Dairy Cattle
Permit to Install No. 49-114-PTI-001

Gentlemen:

Our office has inspected the completion of your freestall extension and available manure storage capacity. You have cleaned out your sand separator basin, pumped down your existing manure pond and lowered your silage leachate pond. You have also completed construction on your freestall barn extension. Since your site still has a considerable amount of construction to complete, seeding and grading have yet to be completed. Your inspector will continue to monitor the grading that needs to be completed as your construction proceeds. Final seeding and grading will need to be completed when construction equipment is no longer disrupting the area.

Given the completion of the above referenced work, this letter serves as your approval to stock up to 920 mature dairy cows.

If you have any questions or concerns about this letter or any other aspect of your operation in regards to your permit, please feel free to contact Gary Zwolinski.

Sincerely,

Kevin Elder
Division Chief

Cc: Gary Zwolinski, Livestock Engineer, ODA-DLEP
Jim Young, Livestock Inspector, ODA-DLEP

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Complaint Investigation

Date: April 12, 2012

By: Jim Young

Complainant:
Denise Mackey Phone: 614-632-8032
Unknown

Facility:
Rising Sun Dairy LLC
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Complaint Information:
Denise Mackey called the Ohio Department of Agriculture, Department of Livestock Environmental Permitting (DLEP) on April 12, 2012 at about 2:30 p.m. and spoke to Andy Ety about the following concern:

> Ms. Mackey stated she was concerned about a manure application on Moorman Road. Her mother, who has asthma lives on the road and she is afraid it may be detrimental to her health. The manure had been applied and not incorporated

Andy Ety called me about the complaint as I was leaving a facility inspection in the area. I immediately responded to the complaint and was at one of the two application fields within 15 minutes.

Field Observations:
Having been in this same area and on Moorman Road several times in the past two weeks, I was aware of where and who was doing the application. The 1st application field was a rye field. Manure had been surface applied and I could see no signs of over application, ponding, or setback violations.
I called Ms. Mackey while I was setting in the field and asked her about her concerns with the application. From this conversation, it appeared that she was not sure where the application field was, nor did she know the address of her mother. I told her what I had observed and that there were no problems with the application.
While still on the phone, I drove east to the 2nd application field. This also was a rye field. All setbacks appeared to have been followed. There were some tracks in a low part of the field on the headlands that had a small amount of manure in them. I did not consider this to be "ponded" manure. I relayed my observations to Ms. Mackey and she appeared to be satisfied.

Follow-up:

I drove to Rising Sun Dairy and spoke to John Jacob about the manure application, the complaint, and my observations. John said that he had applied the manure. I asked him to chisel the headlands of the 2nd application field.
I later spoke with Pieter Assen about the complaint and my findings. Pieter had been unavailable because he was in Columbus on personal business.

Jim Young
Livestock Environmental Inspector

Cc: Harry DeWitt - High Plains Dairy
Kelly McCloud, Assistant Attorney General, Ohio Attorney General's Office

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April 23, 2012

5C's Farm, Inc.
William A. Cleland, Jr.
06383 Cicero Rd.
Hicksville, OH 43526

Re: Warning Letter – Failure to install measuring device and failure to perform groundwater sampling and manure tests.

Dear Mr. Cleland:

Based on an inspection by my staff on March 21, 2012, violations of Ohio Department of Agriculture rules were discovered at your facility and within your operating records.

Specifically, the measuring device in the contaminated stormwater pond has not been reinstalled after it was damaged in 2011. Successive reinstallation deadlines of September 1, 2011 and March 1, 2012 contained in previous inspection reports have not been met. This is a violation of Rule 901:10-2-08(A)(4)(o) which requires that all liquid manure storage or treatment facilities have a depth marker or other appropriate device as approved by the Director in accordance with rule 901:10-2-06 of the Administrative Code. In addition, given that an appropriate measuring device is not installed, you have failed to maintain the required weekly liquid level of the contaminated stormwater pond as specified in ODA rule 901:10-2-08(A)(4)(f) and 901:10-2-16(A)(1)(a)(i).

The staff gauge shall be installed by no later than June 1, 2012. An inspector will inspect your facility at this time to verify the measuring device has been properly installed and marked in accordance with Rule 901:10-2-06 and 901:10-2-08(A)(4)(o) and that weekly records are being maintained in accordance to ODA rule 901:10-2-08(A)(4)(f) and 901:10-2-16(A)(1)(a)(i).

In addition, the March 21, 2012 inspection revealed additional violations in regards to the requirements of your Permit to Operate and ODA rules. Specifically, it was found that no groundwater samples or manure tests were taken in 2011, as required by Rule 901:10-2-08(A)(4)(l)(i) and 901:10-2-10(A)(2), respectively. A Groundwater sample and manure tests were then subsequently taken in April, 2012 to meet the 2011 requirements. However, please be reminded that 2012 groundwater samples must be taken and the analysis placed in the operating record by no later than November 19,2012. In addition, manure tests of all manure storages must be taken before manure is land applied or otherwise removed in 2012, with results placed in the operating record.

We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If future inspections indicate the continuance of these violations, this could result in escalated enforcement actions against your facility and the possibility of monetary penalties.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Andy Ety, DLEP Engineer
Kelly McCloud, Assistant Attorney General
Mark Fritz, DLEP Inspector
Defiance County SWCD

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Administrative Office
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April 27, 2012

Napoleon Dairy, LLC
Ted Dykstra
P.O. Box 53282
Pettisville, OH 43553

Napoleon Dairy, LLC
Wilfred Peters
V 624 CR 16
Napoleon, OH 43545

Certified Mail 91 7108 2133 3935 5344 9703

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Napoleon Dairy, LLC Permit to Operate and Ohio Administrative Code Requirements

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiencies (NOD) Resulting in Noncompliance. ODA has determined that you have violated Permit to Operate (PTO) PET-0001.PO001.HENR and have failed to comply with rules 901:10-2-11, 901:10-2-13 and 901:10-2-16 of the Ohio Administrative Code (O.A.C.).

VIOLATION: MISSING DISTRIBUTION AND UTILIZATION RECORDS

ODA has determined that O.A.C. 901:10-2-11 and PTO PET-0001.PO001.HENR have been violated. Specifically, O.A.C. 901:10-2-11(A)(2) requires that "If the owner or operator decides to use distribution and utilization methods then the owner or operator shall provide a copy of appendices A and F of rule 901:10-2-14 of the Administrative Code, and a copy of the most recent analytical results that list the nutrient content of the manure based on an analysis consistent with the rules to the manure recipient. The permitted facility operating record shall include the name and address of the manure recipient, the date of distribution, and the approximate amount of manure in tons or gallons distributed on that date…" PTO PET-0001.PO001.HENR also requires that in cases where manure generated by the facility is sold or given away, the owner or operator must maintain records in the operating record which include the name and address of the recipient, and the dates, amounts and types of manure distributed.

During an ODA inspection of your operating records on March 15, 2012, it was found that these records were missing and they have subsequently not been provided to ODA-Division of Livestock Environmental Permitting (DLEP), as requested, as of the date of this NOD.

VIOLATION: NO CURRENT SOIL TESTS IN OPERATING RECORD

ODA has determined that O.A.C. 901:10-2-13 and PTO PET-0001.PO001.HENR have been violated. Specifically, O.A.C. 901:10-2-13(D)(1) requires, "A site that receives manure shall be soil tested, at a minimum, once every three years." In addition, O.A.C. 901-10-2-13(E) requires that "Results of the soil sampling events in paragraphs (A) to (D) of this rule shall be recorded in the operating record in accordance with rule 901:10-2-16 of the O.A.C. and shall include the location of the soil sample collection site, the depth of the sample collected and the analysis." PTO PET-0001.PO001.HENR also requires that, "soil test analysis shall be performed as required by Rule 901:10-2-13" and specifically, "these samples shall have been taken within the last three years..."

During ODA's inspections of your operating records on March 1, 2011, July 18, 2011, and March 15, 2012, it was found that there were no current soil tests for the field owned by the dairy. In addition, other land under your control for manure application failed to have current soil tests as required.

CORRECTIVE ACTIONS REQUIRED

A complete set of records of manure removed through Distribution and Utilization since July 18, 2011 shall be provided to ODA-DLEP by June 1, 2012. In addition, current soil tests for the field owned by the dairy and for all other land under the control of the dairy for purposes of manure application shall be provided to ODA-DLEP by June 1, 2012.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violations cited herein are first time violations with the category of seriousness for each violation as minor, or Category III. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount of up to two hundred dollars ($200.00) per violation for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspection by the DLEP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Chief of DLEP. I look forward to your prompt attention to this matter.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE

David T. Daniels
Director

Cc: Henry SWCD
Cathy Alexander, OEPA
Tracy Bleim, ODNR-DSWR
Mike Rodgers, ODA, Acting Chief Legal Counsel
Kelly McCloud, Assistant Attorney General, Ohio Attorney General's Office
Kevin H. Elder, Executive Director, ODA-DLEP
Andy Ety, ODA-DLEP Engineer
Mark Fritz, ODA-DLEP Inspector

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June 6, 2012

Matt Adams
Adams Swine Farm, LLC
8678 S. 550E.
Berne, IN 46711

Re: Warning Letter ~ Land Application of Phosphorus and Soil Test Documentation

Dear Mr. Adams:

Violations of Ohio Department of Agriculture (ODA) rules were discovered during a routine inspection by my staff on April 25, 2012 of Manders Dairy. On that date, the inspector found that the application of sand solids made at Manders Dairy from August 31 through September 2, 2011 were not in compliance with ODA Rules.

As the custom manure applicator holding a Certified Livestock Manager (CLM) Certification, you are required to follow the land application rules applicable to Certified Livestock Managers, as provided in Rule 901:10-1-06(A)(7).

The following violations of Ohio Administrative Code (OAC) Rules were noted at said inspection:

OAC rule 901:10-2-14(E)(3) states that phosphate applications between 250-500 lbs./acre are not recommended but may be made if the phosphate values for the liquid manure exceed 60 lbs./1,000 gallons or if the phosphate values for solid manure exceed 80 lbs./ton. In addition, any phosphate application over 250 lbs./acre is subject to the additional requirements below:

(a) No manure application shall occur on land with soil tests that exceed more than one hundred parts per million Bray P1;

(b) No manure application shall occur on frozen or snow-covered ground;

(c) The manure shall be incorporated within twenty-four hours;

(d) No additional phosphate application shall be made for a minimum of three years on fields with soil tests that measure less than forty parts per million Bray P1 or equivalent; and

(e) No additional phosphate application shall be made for a minimum of five years on fields with soil tests between forty and one-hundred parts per million Bray P1 or equivalent.

Since the phosphate value of the manure applied did not exceed 80 lbs./ton, your application of 263 lbs./acre of phosphate is a violation of OAC Rule 901:10-2-14(E)(3) as described above.

In addition, no soil test was available either on the day of the inspection, nor upon request. OAC Rule 901:10-2-16(B)(4) requires documentation of soil test values that have been taken within the last five years.

COMPLAINT INVESTIGATION

Date of Complaint: 6-10-2012

Time of Complaint: 10:06 a.m.

Complaint Received By: Mark Fritz

Inspector: Mark Fritz

Complainant (name and address):
Jim Phillips
5730 Maple Leaf Rd.
Custar, OH 43511

Complaint Information:
Surface manure application only 100 feet from his well

Facility Involved: Reyskens Dairy

Follow-up Phone Call: 8:10 a.m., June 11, 2012
To: Jim Phillips to let him know that I was on my way to investigate. He stated that he was at work and could not join me. I also called Mark Van de Heijning of Reyskens Dairy to let him know about the complaint and that I would be investigating.

Inspector Findings:
I arrived at the field in question at approximately 9:00 a.m. June 11th, 2012. The field was in alfalfa and had manure surface applied by Reyskens Dairy on June 9th and 10th. The setback area was 115 feet north and northeast from the Phillips' well. There was no evidence of runoff or excessive application. Minor soil cracks were observed, but the application rate of 3,500 gallons per acre was low and there was no evidence of preferential flow to the tile system. The precipitation forecast was for a 60% probability of .02 - .04 inch of rain. Manure application records were complete and readily available. I then found Mark Van de Heijning at the dairy and relayed my findings to him. He told me that it was his understanding that the required setback from wells was 100 feet when vegetation was present, and that they had thought that they were exceeding the setback when they stayed 115 feet away from the well. I told him that there was no allowance for vegetation for well setbacks and that the 100 foot setback from wells is only when the manure is incorporated.

Conclusion:
The required setbacks of 300 feet from a well for surface applications of manure were not met and constitute a rules violation. A similar violation of the rules occurred on the same field in August 2011. Another warning letter will be sent. If similar violations occur in the future, escalated enforcement action will commence.

Application field – well is behind tree line to right

Well, with manure application 115 ft. northeast, in background

Well, with manure application 115 ft. north, in background

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June 29, 2012

Reyskens Dairy
Mark Van de Heijning
19480 Cygnet Road
Custar, Ohio 43511

Re: Warning Letter – Failure to Observe Required Manure Application Setbacks

Mr. Van de Heijning:

This letter serves as a warning letter for failure to observe the required 300 foot setback from wells and residences for surface application of manure as required in Appendix A, Table 2 of Ohio Administrative Code rule 901:10-2-14 and the Permit to Operate (PTO) issued to Reyskens Dairy, LLC.

In response to a complaint on June 10, 2012, an ODA-DLEP inspector conducted an investigation where it was discovered that surface manure applications in the field adjacent to the complainant's property were made that were within 300 feet of the complainant's well and residence. The manure was applied under the control of the dairy, and the application was required to be conducted in compliance with the PTO, and in accordance with Appendix A, Table 2 of rule 901:10-2-14. You have been warned previously about your obligation to follow all setback requirements mandated in your PTO and rule 901:10-2-14. Future failures to observe manure application rules and the requirements of your PTO may lead to escalated enforcement against your facility, including a possible referral to the Ohio Attorney General for civil penalties in common pleas court.

A copy of the investigation report is enclosed. If you have any questions or concerns about this warning letter, please feel free to contact me or any of my staff.

Sincerely,

Kevin H. Elder, Executive Director

Cc: Cathy Alexander, Ohio EPA
Wood SWCD
Mark Fritz, DLEP Inspector
Andy Ety, DLEP Engineer

The ODA takes these violations seriously. Please be aware that future violations of CLM Rules may result in escalated enforcement, including but not limited to, the suspension or revocation of your CLM certificate pursuant to OAC rule 901:10-1-06.

As a reminder, ODA plans to conduct a CLM training course on June 19 and 20, 2012, in Reynoldsburg, Ohio. Please direct any questions concerning this Warning Letter to DLEP Inspector, Mark Fritz, at mfritz@agri.ohio.gov or 614-282-9729, or myself. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder, Chief
Division of Livestock Environmental Permitting

Cc: Jim Carter, Wood SWCD
Tracy Bleim, ODNR-DSWR
Kelly McCord, Assistant Attorney General
Mark Fritz, DLEP Inspector

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
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July 3, 2012

Weaver Bros., Inc
P.O. Box 333
Versailles, OH 45380

Timothy J. Weaver
P.O. Box 333
Versailles, OH 45380

Kreg Kohli
5811 Cardinal Lane
Greenvile, OH 45331

Terry Schweiterman
801 Emerald Ave.
Coldwater, OH 45828

Edward M. Kress
1100 Courthouse Plaza, SW
Dayton, OH 45402

Certified Mail Return Receipt Requested

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Weaver Pullet Farm Permit to Install and Ohio Revised Code Requirements

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiencies (NOD) Resulting in Noncompliance. ODA has determined that you have failed to comply with Section 903.02(A)(2) of the Revised Code which prohibits any person from installing or modifying a Concentrated Animal Feeding Facility (CAFF) without a permit to install (PTI) issued by the Director.

VIOLATION: CONSTRUCTION TO INCREASE DESIGN CAPACITY OF A CAFF WITHOUT ISSUANCE OF A PERMIT TO INSTALL

On March 15th, 2012 ODA received an initial PTI application from Weaver Bros., Inc. to construct two new barns at the Weaver Pullet Farm site to increase the facility's design capacity. This PTI application was still under review when an ODA inspector visited the site on April 19, 2012 and noted that substantial earthwork construction had begun. That same day, ODA notified the facility's contact person that work was observed at the site and that the PTI was not yet approved. The facility's consultant contacted ODA on April 20, 2012. Communicating on behalf of the facility, the consultant wrote that "final grading won't be done until after the permit is approved." From April 23, 2012 to May 15, 2012, the ODA engineering staff worked with the facility's design engineer to develop and implement a plan to confirm the suitability of the engineered fill embankment that had already been constructed. On June 21,

2012 an ODA inspector observed that concrete had been poured for the south barn and a portion of the barn's superstructure had been constructed, visible from the public roadway. On June 27, 2012, an ODA engineer visited the site and confirmed that the concrete slab had been poured for the south pullet barn and the main vertical support columns had been erected. The engineered fill pad for the proposed north pullet barn appeared to be completed at or near the finish grade elevation.

CORRECTIVE ACTIONS REQUIRED

You must immediately cease all construction activities at the site, except those activities required by your NPDES Construction Storm Water Permit. No further work is to take place until you receive written notification from ODA that your PTI has been issued as final by the Director. Within 45 days of the receipt of this letter, you must submit a complete and approvable application for a draft permit to install and draft permit to operate. The draft permits must include documentation demonstrating that all construction to date meets ODA rules and the technical specifications included in the draft permit.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E)(2)(a), and (E)(2)(b). Based upon this review, ODA has determined that the magnitude of the violation is of Category I (Major) with a low gravity of effect. Therefore, if you fail to comply with the Corrective Actions required above within 45 days of receipt of this Notice, you will be subject to the assessment of a civil penalty in an amount of up to one thousand six hundred dollars ($1,600) for each day from the date of receipt of this Notice. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions.

If you fail to comply with the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Sincerely,

Kevin H. Elder
Chief, ODA-DLEP

Cc: Mike Rodgers, ODA, Chief Legal Counsel
Andy Ety, ODA-DLEP Engineer
Christine Pence, ODA-DLEP Inspector
Kelly McCloud, Assistant Attorney General, Ohio Attorney General's Office
Darke County SWCD
Cathy Alexander, OEPA
Tracy Bleim, ODNR-DSWR

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July 11, 2012

Wenning Poultry Farm
Jim and Mary Wenning
1596 Union City Road
Ft. Recovery, Ohio 45846

Certified Mail 91 7108 2133 3935 5344 960

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Wenning Poultry Farm Permit to Operate Requirements

Dear Mr. and Mrs. Wenning:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Wenning Poultry Farm is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Wenning Poultry Farm has violated Permit to Operate (PTO) 54-024-PTO-001. ODA has determined that Wenning Poultry Farm has failed to comply with rules 901:10-2-08, 901:10-2-11, and 901:10-2-16 of the Ohio Administrative Code (O.A.C.).

I. FIRST VIOLATION: RECORD KEEPING

During a routine inspection on May 24, 2012, the DLEP inspector noted the following violation:

No monthly records for solid manure storage inspections documented from on or about December 1, 2011. This includes monthly inspections of manure depths and volumes of the solid manure storage structures. This also includes records of inspections of the structural integrity of the solid manure storage or treatment facilities. These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1)(a)(ii, iii) and as specified by your Permit to Operate.

CORRECTIVE ACTION REQUIRED

You have **14** days from the date on this letter within which you must correct this deficiency by conducting the required inspections and recording the required information listed in O.A.C. 901:10-2-08(A)(4)(b, e) and 901:10-2-16(A)(1)(a)(ii, iii) in Wenning Poultry Farm Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is a first violation with the category of seriousness of the violation as Category III and the gravity of the violation as low. O.A.C. 901:10-5-04(F). Therefore, if Wenning Poultry Farm fails to comply with the Corrective Action required above, Wenning Poultry Farm will be subject to the assessment of a civil penalty in the amount of up to $200.00 for each day from the date of the initial failure to maintain the required records (December 1, 2011). You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

III. SECOND VIOLATION: DISTRIBUTION & UTILIZATION RECORDS

During a routine inspection on May 24, 2012, the DLEP inspector noted the following violation:

> Proper records were not maintained for transactions of manure removed from on or about January 1, 2012 using Distribution & Utilization. Although a significant amount of solid manure has been removed from the facility in 2012, amounts were not recorded and there were no signed acknowledgements from the manure recipient. In addition, no records were provided that demonstrated the recipients received copies of the analytical results that list the nutrient content of the manure and total quantities of manure. Finally, there was not any evidence that copies of appendices A and F of O.A.C Rule 901:10-2-14 were provided to the recipient as required by O.A.C. 901:10-2-11(A)(2). The load counts of solid manure were documented in total weights; however, there were no tonnage calculations provided. This is a violation of O.A.C. Rule 901:10-2-11(A) which requires that:
>
> (1) The permitted facility operating record shall include copies of the acknowledgements between the owner and operator of the facility and manure recipient.
>
> (2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall provide a copy of appendices A and F of rule 901:10-2-14 of the Administrative Code, and a copy of the most recent analytical results that list the nutrient content of the manure based on an analysis consistent with the rules to the manure recipient. The permitted facility operating record shall include the name and address of the manure recipient, the date of distribution, and the approximate amount of manure in tons or gallons distributed on that date and an acknowledgement by the manure recipient. These records shall be recorded in the Operating Record as required by O.A.C. 901:10-1-2-16(A)(1)(e)(i-iv).

CORRECTIVE ACTION REQUIRED

You have **14** days from the date on this letter within which you must correct this deficiency by obtaining signed acknowledgements from the manure recipients. In addition, records shall be provided demonstrating the recipients received copies of the analytical results that list the nutrient content of the manure and total quantities of manure distributed, as well as copies of the applicable requirements of the Administrative Code.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category III and the gravity of the violation as low. O.A.C. 901:10-5-04(G). You were cited for the same violation on January 10, 2012. Therefore, if Wenning Poultry Farm fails to comply with the Corrective Action required above, Wenning Poultry Farm will be subject to the assessment of a civil penalty in the amount of $400.00 for each day from the date of the initial failure to maintain the required records (January 1, 2012). You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

Following each of the compliance deadlines noted above, a DLEP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If Wenning Poultry Farm fails to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

I look forward to your cooperation in addressing these issues listed above. If you have any questions, please do not hesitate to call this office.

Sincerely,

Kevin Elder, Chief
Division of Livestock Environmental Permitting

cc: Kelly McCloud, Assistant Attorney General
Mercer SWCD
Cathy Alexander, OEPA
Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector
Gary Zwolinski, DLEP Engineer

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July 13, 2012

Neal Kremer
9159 State Route 118
Ansonia, OH 45303

RE: 1st of 2 inspections for 2012

Dear Mr. Kremer:

This letter is to document the Ohio Department of Agriculture, Division of Livestock Environmental Permitting's May 23, 2012 inspection of Neal Kremer hog facility. The facility that was inspected is located in Section 35 of Brown Township in Darke County, Stillwater River Watershed. Attached, please find a copy of the Ohio Department of Agriculture's written follow-up report.

The Permit To Operate was issued on November 2, 2011. The Mortality Management Plan and Insect and Rodent Control Plan (IRCP) are being implemented and inspections are recorded in the operating record. In 2012 through May 23, there are records of 698,899 gallons of manure removed, under your control, from the facility.

As required by your permit provision, a minimum of 365 days of storage was to be achieved by removing the build-up of solids in the existing manure storage ponds. As progress was made last year (2011) on removing solids, additional solids remain in both ponds. Menke Consulting provided storage volume calculations on the ponds after solid's removal ceased last year and determined you have approximately 240 days of storage available, which is less than the requirement of your PTO. Based on ODA's inspection of the ponds after solid removal ceased last year, it was questionable whether 365 days could be achieved even if all solids were removed from the ponds. Therefore, ODA-DLEP will continue to monitor your manure storage levels until such time a determination is made that would either require additional solids removal and/or additional manure storage to be constructed, or ODA determines that the liquid storage volume you presently have is sufficient enough storage to properly manage your manure. At that time, ODA's decision may likely require additional permitting or a modification to the existing PTO.

Listed below are required actions noted in the inspection report:

- By no later than **September 15, 2012**, the existing stakes need to be better anchored into the bank, the inside embankments need to be graded around the stakes and additional stakes installed after further manure removal.

- By no later than **September 15, 2012**, the bare areas near the manure storage ponds shall be cleaned up, reseeded and vegetation established. In addition, the temporary detention area between the east manure pond and hog barn shall be regraded and the area restored to its original condition.

- Manure tests will be due prior to removal this summer.

- The May 12, 2012 Nitrate results were not yet returned. Have these available at the next routine inspection in 2012.

Should you have questions regarding this report, please feel free to call me at 614-778-4661 or via e-mail at cpence@agri.ohio.gov.

Sincerely,

Christine Pence

Christine Pence
Livestock Environmental Inspector

Enclosure

CC: Cathy Alexander, Ohio EPA
Greg McGlinch, Darke SWCD
ODNR-DSWR
Kevin Elder, DLEP Chief
Andy Ety, DLEP Engineer
Kelly McCloud, Assistant Attorney General

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July 16, 2012

De Vries Dairy, LLC
7188 Sager Road
LaRue, Ohio 43332

Auke De Vries
3132 DeCliff Road
New Bloomington, OH 43341

Dooitsen D. De Vries
8032 Mount Olive Green Camp Road
LaRue OH 43332

Certified Mail 91 7108 2133 3935 5344 9611

Re: Director's Notice of Deficiencies Resulting in Noncompliance: De Vries Dairy Permit to Operate and Ohio Administrative Code Requirements

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), you are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate (PTO) 51-019-PTO-002 and have failed to comply with rules 901:10-2-08(A)(4)(l)(i),(ii) and 901:10-2-16(A)(1)(a)(vii) of the Ohio Administrative Code (OAC).

VIOLATION: FAILURE TO SATISFY GROUNDWATER MONITORING REQUIREMENTS

Groundwater monitoring wells at DeVries Dairy are to be sampled twice per year as required by the PTO. Results of each sampling event are to be analyzed, evaluated, and interpreted in accordance with the requirements set forth in the PTO. The monitoring wells were sampled on May 5, 2011 to represent the first half of the 2011 calendar year. ODA did not receive an evaluation and interpretation of the results from this sampling event. The monitoring wells were sampled on January 30, 2012 to represent the second half of 2011. The evaluation and interpretation of the results of this sampling event were summarized in a Groundwater Monitoring Report prepared by the facility's consultant and dated March 22, 2012. ODA reviewed this report and determined that it did not satisfy the requirements of the PTO, because the groundwater surface elevations were not properly determined, the direction of groundwater flow was not mapped, and the results were not evaluated. On March 29, 2012, ODA sent correspondence to the facility and the facility's consultant indicating the additional information that was needed in order to satisfy the PTO requirements. ODA stated in this correspondence that revisions or additions to the report needed to be submitted to ODA prior to May 31, 2012 or the facility could expect ODA to pursue enforcement action. As of the date of this Notice, a revised report has not been submitted to ODA. The summary results, evaluation, and interpretation of the groundwater sampling event representing the first half of 2012 have not yet been received by ODA.

CORRECTIVE ACTIONS REQUIRED

By not later than 30 calendar days from receipt of this letter, you are required to submit to ODA the finalized Groundwater Monitoring Report representing the second half of calendar year 2011 based on the January 30, 2012 sampling event. By not later than 45 calendar days from receipt of this letter, you are required to submit a similarly complete and finalized report based on the results of the groundwater sampling event representing the first half of 2012. In addition, you are required to submit a complete report based on the results of the sampling event representing the second half of 2012 by not later than December 31, 2012. As a reminder for calendar year 2013, the biannual groundwater sampling events will need to occur approximately 6 months apart, with the respective groundwater monitoring reports submitted to ODA within 45 days of the actual date of the sampling event.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to eight hundred dollars ($800.00) for each day from the date of receipt of this Notice. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions.

If you fail to comply with any of the corrective actions required herein, you may be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Sincerely,

Kevin H. Elder
Chief, ODA-DLEP

Cc: Mike Rodgers, ODA Chief Legal Counsel
Andy Ety, ODA-DLEP Engineer
Mark Fritz, ODA-DLEP Inspector
Kelly McCloud, Assistant Attorney General, Ohio Attorney General's Office
Marion County SWCD
Cathy Alexander, OEPA
Tina Ray, ODNR-DSWR

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July 17, 2012

Miami Valley Dairy, LLC
c/o Sybrand T.C. vanRaaij
9235 Wildman Road
South Charleston, Ohio 45368

Ampt International BV
c/o Pieter Ampt
Zuiderdijkweg 10
SH Wieringerwerf, Netherlands 1771

Jaco International
c/o Jacob P. Lievaart
Noodermeerweg 67
PX Rutten, Netherlands 8313

Dear Miami Valley Dairy, LLC:

As new owners/operators of the recently transferred Miami Valley Dairy, LLC, this letter is to inform you of the Ohio Department of Agriculture, Division of Livestock Environmental Permitting (DLEP) expectations of this facility given the past history and manure handling/storage issues. In addition, the facility is currently operating under a Permit to Operate (PTO) that is well past its renewal date. The last correspondence regarding the PTO renewal application was over two years ago. **Therefore, an updated PTO renewal application shall be submitted to ODA-DLEP by no later than September 1, 2012.**

In addition, please review the items below, as they will be required for completion of the PTO renewal and shall be completed as outlined below:

1. Currently, there are no liquid level markers in the contaminated stormwater pond. These shall be installed and calibrated with the PTO renewal process. In addition, the liquid level markers established in the manure storage pond need to be verified and evaluated to ensure they are accurate.
2. The damaged geotextile liners in each of the two sand settling pits need to be addressed. There are significant holes in the geotextile liners in both the sand settling basins. The holes in the liners could allow manure to seep between the liners and the concrete wall/floor. There are perimeter drains around the outside of each of the two basins with sump pumps; however, it is unknown if they are functional. These repairs need to be made immediately or an alternative plan needs to be submitted to DLEP by no later than September 1, 2012.
3. There is no permanent operating transfer system between the sand settling pits and the manure pond. The existing system failed at startup and has not been repaired. This shall be fixed/replaced or an alternative plan to improve this situation submitted by no later than September 1, 2012.

4. Storage capacity of the manure storage pond. There are a significant amount of sand/manure solids built up in the east side of the manure storage pond. Evaluate and prepare a plan to remove these solids as part of the PTO renewal process.

I appreciate your attention to these issues and please do not hesitate to contact ODA-DLEP if you have questions or concerns. You can reach Andy Ety at 614-728-4220 or Gary Zwolinski at 614-728-4215.

Sincerely,

Kevin Elder, Chief
Division of Livestock Environmental Permitting

Cc: Kelly McCloud, Assistant Attorney General
Christopher Simpson, Clark SWCD
Cathy Alexander, OEPA
Dave Gerdeman, P.E., North Point Engineering
Gary Zwolinski, DLEP Engineer
Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector

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August 8, 2012

5C's Farm, Inc.
William A. Cleland, Jr.
06383 Cicero Rd.
Hicksville, OH 43526

Certified Mail 91 7108 2133 3935 5344 9628

Re: Director's Notice of Deficiencies Resulting in Noncompliance: Failure to install measuring device

Dear Mr. Cleland:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), 5C's Farm, Inc. is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). 5C's Farm, Inc. has violated Permit to Operate (PTO) 20-079-PTO-001. ODA has determined that 5C's Farm, Inc. has failed to comply with 901:10-2-06 and 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

The depth markers in the stormwater pond were noted to be damaged during a routine inspection on April 7, 2011. Successive reinstallation deadlines of September 1, 2011 and March 1, 2012 have not been met as required in previous inspection reports. Subsequently, a warning letter was issued on April 18, 2012, which contained a reinstallation deadline of June 1, 2012. During a partial inspection on July 30, 2012, the inspector found that the damaged depth marker still had not been reinstalled.

ODA has determined that O.A.C. 901:10-2-08(A)(4)(o) has been violated which requires that all liquid manure storage or treatment facilities must have a depth marker or other appropriate device as approved by the director in accordance with rule 901:10-2-06 of the Administrative Code. This depth marker shall clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the twenty-five year, twenty-four hour rainfall event, or, in the case of new sources subject to the requirement in paragraph (D)(1) of rule 901:10-3-06 of the Administrative Code, the runoff and direct precipitation from a one-hundred year, twenty-four hour rainfall event.

CORRECTIVE ACTION REQUIRED

You have 14 days from the date on this letter within which you must correct this deficiency by reinstalling permanent markers with elevations clearly marked in accordance with OAC 901:10-2-06.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(E) and (F). Based upon this review, ODA has determined that the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Action required above, you will be subject to the assessment of a civil penalty in an amount up to $800.00 for each day from the date of receipt of this Notice to the date when ODA is in receipt of such documentation demonstrating that the PTO requirements have been sufficiently met. You may also be subject to additional penalties for each day for noncompliance with the deadline set forth in the Corrective Action, as well as the potential for escalated enforcement.

Following the compliance deadline noted above, a DLEP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadline of this Notice. If 5C's Farms, Inc. and Mr. William A. Cleland, Jr. fail to comply with the corrective action required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violation will be promptly corrected.

Sincerely,

Kevin Elder, Chief
Division of Livestock Environmental Permitting

Cc: Cathy Alexander, OEPA
Kelly McCloud, Ohio Assistant Attorney General
Michael Rodgers, Chief Legal Counsel, ODA
Mark Fritz, DLEP Inspector
Andy Ety, DLEP Engineer

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August 13, 2012

ST The Ohio Heifer Center
C/o Paul Detwiler
1100 Huntington Rd
South Charleston, Ohio 45368

Certified Mail
91 7108 2133 3935 5344 9635

Re: Warning Letter for Failure to Complete Construction of Major Operational Change
Permit to Operate: #12-065-PTO-002

Dear Mr. Detwiler:

On July 22, 2011, ODA-DLEP reviewed and approved plans for a Major Operational Change (MOC) for the construction of a stormwater/leachate pond to collect the contaminated stormwater from the concrete feed storage pad at your facility. Construction of the pond began in August, 2011, but still has not been satisfactorily completed. On April 16, 2012, the facility was inspected by (ODA-DLEP) and it was found that several construction items needed to be completed and/or repaired. In a letter dated May 8, 2012, it was required that the remaining construction items be completed and/or submitted by no later than June 1, 2012.

During a partial inspection by ODA-DLEP on August 1, 2012, a majority of the items from the May 8, 2012 letter were complete. However, the replacement of the riser pipe for the perimeter drain and the submittal of a final set of as-built plans and notarized letter stating construction was completed as approved were still not completed or submitted. **This letter serves as a warning that if all of these remaining items are not completed by September 1, 2012, escalated enforcement will be taken with the possibility of monetary fines.**

Please direct any questions concerning this Warning Letter to DLEP Inspector, Jim Young, at jyoung@agri.ohio.gov or 614-989-8023 or to my office. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder, Chief

Cc: Maurice Rosenstein– Inguran, LLC
Sue Sifrit – ST The Ohio Heifer Center
Jim Young, ODA-DLEP Inspector
Andy Ety, ODA-DLEP Engineer

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Director David T. Daniels

Administrative Office
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-466-2732 • Fax: 614-466-6124
www.agri.ohio.gov • administration@agri.ohio.gov

November 15, 2012

Assen Dairy, LLC
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Certified Mail No. 91710821333935534496 80

Ohio Milk Partners, LLC
2450 Highway 86
Friona, Texas 79035

Certified Mail No. 91710821333935534496 73

Rising Sun Dairy, LLC
2450 Highway 86
Friona, Texas 79035

Certified Mail No. 91710821333935534496 66

Re: Notice of Violation and Proposed Administrative Penalty

Dear Assen Dairy, LLC; Ohio Milk Partners, LLC; Rising Sun Dairy, LLC:

This letter is to inform you that your facility was recently the subject of a complaint and investigation that was conducted by the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP). At the conclusion of the inspection, ODA found your facility to be in violation of Ohio law.

In accordance with Revised Code (R.C.) Section 903.16(E), ODA proposes to impose an administrative penalty for a violation of your Permit to Install (PTI) and your Permit to Operate (PTO). R.C. 903.16(E) reads, in part:

> (E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

Your permit allows for an expansion to house up to 2,558 cows. However, before you may house more than 699 cows, you are required to submit a notarized statement, as-built plans, and ODA must inspect and approve the construction of the manure storage or treatment facilities that support the expansion. On or about March 22, 2012, you submitted a notarized statement after submitting as-built plans for sand lanes and on or about April 17, 2012, you submitted a notarized statement certifying that you have a design capacity of 920 cows. Enclosed for your convenience is a copy of the March 22, 2012 and April 19, 2012 letters from ODA. The April 19, 2012 letter specifically grants your facility permission to house no more than 920 cows based

upon your aforementioned submittals. At no time, has ODA authorized you to house more than 920 cows. Further, you have not provided ODA with a notarized statement or as-built plans related to the construction of manure storage or treatment facilities necessary to support more than 920 cows, nor have you submitted to an ODA inspection of any manure storage or treatment facilities for approval to stock more than 920 cows.

On November 8, 2012, ODA DLEP inspector, Gary Zwolinski conducted an inspection of your facility. During that inspection, Mr. Zwolinski discovered that your facility was housing over 1,100 cows. This unauthorized addition of cattle is a violation of the PTI and PTO. As a result of this violation, ODA is proposing to impose a five thousand dollar ($5,000.00) administrative penalty pursuant to R.C. 903.16(E).

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the propose action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: David Gorman, ODA Legal Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on November 15, 2012.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called. You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed administrative penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider it a waiver of your right to an administrative hearing and may issue a final order without a hearing. If you have questions, please contact Mr. David Gorman, ODA Legal Counsel, at (614) 728-6430.

If you have any questions or concerns about this notice of violation please do not hesitate to contact me.

Sincerely,

Kevin Elder,
Chief, Division of Livestock Environmental Permitting

Enclosure

cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Michael L. Rodgers, Chief Legal Counsel

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Director David T. Daniels

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November 29, 2012

91 7108 2133 3935 5344 9659

Mr. Derek De Vries
De Vries Dairy, LLC
7188 Sager Road
LaRue, OH 43332

RE: Compliance with ODNR-DSWR 7/30/12 Referral
De Vries Dairy – Winnemac Pike Heifer Facility
3159 Winnemac Pike, La Rue OH 43332

Mr. De Vries:

Our office received your letter dated 11/12/12 in which you stated how you intend to comply with the ODNR-DSWR Chief's Order which referred the Winnemac Pike heifer facility to ODA-DLEP. We met with you on 11/20/12 to discuss various options for re-locating the approximately 350 calf hutches from the Winnemac Pike heifer facility to the dairy on Sager Road, as was the stated intent in your 11/12/12 letter. We discussed the issue further during our follow-up telephone conversation on 11/28/12.

You have indicated a desire to construct a concrete pad on which to place the calf hutches and to direct runoff from this area to an existing manure storage structure. We discussed that construction of a concrete pad and moving the calf hutches to the dairy could likely be considered to be a Major Operational Change (MOC) to the existing permit for the dairy, since the addition of 350 calves would represent less than a 10% increase in total animal units.

We also discussed that your plans for future expansion of the dairy currently include a proposed expansion of the concrete silage bunker pad area. The expanded silage pad would likely serve as a suitable temporary location for the calf hutches until the pad was needed to store silage in the future. In the long term, our office recommends that you consider incorporating a permanent location for the calf hutches into the overall facility site design in the previously submitted Permit to Install (PTI) application. Please note that if the proposed silage pad expansion were to be constructed as shown on the drawings submitted to ODA in December 2010, then the staff gauge for the storm water pond would need to be adjusted as shown on those same drawings to account for the additional runoff area.

Regardless as to which option you choose to pursue, ODA-DLEP **requires** the following actions:

- Not later than **January 1, 2013** you must submit a detailed plan to ODA-DLEP showing how you intend to locate the calf hutches at the dairy in compliance with ODA rules. The detailed plan could be in the form of a request for an MOC to your existing permit or it could be a revised PTI application. The staff at ODA-DLEP will work with you to finalize your plans in a reasonable timeframe.

- Pending approval of your MOC request or PTI application, you must complete all necessary construction to house the calves at the dairy not later than **June 1, 2013**.

- The Winnemac Pike heifer facility must be closed not later than **August 1, 2013**. Closure of this facility is defined as the following: all livestock must be removed from the site; all manure must be removed and properly land applied; the waterers must be shut off and the gates removed; the wastewater holding tank pumped out; disturbed areas graded and seeded; and ODA-DLEP staff conducts a close-out inspection.

- Until the facility has been properly closed as defined above, the Winnemac Pike heifer facility must be operated and maintained in an environmentally safe manner with no adverse impacts to waters of the State, and ODA-DLEP staff may periodically inspect the site.

Please take the time to read and understand the expectations of this office and the required actions identified above. Feel free to contact our office if you have any questions.

Sincerely,

Patrick Bailey

Patrick Bailey
ODA-DLEP

Cc: Marion SWCD
Kirk Hines - ODNR-DSWR
Kevin Elder - ODA-DLEP
Andy Ety - ODA-DLEP
Mark Frtiz – ODA-DLEP

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November 21, 2012

ST- The Ohio Heifer Center
Paul Detwiler
11000 Huntington Road
South Charleston, Ohio 45368

RE: Warning Letter – Contaminated Runoff from Production Area

Mr. Detwiler,

On November 9, 2012, our office received a complaint forward and initially received by Ohio EPA, Division of Emergency and Remedial Response (OEPA-DERR) through their spill hotline. The final cause of the discharge was the installation of a 4" perforated tile located on the south side of the concrete channel that was installed on the northeast corner of the commodity storage area. Additional detail of the investigation is included in the attached complaint investigation report.

As a result of this discharge, this warning letter serves as a notice to you that corrective actions must be completed in a timely fashion and as described below:

1. The 4" CPT shall be eliminated or rerouted to the contaminated stormwater pond by no later than November 28, 2012. This shall also include plugging the 6" CPT where the 4" CPT was originally outletted. Photographic documentation must be provided to ODA-DLEP to document this work.
2. The clean stormwater ditch where the contaminated effluent was present shall be dredged and properly graded to allow for positive drainage down to the outlet of the stream. The extent of re-grading and dredging must be evaluated and agreed to by ODA-DLEP to ensure the problem is remedied, while at the same minimizing disturbance to the ditch. This work shall be completed by no later than December 1, 2012.
3. A complete spill report shall be submitted by no later than November 28, 2012.
4. A complete set of as-built plans for the contaminated stormwater pond shall be submitted by no later than December 1, 2012.

If these actions are not completed as described above, then escalated enforcement will be pursued. If you have any questions or concerns about this warning letter or corrective actions, please feel free to contact me or my staff.

Respectfully,

Kevin Elder
Division Chief

Enclosure: Complaint Investigative Report

Cc: Cathy Alexander, Ohio EPA-DSW
Bill Lohner, Ohio EPA-DERR
Andy Ety, ODA-DLEP
Jim Young, ODA-DLEP

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December 10, 2012

5C's Farm, Inc.
William A. Cleland, Jr.
06383 Cicero Road
Hicksville, Ohio 43526

RE: Warning Letter – Failure to Construct Cover over Bunker Storing Food Residual

Dear Mr. Cleland,

Based on my staff's inspection on August 30, 2012, a concrete bunker that was constructed at the gasification site was storing food residuals that were being brought to the site to be dried. Given the size of the bunker (approximately 280 feet by 80 feet) and the fact that the food residuals were high in moisture and exposed to runoff, there was an obvious concern that contaminated runoff could migrate from the facility and impact water quality. In order to prevent this concern, you were required to submit a plan to ODA-DLEP for review and approval that included the construction of a cover over the bunker to be constructed by no later than December 1, 2012. To date, no plans have been submitted for review and approval and based on my staff's inspection on December 7, 2012, no cover had been constructed.

Given the time of year and potential delays in construction of a cover in the near future, this Warning Letter serves as your notice that all food residuals and other waste products that could produce contaminated runoff shall be removed from the bunker by no later than December 31, 2012. Alternative solutions could include moving the food residuals inside the existing building on the site, storing the residuals at the cattle facility in an area that drains directly to the contaminated stormwater pond or cease receiving the food residuals until proper storage can be provided. If you wish to be granted approval to store such waste in this bunker in the future, then you shall provide a set of plans to address the runoff concerns and receive written approval from ODA-DLEP to use the storage bunker.

If you have questions or concerns, please feel free to contact me or any of my staff representatives. In addition, we take these violations seriously and failure to abide by the requirements in this letter will result in escalated enforcement, including potential monetary fines.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Mark Fritz, DLEP Inspector
Andy Ety, DLEP Engineer

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March 1, 2013

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Trillium Farm Holdings, LLC
10513 Croton Road
Croton, Ohio 43013

Re: Warning Letter – Failure to Conform to the Insect and Rodent Control Plan
Croton Layer #1 - Permit to Operate #: 45-131-PTO-002

Gentlemen:

This letter serves to inform you of violations of your Permit to Operate (PTO) that were found during our regular inspection on February 22 and 25, 2013 at Trillium Farm - Croton Layer #1.

During the records inspection of the facility's operating records, there were several items found to not be in compliance with the requirements of your PTO issued on April 11, 2012. These violations are listed below and require your immediate attention:

- The manure moisture in both manure storage barns is slumping and is wetter than past inspections at a similar time of the year. In the Insect and Rodent Control Plan (IRCP) of the PTO, it is stated that manure in the manure storage barns is to be kept dry enough to prevent excessive fly breeding and low enough to prevent slumping of the manure. Failure to do so is a violation of the IRCP of the PTO.
- The FEM-6 form is not on file in the facility operating record. The FEM-6 is to record the summary of the pit walks and fly spec cards. Failure to do so is a violation of the IRCP of the PTO.
- The Management Team Inspection Report (FEM 5BB), which requires a walk through and inspection of each layer house and manure storage barn every two weeks, is not being done properly. This inspection is to be completed by the Compliance Officer, Site Production Manager, and Senior Production Manager. The Senior Production Manager has not been participating in these inspections and a failure to do so is a violation of the IRCP of the PTO.

A partial inspection will be conducted at this facility by April 15, 2013 to assure all of the aforementioned items have been corrected. Failure to correct these violations listed above could result in escalated enforcement.

Should you have any questions about this Warning Letter, please direct them to ODA-DLEP inspector Jim Young at 614-989-8023 or by via e-mail at jyoung@agri.ohio.gov. You may also contact Andy Ety at 614-728-4220 or via e-mail at aety@agri.ohio.gov.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Kelly, McCloud - Assistant Attorney General, Ohio Attorney General's Office
Orland Bethel – Ohio Fresh Eggs
J.T. Dean – Trillium Farms
Joe Laffoon – Trillium Farms
Dick Rowley – Trillium Farms
Dave Hasemann - Trillium Farms
Chuck Renken - Trillium Farms
Sheryl Logue - Trillium Farms
Tabi Smith - Trillium Farms
David Fabian – Trillium Farms
Jim Kiracofe - Licking SWCD
Kirk Hines – ODNR-DSWR
Jim Young - ODA-DLEP
Andy Ety - ODA-DLEP

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March 12, 2013

Van Raay Dairy Limited Partnership
12471 Thomas Road
South Charleston, Ohio 45368

RE: Warning Letter – Improper Mortality Disposal ~ PTO: 12-156-PTO-002

Mr. van Raaij:

Violations were discovered during a partial inspection by my staff on March 7, 2013. The DLEP Inspector determined that Van Raay Dairy Farm failed to comply with Rule 901:10-2-15 of the Ohio Administrative Code (OAC) and your approved Mortality Management Plan as described in your Permit to Operate (PTO).

As approved in your PTO, mortality composting was one of the methods chosen for mortality management. You have obtained a certificate for mortality composting and you should be following Best Management Practices as set forth in "Ohio's Livestock and Poultry Mortality Composting Manual" and NRCS Compost Facility Standard 317. This facility's Mortality Management Plan indicates that mortality will be composted in the concrete basin located on the northeast side of the facility. Within the compost structure, mortality will have two feet of cover. Leachate/liquid will be pumped into the adjacent manure pit. In the event of significant losses, mortality will be removed to the Clark County Landfill.

During the inspection, the DLEP Inspector found over ten animal carcasses partially exposed and not properly covered at the designated compost site, which was formerly used as a manure pit. The compost pit had liquid manure levels nearly full, which is neither acceptable nor favorable conditions for proper composting. Mortality records provided during this inspection indicated a significant death loss in January-February, 2013, totaling approximately 77 cows. Deaths were due to illness, injury and other causes.

By no later than March 20, 2013, Van Raay Dairy shall remove and properly dispose of all mortality in accordance with all state/local rules using approved methods for the disposal of livestock. Based on DLEP's inspection and the presence of a large number of mortality, composting does not appear to be a viable option. Van Raay Dairy must contact the DLEP inspector of the method that will be used by no later than March 15, 2013. On or around March 20, 2013, DLEP will conduct a follow-up inspection to verify compliance.

By no later than April 1, 2013, Van Raay Dairy must submit a plan to permanently manage the mortality at this facility in accordance with all state/local rules. The use of the existing manure pit to compost mortality will no longer be permitted unless appropriate modifications can be made to provide an acceptable system. Depending on the option chosen, a Major Operational Change may be required in order to allow any proposed modifications.

We take violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspections indicate the continuance of the violations noted, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Clark County SWCD
Dr. Tony Forshey, Division of Animal Health
Roger Tedrick, Dairy Division
Andy Ety, Engineer
Christine Pence, Inspector

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March 13, 2013

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Trillium Farm Holdings, LLC
10513 Croton Road
Croton, Ohio 43013

Re: Warning Letter – Failure to Conform to the Insect and Rodent Control Plan and 2011 Consent Order for Croton Layer #4
Permit to Operate #: 45-135-PTO-002

Gentlemen:

This letter serves to inform you of violations of your Permit to Operate (PTO) and the 2011 Consent Order that were found during our regular inspection on February 22 and 25, 2013 at Trillium Farm - Croton Layer #4.

During the records inspection of the facility's operating records, there were several items found to not be in compliance with the requirements of your PTO issued on April 11, 2012 and Paragraph 22 of the June 28, 2011 Consent Order. These violations are listed below and require your immediate attention:

1. Manure moisture samples taken on 2/14/2013 for the West Manure Storage Barn (WMSB) exceeded 60% moisture and remedial actions to correct the issues has not been submitted to DLEP.
    a. Item #31, page 143 of the Insect and Rodent Control Plan (IRCP) of the PTO, it is stated that manure in the manure storage barns is to be kept dry enough to prevent excessive fly breeding and low enough to prevent slumping of the manure. Failure to do so is a violation of the IRCP of the PTO.
    b. Paragraph 22(a) of the June 28, 2011 Consent Order says..."Defendant shall contact ODA on the same day that Defendant receives notice if manure moisture in the manure storage barns or the physical condition of the manure on the belts shows excess moisture and/or exceeds sixty percent (60%) and provide to ODA possible remedial actions including the remedial action chosen for each incident."

2. Manure temperatures at 3 feet in the WMSB had ranged between 90 and 100 degrees Fahrenheit for two weeks prior to this inspection and were 85 and 97 degrees Fahrenheit at 6 feet.
    a. Paragraph 22(d) of the June 28, 2011 Consent Order says..."attain a minimum temperature of 120 degrees Fahrenheit that is required for composting in manure rows over three (3) feet in height."
3. The FEM-6 form is not on file in the facility operating record. The FEM-6 is to record the summary of the pit walks and fly spec cards.
    a. Failure to do so is a violation of the IRCP of the PTO.
4. The FEM-3 form for the week of 2.11.2013 was not on file in the facility operating record. The FEM-3 is the Daily Barn Inspection Report.
    a. Failure to do so is a violation of the IRCP of the PTO.

By March 25, 2013, Trillium Farms is required to submit to ODA-DLEP, in writing, an explanation of the possible causes for the higher moisture levels and lower temperatures in the manure storage barns at Croton Layer #4. In addition, the remedial actions that will be taken to correct these deficiencies shall be provided. A partial inspection will be conducted at this facility by April 15, 2013 to assure all of the aforementioned items have been corrected. Failure to correct these violations listed above could result in escalated enforcement.

Should you have any questions about this Warning Letter, please direct them to ODA-DLEP inspector, Jim Young, at 614-989-8023 or by via e-mail at *jyoung@agri.ohio.gov.* You may also contact Andy Ety at 614-728-4220 or via e-mail at *aety@agri.ohio.gov.*

Sincerely,

Kevin H. Elder
Division Chief

Cc: Kelly, McCloud - Assistant Attorney General, Ohio Attorney General's Office
Orland Bethel – Ohio Fresh Eggs
J.T. Dean – Trillium Farms
Joe Laffoon – Trillium Farms
Dick Rowley – Trillium Farms
Dave Hasemann - Trillium Farms
Chuck Renken - Trillium Farms
Sheryl Logue - Trillium Farms
Tabi Smith - Trillium Farms
David Fabian – Trillium Farms
Jim Kiracofe - Licking SWCD
Kirk Hines – ODNR-DSWR
Jim Young - ODA-DLEP
Andy Ety - ODA-DLEP

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March 13, 2013

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Trillium Farm Holdings, LLC
241 St. Andrews Way
Sioux Center, Iowa 51250

Re: Warning Letter – Failure to Conform to the Insect and Rodent Control Plan and 2011 Consent Order for Croton Layer #3
Permit to Operate #: 45-133-PTO-002

Gentlemen:

This letter serves to inform you of violations of your Permit to Operate (PTO) that were found during ODA-DLEP's regular inspection on February 22 and 25, 2013 at Trillium Farm - Croton Layer #3.

During the inspection of the facility's operating records, there were several items found to not be in compliance with the requirements of your PTO issued on April 11, 2012 and Paragraph 22 of the June 28, 2011 Consent Order. These violations are listed below and require your immediate attention:

1. Manure moisture samples taken on 2/14/2013 for the North Manure Storage Barn (NMSB) exceeded 60% moisture and remedial actions to correct the issues has not been submitted to DLEP.
    a. Item #31, page 143 of the Insect and Rodent Control Plan (IRCP) of the PTO, it is stated that manure in the manure storage barns is to be kept dry enough to prevent excessive fly breeding and low enough to prevent slumping of the manure. Failure to do so is a violation of the IRCP of the PTO.
    b. Paragraph 22(a) of the June 28, 2011 Consent Order says..."Defendant shall contact ODA on the same day that Defendant receives notice if manure moisture in the manure storage barns or the physical condition of the manure on the belts shows excess moisture and/or exceeds sixty percent (60%) and provide to ODA possible remedial actions including the remedial action chosen for each incident."
2. Manure temperatures at 3 feet in the SMSB had ranged between 92 and 100 degrees Fahrenheit for two weeks prior to this inspection and were 80 and 83

degrees Fahrenheit at 6 feet. The NMSB had only reached a temperature of 50 degrees Fahrenheit.

a. Paragraph 22(d) of the June 28, 2011 Consent Order says..."attain a minimum temperature of 120 degrees Fahrenheit that is required for composting in manure rows over three (3) feet in height."

By March 25, 2013, Trillium Farms is required to submit to ODA-DLEP, in writing, an explanation of the possible causes for the higher moisture levels and lower temperatures in the manure storage barns at Croton Layer #3. In addition, the remedial actions that will be taken to correct these deficiencies shall be provided. A partial inspection will be conducted at this facility by April 15, 2013 to assure all of the aforementioned items have been corrected. Failure to correct these violations listed above could result in escalated enforcement.

Should you have any questions about this Warning Letter, please direct them to ODA-DLEP inspector Jim Young at 614-989-8023 or by via e-mail at *jyoung@agri.ohio.gov.* You may also contact Andy Ety at 614-728-4220 or via e-mail at *aety@agri.ohio.gov.*

Sincerely,

Kevin H. Elder
Division Chief

Cc: Kelly, McCloud - Assistant Attorney General, Ohio Attorney General's Office
Orland Bethel – Ohio Fresh Eggs
J.T. Dean – Trillium Farms
Joe Laffoon – Trillium Farms
Dick Rowley – Trillium Farms
Dave Hasemann - Trillium Farms
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Tabi Smith - Trillium Farms
David Fabian – Trillium Farms
Jim Kiracofe - Licking SWCD
Kirk Hines – ODNR-DSWR
Jim Young - ODA-DLEP
Andy Ety - ODA-DLEP

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March 22, 2013

Irish Acres Dairy, LLC
11053 SR 705
Sidney, Ohio 45365

9171082133393946936476

Irish Acres Dairy, LLC
Attn: Paddy Dunne
7170 S 300 W
Berne, Indiana 46711

9171082133393946936483

Certified Mail Return

Re: Director's Notice of Deficiency Resulting in Noncompliance
Permit to Operate: 75-150-PTO-002 and Ohio Administrative Code Requirements

Dear Mr. Dunne:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiency resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate (PTO) 75-150-PTO-002 and have failed to comply with the Ohio Administrative Code (O.A.C.).

VIOLATION 1: FREEBOARD MAINTENANCE FOR MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 and PTO 75-150-PTO-002 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard. O.A.C. 901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record. PTO 75-150-PTO-002 also requires the permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level.

During a Division of Livestock Environmental Permitting (DLEP) inspection on March 19, 2013, two earthen manure storage facilities at Irish Acres Dairy were found to be above Maximum Operating Levels. Specifically, the liquid level of Pond 2 was within 6 inches from the top of bank and approximately 1 foot above the Maximum Operating Level (MOL). The liquid level in Pond 3 was within 1 foot from the top of bank and approximately 6 inches over the MOL.

CORRECTIVE ACTIONS REQUIRED

The levels within Pond 2 and Pond 3 shall be lowered below their respective Maximum Operating Levels (MOL) as provided in the PTO, by no later **March 29, 2013**. You must maintain all required records of manure application or distribution of the manure and these records shall be made available to the DLEP inspector at the date of re-inspection. In addition, to ensure continued compliance with 901:10-2-08,

enough manure shall be removed so that the operating level is reduced and maintained to a level of at least 1 foot below the maximum operating level in each of the two storage structures to provide sufficient storage until May 15, 2013. ODA-DLEP will re-inspect the facility on, or after, April 1, 2013.

The Department expects you to explore all necessary means for lowering these levels, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, and/or the removal of cows.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (F). Based upon this review, ODA has determined that the violation is a first-cited violation, with a category of seriousness as Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $800.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION 2: OVERPOPULATION OF ANIMAL CAPACITY/FAILURE TO APPLY FOR APPLICABLE PERMITS

ODA has determined that O.A.C. Rule 901:10-1-10(A) has been violated which in part states that a facility may not expand by more than ten per cent in excess of the design capacity set forth in the current design capacity. As set forth in PTO 75-150-PTO-002, Irish Acres Dairy has a permitted design capacity for 1,630 mature dairy cows and 100 heifers.

During the March 19, 2013 inspection, ODA-DLEP inspectors discovered your facility was housing well over the permitted design capacity. Based on DLEP's observations, nearly every freestall in barns 1-3 had a cow present, with approximately 25-35 more cows standing in the isles, clearly indicating that the barns were overstocked. The facility's pen count records support this observation. The facility's actual pen count records provided to the inspector indicated that there were 1,805 milking/dry cows and 135 heifers. This unauthorized addition of cattle in excess of the permitted design capacity is a violation of the facility's Permit to Operate.

CORRECTIVE ACTIONS REQUIRED

You must reduce the number of animals to comply with the facility's PTO by no later than **April 5, 2013**. The barns and cow inventory records will be re-inspected for compliance on, or after, April 8, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Action required above, you will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of this Notice to the date of re-inspection. You may

also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION 3: FALSIFICATION OF RECORDS

Throughout the inspection, the animal inventory was questioned by the ODA-DLEP inspectors and as a result, three different animal inventory numbers were provided to the DLEP inspector.

CORRECTIVE ACTIONS REQUIRED

Cow number records shall be accurate and consistent with the animal numbers present at the facility and these records and barn counts will be re-inspected on, or after, April 8, 2013. True and accurate records shall be provided at this re-inspection.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. If you fail to comply with the Corrective Action required above, you will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION 4: RECORD KEEPING REQUIREMENTS

ODA has determined that O.A.C. Rules 901:10-2-08 (A) and 901:10-2-16 (A) and PTO 75-150-PTO-002 have been violated. These rules require, in pertinent part, that an owner or operator shall maintain an operating record and that the operating record shall include documentation of the information required by rule.

During the routine inspection on March 19, 2013, the DLEP inspector noted the following violations:

1. No weekly manure storage pond records for Ponds 1, 2 and 3 since February 21, 2013. This is a violation of O.A.C. 901:10-2-08(A)(4). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1).

2. No monthly records for Insect & Rodent Control plan since February 21, 2013. This is a violation of O.A.C. 901:10-2-19(B). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1).

3. No daily records for water line inspection documented since February 22, 2013. This is a violation of O.A.C. 901:10-2-08(A)(4)(n). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1)(a)(ix).

CORRECTIVE ACTIONS REQUIRED

You must immediately correct this deficiency by conducting the required inspections and recording the required information and make these records available to the DLEP Inspector on the date of re-inspection on, or after, April 1, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $200.00 for each day from the date of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION 5: UNCONTAINED MANURE OFF SILAGE LEACHATE PAD

ODA has determined that O.A.C. 901:10-2-04, 901:10-2-08 and 901:10-2-16 have been violated. Specifically 901:10-2-04 requires that the owner or operator use spill prevention and good housekeeping techniques to ensure that stormwater discharges from contaminated areas comply with Ohio water quality standards. Additionally, O.A.C. Rule 901:10-2-16 requires that records of actions be taken to correct any deficiencies found as a result of inspections conducted in the production area.

During the routine inspection on March 19, 2013, the DLEP inspector observed that silage pad leachate was not being contained within the concrete curbed areas as originally designed, specifically along the northern side and northwest corner of the facility. Accumulated solids along the edges of the concrete and in the settling pit were preventing liquid from flowing to Pond 1. The design plans approved and installed at your facility required the rainfall/runoff from up to the 100-year, 24-hour storm event be collected and stored in Pond 1.

CORRECTIVE ACTIONS REQUIRED

You must immediately correct this deficiency by properly restoring the drainage from the silage pad so that runoff can freely flow into Pond 1. Runoff from the silage pad is not permitted to discharge from the production area. Additionally, better housekeeping in the northwest corner of the facility must take place and maintained thereafter. This area will be inspected for compliance on, or after, April 1, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Action required above, you will be subject to the assessment of a civil penalty in the amount of up to $800.00 for each day from the date of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspections by the DLEP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to contact this office with any concerns or questions as to what may be expected from Irish Acres Dairy in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin Elder,
Division Chief

Cc: Eddie O'Donnell, Irish Acres Dairy
Craig Hall, Irish Acres Dairy
Shelby SWCD
ODNR DSWR
Kelly McCloud, Assistant Attorney General
Mike Rodgers, ODA Chief Legal Counsel
Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector

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April 2, 2013

5C's Farm, Inc.
William A. Cleland Jr.
06383 Cicero Rd.
Hicksville, OH 43526

RE: Warning Letter – PTO:20-079-PTO-001
Failure to Maintain Distribution and Utilization Records

Dear Mr. Cleland,

It has come to my attention through a complaint received by the Defiance Soil and Water Conservation District (SWCD) that you have failed to maintain Distribution and Utilization (D&U) records as required by your Permit to Operate (PTO). The requirements for recordkeeping for manure removed through D&U are contained in Rule 901:10-2-11.

On March 22, 2013, Jason Roehrig of Defiance SWCD informed the Division of Livestock Environmental Permitting (DLEP) that a complaint had been received by the District regarding frozen ground application of manure originating from your farm. A subsequent investigation revealed that the application of this manure was not under your control and therefore fell under the provisions of manure removed through D&U. This investigation also revealed there was no signed agreement with the recipient of the manure. Finally, copies of the required manure tests and Appendices A, B and F were not provided to the recipient.

Specifically, O.A.C. 901:10-2-11(A)(2) requires that: *"If the owner or operator decides to use distribution and utilization methods then the owner or operator shall provide a copy of appendices A and F of rule 901:10-2-14 of the Administrative Code, and a copy of the most recent analytical results that list the nutrient content of the manure based on an analysis consistent with the rules to the manure recipient. The permitted facility operating record shall include the name and address of the manure recipient, the date of distribution, and the approximate amount of manure in tons or gallons distributed on that date and an acknowledgement by the manure recipient as follows:*

(a) "I have been provided with a copy of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of rule 901:10-2-14 of the Administrative code. The manure will be distributed and utilized according to the best management practices and according to any state laws regulating these uses."

Based on these observations, it is required that you provide DLEP with a copy of the signed acknowledgement from the recipient of the manure and a copy of the most recent analysis of the manure as stated in the above rules, by April 15, 2013. DLEP takes these matters seriously and expects that future removal of manure through D&U provisions will comply fully with the Ohio Administrative Code and your Permit to Operate.

Please feel free to direct any questions concerning this Warning Letter to me or any of my staff. I look forward to your prompt attention to this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: Defiance SWCD
Kirk Hines, ODNR-DSWR
Kelly McCloud, Assistant Attorney General
Andy Ety, ODA-DLEP Engineer
Mark Fritz, ODA-DLEP Inspector

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April 4, 2013

Frisian Hijma Dairy LLC
Johannes and Sybolt Hijma
12464 Rd. 100
Kenton, OH 43326

Certified Mail Return 91710821333939466256 84

Re: Director's Notice of Deficiency Resulting in Noncompliance
Permit to Operate: 33-055-PTO-002 and Ohio Administrative Code Requirements

Gentlemen:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiency resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate (PTO) 33-055-PTO-002 and have failed to comply with the Ohio Administrative Code (O.A.C.).

VIOLATION 1: FREEBOARD MAINTENANCE FOR MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 and PTO 33-055-PTO-002 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard. O.A.C. 901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record. PTO 75-150-PTO-002 also requires the permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level.

During a Division of Livestock Environmental Permitting (DLEP) visit on April 1, 2013, two earthen manure storage facilities at Frisian Hijma Dairy were found to be above Maximum Operating Levels. Specifically, the liquid level of the Manure Pond was within 15 inches from the top of bank and approximately 5 inches above the Maximum Operating Level (MOL). The liquid level in the Stormwater Pond was also well in excess of the approved MOL for this structure as manure was backed up onto the silage pad.

CORRECTIVE ACTIONS REQUIRED

The levels within the Manure Pond and the Stormwater Pond shall be lowered below their respective Maximum Operating Levels (MOL) as provided in the PTO, by no later than **April 10, 2013**. You must maintain all required records of manure application or distribution of the manure and these records shall be made available to the DLEP inspector at the date of re-inspection. In addition, to ensure continued compliance with 901:10-2-08, enough manure shall be removed by May 15, 2013, in each of the two

storage structures, to provide sufficient storage until July 15, 2013. ODA-DLEP will re-inspect the facility on, or after, April 10, 2013 and again on, or after, May 15, 2013.

The Department expects you to explore all necessary means for lowering these levels, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, and/or the removal of cows.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (G). Based upon this review, ODA has determined that the violation has been cited multiple times, with a category of seriousness as Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $1,600.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION 2: UNCONTAINED MANURE OFF SILAGE LEACHATE PAD

ODA has determined that O.A.C. 901:10-2-04 and 901:10-2-08 have been violated. Specifically 901:10-2-04 requires that the owner or operator use spill prevention and good housekeeping techniques to ensure that stormwater discharges from contaminated areas comply with Ohio water quality standards..

During the visit by DLEP on April 1, 2013, the DLEP inspector observed that silage pad leachate was not being contained within the concrete curbed areas as originally designed, specifically along the south side of the silage pad. A portion of the curbing was missing, allowing backed-up liquid from the Stormwater Pond to flow into the adjacent field. The design plans approved and installed at your facility required the rainfall/runoff from up to the 100-year, 24-hour storm event be collected and stored in the Stormwater Pond.

CORRECTIVE ACTIONS REQUIRED

You must immediately, but by no later than April 5, 2013, correct this deficiency by properly restoring the damaged curb from the silage pad so that runoff is contained. Runoff from the silage pad is not permitted to discharge from the production area. This area will be inspected for compliance on, or after, April 5, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II and the gravity of the violation as medium. Therefore, if you fail to comply with the Corrective Action required above, you will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspections by the DLEP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to contact this office with any concerns or questions as to what may be expected from Frisian Hijma Dairy in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin Elder,
Division Chief

Cc: Hardin SWCD
ODNR DSWR
Kelly McCloud, Assistant Attorney General
Mike Rodgers, ODA Chief Legal Counsel
Andy Ety, DLEP Engineer
Mark Fritz, DLEP Inspector

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April 19, 2013

Heartland Dairy Holdings, LLC
John Glessner
3042 Tama Road
Rockford, Ohio 45882

Certified Mail Return 9171082133393946625677

Re: Director's Notice of Deficiency Resulting in Noncompliance
Permit to Operate: 54-121-PTO-002 and Ohio Administrative Code Requirements

Gentlemen:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiency resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate (PTO) 54-121-PTO-002 and have failed to comply with the Ohio Administrative Code (O.A.C.).

VIOLATION 1: FREEBOARD MAINTENANCE FOR MANURE STORAGE OR TREATMENT FACILITIES

ODA has determined that O.A.C. 901:10-2-08 and PTO 33-055-PTO-002 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. 901:10-3-02 to 901:10-3-06, plus an additional one foot of freeboard. O.A.C. 901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record. PTO 75-150-PTO-002 also requires the permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level.

During a Division of Livestock Environmental Permitting (DLEP) visit on April 17, 2013, three earthen manure storage facilities at Rockford Dairy were found to be above Maximum Operating Levels. Specifically, the liquid level of the Manure Ponds 1 and 2 were within one foot of the top of bank and approximately 11 inches above the Maximum Operating Level (MOL). In addition, the liquid level of Manure Pond 3 was one inch over MOL, but was, however, approximately 12 inches below top bank at an eroded area near the northwest corner of the pond.

CORRECTIVE ACTIONS REQUIRED

The levels within the Manure Ponds shall be lowered below their respective Maximum Operating Levels (MOL) as provided in the PTO, by no later than **April 26, 2013**. You must maintain all required records of manure application or distribution of the manure and these records shall be made available to the DLEP inspector at the date of re-inspection. In addition, manure levels shall be lowered enough by May 31, 2013 in order to provide enough storage through silage harvest, which should be figured as being no earlier than September 15, 2013. ODA-DLEP will re-inspect the facility on, or after, April 26, 2013.

The Department expects you to explore all necessary means for lowering these levels, including but not limited to, land application, transferring of manure to another approved manure storage structure, transporting to a wastewater treatment facility, and/or the removal of cows.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (F). Based upon this review, ODA has determined that the violation is a first-cited violation, with a category of seriousness as Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $800 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

VIOLATION 2: CONTAMINATED RUNOFF/MANURE LEAVING PRODUCTION AREA

ODA has determined that O.A.C. 901:10-2-04 and 901:10-2-08 have been violated. Specifically 901:10-2-04 requires that the owner or operator use spill prevention and good housekeeping techniques to ensure that stormwater discharges from contaminated areas comply with Ohio water quality standards..

During the visit by DLEP on April 17, 2013, the DLEP inspector observed that silage pad leachate was not being contained within the concrete walled areas as originally designed, specifically along the north side of the silage pad. Said leachate was flowing around a plastic tile underneath the silage pad, and outletting into the clean runoff waterway which flows west, along the north side of the silage pad. The design plans approved and installed at your facility required the rainfall/runoff from up to the 100-year, 24-hour storm event be collected and stored in the Stormwater Pond.

CORRECTIVE ACTIONS REQUIRED

You must immediately, but by no later than **April 24, 2013**, stop flow from underneath the silage pad area so that runoff is contained. Runoff from the silage pad is not permitted to discharge from the production area. In addition, you must keep the tile stop closed that stops flow from the clean water ditch from leaving the property, until further notice. This area will be inspected for compliance on, or after, April 24, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II and the gravity of the violation as medium. Therefore, if you fail to comply with the Corrective Action required above, you will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspections by the DLEP Inspector will determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential

for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

VIOLATION 3 – INACCURATE MOL MARKINGS

ODA has determined that O.A.C. 901:10-2-06(A)(2) has been violated which requires that depth markers be installed in manure ponds to monitor liquid levels.

During the visit by DLEP on April 17, 2013, the DLEP inspector observed that MOL markings provided with the existing level markers in Pond 3 are not accurate on any of the 3 ponds and thus effectively prevent the monitoring of liquid manure levels.

CORRECTIVE ACTIONS REQUIRED:

The elevations of the embankments of all three ponds must be resurveyed, as well as existing manure level surface of each pond (to determine if there is a hydraulic "jump" between them). MOL's must be reset for each of the 3 ponds based on the lowest top bank point of each. This survey and re-setting of MOL levels must be completed by **April 26, 2013** and have permanent MOL markers in all three ponds established by **May 3, 2013**. This area will be inspected for compliance on, or after May 3, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E) and (F). Based upon this review, ODA has determined that the violation is a first-cited violation, with a category of seriousness as Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $800 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

Please feel free to contact this office with any concerns or questions as to what may be expected from Heartland Dairy Holdings, LLC in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin Elder,
Division Chief

Cc: Mercer SWCD
ODNR DSWR
Kelly McCloud, Assistant Attorney General
Mike Rodgers, ODA Chief Legal Counsel
Andy Ety, DLEP Engineer
Mark Fritz, DLEP Inspector

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May 1, 2013

Heartland Dairy Holdings, LLC
John Glessner
3042 Tama Road
Rockford, Ohio 45882

Re: Compliance Inspection and Request for Extension on Manure Levels
Director's Notice of Deficiency Resulting in Noncompliance - April 19, 2013

Gentlemen:

As a follow-up to my staff's inspection of Rockford Dairy on April 29, 2013, this letter is to inform Heartland Dairy Holdings, LLC of issues that remain from the Notice of Deficiency (NOD) dated April 19, 2013. As required in the NOD, the levels within the manure storage ponds were to be lowered below their respective Maximum Operating Levels (MOL) as provided in the PTO, by no later than April 26, 2013. Based on my staff's inspection on April 29, 2013, the levels within all ponds still exceeded the MOL's for all ponds. However, Heartland Dairy Holdings, LLC requested an extension of this deadline and cited that great efforts have been made to remove manure since the date of the NOD and that the recent weather conditions have prevented land application. Based on the recent efforts and continual efforts planned, this letter grants Heartland Dairy Holdings, LLC an extension to have the levels in the manure storage ponds below the currently marked MOL elevation of 95.5 by no later than **May 6, 2013**. If this deadline is not met, then additional enforcement action can be expected in accordance with the Notice of Deficiency, dated April 19, 2013.

As you are aware, additional violations and deadlines were set forth in the NOD that still need to be met. Specifically, permanent MOL elevation markings were to be re-established with a new survey and markings placed in all 3 ponds by no later than May 3, 2013. Based on my staff's inspection, a new MOL marking had been established in Pond 3, but nothing was set in Ponds 1 and 2. In addition, ODA-DLEP understands that Heartland Dairy Holdings, LLC wishes to re-establish MOL markings by submitting a Major Operational Change (MOC) to increase manure storage volumes within the existing ponds by raising the Maximum Operating Level of each pond to apparently correct a technical mistake that was made in your existing Permit to Operate.

The NOD also required additional manure removal prior to May 31, 2013 to allow for ample manure storage through September 15, 2013. You need to continue to evaluate practical solutions to achieve this requirement and continue to work on a sustainable plan for long term manure management.

Lastly, operations at Rockford Dairy appear to be under the control or direction of individuals that do not appear on any permit documents. If in fact new operators are in control of day-to-day operations of Rockford Dairy, then appropriate compliance information and transfer requests need to be submitted to add such operators to the Permit. We require that you respond by May 10, 2013 about whether there are new operators of Rockford Dairy and if so we require, by May 31, 2013 that the appropriate transfer request be submitted to ODA, DLEP.

Sincerely,

Kevin Elder,
Division Chief

Cc: Kelly McCloud, Assistant Attorney General
Mike Rodgers, ODA Chief Legal Counsel
Andy Ety, DLEP Engineer
Mark Fritz, DLEP Inspector

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
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8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
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May 13, 2013

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Certified Mail 91 7108 2133 3939 4662 5660

Trillium Farm Holdings, LLC
10513 Croton Road
Croton, Ohio 43013

Certified Mail 91 7108 2133 3939 4662 5653

Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) Division of Livestock Enviornmental Permitting (DLEP) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for Croton Layer 3. DLEP has determined that Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC have failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 22 of the June 28, 2011 Consent Order in State of Ohio v. Ohio Fresh Eggs, LLC, Licking County Common Pleas Case No. 99- CV-756.

I. VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS

a. OAC 901:10-1-10(G) and Paragraph 22 of the Consent Order require Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC to comply with the terms and conditions contained in the permits issued to Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC by DLEP. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC for Croton Layer 3 (45-133-PTO-002) requires that Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC contact DLEP the same day that the manure moisture in the manure storage barns or the physical condition of the manure on the belts shows excess moisture and/or exceeds sixty percent (60%) and provide to ODA-DLEP the remedial actions including the remedial action chosen for each incident."

b. In a Warning Letter issued to Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC for Croton Layer #3 dated March 13, 2013, Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC was required to submit to DLEP, in writing, an explanation of the possible causes for the higher moisture levels and lower temperatures in the manure storage barns at Croton Layer #3, as well as the remedial actions that would be taken to correct these deficiencies.

According to the operating record, the manure moisture samples taken on February 14, 2013 from the West Manure Storage Barn (WMSB) exceeded 60% moisture and the written remedial actions to correct the issues were not submitted to DLEP by the requested date of March 25, 2013. Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC failed to submit the information as required in the March 13, 2013 warning letter and nothing has been submitted to DLEP as the date of this NOD.

II. CORRECTIVE ACTION REQUIRED

Ohio Fresh Eggs, LLC and Trillium Farm Holding, LLC are required to submit to DLEP, in writing, an explanation of the possible causes for the higher moisture levels and lower temperatures in the manure storage barns at Croton Layer #3 by May 20, 2013 as well as the remedial actions that will be, or have been taken to correct these deficiencies.

III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E), DLEP shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, DLEP has reviewed OAC 901:10-5-04(D), (E) and (H). Based upon this review, ODA-DLEP has determined that the violations cited herein are in the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC fail to comply with any of the corrective actions required herein, Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC would be subject to the assessment of a civil penalty in the amount of $500.00 per seven days.

Please feel free to contact this office with any questions concerning this NOD. I look forward to your continuing cooperation in this matter.

Sincerely,

Kevin Elder, Division Chief

Cc: Cathy Alexander, Ohio EPA
Jim Kiracofe, Licking SWCD
David Gorman, Senior Staff Counsel
Kelly, McCloud, Assistant Attorney General
Andy Ety, DLEP Environmental Engineering
Jim Young, Environmental Inspector

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May 13, 2013

Ohio Fresh Eggs, LLC
Trillium Farm Holdings, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Re: Warning Letter – Failure to Conform - Insect and Rodent Control Plan (IRCP)
Croton Layer #1 - Permit to Operate #: 45-131-PTO-002

Gentlemen:

This letter serves to inform you of violations of your Permit to Operate (PTO) and the Consent Order dated June 28, 2011 found during the partial re-inspection on April 22, 2013 at Croton Layer #1.

On March 1, 2013, a Warning Letter was issued for Croton Layer #1 for the "Failure to Conform to the Insect and Rodent Control Plan" (IRCP) as set forth in the PTO issued on April 11, 2012 and the requirements of the Consent Order dated June 28, 2011. This inspection was conducted to review the operating records and to determine if compliance had been achieved for previous violations. The FEM-6 forms have been completed and are on file since March 13, 2013. Based on this re-inspection, additional items were discovered that need attention and are as follows:

1. During the review of the operating records it was found that there are no reports for the previous 2 weeks for the outside barn pesticide applications or treatments. These reports must be completed, reported, and filed weekly, whether there has or has not been any applications made that week. Also, it was found that the Daily Barn Inspection Report forms, FEM-3, are all identical from January 1, 2013 through April 22, 2013. During that period of time the manure in each barn, with the exception of Barns #13A and 14B, for each day was listed as dry.

   The ODA inspection report for February 22, 2013 indicated that manure in the belt battery barns was wetter than during past inspections. It was also reported that the manure was pliable and the manure in the manure storage barns was slumped. Additionally, the last Management Team Inspection Report (FEM 5BB) for April 10, 2013 reported Barn #12 as having wet-dry manure, Barn #13A with few-moderate flies, and Barn #14B having moderate flies. As a result of this review, the accuracy of the Daily Barn Inspection Report FEM-3 is questioned. Since the Site Production Manager is required to fill out this report by entering each barn on a daily basis, it is questioned if this is being done.

2. The Management Team Inspection Report (FEM 5BB), which requires a walk through and inspection of each layer house and manure storage barn every two weeks, is not being done properly. This inspection is to be completed by the Compliance Officer, Site

Production Manager, and Senior Production Manager. The Senior Production Manager has not been participating in these inspections and a failure to do so is a violation of the IRCP of the PTO.

3. During the barn inspections, observations were made that the large amount of dust/dander and overall cleanliness of the barns has not improved and possibly has worsened since ODA's inspection on February 22, 2013. In that inspection, it was reported "All of the barns had more dust and dander under the cage rows than has been seen during other inspections. This increase in dust/dander provides good areas for pupae to hatch. There are concerns about the lack of housekeeping in the barns." Barns #5 and #9 were cleaner than during the last inspection but the remaining barns were dirtier than before with dust on the floor and under the cage rows as deep as 3 inches.

   On page #2 of the IRCP it states "The buildings will be maintained in such a manner as to minimize the activity and reduce the presence of insects and rodents." On page #5 of the IRCP it states "All walkway areas that have the opportunity for spilled organic materials (such as eggs, mortalities, manure and feeds) will be inspected to ensure no spilled or wasted materials that may serve as a food or breeding medium for insects or rodents remains. Any spilled material discovered will be cleaned up from these areas on a regular basis. Form FEM-4 will be used to record such activities in the operating record." To do so, Form FEM-4 may need to be revised to allow this information to be recorded.

4. The IRCP also calls for the manure belts to be moved once every day, removing approximately 20% of the manure on the belts. It is reported that the belts are being moved and completely emptied every 2-3 days. This may be one contributing factor of why the manure on the belts has been wetter than normal.

As a reminder, the Insect and Rodent Control Plan that is part of your Permit to Operate and the Consent Order was prepared by Ohio Fresh Eggs, LLC and agreed upon by ODA-DLEP. These two documents outline the requirements for the manner in which Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC must operate within the state of Ohio. Any deviations thereof are considered to be non-compliant and a violation of the PTO and/or Consent Order. It is imperative that the Management Team consisting of the Director of Operations, the Site Production Manager, the Senior Production Manager, Compliance Officer, and the Qualified Professional Entomologist work together when the Professional Entomologist makes his required monthly inspections at the facilities. During this monthly inspection, it is important all members of the Management Team participate in the barn inspections, discuss the findings in each barn, and participate in the discussion of possible problems and actions required to be taken to prevent potential problems. Doing so will require *all* Management Team members to set aside the necessary time and exert all efforts toward evaluating all of the barns, discussing the findings in the barns, and discussing possible solutions for any existing and/or possible future problems.

A partial re-inspection will be conducted at this facility by June 1, 2013 to assure all of the aforementioned items have been corrected. Failure to correct these violations listed above could result in escalated enforcement.

Should you have any questions about this Warning Letter, please direct them to ODA-DLEP inspector Jim Young at 614-989-8023 or by via e-mail at *jyoung@agri.ohio.gov.* You may also contact Andy Ety at 614-728-4220 or via e-mail at *aety@agri.ohio.gov.*

Sincerely,

Kevin H. Elder, Division Chief

Cc: Doug Mack – Trillium Farms
Dick Rowley – Trillium Farms
Dave Hasemann - Trillium Farms
Ramchano Almoro – Trillium Farms
Sheryl Logue - Trillium Farms
Tabi Smith - Trillium Farms
David Fabian – Trillium Farms
Maxcy Nolan – Professional Entomologist
Jim Kiracofe - Licking SWCD
Kirk Hines – ODNR-DSWR
Kelly, McCloud - Assistant Attorney General
David Gorman, Senior Staff Counsel
Jim Young – Environmental Inspector
Andy Ety – Environmental Engineer

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June 4, 2013

Miedema Dairy, LLC
Attn: Andy Miedema
24376 St. Rt. 104
Circleville, Ohio 43113

Re: Warning Letter – Failure to maintain records in accordance to ODA Rules and Permit to Operate #65-108-PTO-002

Mr. Miedema:

This letter serves to inform you of violations of your Permit to Operate (PTO) that were found during the routine inspection of May 23, 2013 of Miedema Dairy, LLC. During that inspection, it was found by the ODA-DLEP inspector that operating records were not being maintained in accordance with Ohio Administrative Code (O.A.C) 901:10-2-08 and 901:10-2-16.

Specifically, ODA has determined that O.A.C. R 901:10-2-08(A) and 901:10-2-16(A), as well as PTO 65-108-PTO-002, have been violated. As the owner/operator, you shall maintain an operating record that includes documentation of the information required by rule and your PTO. During the routine inspection on May 23, 2013, the DLEP inspector noted the following violations:

1. No weekly manure storage pond records for North and the South Manure Storage Ponds, the Mortality Compost Storage Area, or the Solids Stacking Pad. This is a violation of O.A.C. 901:10-2-08(A)(4). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1).

2. No monthly records for Insect & Rodent Control Plan. This is a violation of O.A.C. 901:10-2-19(B). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1).

3. No daily records for water line inspections have been documented. This is a violation of O.A.C. 901:10-2-08(A)(4)(n). These inspections shall be recorded in the Operating Record as required by O.A.C. 901:10-2-16(A)(1)(a)(ix).

4. No land application records were kept for the mortality compost or separated solids that were applied under the control of the facility. Specifically, O.A.C. 901:10-2-16(A)(1)(c) requires specific land application records to be maintained to demonstrate compliance with O.A.C. 901:10-2-14 and your PTO.

You shall immediately correct the violations listed above. My staff will perform a re-inspection of your facility and operating records on, or around, August 1, 2013 to ensure you have returned to compliance. Failure to perform the required inspections

<u>or maintain the required operating records in the future will lead to escalated enforcement, including the possibility of monetary penalties.</u>

Please feel free to direct any questions concerning this Warning Letter to myself or your DLEP inspector. I look forward to your cooperation in correcting these violations.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Pickaway SWCD
Kirk Hines, ODNR-DSWR
Andy Ety, Engineer -DLEP
Jim Young, Inspector -DLEP

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August 1, 2013

Irish Acres Dairy, LLC
11053 SR 705
Sidney, Ohio 45365

Certified Mail No. 91 7108 2133 3939 4681 9960

Irish Acres Dairy, LLC
Attn: Paddy Dunne
7170 S 300 W
Berne, Indiana 46711

Certified Mail No. 91 7108 2133 3939 4681 9953

Re: Notice of Violation and Proposed Administrative Penalty

Dear Irish Acres Dairy, LLC:

This letter is to inform you that your facility was recently the subject of a complaint and investigation that was conducted by the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP). At the conclusion of the investigation, ODA found your facility to be in violation of Ohio Laws and your Permit to Operate.

In accordance with Revised Code (R.C) Section 903.16(E), ODA proposes to impose an administrative penalty for a violation of your Permit to Operate (PTO). R.C. 903.16(E) reads, in part:

> (E) In addition to any other penalties imposed under this section, the Director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the Director or the Director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

Your Permit to Operate includes requirements that best management practices and good housekeeping practices shall be utilized and maintained by the operation in accordance with improved engineering plans and/or the Stormwater Pollution Prevention Plans referenced in Ohio Administrative Code (O.A.C.) Rule 901:10-2-04(E). All areas designed or approved to be free of manure shall be maintained as such. There are three (3) manure storage structures at this facility, and the storage structures are identified as Manure Pond #1, Manure Pond #2 and Manure Pond #3. Each of these manure storage structures are designed to store manure. Manure from these storage structures shall be removed and applied in accordance with the approved land application methods contained in O.A.C. Rule 901:10-2-14. Additionally, your Permit to Operate indicates that manure will be applied by a custom manure applicator, and through use of an Aerway dragline system. Manure will be incorporated immediately after application, unless applied over a growing crop (such as alfalfa).

On June 27, 2013, the ODA-DLEP inspector, Christine Pence, conducted an inspection of your facility as a result of a complaint filed with Ohio Environmental Protection Agency, Division of Environmental Response and Revitalization (OEPA-DERR) on June 24, 2013. On that date, OEPA-DERR was notified by a caller regarding discolored liquid discharging from a field tile into a stream. During the inspection, Christine Pence discovered that your facility had improperly removed manure from Manure Pond #1. Equipment owned by the custom manure applicator was used by your facility to intentionally pump

manure over the embankment of Manure Pond #1, and onto a small grassy area adjacent to "N.Dairy" field (in PTO). An estimated 400,000 gallons of liquid manure was removed from Manure Pond #1 and placed in an area of less than one acre in size adjacent to Manure Ponds #1 and #3. The manure was removed in a manner to cause ponding, and there were no attempts to utilize best management practices or to properly land apply the liquid manure in compliance with rule requirements or the PTO.

Improper land application of manure is a violation of O.A.C. Rule 901:10-2-14. This rule establishes best management practices that govern land application of manure on land application areas. The land application of manure at each land application area shall be conducted to utilize nutrients at agronomic rates, and to minimize nutrient runoff to waters of the state and shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

As a result of the violations noted herein, ODA proposes to impose an administrative penalty of five thousand dollars ($5,000.00) upon Irish Acres Dairy, LLC.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: David Gorman, ODA Legal Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3300, telephone (614)728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on August 1, 2013.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called. You may present evidence and examine witnesses appearing for and against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider it a waiver of your right to an administrative hearing and may issue a final order without a hearing. If you have questions, please contact Mr. David Gorman, ODA Legal Counsel, at (614)728-6430.

Please be aware, the alleged violations and proposed penalties contained herein reflect only the violations of Revised Code Chapter 903 and Ohio Administrative Code Chapter 901:10; this notice, in no way reflects any violations of other Ohio or federal laws. Applicable other Ohio state agencies or agencies of the federal government may still take civil and/or criminal action against you for violations of their respective laws as a result of the discharge.

Sincerely,

Kevin Elder,
Chief, Division of Livestock Environmental Permitting

cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Shelby SWCD
Michael L. Rodgers, Chief Legal Counsel
Christine Pence, Inspector, ODA-DLEP
Andy Ety, Engineer, ODA-DLEP

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August 1, 2013

Irish Acres Dairy, LLC
11053 SR 705
Sidney, Ohio 45365

Certified Mail No. 91 7108 2133 3939 4681 9939

Irish Acres Dairy, LLC
Attn: Paddy Dunne
7170 S 300 W
Berne, Indiana 46711

Certified Mail No. 91 7108 2133 3939 4681 9946

Re: Notice of Deficiencies (NOD)

Dear Irish Acres Dairy, LLC:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Irish Acres Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Irish Acres Dairy, LLC has violated Permit to Operate (PTO) 75-150-POT-002. ODA has determined that Irish Acres Dairy, LLC has failed to comply with rules 901:10-2-08, 901:10-2-14, 901:10-2-16 and 901:10-2-17 of the Ohio Administrative Code (O.A.C.).

I. VIOLATION: VEGETATION MAINTENANCE

During an inspection on July 16, 2013, the DLEP inspector noted the following violations:

> Vegetation around liquid manure storage structures has not been properly maintained. Vegetation was approximately 24-36 inches high. This is a violation of O.A.C. 901:10-2-08(A)(4)(k). Pond or lagoon areas are to be kept mowed and accessible unless these areas are grassed waterways or buffers that manage precipitation and runoff.

CORRECTIVE ACTIONS REQUIRED

You have **14** days from the date on this letter within which you must correct each of these deficiencies by:

1. Performing required maintenance/mowing of vegetation around the manure storage structures. These areas shall be properly maintained thereafter.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category II and the gravity of the violation as low. Therefore, if Irish Acres Dairy, LLC fails to comply with the Corrective Actions required above, Irish Acres Dairy,

LLC will be subject to the assessment of a civil penalty in the amount of up to $800.00 for each violation for each day from the date of the initial failure to address the required items.

II. VIOLATION: RECORDKEEPING

1. Soil test data for land in the MMP, specifically where manure was land applied in 2013, was outdated. The most recent soil test information for fields where manure was applied so far in 2013 was from May, 2009. No current soil tests were available for review. Manure application rate shall be based on the land application area's soil tests conducted in accordance with rule 901:10-2-13 of the Administrative Code and that are no older than three years.
2. No manure samples had been collected or analysis performed prior to removal of the manure from Manure Pond #1. The manure application rate shall be based on the most current manure test results conducted in accordance with rule 901:10-2-10 of the Administrative Code. The manure test results expressed as a nutrient percentage shall be converted into either pounds per ton of dry or wet manure or pounds per one thousand gallons of liquid manure. At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids.
3. Manure application records for manure applied thus far in 2013 were incomplete. Many of the areas of the manure application form have been left blank. Specifically, the following information was not documented:

   a. Periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.
   b. Land application areas as described on a soil survey map.
   c. Records of the cropping schedule for each land application area for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year.
   d. Date, rate, quantity and method of application of the nutrient, and/or form and source of manure, commercial fertilizer and/or other organic by-products.
   e. Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied.
   f. Condition of soil at the time of application including, but not limited to, available water capacity and evidence of soil cracks and related information on soil conditions.
   g. Temperature, including general weather conditions at time of application and for twenty-four hours prior to and following application.

CORRECTIVE ACTIONS REQUIRED

The following corrective actions shall be completed by the dates provided:

1. Gathering current (less than three years old) soil test data for those fields where manure has been applied or will be applied in 2013. If soil samples have not been collected yet for those fields planned to receive manure in 2013, samples shall be collected and soil test results maintained in the facility's operating records for review by the ODA-DLEP Inspector by no later than November 15, 2013.
2. Collect representative samples of manure from each of the three manure storage ponds. These samples shall be taken and results of those analyses shall be submitted to ODA-DLEP by no later than September 1, 2013. Copies of those results shall also be maintained in the facility's operating records.

3. Documenting all required information on the manure application record form for each manure application event that has taken place in 2013. These records shall be complete and made available to ODA-DLEP by no later than September 1, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category III and the gravity of the violation as low. Therefore, if Irish Acres Dairy, LLC fails to comply with the Corrective Actions required above, Irish Acres Dairy, LLC will be subject to the assessment of a civil penalty in the amount of up to $200.00 for each violation for each day from the date of the initial failure to address the required items.

III. VIOLATION: EMERGENCY RESPONSE PLAN

ODA-DLEP was not properly notified about the manure discharge that occurred as a result of improper manure removal from the facility. The facility's Emergency Response Plan provides procedures for reporting as described below:

(a) The owner or operator shall report by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence of the following:
(i) The times at which the discharge or manure spill occurred and was discovered;
(ii) The approximate amount and the characteristics of the discharge or manure spillage;
(iii) The waters of the state affected by the discharge or spillage;
(iv) The circumstances which created the discharge or spillage;
(v) The names and telephone numbers of persons who have knowledge of these circumstances;
(vi) Those steps being taken to clean up the discharge or spillage; and
(vii) The names and telephone numbers of persons responsible for the cleanup.
(b) For any emergency that requires immediate reporting after normal business hours, contact the Ohio department of agriculture's emergency telephone number.
(c) If applicable, the owner or operator shall notify appropriate local authorities.
(d) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence, unless the director allows an extension of time or waives the reporting requirement. This report shall outline the actions taken or proposed to be taken to correct the problem and to ensure that the problem does not recur.

CORRECTIVE ACTION REQUIRED

You have 14 days from the date on this letter within which you must correct this deficiency by submitting a completed Manure Spill Report to ODA-DLEP. You must also review and update the facility's Emergency Response Plan to ensure all information is current. Provide ODA-DLEP with a copy of those changes.

PENALTY ASSESSMENT

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

category of seriousness of the violation as Category I and the gravity of the violation as medium. Therefore, if Irish Acres Dairy, LLC fails to comply with the Corrective Actions required above, Irish Acres Dairy, LLC will be subject to the assessment of a civil penalty in the amount of up to $3,200.00 for each violation for each day from the date of the initial failure to address the required items. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

IV. VIOLATION: OVERPOPULATION OF COW NUMBERS

During inspections conducted on March 19, 2013 and July 16, 2013, your facility was housing more animals than the permitted design capacity. The unauthorized addition of mature dairy cows in excess of the permitted design capacity is a violation of the facility's Permit to Operate. A Notice of Deficiency Letter was issued to Irish Acres Dairy, LLC on March 22, 2013 due to the overpopulation of animals and the animal population was lowered; however, during the inspection on July 16, 2013, animal numbers had again increased to above the permitted number. If Irish Acres Dairy, LLC wishes to increase the facility's design capacity, then you must submit a request, and receive approval, for either a Major Operational Change or Permit to Install PRIOR to stocking more cows/heifers than allowed per the Permit to Operate.

CORRECTIVE ACTION REQUIRED

You have 14 days from the date on this letter within which you must correct this deficiency by reducing the number of animals to comply with the facility's PTO. The barns and cow inventory will be re-inspected for compliance.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. Therefore, if Irish Acres Dairy fails to comply with the Corrective Actions required above, Irish Acres Dairy, LLC will be subject to the assessment of a civil penalty in the amount of up to $3,200.00 for each violation for each day from the date of the initial failure to address the required items. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

Following each of the compliance deadlines noted above, a DLEP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If Irish Acres Dairy, LLC fails to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please be aware, the alleged violations and proposed penalties contained herein reflect only the violations of Revised Code Chapter 903 and Ohio Administrative Code Chapter 901:10; this notice, in no way reflects any violations of other Ohio or federal laws. Applicable other Ohio state agencies or agencies of the federal government may still take civil and/or criminal action against you for violations of their respective laws as a result of the discharge.

Please feel free to direct any questions concerning this NOD to the Division of Livestock Environmental Permitting.

Sincerely,

Kevin Elder
Chief, Division of Livestock Environmental Permitting

Cc: Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector
Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Michael L. Rodgers, Chief Legal Counsel
Cathy Alexander, OEPA
Shelby SWCD

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August 30, 2013

Napoleon Dairy, LLC
V 624 Co. Rd. 16
Napoleon, OH 43545

Certified Mail
91 7108 2133 3939 4695 6146

Re: **Warning Letter**

Dear Mr. Van Bakel,

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on August 22, 2013. On that date, staff from the Ohio Department of Agriculture, Division of Livestock Environmental Permitting (ODA-DLEP) inspected the freeboard allowance at your facility and found the manure pond to be above maximum operating level.

Rule 901:10-2-08(A)(4)(a) of the Administrative Code states:

"The operating level must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional one foot of freeboard"

During the inspection, ODA staff observed that your manure pond was 3 inches above Maximum Operating Level (MOL). Manure must be removed and liquid level lowered below MOL by September 10, 2013.

As the dairy has had a history of MOL violations, by December 1, 2013, sufficient manure must be removed to provide storage until July 15, 2013. In addition, the inspection report dated May 15, 2013 requires that solids removal from the bottom of the manure pond be completed by November 15, 2013.

Failure to observe the stated deadlines may result in escalated enforcement action.

Sincerely,

Kevin H. Elder
Executive Director, Division of Livestock Environmental Permitting

Cc: Wilfred Peters, Napoleon Dairy Manager
Mark Fritz, ODA-DLEP
Henry SWCD
Kirk Hines, ODNR-DSWR

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September 4, 2013

RWJC, LLC
9100 Smucker Road
Smithville, Ohio 44677

Certified Mail
91 7108 2133 3939 4695 6481

Re: Notice of Deficiencies Resulting in Noncompliance - Failure to Submit Request for Approval
County Line Egg Farm - PTO: 76-072-PTO-001

Dear Rick and Wendy Breneman and John and Connie Surber:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), RWJC, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). RWJC, LLC has violated Permit to Operate (PTO) 76-072-PTO-001 by failing to comply with Appendix to Rule 901:10-1-09 of the Ohio Administrative Code (O.A.C.).

VIOLATION: FAILURE TO SUBMIT PLANS FOR APPROVAL OF MAJOR OPERATIONAL CHANGE.

ODA has determined that O.A.C. 901:10-1-09 has been violated. Specifically, O.A.C Appendix of Rule 10-1-09, Operational Changes, requires that plans for any Major Operational Change (MOC) be submitted to ODA for review and approval prior to commencing construction. A Major Operational Change (MOC) is considered as follows: "Changes or addition of any manure storage or treatment facility, change in animal species or size, that is less than 10 percent increase in design capacity. Any additional manure storage volume generated less than 10 percent from the permitted design capacity including contaminated stormwater."

During a routine inspection on August 26, 2013, an inspector from ODA's Livestock Environmental Permitting (DLEP) discovered that a new egg processing plant is being constructed at your County Line Eggs' facility. As a portion of this additional construction, eggwash will be a by-product of cleaning the eggs. Eggwash water is classified as manure and an underground eggwash storage tank has been installed to store the eggwash water without any prior approval by ODA-DLEP. In addition, you have created a liquid manure source at the facility that is not part of your Permit to Operate and associated manure management plan.

CORRECTIVE ACTIONS REQUIRED

RWJC, LLC is required to submit a Major Operational Change request to ODA-DLEP by no later than September 16, 2013. The plan shall include all the information required to be submitted for a MOC as described in 901:10-1-09, as well as the $500 MOC fee. The submittal shall also clearly describe how the liquid waste will be handled and addressed in the Manure Management Plan portion of your existing Permit to Operate. Lastly, the egg processing plant, or any item

already constructed with this operation, shall not be used or put into operation until written approval is granted by ODA-DLEP.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Major, or Category I, and the gravity of the violation as low. Therefore, should RWJC, LLC fail to comply with the Corrective Actions required above, RWJC, LLC will be subject to the assessment of a civil penalty in the amount up to $1600.00 per day. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

Please feel free to contact this office if you have questions of what is required of you to resolve the violations documented in this Notice of Deficiencies. I look forward to your cooperation in this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: Tracy Joyner – County Line Eggs
Andy Ety - DLEP Engineer
Jim Young - DLEP Inspector
Kelly, McCloud - Assistant Attorney General, Ohio Attorney General's Office
Carolyn Gabric – Stark SWCD

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September 23, 2013

Shockney & Son, Inc.
J.M. Shockney
7473 E. 100 South
Union City, IN 47390

Certified Mail:

91 7108 2133 3939 4662 5622

Re: Notice of Deficiency (NOD)
Permit to Install #: 19-149-PTI-001

Dear Shockney & Sons, Inc.,

Pursuant to Ohio Department of Agriculture's ("ODA") authority under Section 903.16 of the Ohio Revised Code ("O.R.C"), Shockney & Sons, Inc. is hereby issued a Notice of Deficiency Resulting in Noncompliance ("NOD"). Shockney & Sons, Inc. have violated Permit to Install ("PTI") 19-149-PTI-001. ODA has determined that Shockney & Sons, Inc. have failed to comply with Rule 901:10-2-01(B)(4) of the Ohio Administrative Code ("O.A.C").

I. VIOLATION: UNAUTHORIZED STOCKING OF ANIMALS

On September 18, 2013, an ODA-DLEP Inspector conducted an inspection of your facility. During that inspection, the ODA-DLEP Inspector discovered your facility housed 2,000 hogs. The Inspector was informed that 2,000 hogs were stocked on September 14, 2013, and an additional 2,000 hogs were to be stocked on September 21, 2013, which brings the facility to the permitted capacity of 4,000 hogs. This unauthorized stocking of hogs is a violation of the terms and conditions of PTI 19-149-PTI-001 and O.A.C Rule 901:10-2-01(B)(4).

In accordance with the administrative procedures for a PTI contained in O.A.C. Rule 901:10-2-01(B)(4), upon completion of the construction of manure storage or treatment facilities, and prior to receiving authorization to stock animals, the owner or operator must perform the following required actions:

a. Submit a notarized statement certifying that the facility was constructed in accordance with design plans submitted to the department;

b. Submit a set of completed and approved set of as-built plans to demonstrate compliance with O.A.C. Rule 901:10-2-05(A) or Rule 901:10-2-06(A), and any other construction documents required by the terms and conditions of the approved PTI; and

c. An ODA-DLEP representative must inspect the facilities after construction is completed.

On August 30, 2013, ODA received the required as-built plans. On September 9, 2013, ODA received the required notarized statement. However, the following required documentation has not been submitted and received by the department, and the following construction activities have not been completed:

a. Documentation of subgrade evaluation and proof-rolling as require by the PTI;

b. A Contractor Daily Log as required by the PTI, which shall include pictures of construction documenting compliance with the approved PTI;

c. Concrete batch tickets to document that the concrete specifications were met as approved; and

d. Extension of the perimeter drain inspection ports, installation of caps on the ports, and installation of the final inspection port at the northeast corner of the facility as discussed during a compliance inspection conducted on September 4, 2013.

CORRECTIVE ACTIONS REQUIRED

You have until **September 30, 2013,** to correct each of the above deficiencies by performing the following action(s):

1. Submitting the required construction documentation and complete any remaining construction items or totally depopulate the facility with swine.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category I (Major) and the gravity of the violation as low. Therefore, if Shockney & Sons, Inc. fails to comply with the Corrective Actions required above, Shockney & Sons, Inc. will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each violation for each day from the date of the initial failure to address the required items.

Following the compliance deadline noted above, an ODA-DLEP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the terms and conditions of the PTI, and with the deadline of this Notice. If Shockney & Sons, Inc. fails to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please be aware, the alleged violations and proposed penalties contained herein reflect only the violations of Revised Code Chapter 903 and Ohio Administrative Code Chapter 901:10. This Notice does not address violations of other Ohio or federal laws that may have occurred.

Applicable other Ohio state agencies or agencies of the federal government may still take civil and/or criminal action against you for violations of their respective laws if warranted.

Please feel free to direct any questions concerning this NOD to the Division of Livestock Environmental Permitting.

Sincerely,

Kevin Elder,
Division Chief

cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Michael L. Rodgers, Chief Legal Counsel
Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector

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September 24, 2013

LDT Keller Farms, LLC
Dan Keller
841 Burketsville-St. Henry Road
Fort Recovery, Ohio 45846

Re: Notice of Deficiency (NOD)
Permit to Operate: PTO: 54-141-PTO-001

Dear Mr. Keller,

Pursuant to Ohio Department of Agriculture's ("ODA") authority under Section 903.16 of the Ohio Revised Code ("O.R.C"), LDT Keller Farms, LLC is hereby issued a Notice of Deficiency Resulting in Noncompliance ("NOD"). LDT Keller Farms, LLC have violated Permit to Operate ("PTO") 54-141-PTO-001. ODA has determined that LDT Keller Farms, LLC have failed to comply with Rule 901:10-2-01(B)(4) of the Ohio Administrative Code ("O.A.C").

I. VIOLATION: UNAUTHORIZED USE OF SILAGE STORAGE PAD

On September 24, 2013, an ODA-DLEP Inspector conducted an inspection of your facility. During that inspection, the ODA-DLEP Inspector discovered that a recently constructed silage storage pad was in use and storing silage. This unauthorized use of the pad is a violation of the terms and conditions of PTO 54-141-PTO-001, O.A.C Rule 901:10-2-01(B)(4) and the Major Operational Change (MOC) dated March 11, 2013.

In accordance with the administrative procedures for a PTO and/or a MOC contained in O.A.C. Rule 901:10-2-01(B)(4), upon completion of the construction of manure storage or treatment facilities or the installation of a system that will increase manure production (i.e.: silage leachate/runoff), and prior to receiving authorization to use the facility, the owner or operator must perform the following required actions:

a. Submit a notarized statement certifying that the facility or structure was constructed in accordance with design plans submitted to, and approved by, the department;

b. Submit a set of completed and approved set of as-built plans to demonstrate compliance with O.A.C. Rule 901:10-2-05(A) or Rule 901:10-2-06(A), and any other construction documents required by the terms and conditions of the approved PTO; and

c. An ODA-DLEP representative must inspect the facilities after construction is completed.

The following required documentation has not been submitted and received by the department:

a. Pictures of construction documenting compliance with the approved MOC.

b. A set of as-built plans and construction documentation demonstrating the pad and collection system was installed as approved. Documentation to include survey shots on pad to show drainage and show the pipe/berming that has been installed.

CORRECTIVE ACTIONS REQUIRED

You have until **October 10, 2013** to correct each of the above deficiencies by submitting the required construction documentation.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category I (Major) and the gravity of the violation as low. Therefore, if LDT Keller Farms, LLC fails to comply with the Corrective Actions required above, LDT Keller Farms, LLC will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for this violation for each day from the date of the initial failure to address the required items.

Following the compliance deadline noted above, ODA-DLEP will determine whether you have returned to compliance with ODA's rules, with the terms and conditions of the PTO, and with the deadline of this Notice. If LDT Keller Farms, LLC fails to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please be aware, the alleged violations and proposed penalties contained herein reflect only the violations of Revised Code Chapter 903 and Ohio Administrative Code Chapter 901:10. This Notice does not address violations of other Ohio or federal laws that may have occurred. Applicable other Ohio state agencies or agencies of the federal government may still take civil and/or criminal action against you for violations of their respective laws if warranted.

Please feel free to direct any questions concerning this NOD to the Division of Livestock Environmental Permitting.

Sincerely,

Kevin Elder,
Division Chief

cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Michael L. Rodgers, Chief Legal Counsel
Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector

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September 30, 2013

Bruce Mikesell
B.A. Mikesell, Inc.
2129 Stephens Rd.
New Madison, Oh 45346

RE: Complaint Investigation- McCullough/Martin

Dear Mr. Mikesell:

This letter is to document the Ohio Department of Agriculture, Division of Livestock Environmental Permitting's follow-up of a manure/beetle complaint received on August 30, 2013 and the subsequent investigation on the same day. A summary of the investigation is included below, with a detailed report of the investigation attached.

As a Certified Livestock Manager (CLM), you are responsible for the placement, inspection, treatment and application of manure in compliance with ODA Rules. You followed the basic ODA Rules for the management of stockpiled manure, however; the ODA-DLEP Inspector observed moderate levels of live darkling beetles in and around a residence. Once stockpiles are placed in the field, they need to be monitored more closely for any insects, including darkling beetles, and treated accordingly. It is recommended to investigate additional methods for the treatment of insects (beetles) on and around manure stockpiles, especially if the current method is not completely effective. It is recommended that you visually inspect the manure prior to removal from the source and reach an agreement with the poultry producer to have manure treated prior to or during removal.

ODA permitted facilities are required to comply with their Permit to Operate and Insect & Rodent Control Plan. The facility's Insect & Rodent Control Plan outlines specific measures to be taken for insects and may also include specific language for beetle control. ODA permitted facility's employees must monitor and evaluate manure prior to clean out to determine what action is needed for beetle control. Throughout ODA-DLEP's inspections of poultry houses, darkling beetle populations will continue to be carefully evaluated.

Please assure that the issues noted in the attached investigation report are prevented in the future. We take these issues seriously and appreciate your prompt correction and cooperation throughout this matter. If future complaints occur, commencement of enforcement actions could possibly result in monetary penalties.

Respectfully,

Christine Pence

Christine Pence
Livestock Environmental Inspector

Enclosure

CC: Tim Weaver, Weaver Bros. Inc.
Steve Langston, Weaver Bros. Inc.
Marlene McCullough
Haley Martin
Darke SWCD

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September 30, 2013

Weaver Brothers, Inc.
Tim Weaver
P.O. Box 333
Versailles, Ohio 45380

RE: Warning Letter - Insect & Rodent Control Plan

Dear Mr. Weaver:

This letter is to document the Ohio Department of Agriculture, Division of Livestock Environmental Permitting's follow-up of a manure/beetle complaint received on August 30, 2013 and the subsequent investigation on the same day. This letter serves also to inform you of violations of the Permit to Operate (PTO) that were found as a result of the complaint investigation, stockpile inspection and routine inspection.

On August 8, 2013, manure from Weaver Bros. Inc. was sold and transferred to a Certified Livestock Manager (CLM), B.A. Mikesell. On August 30, 2013, ODA-DLEP Inspector Christine Pence received a resident's complaint regarding darkling beetles. As a result of the complaint that was reported and investigated on August 30, 2013, Mr. Mikesell, the recipient/applicator and CLM, followed the basic ODA Rules for the management of stockpiled manure, however; the ODA-DLEP Inspector observed moderate levels of live darkling beetles in and around a residence. Mr. Mikesell was reminded that once stockpiles are placed in the field, they need to be monitored more closely for any insects, including darkling beetles, and treated accordingly. It is recommended to investigate additional methods for the treatment of insects (beetles) on and around manure stockpiles, especially if the current method is not completely effective.

On September 6, 2013, the ODA-DLEP Inspector investigated a site with stockpiled manure that originated from Dew Fresh on August 8, 2013, that was treated for insects once after the pile was stacked. At that location, the pile was properly placed and stacked. There was a crust over the pile and evidence insecticide had been applied, with dead beetles observed around the base of the pile. There were, however; a *moderate-abundant number of beetles alive inside and around the outside of the pile under clumps of manure and crop residue. The purpose of this visit was to evaluate the level of insects remaining in the manure after removal from the poultry house. It was determined that if the manure is being treated prior to removal from the barns, then more aggressive action is definitely warranted.

On September 18, 2013, ODA-DLEP conducted routine inspections at Weaver Bros. Inc. facilities which included A1, Dew Fresh, Pullet and Stillwater Pullet. Each of the facility's weekly I&R records show the weeks manure was sprayed once prior to removal; however, the specific day of treatment was not documented, but it was discussed this needs to be done. As a result of ODA's inspection, manure that is being treated prior to removal from the barns warrants more aggressive action. Monitoring of beetle levels prior to and during manure removal is not currently occurring. Ongoing monitoring and treatment will be necessary by the recipient.

**Moderate –Two to 50 adults per square foot found in half or more of the sample locations. Abundant – Fifty to hundreds of adults per square foot found in 90 percent or more of the sample locations; clusters of hundreds of adults and masses of larvae present.*

As an ODA permitted facility and the source of the manure specifically in this complaint, Weaver Bros. Inc.'s Dew Fresh facility is required to comply with its Permit to Operate, which includes the Insect & Rodent Control Plan. Weaver's Insect & Rodent Control Plan outlines specific measures to be taken for insects and includes specific language for beetle control. The plan includes that if beetles are present at manure clean out time, manure will be treated to kill beetles prior to hauling or application. The plan also indicates that Darkling beetles are monitored while hauling and stockpiling.

As a result of the investigation on August 30; the stockpile inspection on September 6; and the routine inspection of Weaver facilities on September 18, 2013, it appears that Weaver Bros. Inc., Dew Fresh facility has not properly implemented portions of its Insect & Rodent Control Plan, specifically for beetle control prior to removal of manure. Weaver Bros. Inc. employees must carefully review and implement the terms within the Permit to Operate. Employees must monitor and evaluate manure more closely prior to clean out to determine what action is needed for beetle control. Any change in the existing Insect & Rodent Control plan requires a request for a Major Operational Change submitted to ODA-DLEP.

Partial inspections will be conducted during manure removal at the aforementioned Weaver facilities to assure all of the aforementioned items have been addressed. Please assure that the issues noted herein are prevented in the future. We take these issues seriously and appreciate your prompt correction and cooperation. If future complaints occur, commencement of enforcement actions could possibly result in monetary penalties.

Respectfully,

Kevin Elder,
Division Chief

Enclosure

CC: Steve Langston, Weaver Bros. Inc.
Christine Pence, ODA-DLEP
Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Michael L. Rodgers, Chief Legal Counsel
Marlene McCullough
Darke SWCD

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October 4, 2013

Napoleon Dairy LLC
V 624 Co. Rd.16
Napoleon, Ohio 43545

Re: Warning Letter - Permit to Operate Renewal
PTO: PET-0001.PO001.HENR

Gentlemen:

This letter serves as a Warning Letter for failure to complete the submission of a Permit to Operate (PTO) renewal application within a reasonable amount of time and prior to the expiration date of your existing PTO. The existing Permit to Operate (PTO) you are currently operating under technically expired on July 16, 2013 and may formally expire if the PTO renewal application is not complete in a timely fashion.

On January 16, 2013, the initial PTO renewal application was received. On January 25, 2013, comments were sent out to North Point Engineering and Napoleon Dairy, LLC. The comments were re-sent to Wilfred Peters and to Rene van Bakel in April, 2013. A meeting held on May 15, 2013 with Rene vanBakel, Wilfred Peters, Mark Fritz and Gary Zwolinski to discuss the issues that needed to be addressed to complete the PTO renewal. At that time, the soil tests for land that the dairy applied manure to were needed and it was stressed to obtain these samples as soon as possible. Also, the expiration (July 16, 2013) of the PTI for this facility was also discussed. The possibility of extending the PTI would be at the Director's discretions, but an active PTO would be necessary before an extension would be considered.

On May 31, 2013, updated information on the ownership of Napoleon Dairy was received from Hen Smit and on September 3, 2013, some information was received from North Point Engineering. On July 18, 2013 a letter outlining the results of the first 2013 inspection was sent to Napoleon Dairy and in it was a reference to the need for soil samples to be sent to this office. To this date, no updated information has been received from Napoleon Dairy in regards to the manure management plan.

It is imperative ODA receive a completed PTO renewal application **no later than November 8, 2013.** Please be advised that failure to produce the required information by this deadline could result in enforcement proceedings that could result in penalties against Napoleon Dairy, or even denial of any Permit to Install extension request. If you have any questions or concerns, please feel free to call me.

Respectfully,

Kevin Elder
Division Chief

Cc: Mark Fritz, ODA-DLEP Inspector
Kelly McCloud, Ohio Attorney General's Office
Gary Zwolinski, Livestock Environmental Engineer, ODA-DLEP

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October 16, 2013

Mills Dairy Farm, LLC
C/o Greg Mills
2145 Twp Road 757
Perrysville, Ohio 44864

91 7108 2133 3939 4695 6207

Re: Notice of Deficiencies – Failure to Obtain Permits

Dear Mr. Mills,

This letter is to summarize what was found at your facility on September 30, 2013 by the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP) staff. Based on my staffs inspection, it was concluded your facility is in violation of Ohio law. Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.02 and 903.03 of the Ohio Revised Code (O.R.C.), Mills Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Mills Dairy has failed to comply with rule 901:10-1-02 of the Ohio Administrative Code (O.A.C.).

I. VIOLATION: OVERPOPULATION OF COW NUMBERS

During the inspection on September 30, 2013, your facility was housing between 900 and 1,000 lactating and dry cows. A facility in excess of 700 lactating and dry cows, without first having a valid Permit to Install and Permit to Operate (PTI/PTO), is a violation of O.R.C. Chapter 903. In a letter sent to Mills Dairy Farm on January 12, 2012, the Department of Agriculture warned you that, "given the facility's desire to expand at this location and the resource concerns identified that need to be corrected, Mills Dairy shall complete a Permit to Install and Permit to Operate application that shall be submitted to ODA-LEPP by no later than July 1, 2012." The January 12, 2012 letter went on to state that if Mills Dairy did not submit a complete PTI/PTO application by July 1, 2012 and failed to stay consistently below the design capacity and animal stocking limits of 699 mature dairy cows and 999 on young stock, ODA-LEPP will consider escalated enforcement, to include referral of this matter to the Ohio Attorney's General Office."

CORRECTIVE ACTION REQUIRED

You have until November 1, 2013 within which you must correct this deficiency by reducing the number of lactating and dry cows at the facility to less than 700 head, or have a completed Permit to Operate (PTO) and Permit to Install (PTI) application submitted to ODA-DLEP. If complete applications are not received by ODA-DLEP on or before November 1, 2013, the cow inventory will be re-inspected by ODA for compliance.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the

amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a first violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. Therefore, if Mills Dairy fails to comply with the Corrective Actions required above, Mills Dairy will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each violation for each day from the date of the initial failure to address the required items. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

The submittal of a completed PTO and PTI application or the re-inspection by the DLEP staff will determine whether you have returned to compliance and with the requirements of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to contact this office with any concerns or questions as to what may be expected from Mills Dairy in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Andy Ety - DLEP Engineer
Jim Young - DLEP Inspector
Mark Fritz – DLEP Inspector
Mike Rodgers, ODA Chief Legal Counsel
Kelly McCloud - Assistant Attorney General, Environmental Enforcement

Ohio Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
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October 22, 2013

Tom Hertzfeld
Hertzfeld Poultry Farms
15799 Milton Road
Grand Rapids, Ohio 43522

Re: Warning Letter – Failure to conform to the Insect and Rodent Control Plan
Hertzfeld Poultry Farms – Permit to Operate #: 87-085-PTO-0002

Tom:

This letter serves to inform you of violations of your Permit to Operate (PTO) that were found during our inspection on October 3, 2013. These violations are listed below and require your immediate attention:

- The IRCP of the PTO states that the pits will be walked daily and repairs made daily to any water leaks. The water leaks in Barns A and B were abundant and the size of the puddles and collection of wet manure were indicative of neglecting the daily pit inspections for water leaks.
- The IRCP of the PTO stated that pit fans will be used and repaired as needed to dry the manure. Barns A and B showed signs of high moisture manure (not including the very wet manure due to water leaks) and many pit fans were inoperative. Additional pit fans may be necessary in these barns to obtain enough airflow to provide sufficient drying of this manure.
- The fly control management plan in the PTO stated that manure below 30% moisture does not allow any appreciable fly breeding. Hertzfeld Poultry Farms acknowledges that the facility has an issue with mineral salts in their groundwater. These salts do affect the quality of the stored manure. With the numerous clusters of flies that were observed in the pits of barns A and B, attention must be given to treating the water to reduce the salt, reduce water leaks and therefore reduce the manure moisture.

An additional inspection was performed on October 16 which showed a reduction in flies and additional fans in use to increase the air flow. Abundant water leaks were still observed in both Building A and B.

Immediate action must be given to these issues to reduce the flies at Hertzfeld Poultry Farms. A partial inspection will be conducted at this facility by November 8 to assure all of the aforementioned items have been corrected. It should also be noted that conditions such as these are what created the situation at Buckeye Egg some years ago. Failure to correct the violations listed above could result in escalated enforcement.

Should you have any questions about this Warning Letter, please direct them to ODA-DLEP inspector Mark Fritz at 614-282-9729 or via email at mfritz@agri.ohio.gov. You may also contact Gary Zwolinski at 614-728-4215 or via email at gzwolinski@agri.ohio.gov.

Sincerely,

Kevin Elder
Division Chief

Cc: Kelly McCloud – Assistant Attorney General, Ohio Attorney General's Office
Mark Fritz – ODA-DLEP
Gary Zwolinski – ODA DLEP

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October 23, 2013

Frisian Hijma Dairy LLC
Johannes and Sybolt Hijma
12464 Rd. 100
Kenton, OH 43326

91 7108 2133 3939 4662 5615

Certified Mail Return

Re: Director's Notice of Deficiency Resulting in Noncompliance
Permit to Operate: 33-055-PTO-002 and Ohio Administrative Code Requirements

Gentlemen:

Pursuant to Ohio Revised Code (O.R.C.) Section 903.16(A)(1), the Ohio Department of Agriculture hereby issues this Notice of Deficiency (NOD) as a result of your noncompliance with Ohio Administrative Code (O.A.C.) Section 901:10-2-08 and noncompliance with your Permit to Operate (PTO) 33-055-PTO-002.

VIOLATION: FREEBOARD MAINTENANCE FOR MANURE STORAGE OR TREATMENT FACILITIE

ODA has determined that O.A.C. §901:10-2-08 and PTO 33-055-PTO-002 have been violated. Specifically, O.A.C. §901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. §901:10-3-02 to §901:10-3-06, plus an additional one foot of freeboard. O.A.C. §901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and documented in the operating record. PTO 75-150-PTO-002 also requires the permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level.

During a Division of Livestock Environmental Permitting (DLEP) visit on October 18, 2013, one of the earthen manure storage facilities at Frisian Hijma Dairy was found to be above Maximum Operating Level. Specifically, the liquid level in the Manure Pond was at least 6 inches above Maximum Operating Level (MOL).

CORRECTIVE ACTIONS REQUIRED

The level within the Manure Pond shall be lowered below the Maximum Operating Level as provided in the PTO, by **no later than November 1, 2013**. You must maintain all required records of manure application or distribution of the manure and these records shall be made available to the DLEP inspector at the date of re-inspection on or after November 1, 2013.

PENALTY ASSESSMENT

Pursuant to O.A.C. §901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. §901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. §901:10-5-04(D), (E) and (G). Based upon this review, ODA has determined that the violation has been cited multiple times, with a category of seriousness as Category I, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $3,200.00 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The re-inspections by the DLEP Inspector will determine whether you have returned to compliance with Ohio law and the PTO requirements by the deadlines imposed in this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

ADDITIONAL WARNING NOTICE

While not a part of this notice of deficiency, I need to point out as an additional warning, to ensure continued compliance with O.A.C. §901:10-2-08, enough liquid manure shall be removed from both storage ponds by November 15, 2013 to provide sufficient storage until May 15, 2014. ODA-DLEP will re-inspect the facility on, or after, November 15, 2013 to ensure sufficient volume has been removed. In the event that there is not enough storage to prevent application to frozen and/or snow covered ground, you may be subject to additional enforcement actions.

Please feel free to contact this office with any concerns or questions as to what may be expected from Frisian Hijma Dairy in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin Elder,
Division Chief

Cc: Hardin SWCD
ODNR DSWR
Kelly McCloud, Assistant Attorney General
Mike Rodgers, ODA Chief Legal Counsel
Andy Ety, DLEP Engineer
Mark Fritz, DLEP Inspector

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November 18, 2013

Frisian Hijma Dairy, LLC
Sybolt and Johannes Hijma
12464 Rd. 100
Kenton, Ohio 43326

Certified Mail Return Receipt Requested

Re: Director's Notice of an Adjudication Hearing

Gentlemen:

This document is notice that the Director of the Ohio Department of Agriculture ("Director") ("ODA" or "Department"), under the authority of Ohio Revised Code ("O.R.C.") 903.16, proposes to issue an order to Frisian Hijma Dairy, LLC and Sybolt and Johannes Hijma imposing a civil penalty of $41,600 because of the ODA's determination that you have failed to comply with the requirements of Permit to Operate (PTO) 33-055-PTO-002, and with rule 901:10-2-08 of the Ohio Administrative Code (O.A.C.).

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

During inspections conducted by the Division of Livestock Environmental Permitting (DLEP) on April 1, April 5, June 6, July 10, July 18, August 8, August 13, October 18, November 7, November 15, 2013, and November 18, 2013 the following violations were found:

One or both of the two earthen liquid manure storage ponds were discovered to be above the Maximum Operating Level (MOL) anywhere between 1 to 15 inches. On April 4, 2013 and October 23, 2013, respectively, two separate Notices of Deficiency (NOD) were issued to the facility and required the owners or operators to take corrective action to resolve the violations and return to compliance within the specified time periods.

While the requirement in the April 4, 2013 NOD to lower levels of liquid manure in the manure storage ponds below their respective MOL's by April 10, 2013 was met, one or more of these ponds were discovered above the MOL again during inspections conducted on the following dates: June 6, July 10, July 18, August 8, August13, and October 18, 2013. The October 23, 2013 NOD required the level of liquid manure within the manure storage pond to be lowered below the MOL by November 1, 2013. DLEP conducted another inspection on November 7, 2013, and found the manure storage pond to be 11 inches above the MOL, and within 6 inches of overflow. An additional warning notice included as an addendum in the October 23, 2013 NOD required that enough liquid manure be removed from both storage ponds by November 15, 2013 to provide sufficient storage until May 15, 2014. This requirement was not met, as shown by subsequent inspections by DLEP on November 15, 2013 and November 18, 2013.

ODA has determined that O.A.C. 901:10-2-08 and PTO 33-055-PTO-002 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(a) requires that the operating level of manure treatment lagoons and manure storage ponds must not exceed the level that provides adequate storage to contain a precipitation event as required in O.A.C. §901:10-3-02 to §901:10-3-06, plus an additional one foot of freeboard. O.A.C. §901:10-2-08(A)(4) requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and documented in

the operating record. PTO 75-150-PTO-002 also requires the permittee to maintain the manure level in all manure storage or treatment facilities below the Maximum Operating Level.

Based on your failure to correct the noted deficiencies by the required dates, and your failure to return to compliance, the Director is proposing the imposition of a civil penalty in the amount of $41,600.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: Dave Gorman, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6213. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on November 18, 2013.

Please note that if your company is a corporation or limited liability company, only an attorney may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called. You may present evidence and examine witnesses appearing for and against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

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

Sincerely,

Kevin H. Elder, Chief

Cc: Andy Ety – Division of Livestock Environmental Permitting
Mike Rodgers - Chief Legal Counsel, ODA
Kelly McCloud - Assistant Attorney General
Cathy Alexander - Ohio EPA
Mark Fritz - ODA DLEP Inspector
Andy Ety - ODA DLEP Engineer

Ohio Department of Agriculture
State of Ohio

In re: Frisian Hijma Dairy, LLC

Emergency Order No: 2013-311
Frisian Hijma Dairy, LLC
Permit To Operate (PTO) No. 33-055-PTO-002

Frisian Hijma Dairy LLC
12464 Rd. 100
Kenton, OH 43326

Emergency Order

The Ohio Department of Agriculture (ODA) Division of Livestock Environmental Permitting (DLEP) completed an inspection of Frisian Hijma Dairy, LLC on November 7, 2013. This facility is regulated by the ODA pursuant to Chapter 903 of the Ohio Revised Code and under Permit to Operate (PTO) No. 33-055-PTO-002, which was issued to Frisian Hijma Dairy, LLC on October 6, 2009. The current operating level of the manure storage pond, the constant production of manure, the unpredictability of weather conditions, and the inability to demonstrate continual efforts for manure removal have created the serious threat of an overflow necessitating this Emergency Order. Pursuant to ODA's authority under Section 903.18 of the Ohio Revised Code (ORC), the Director has determined that an emergency exists, requiring immediate action to protect public health and the environment. Frisian Hijma Dairy, LLC is hereby ordered to immediately comply with this Emergency Order.

Findings of Fact

ODA-DLEP staff conducted two separate site visits at Frisian Hijma Dairy and found the following:

1. On November 7, 2013, the manure storage pond was approximately 12 inches above Maximum Operating Level (MOL).
2. On November 18, 2013, the manure storage pond was approximately 15 inches above Maximum Operating Level, or approximately 3 inches from overflowing in some locations around the embankment.

I conclude that an emergency exists based on the serious threat of a manure overflow that requires immediate action to protect the public health and the environment.

By the authority vested in my office pursuant to Section 903.18 of the Revised Code, it is hereby

ORDERED that:

1. Frisian Hijma Dairy, LLC shall immediately commence corrective actions to return to compliance with the maximum operating level in the manure storage pond at the facility as required in the Permit to Operate.

2. Frisian Hijma Dairy, LLC shall immediately develop an Emergency Action Plan (EAP) to address daily manure production and runoff from the facility from the date of these Emergency Orders to May 1, 2014. The manure volume generated by Frisian Hijma Dairy, LLC for this time period that will need to be addressed is approximately 5.5 million gallons. **This action plan shall be completed within <u>10 days</u> of the receipt of these Emergency Orders and shall be in accordance with the items below:**

    a. A temporary manure storage structure shall be evaluated at the facility, or at a satellite location, that could be constructed in an environmentally safe manner. Evaluation of such a structure shall immediately commence and siting and geological information shall be provided to ODA-DLEP prior to commencing construction. If constructed, this manure storage structure would only be considered to be temporary and would need to be emptied and properly closed by no later than July 30, 2014, with a closure plan submitted for ODA-DLEP review by no later than March 31, 2014. If a permanent manure storage structure is desired, a complete Permit to Install and Permit to Operate application shall be submitted to ODA-DLEP by no later than March 31, 2014.

    b. Local Waste Water Treatment Plants (WWTP) shall be contacted for additional waste disposal. A list of WWTP's contacted shall be provided in the action plan and a statement as to whether they can, or cannot, receive additional waste. If the WWTP cannot receive additional waste, then a statement as to why they cannot needs to be provided.

    c. Satellite liquid storage facilities shall be evaluated to determine if there is available storage volume that could be utilized by your facility. If satellite storage is available, then provide the gallons of storage available, as well as the location and any contractual arrangements for the transaction.

    d. Within this plan, Frisian Hijma Dairy, LLC may propose to reduce or remove the number of cows at the facility in order to reduce the amount of manure to be handled between now and May 1, 2014.

    e. Manure application on frozen or snow covered ground is not an alternative provided in the plan. All manure application on frozen or snow covered ground shall be prior approved by ODA-DLEP.

3. Frisian Hijma Dairy, LLC shall comply with all terms and conditions contained in the permits and with all applicable laws and regulations.

4. The Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.

5. Frisian Hijma Dairy, LLC shall immediately comply with this order.

6. A certified copy of this order shall be served upon Frisian Hijma Dairy, LLC.

Effective Date of this Order: Upon journalization.

David Daniels, Director
Ohio Department of Agriculture

11/18/2013
Date

Entered, Ohio Department of Agriculture Journal this 18th day of November, 2013, by Carrie Ellis.

Certification

STATE OF OHIO :
:
COUNTY OF LICKING, SS :

I, David Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No. 2013-311,** which was entered upon the order journal of the Ohio Department of Agriculture on the 18th day of November, 2013.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 18th day of November, 2013.

David Daniels, Director
Ohio Department of Agriculture

NOTICE OF APPEAL RIGHTS

This EMERGENCY ORDER takes effect immediately.

Pursuant to R.C. 903.18, this EMERGENCY ORDER may be appealed to the Ohio Department of Agriculture for an administrative hearing. The administrative hearing will be conducted in accordance with R.C. Chapter 119. Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the EMERGENCY ORDER. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: David D. Gorman, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty (30) days of the date of mailing of this notice. This notice is being mailed to you on November 18, 2013.

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

You may present evidence and examine witnesses appearing for and against you, to show cause why these Emergency Order should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Ohio Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

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December 5, 2013

Jeff Ricker
21611 McConnell Road
Spencerville, OH 45887

Alan Ricker
3003 S. Becker Road
Spencerville OH 45887

Re: Jeff and Alan Ricker Swine
Warning Letter – Stocking Animals without Authorization
Permit to Install #81-155-PTI-001/ Permit to Operate #81-155-PTO-001

Gentlemen:

This letter serves to inform you of violations of your Permit to Install (PTI) and Permit to Operate (PTO) that were found during the inspection of your facility on December 4, 2013. During that inspection, it was found that you had completed construction of Finisher Barn 4 and had stocked animals in violation of Ohio Administrative Code (O.A.C) 901:10-2-01.

Specifically, ODA has determined that O.A.C. 901:10-2-01(B)(4)(b) has been violated because you stocked animals without prior authorization from ODA to do so, and you failed to provide ODA the opportunity to conduct the required final construction inspection prior to stocking animals. As the facility owners/operators, you are required to perform the following actions:

1. By December 12, 2013 submit a notarized statement, signed by one or both owners/operators, certifying that the facility was constructed in accordance with the approved permit documents.

2. By December 19, 2013 complete grading and appropriate temporary stabilization to minimize erosion of all areas disturbed by construction.

3. By June 15, 2014 permanent seeding of disturbed areas must be completed or these areas must otherwise be permanently stabilized to prevent erosion.

My staff will perform follow-up inspections of your facility as required to ensure you have returned to compliance and completed the items listed above by the given deadlines. Failure to perform the required actions to correct these violations will lead to escalated enforcement, which include the possibility of monetary penalties or depopulation of the new barn.

Please feel free to direct any questions concerning this Warning Letter to myself or any of my staff. I look forward to your cooperation in correcting these violations.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Van Wert SWCD
Kirk Hines, ODNR-DSWR
Patrick Bailey, Engineer -DLEP
Mark Fritz, Inspector –DLEP
Dan Bruner, Inspector - DLEP

Ohio Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
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January 10, 2014

Certified Mail No.
91 7108 2133 3939 4662 5585

Napoleon Dairy, LLC
V624 County Road 16
Napoleon, OH 43545

Dear Sirs:

The Ohio Department of Agriculture's Division of Livestock Environmental Permitting (DLEP) received a renewal application of the Permit to Operate No. PET-0001.PO001.HENR and a request for an extension of Permit to Install No.PET-0001.PI001.HENR, that were issued on July 16, 2008 for the following facility:

Napoleon Dairy
V624 County Road 16
Napoleon, OH 43545

In accordance with Revised Code Section 903.09, the Ohio Department of Agriculture proposes to deny your further request for an extension of your Permit to Install No. PET-0001.PI001.HENR and to deny your renewal of Permit to Operate No. PET-0001.PO001.HENR.

Revised Code Section 903.09 states, in part,

> (F) The denial, modification, suspension, or revocation of a permit to install, permit to operate, or NPDES permit without the consent of the applicant or permittee shall be preceded by a proposed action stating the director's intention to issue an order with respect to the permit and the reasons for it.
> ...

Rule 901:10-1-02(C) of the Ohio Administrative Code regulates the duration and renewal of ODA permits, and provides as follows:

> (1) Permit to install.
> (a) A permit to install shall expire after twenty-four months unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time.
> (b) The director may extend the expiration of a permit to install upon request of the applicant. An extension, if approved, will be valid for twelve months.
> (c) Any further extensions are at the discretion of the director.

(2) Permit to operate.

(a) A permit to operate shall be valid for a period of five years.
(b) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing application for permits to operate that are established by rules, including rules 901:10-2-07 to 901:10-2-20 of the Administrative Code.

As a condition of this PTI extension, you were required to have a valid PTO and have a continuing program of construction or enter into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. You have not done either. Since the extension request the following has occurred:

- On July16, 2013, the PTI/PTO officially expired.
- On August 30, 2013, ODA-DLEP sent a warning letter for exceeding maximum manure operating level in the manure storage pond.
- On October 4, 2013, ODA-DLEP sent a warning letter placing a deadline for PTO completion of November 8, 2013.
- On January 6, 2014, ODA-DLEP received word from the consultant working with Napoleon Dairy, LLC that they were no longer associated with Napoleon Dairy, LLC and that they requested the return of material they had submitted on November 14, 2013.

As the renewal was never completed, ODA-DLEP never received background check information from the country of the Netherlands concerning the new owners and whether they complied with the Dutch environmental laws of the Netherlands. Likewise, now that the consultant who had been assisting Napoleon Dairy, LLC with the PTO renewal has ceased work on the application, it appears that once again the permitting process has come to a halt. Therefore, ODA-DLEP proposes to deny your further request for an extension of your Permit to Install No. PET-0001.PI001.HENR and to deny your renewal of Permit to Operate No. PET-0001.PO001.HENR.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: David Gorman, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty (30) days of the date of mailing of this notice. This notice is being mailed to you on January 9, 2014.

You are further advised that, at the hearing, you have the right to be present in person, or you may present your arguments and contentions in writing. You also have the right to hire an attorney, who may appear with you or in your place. During the hearing, you will have the right to present evidence and examine witnesses appearing for and against you. Please note that if your business is a corporation that it must be represented by an attorney at any administrative hearing.

If you do not wish to have a hearing on the allegations set forth in this letter, an order will be issued denying your PTO renewal and PTI extension. Please note that should an order be issued, you will need to reduce the design capacity of your facility to less than 700 mature dairy cows.

Sincerely,

Kevin Elder
Division Chief

cc: Gary Zwolinski, Livestock Engineer, DLEP
Andy Ety, Livestock Engineer, DLEP
David Gorman, ODA Legal
Kelly McCloud, Assistant Attorney General, Ohio Attorney General's Office

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January 31, 2014

Evan Barton
8166 Lake Drive Road
Heath, Ohio 43056

Certified Mail:

RE: Requirements for Permit Submittal or Reduction in Design Capacity

Dear Mr. Barton,

On January 30, 2014, my staff met with you to review the need for your facility, located at 8166 Lake Drive Road, to be permitted through our Division of Livestock Environmental Permitting (DLEP). Based on my staff's visit, your facility currently exceeds the permitting threshold of 700 mature dairy cows. Therefore, you are required to submit the appropriate permit applications to this office or lower the design capacity of your facility to below 700 mature dairy cows.

At the conclusion of the meeting, you stated you plan to immediately start the process of developing permit applications that will likely consist of both a Permit to Install (for additional housing and manure storage) and a Permit to Operate. **Given the existing design capacity of the facility exceeds the permitting threshold, these applications shall be expedited and submitted to the DLEP office by no later than May 15, 2014. If these applications are not received by this date, my staff will re-inspect your facility, at which time the facility shall have lowered its maximum operating level to below 700 mature cows.** If neither of these action items has occurred by the May 15, 2014 deadline, then enforcement action will likely commence.

Lastly, please be reminded that any further expansion of this facility cannot commence until the appropriate permits would be approved, which would include additional housing or manure storage. I want to thank you for your willingness to meet with my staff and let you know that they are also willing to assist you with any questions you may have on the permitting process. I look forward to you becoming a permitted facility.

Respectfully,

Kevin Elder
Division Chief

Cc: Jim Young, ODA-DLEP, Livestock Inspector
Mark Fritz, ODA-DLEP, Livestock Inspector
Dave Gorman, ODA Legal Counsel, Senior Staff Counsel
Kelly McCloud, Ohio Attorney General's Office, Assistant Attorney General
Andy Ety, ODA-DLEP

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

March 11, 2014

Neal Kremer
9159 State Route 118
Ansonia, OH 45303

Certified Mail

91 7108 2133 3939 4662 5554

Re: PTO- 19-122-PTO-002- Warning Letter- Failure to Submit 2013 Annual Report

Dear Mr. Kremer:

This letter serves as a warning letter for not submitting a 2013 Annual Report for the above referenced permit. You are required by OAC 901:10-2-20 to submit a completed Annual Report by no later than January 31st of the following year.

Since no 2013 Annual Report was received by the required deadline date of January 31, 2014, your facility could be subject to additional enforcement proceedings. Therefore, a complete 2013 Annual Report must be submitted by no later than March 19, 2014. If you have questions, please feel free to call me or my staff.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Christine Pence, DLEP Inspector
David Gorman, Legal Counsel, Ohio Department of Agriculture
Cathy Alexander, Ohio EPA

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March 25, 2014

Blue Stream Dairy, Inc.
220 South Elizabeth Street
Box 126
Spencerville, OH 45887

Certified Mail:
91 7108 2133 3939 4662 5547

Re: Notice of Violation and proposed Administrative Penalty

Dear Blue Stream Dairy, LLC,

This letter is to inform you that your facility was recently the subject of an investigation that was conducted by The Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP). At the conclusion of the investigation, the ODA found your facility to be in violation of Ohio law.

In accordance with Revised Code (R.C.) Section 903.16(E), ODA proposes to impose an administrative penalty for a violation of your Permit to Operate (PTO). R.C. 903.16(E) reads in part:

> (E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or director's authorized representative determines that the owner or operator is not in compliance with the best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

Your permit allows for 20.6 million gallons of manure storage in four ponds at the facility and a satellite pond on TR 124 with a capacity of 2.2 million gallons, which was recently approved through a Major Operational Change.

On March 11, 2014, the ODA was informed by Burt Brown that Blue Stream Dairy was transferring manure to an un-permitted satellite pond on land owned by Ohio Decorative Products on CR 71 about 1,800 feet south of CR 82. On March 20, 2014, DLEP staff conducted an inspection of that pond and confirmed that manure was recently transferred for storage. The construction and use of this unauthorized manure storage pond is a violation of your PTO. As a result of this violation, ODA is proposing to impose a five thousand dollar ($5,000.00) administrative penalty pursuant to R.C. 903.16(E).

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for a hearing must be made to the Ohio Department of Agriculture, Attention: Dave Gorman, ODA Legal Counsel, Legal Section,

8995 East Main Street, Reynoldsburg, Ohio 43068-3399, Telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on March 25, 2014.

Please note that if your company is a corporation or a limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at a hearing. A court reporter will be present to make a record of the proceeding and swear in witnesses who are called. You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed administrative penalty should not be ordered against you. However, as a corporate entity, you must be represented by an attorney at the administrative hearing. The Assistant Attorney General assigned to the Department will represent the Department at this hearing.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider a waiver of your right to an administrative hearing and may issue a final order without a hearing. If you have questions, please contact Mr. David Gorman, ODA Legal Counsel, at (614) 728-6430.

If you have any questions or concerns about this notice of violation please do not hesitate to contact me.

Sincerely,

Kevin Elder,
Division Chief

Cc: Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Dan Bruner, DLEP Inspector
David Gorman, ODA Legal Council

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April 8, 2014

Gina Dairy, LLC
Jan, Gina and Willem Fokker
14349 Richey Road
Ohio City, OH 45874

Certified Mail:
91 7108 2133 3939 4662 5530

Re: Notice of Violation and Proposed Administrative Penalty

Dear Jan, Gina and Willem Fokker,

This letter is to inform you that your facility was recently the subject of a complaint and investigation that was conducted by the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP). At the conclusion of the inspection, ODA determined Gina Dairy, LLC failed to comply with Ohio Administrative Code (OAC) 901:10-2-14.

In accordance with Revised Code (R.C.) Section 903.16(E), ODA proposes to impose an administrative penalty for a violation of your Permit to Operate (PTO). R.C. 903.16(E) reads, in part:

> (E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

At my staff's investigation on March 26, 2014, it was reported that manure had been applied during three distinctive time periods to a 40 acre field that was either frozen or snow-covered. ODA Rules that were specifically violated are as follows:

1. *OAC 901:10-2-14(G)(1)(a) Prior approval for each surface application of manure shall be obtained from the director or his designated representative.* **No permission was requested and no permission was granted. Based on the March 26, 2014 inspection, manure storage availability was not in jeopardy and no good reason for this violation could be given by the owners/operators.**
2. *OAC 901:10-2-14(G)(1)(d) Applications are to be made on land with at least ninety per cent surface residue cover at the time of application such as good quality hay or pasture field, all corn grain residue remaining after harvest, and all small grain residue cover remaining after harvest. Vegetation or residue shall not be completely covered by ice or snow at the time of application.* **There was very little surface residue cover on the field where manure was applied during the frozen/snow covered conditions. The field had been chisel plowed prior to any manure being applied in late 2013 and therefore residue cover was minimal.**
3. *OAC 901:10-2-14(G)(1)(f) Manure shall not be applied on more than twenty contiguous acres. Contiguous areas for application are to be separated by a break of*

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at least two hundred feet. Areas that are furthest from streams, ditches, waterways, and\or surface waters are to be utilized in preference to areas with the potential for surface water runoff. **The field consisted of a total of 40 acres and more than 20 contiguous acres had manure applied during frozen/snow covered conditions.**

4. *OAC 901:10-2-14(G)(1)(g) Setbacks from surface waters and conduits to surface waters, (including grassed waterways and surface drains) shall be a minimum of two hundred feet. Setbacks shall have at least ninety per cent surface residue cover and vegetation or residue shall not be completely covered by ice or snow at the time of application.* **Setbacks for frozen/snow covered conditions were not adhered to in numerous locations. Manure was applied right up to field surface drains and within 30 feet of ditches.**

As a result of the violations noted above, ODA proposes to impose an administrative penalty of three thousand dollars ($3,000.00) upon Gina Dairy, LLC.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: David Gorman, ODA Legal Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3300, telephone (614)728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on April 8, 2014.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called. You may present evidence and examine witnesses appearing for and against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider it a waiver of your right to an administrative hearing and may issue a final order without a hearing. If you have questions, please contact Mr. David Gorman, ODA Legal Counsel, at (614)728-6430.

Respectfully,

Kevin Elder
Division Chief

Cc: Van Wert SWCD
Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Dave Gorman, ODA, Legal Counsel
Andy Ety, ODA, Engineer
Dan Bruner, ODA Inspector

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April 9, 2014

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Trillium Farm Holdings, LLC
10513 Croton Road
Croton, Ohio 43013

Re: Warning Letter – Failure to Maintain Eggwash Pond Freeboard
Croton Layer #4 - PTO #: 45-134-PTO-002

Gentleman:

On March 18, 2014, an inspection by my staff discovered a violation of the Ohio Administrative Code (OAC), as well as the Permit to Operate for Croton Layer #4.

VIOLATION: FREEBOARD

Rule 901:10-2-08(A)(4)(a) of the Administrative Code requires that the operating level of manure treatment lagoons and manure storage ponds not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional one foot of freeboard. The maximum operating level shall not exceed that specified in the manure management plan of the Permit to Operate (PTO).

The maximum operating level for the Egg Wash Cell #2, as identified in the above referenced PTO, is 11.72 feet. At this inspection, the level for Cell #2 was at 12.75 feet. As a result, Cell #2 was 1.03 feet above the maximum operating level and was not in compliance with the Permit to Operate.

CORRECTIVE ACTIONS REQUIRED

Upon receipt of this notification, you are required to submit to ODA-DLEP a written plan describing how the operating level of Egg Wash Cell #2 at Layer #4 will be lowered below the maximum operating level of 11.72 feet. This plan shall be submitted by no later than April 14, 2014. The actual lowering of Egg Wash Cell #2 below the MOL shall be completed by no later than April 28, 2014 and ODA-DLEP shall be notified once completed.

We take these violations very seriously and anticipate your prompt attention to correcting the situation. If subsequent inspections indicate the continuance of the violation noted or if these deadlines are not met, escalated enforcement actions against the facility could be taken, which

Ohio Department of Agriculture
State of Ohio

In re: Zylstra Dairy, LTD **Order No: 2014-105**

91 7108 2133 3939 4662 5523

Zylstra Dairy LTD
Yme and Willem Zylstra
11753 Road 21
Antwerp Ohio, 45813
Permit To Operate (PTO) No. 63-037-PTO-002

Emergency Order

The Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP), completed an inspection of Zylstra Dairy, LTD on April 10, 2014. This facility is regulated by the ODA pursuant to Chapter 903 of the Ohio Revised Code (ORC) and under Permit to Operate (PTO) No. 63-037-PTO-002, which was issued to Zylstra Dairy, LTD on June 24, 2009. The current operating levels in the ponds, the constant production of manure, the unpredictability of the weather conditions, and the facility's failure to ensure adequate storage availability for the winter months as required in the permit, have created an emergency in light of the serious threat of overflows. Pursuant to ODA's authority under ORC 903.18, the Director has determined that an emergency exist, requiring immediate action to protect public health or safety or the environment. Zylstra Dairy, LTD is hereby ordered to comply immediately with this Emergency Order.

Findings of Fact and Conclusions of Law

ODA-DLEP staff conducted a routine inspection at Zylstra Dairy LTD on April 10, 2014 and found the following:

1. Liquid north pit is about 2 inches above the Maximum Operating Level (MOL).
2. Liquid south pit is about 4 inches above the Maximum Operating Level (MOL).
3. The Manure Storage Pond is about 12 inches above the Maximum Operating Level (MOL).
4. The Leachate Storage Pond is about 48 inches above Maximum Operating Level (MOL).

Based on the above manure levels and on the serious threat of manure and/or contaminated stormwater overflows from the facility, I conclude as a matter of law that an emergency exists, that requires immediate action to protect the public health or safety or the environment.

By the authority vested in my office pursuant to ORC 903.18, it is hereby

ORDERED that:

1. Zylstra Dairy LTD shall immediately commence corrective actions to return to compliance with maximum operating levels in all liquid manure storage ponds at the facility as required in the Permit to Operate. **This action shall be completed within 10 days of the receipt of these Emergency Orders.**

2. Zylstra Dairy LTD shall immediately develop an Emergency Action Plan (EAP) to address daily manure production and runoff from the facility from the date of this Emergency Order through August 15, 2014. The estimated manure volume generated by your facility for this time period that must be addressed, including the existing manure volume over Maximum Operating Level, is approximately 10 million gallons. **This action shall be completed within 7 days of the receipt of these Emergency Orders and shall include all of the action items listed below:**
    a. A plan for completion of construction of the embankment changes to West Storage Pond in accordance with the Major Operational Change previously approved by ODA on January 11, 2012.
    b. A plan to apply manure <u>at any time</u> that area weather and field conditions become suitable and meet the land application criteria of OAC 901:10-2-14. This includes making arrangements in advance for land application equipment availability through contract or otherwise so that land application can take place as soon as conditions are favorable.
    c. Local waste water treatment plants (WWTP) shall be contacted to see if it is feasible for any of them to receive additional waste from your facility. A list of WWTPs contacted shall be provided to ODA along with a statement as to whether they can, or cannot, receive additional waste. If the WWTP can receive additional waste, a contract shall be provided that states the volume to be distributed and a timeframe for distribution.
    d. Satellite liquid storage facilities in the area shall be evaluated to determine if there is available storage volume that could be utilized by your facility.
    e. Any temporary alterations that can be made to the facility or facility practices either to eliminate clean stormwater discharging to the manure storage ponds or to lessen the amount of manure/contaminated stormwater being generated at the facility shall be made.
    f. The possible reduction or removal of the number of cows at the facility in order to reduce the amount of manure to be produced and handled.

3. Zylstra Dairy LTD shall comply with all terms and conditions contained in the permits and with all applicable laws and rules.

4. This Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.

5. Zylstra Dairy LTD shall immediately comply with this order.

6. A certified copy of this order shall be served upon Zylstra Dairy LTD.

Effective Date of this Order: Upon journalization.

David T. Daniels, Director
Ohio Department of Agriculture

4/11/2014
Date

Entered, Ohio Department of Agriculture Journal this 11th day of April, 2014, by

Carrie Ellis.

Certification

STATE OF OHIO

COUNTY OF LICKING, SS :

I, David T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No. 2014-105** which was entered upon the order journal of the Ohio Department of Agriculture on the 11th day of April, 2014.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 11th day of April, 2014.

David T. Daniels Director
Ohio Department of Agriculture

DEPARTMENT OF AGRICULTURE
STATE OF OHIO

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Director David T. Daniels

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April 16, 2014

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43013

Trillium Farm Holdings, LLC
10513 Croton Road
Croton, Ohio 43013

Re: Warning Letter – Failure to Maintain Storm Water Pond Freeboard
Croton Layer #1 - PTO# - 45-131-PTO-002

Gentlemen:

On March 18, 2014, an inspection by my staff discovered a violation of the Ohio Administrative Code (OAC), as well as the Permit to Operate for Croton Layer #1.

VIOLATION: FREEBOARD

Rule 901:10-2-08(A)(4)(a) of the Administrative Code requires that the operating level of manure treatment lagoons and manure storage ponds not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional one foot of freeboard. The maximum operating level shall not exceed that specified in the manure management plan of the Permit to Operate (PTO).

At this inspection, the stormwater pond level was at 12.25 feet. The maximum operating level for the storm water pond, as identified in the above referenced PTO, is 11.69 feet. As a result, the storm water pond was 0.56 feet above the maximum operating level and was not in compliance with the Permit to Operate.

CORRECTIVE ACTIONS REQUIRED

Upon receipt of this notification, you are required to submit to ODA-DLEP a written plan to lower the operating level of the storm water pond to a level below the maximum operating level of 11.69 feet by April 21, 2014. The lowering of the storm water pond below the MOL shall be completed by no later than May 2, 2014 and ODA-DLEP shall be notified once completed.

We take these violations very seriously and anticipate your prompt attention to correcting the situation. If subsequent inspections indicate the continuance of the violation noted or if these

deadlines are not met, then escalated enforcement actions may be taken against the facility, which may include monetary penalties. Please feel free to contact this office with any questions and I look forward to your cooperation.

Sincerely,

Kevin Elder
Division Chief

Cc: Kelly, McCloud, Assistant Attorney General, Ohio Attorney General's Office
Orland Bethel – Ohio Fresh Eggs
J.T. Dean – Trillium Farms
Doug Mack – Trillium Farms
David Gatten – Trillium Farms
Dave Hasemann - Trillium Farms
Ramchano Almoro – Trillium Farms
Sheryl Logue - Trillium Farms
Tabi Smith - Trillium Farms
Jim Kiracofe - Licking SWCD
Cathy Alexander, Ohio EPA
Andy Ety – Engineer, ODA-DLEP
Jim Young - DLEP Inspector
Mark Fritz – DLEP Inspector

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May 14, 2014

Ringler Livestock, LLC
Alex Ringler
2 Seymour Street
Marengo, Ohio 43334

91 7108 2133 3939 4695 2513

Re: Notice of Deficiency – Failure to Obtain Permit

Dear Mr. Ringler,

This letter is to summarize the status of your Permit to Operate application that is currently incomplete and therefore jeopardizes your facility from operating in accordance to the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP) laws and rules. Based on my staff's knowledge, manure is being co-mingled from swine finishing operations that exceed the threshold of 2,500 swine weighing more than 55 pounds, which requires a Permit to Operate (PTO). Therefore, it is concluded your facility is in violation of Ohio law. Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.02 and 903.03 of the Ohio Revised Code (O.R.C.), Ringler Livestock, LLC is hereby issued a Notice of Deficiencies (NOD) resulting in noncompliance. Ringler Livestock, LLC has failed to comply with rule 901:10-1-02 of the Ohio Administrative Code (O.A.C.).

I. VIOLATION: FAILURE TO OBTAIN NECESSARY PERMIT

My staff met with you on January 24, 2013 to go over the permitting requirements and expected timing to get a permit. You requested that DLEP send you a letter outlining the requirements and expectations, which was sent to you and dated January 25, 2013. In the letter, it was stated that a PTO application needed to be submitted to DLEP by no later than June 1, 2013 and would include the co-mingling of manure between the Quad Farm and the Shop Farm. The timing of this was to give ODA-DLEP the opportunity to review and finalize the permit prior to the expected start of operation of the anaerobic digester and mixing of manure from the two sites. The initial PTO application was not received by this office until September 3, 2013, almost three months delayed. The January 25, 2013 letter also stated that the PTO was to be finalized prior to the operation of the digester and manure being transferred from the Quad Farm to the digester at the Shop Farm. Although manure is being transferred between the sites currently, no permit has been finalized and no substantial effort has been made recently to complete the permit. The current status of the permit application is that my staff sent review comments to you and your consultant on November 6, 2013 and has yet to receive any official response to those comments. Therefore, since Ringler Livestock, LLC is co-mingling manure between multiple facilities that exceed 2,500 head of swine weighing 55 pounds or more and do not have a Permit to Operate and have failed to make substantial progress on completing the application over the last seven months, this letter serves as your notice that the PTO shall be completed as described in the Corrective Actions stated below.

CORRECTIVE ACTION REQUIRED

You have until June 7, 2014 within which you must correct this deficiency by completing the Permit to Operate (PTO) application revisions as requested in the November 6, 2013 comments from ODA-DLEP. If a complete application is not received by ODA-DLEP on or before June 7, 2014, co-mingling of manure must immediately cease and shall not be allowed until a final permit is obtained. In addition, if

DLEP has additional revision comments in response to future Ringler Livestock submittals on the application, revisions shall be returned to DLEP by no later than 10 business days from receipt of the comments from DLEP.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a first violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. Therefore, if Ringler Livestock, LLC fails to comply with the Corrective Actions required above, Ringler Livestock, LLC will be subject to the assessment of a civil penalty in the amount of up to $1,600 for each day from the date of when this violation was first noted by ODA-DLEP. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The submittal of a completed PTO application and/or a future inspection by the DLEP staff will determine whether you have returned to compliance with the requirements of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to contact this office with any concerns or questions as to what may be expected from Ringler Livestock, LLC in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Mike Rodgers, ODA Chief Legal Counsel
Kelly McCloud - Assistant Attorney General, Environmental Enforcement
Andy Ety - DLEP Engineer
Mark Fritz – DLEP Inspector

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Legal Office
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Phone: 614-728-6430 • Fax: 614-995-4565
www.agri.ohio.gov • legal@agri.ohio.gov

May 14, 2014

Certified Mail No. 91 7108 2133 3939 4663 4150

Gina Dairy, LLC
Jan, Gina, and Willem Fokker
14349 Richey Road
Ohio City, Ohio 45874

Re: Director's Order 2014-131

Dear Jan, Gina, and Willem Fokker:

Enclosed please find a certified copy of Ohio Department of Agriculture Director's Order 2014-131 which imposes a $5,000.00 fine against your dairy for violations of Chapters 903 and 901:10 of the Ohio Revised Code and Administrative Code. Please see page 2 of this Order for your appeal rights.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE

David D. Gorman
Senior Staff Counsel

Enclosure

cc: Kevin Elder, Executive Director
Division of Livestock Environmental Permitting

RECEIVED
MAY 15 2014
LIVESTOCK PERMITTING

Department of Agriculture
State of Ohio

In re: **Order No. 2014-131**

Gina Dairy, LLC

ORDER

On April 8, 2014, the Division of Livestock Environmental Permitting sent Gina Dairy, LLC, attention to Jan, Gina, and Willem Fokker, a notice informing them of violations of Ohio Revised Code Chapter 903 and Chapter 901:10 of the Ohio Administrative Code. This notice was received by Gina Dairy on April 9, 2014. Specifically, the Department alleged that Gina Dairy violated Ohio Administrative Code Section 901:10-2-14(G)(1). A copy of the notice is attached to this Order as Exhibit A. Neither Jan, Gina, nor Willem Fokker, nor anyone else on behalf of Gina Dairy, LLC requested a hearing in accordance with Revised Code Chapter 119.

Therefore, by the authority vested in my office by law, it is hereby

ORDERED:

1. That the notice attached hereto as Exhibit A, is specifically adopted as my own;
2. That Gina Dairy, LLC is assessed a civil fine, pursuant to R.C. 903.16(E), in the amount of Five Thousand ($5,000.00) Dollars;
3. That upon journalization a certified copy of this Order be sent to Gina Dairy, LLC attention Jan, Gina, and Willem Fokker.

Effective date of this Order: Upon journalization

DEPARTMENT OF AGRICULTURE STATE OF OHIO

David T. Daniels, Director
Ohio Department of Agriculture

5/14/2014
Date

Entered, Ohio Department of Agriculture Journal this 14th day of May 2014 by Tonne Ellis.

NOTICE

This Order may be appealed to the Environmental Review Appeals Commission in accordance with the Revised Code section 3745.04 by filing a notice of appeal with the Environmental Review Appeals Commission within **thirty (30) days** of the date of mailing of this Order. Revised Code section 3745.04 states, in part:

> ...(B) Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it. However, the director has and retains jurisdiction to modify, amend, revise, renew, or revoke any permit, rule, order, or other action that has been appealed to the commission. The modification, amendment, revision, renewal, or revocation is subject to applicable public participation and public notice requirements and is subject to an appeal under this section or section 3745.07 of the Revised Code, as applicable. Not later than thirty days after the issuance of the modification, amendment, revision, renewal, or revocation, the director shall file with the commission and serve on each party to the existing appeal a statement notifying the commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the commission and serving on all parties an objection to the modification, amendment, revision, renewal, or revocation. The objection shall be filed with the commission not later than thirty days after the director files the statement with the commission regarding the modification, amendment, revision, renewal, or revocation. The objection shall state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The commission shall not charge a fee for the filing of such an objection. ...
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> (D) An appeal shall be in writing and shall set forth the action complained of and the grounds upon which the appeal is based.
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> The appeal shall be filed with the commission within thirty days after notice of the action. Notice of the filing of the appeal shall be filed with the appellee within three days after the appeal is filed with the commission. ...
>
> > (E) As used in this section and sections 3745.05 and 3745.06 of the Revised Code, "director of environmental protection" and "director" are deemed to include the director of agriculture and "environmental protection agency" is deemed to include the department of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

CERTIFICATION

STATE OF OHIO :
:
COUNTY OF LICKING, SS :

I, Davit T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No. 2014-131** which was entered upon the order journal of the Ohio Department of Agriculture on the 14th day of May, 2014.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 14th day of May, 2014.

David T. Daniels, Director
Ohio Department of Agriculture

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

May 14, 2014

Ringler Livestock, LLC
Alex Ringler
2 Seymour Street
Marengo, Ohio 43334

91 7108 2133 3939 4695 2513

Re: Notice of Deficiency – Failure to Obtain Permit

Dear Mr. Ringler,

This letter is to summarize the status of your Permit to Operate application that is currently incomplete and therefore jeopardizes your facility from operating in accordance to the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP) laws and rules. Based on my staff's knowledge, manure is being co-mingled from swine finishing operations that exceed the threshold of 2,500 swine weighing more than 55 pounds, which requires a Permit to Operate (PTO). Therefore, it is concluded your facility is in violation of Ohio law. Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.02 and 903.03 of the Ohio Revised Code (O.R.C.), Ringler Livestock, LLC is hereby issued a Notice of Deficiencies (NOD) resulting in noncompliance. Ringler Livestock, LLC has failed to comply with rule 901:10-1-02 of the Ohio Administrative Code (O.A.C.).

I. VIOLATION: FAILURE TO OBTAIN NECESSARY PERMIT

My staff met with you on January 24, 2013 to go over the permitting requirements and expected timing to get a permit. You requested that DLEP send you a letter outlining the requirements and expectations, which was sent to you and dated January 25, 2013. In the letter, it was stated that a PTO application needed to be submitted to DLEP by no later than June 1, 2013 and would include the co-mingling of manure between the Quad Farm and the Shop Farm. The timing of this was to give ODA-DLEP the opportunity to review and finalize the permit prior to the expected start of operation of the anaerobic digester and mixing of manure from the two sites. The initial PTO application was not received by this office until September 3, 2013, almost three months delayed. The January 25, 2013 letter also stated that the PTO was to be finalized prior to the operation of the digester and manure being transferred from the Quad Farm to the digester at the Shop Farm. Although manure is being transferred between the sites currently, no permit has been finalized and no substantial effort has been made recently to complete the permit. The current status of the permit application is that my staff sent review comments to you and your consultant on November 6, 2013 and has yet to receive any official response to those comments. Therefore, since Ringler Livestock, LLC is co-mingling manure between multiple facilities that exceed 2,500 head of swine weighing 55 pounds or more and do not have a Permit to Operate and have failed to make substantial progress on completing the application over the last seven months, this letter serves as your notice that the PTO shall be completed as described in the Corrective Actions stated below.

CORRECTIVE ACTION REQUIRED

You have until June 7, 2014 within which you must correct this deficiency by completing the Permit to Operate (PTO) application revisions as requested in the November 6, 2013 comments from ODA-DLEP. If a complete application is not received by ODA-DLEP on or before June 7, 2014, co-mingling of manure must immediately cease and shall not be allowed until a final permit is obtained. In addition, if

DLEP has additional revision comments in response to future Ringler Livestock submittals on the application, revisions shall be returned to DLEP by no later than 10 business days from receipt of the comments from DLEP.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is a first violation with the category of seriousness of the violation as Category I and the gravity of the violation as low. Therefore, if Ringler Livestock, LLC fails to comply with the Corrective Actions required above, Ringler Livestock, LLC will be subject to the assessment of a civil penalty in the amount of up to $1,600 for each day from the date of when this violation was first noted by ODA-DLEP. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

The submittal of a completed PTO application and/or a future inspection by the DLEP staff will determine whether you have returned to compliance with the requirements of this Notice. If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to contact this office with any concerns or questions as to what may be expected from Ringler Livestock, LLC in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder
Division Chief

Cc: Mike Rodgers, ODA Chief Legal Counsel
Kelly McCloud - Assistant Attorney General, Environmental Enforcement
Andy Ety - DLEP Engineer
Mark Fritz – DLEP Inspector

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Legal Office
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-728-6430 • Fax: 614-995-4585
www.agri.ohio.gov • legal@agri.ohio.gov

May 22, 2014

Certified Mail No. 91 7108 2133 3939 4663 4051

Gina Dairy, LLC
Jan, Gina, and Willem Fokker
14349 Richey Road
Ohio City, Ohio 45874

Re: Director's Order 2014-143

Dear Jan, Gina, and Willem Fokker:

Enclosed please find a certified copy of Ohio Department of Agriculture Director's Order 2014-143 which imposes a $3,000.00 fine against your dairy for violations of Chapters 903 and 901:10 of the Ohio Revised Code and Administrative Code. Please see page 2 of this Order for your appeal rights. I apologize for the error in the original order.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE

David D. Gorman
Senior Staff Counsel

Enclosure

cc: Kevin Elder, Executive Director
Division of Livestock Environmental Permitting

Department of Agriculture
State of Ohio

In re: **Order No. 2014-143**

Gina Dairy, LLC

ORDER

On May 14, 2014, Director's Order 2014-131 was journalized imposing a fine of Five Thousand ($5,000.00) Dollars against Gina Dairy LLC. Due to a typographical error this amount should have been Three Thousand ($3,000.00) Dollars.

Therefore, by the authority vested in my office by law, it is hereby

ORDERED:

1. That Director's Order 2014-131 is hereby rescinded;
2. That Gina Dairy, LLC is assessed a civil fine, pursuant to R.C. 903.16(E), in the amount of Three Thousand ($3,000.00) Dollars;
3. That upon journalization a certified copy of this Order be sent to Gina Dairy, LLC attention Jan, Gina, and Willem Fokker.

Effective date of this Order: Upon journalization

David T. Daniels, Director
Ohio Department of Agriculture

5/20/2014
Date

Entered, Ohio Department of Agriculture Journal this 20th day of May 2014 by Connie Ellis.

STATE OF OHIO DEPARTMENT OF AGRICULTURE

NOTICE

This Order may be appealed to the Environmental Review Appeals Commission in accordance with the Revised Code section 3745.04 by filing a notice of appeal with the Environmental Review Appeals Commission within **thirty (30) days** of the date of mailing of this Order. Revised Code section 3745.04 states, in part:

> ...(B) Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it. However, the director has and retains jurisdiction to modify, amend, revise, renew, or revoke any permit, rule, order, or other action that has been appealed to the commission. The modification, amendment, revision, renewal, or revocation is subject to applicable public participation and public notice requirements and is subject to an appeal under this section or section 3745.07 of the Revised Code, as applicable. Not later than thirty days after the issuance of the modification, amendment, revision, renewal, or revocation, the director shall file with the commission and serve on each party to the existing appeal a statement notifying the commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the commission and serving on all parties an objection to the modification, amendment, revision, renewal, or revocation. The objection shall be filed with the commission not later than thirty days after the director files the statement with the commission regarding the modification, amendment, revision, renewal, or revocation. The objection shall state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The commission shall not charge a fee for the filing of such an objection. ...
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> > (E) As used in this section and sections 3745.05 and 3745.06 of the Revised Code, "director of environmental protection" and "director" are deemed to include the director of agriculture and "environmental protection agency" is deemed to include the department of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

CERTIFICATION

STATE OF OHIO

COUNTY OF LICKING, SS

I, Davit T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No. 2014-**143 which was entered upon the order journal of the Ohio Department of Agriculture on the 20th day of May, 2014.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 20th day of May, 2014.

David T. Daniels, Director
Ohio Department of Agriculture

Ohio | Department of Agriculture
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Division of Livestock Environmental Permitting
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June 5, 2014

Wenning Poultry Farm
C/o Mr. and Mrs. James Wenning
1500 Union City Road
Ft. Recovery, Ohio 45846

CERTIFIED MAIL:
91 7108 2133 3939 4695 2971

RE: Notice of Deficiency (NOD)
Permit to Install #54-024-PTI-002

Dear Mr. and Mrs. Wenning:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Wenning Poultry Farm is hereby issued a Notice of Deficiency (NOD) resulting in Noncompliance. Wenning Poultry Farm has violated Permit to Install (PTI) 54-024-PTI-002. ODA has determined that Wenning Poultry Farm has failed to comply with Rules 901:10-2-01 (B)(4)(b) and 901:10-2-04(E)(1) of the Ohio Administrative Code (OAC).

I. VIOLATION: UNAUTHORIZED STOCKING OF ANIMALS

On May 21, 2014, an ODA-DLEP Inspector conducted a construction inspection of your facility. During that inspection, the ODA-DLEP Inspector discovered your facility housed layers in Barn 10. The Inspector was informed that stocking began on May 19, 2014. During the inspection, it was found that the construction of the manure conveyor system that transports manure from Barn 10-14 to the manure storage structure, and grading and seeding were not complete. This unauthorized stocking of animals is a violation of the terms and conditions of PTI-54-024-002 and O.A.C Rule 901:10-2-01(B)(4).

In accordance with the administrative procedures for a PTI contained in O.A.C Rule 901:10-2-01 (B)(4)(b), after submitting a copy of the completed as-built plans and after the facilities are inspected by the director or an authorized representative as required by this rule, an authorized representative of the director will issue authorization to stock animals or use a new manure storage or treatment facility and to thereby commence operations in accordance with any permit to operate issued for the facility. Based on the inspection on May 21, 2014, stocking commenced prior to the required inspection and prior to receiving authorization to stock.

CORRECTIVE ACTIONS REQUIRED

You have until **June 14, 2014** to complete the final grading and seeding/mulching of all disturbed areas. Furthermore, you have until **June 21, 2014** to cover the junction between the conveyor belts located between the two barns. Once these items are complete, you shall contact ODA-DLEP for an inspection of the final construction. Upon a satisfactory inspection, ODA-DLEP will authorize stocking and the commencement of operations in accordance with any Permit to Install (PTI) issued to the facility.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category I (Major) and the gravity of the violation as low. Therefore, if Wenning Poultry Farm fails to comply with the Corrective Actions required above, Wenning Poultry Farm will be subject to the assessment of a civil penalty in the amount of up to $1,600.00 for each day from the date of the initial failure to address the required items.

II. VIOLATION: UNCONTAINED MANURE SOLIDS

On May 30, 2014, an ODA-DLEP Inspector conducted an inspection of your facility. During that inspection, the ODA-DLEP Inspector discovered a pile of uncontained/spilled manure solids under the newly installed manure conveyor belt at Barn 10-14. Manure had overtopped the conveyer at a junction and spilled over onto the ground. The pile was approximately 4 feet high. This is a violation of O.A.C. Rule 901:10-2-04(E)(1). Best Management Practices and good housekeeping practices shall be maintained by the operation and all areas designed or approved to be free of manure or other pollutants shall be kept clean. The spillage of manure outside contained areas is a violation of the permit and O.A.C.

CORRECTIVE ACTIONS REQUIRED

You have until **June 9, 2014** to correct the above deficiency by cleaning up the spilled manure and maintain those areas thereafter.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category II (Moderate) and the gravity of the violation as low. Therefore, if Wenning Poultry Farm fails to comply with the Corrective Actions required above, Wenning Poultry Farm will be subject to the assessment of a civil penalty in the amount of up to $800.00 for each violation for each day from the date of the initial failure to address the required items.

Following the dates of compliance noted above, ODA-DLEP will inspect your facility to determine whether you have returned to compliance with ODA's rules, and with the terms and conditions of Permit 54-024-PTI-002. If Wenning Poultry Farm fails to comply with any of the corrective actions required by this Notice, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

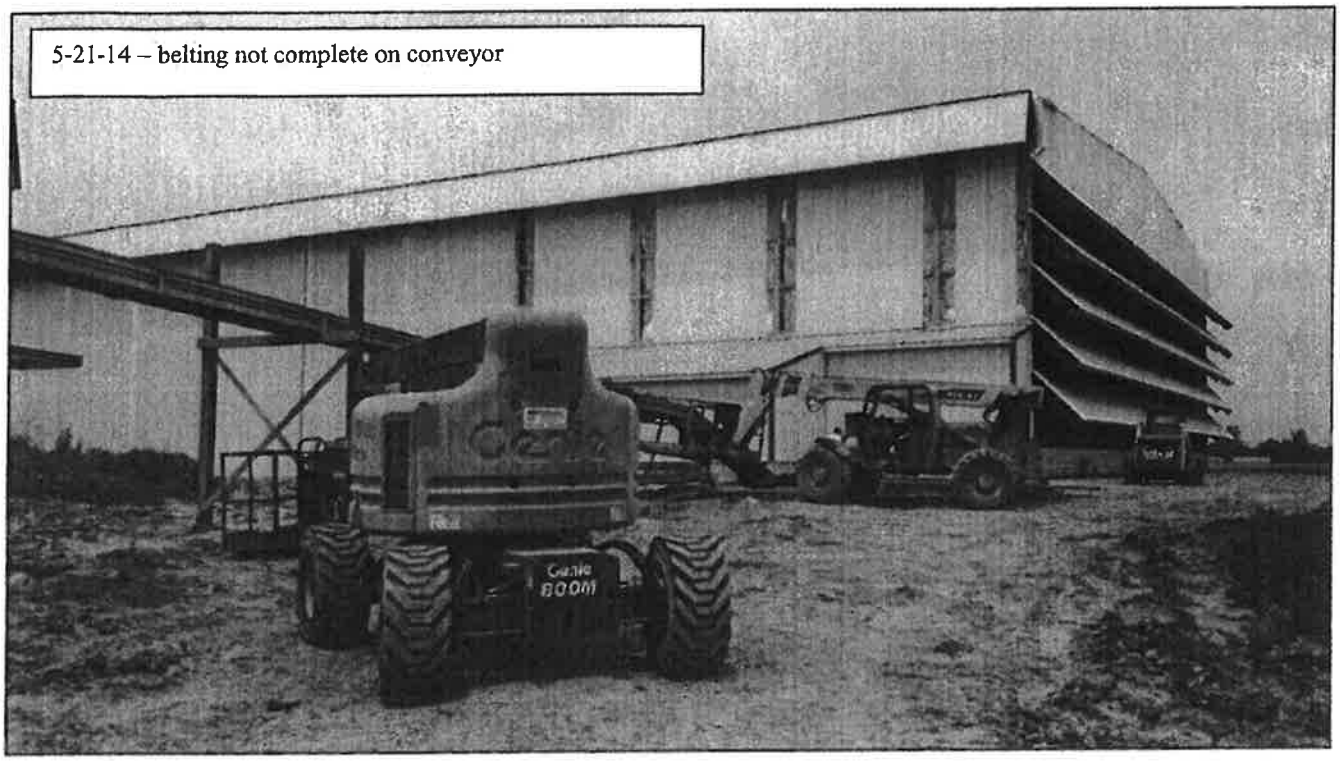
Please be aware, the alleged violations and proposed penalties contained herein reflect only the violations of Revised Code Chapter 903 and Ohio Administrative Code Chapter 901:10. This Notice does not address violations of other Ohio or federal laws that may have occurred. Applicable other Ohio state agencies or agencies of the federal government may still take civil and/or criminal action against you for violations of their respective laws if warranted.

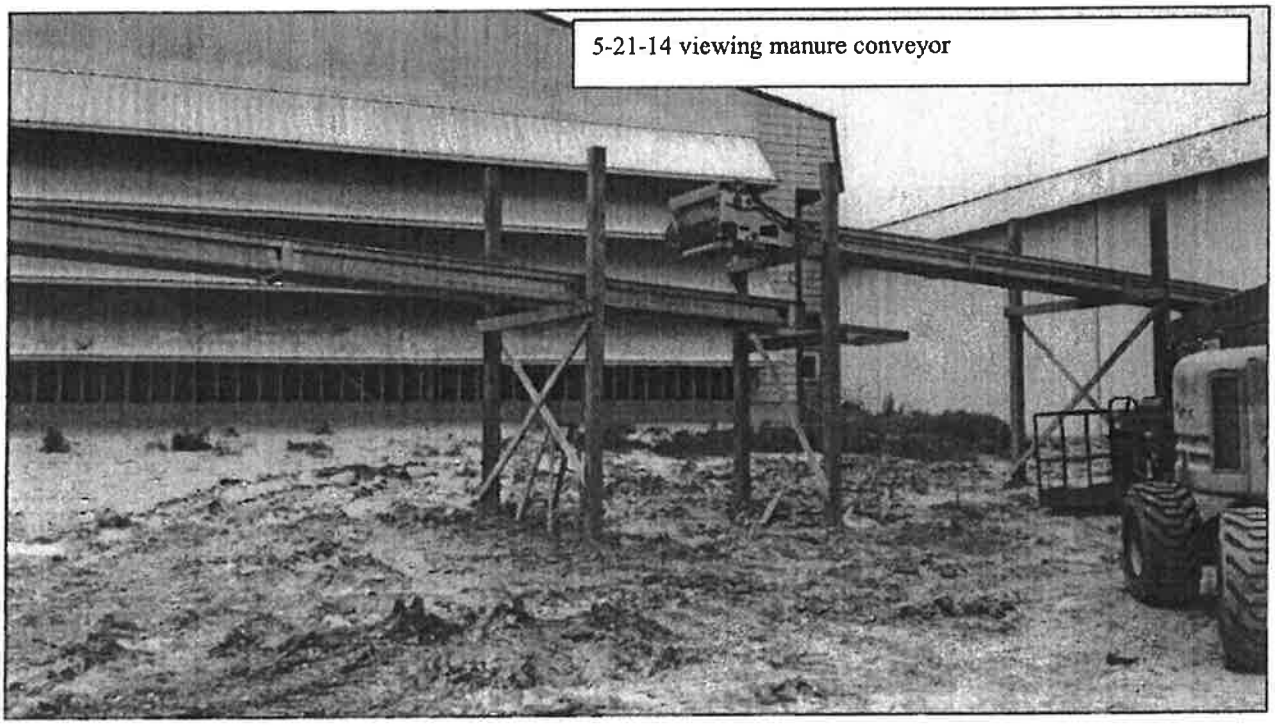
Please feel free to direct any questions concerning this NOD to me or my staff in the Division of Livestock Environmental Permitting.

Sincerely,

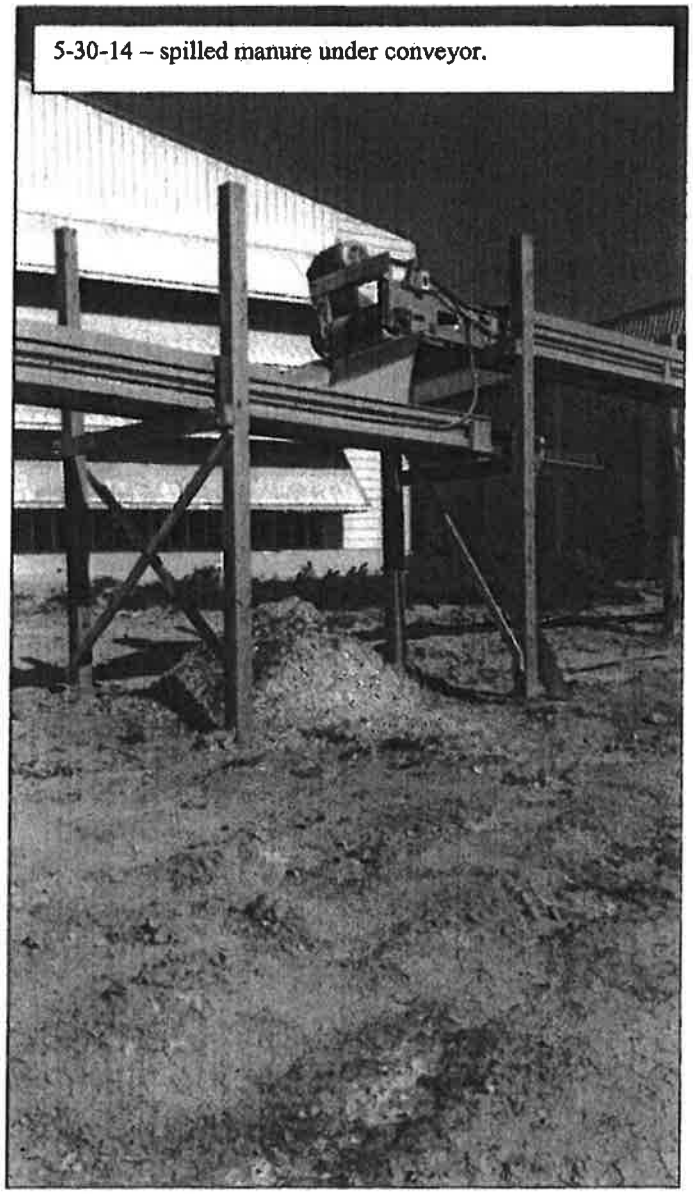
Kevin Elder,
Division Chief

cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Dave Gorman, ODA Legal Counsel
Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Christine Pence, DLEP Inspector

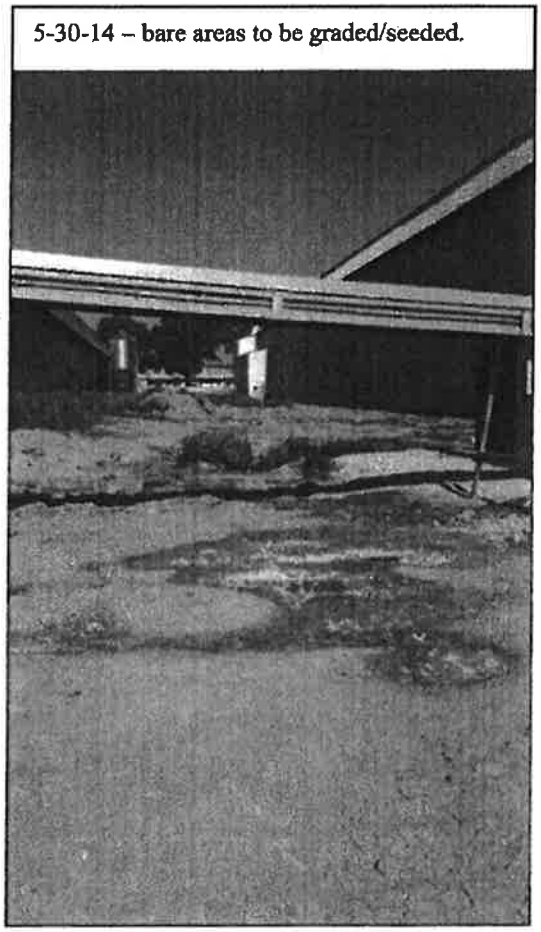

5-21-14 – belting not complete on conveyor


5-21-14 viewing manure conveyor

5-30-14 – spilled manure under conveyor.



5-30-14 – bare areas to be graded/seeded.



Ohio | Department of Agriculture
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June 5, 2014

McChesney Enterprises, Inc.
C/O Phillip McChesney, President
2636 Twp Rd. 136
Edison, Ohio 44320

RE: Withdrawal of Permit to Install (PTI) and Permit to Operate (PTO) Application

Mr. McChesney:

On May 1, 2014 the Ohio Department of Agriculture (ODA) Division of Livestock Environmental Permitting (DLEP) received your Permit to Install (PTI) and Permit to Operate (PTO) application for a 9,200 head swine facility located at 2636 Twp Road 136, Edison OH 44320. Your consultant submitted a letter dated June 5, 2014 requesting the withdrawal of this permit application from further consideration and review by ODA. In accordance with your request and accompanying this letter, ODA is hereby returning your PTI and PTO application and all associated documents. Please note that the permit application fee is *non-refundable* in accordance with OAC 901:10-1-04(A), and it will *not* be credited or applied toward any future permit application fee(s).

If you have any questions on this matter, please feel free to contact me or my staff.

Respectfully,

Kevin Elder
Division Chief, ODA-DLEP

Cc: Tom Menke, Menke Consulting Inc.
Kelly McCloud, Assistant Attorney General, Environmental Enforcement Section
Dave Gorman, ODA Legal Counsel
Daniel Barker, District Administrator, Morrow SWCD
Deb Nace, District Conservationist, Morrow Co.-NRCS
Andy Ety , ODA-DLEP
Patrick Bailey, ODA-DLEP

Ohio Department of Agriculture
State of Ohio

In re:
Revocation based upon facility closure

Order No: 2014-147

Permit to Operate No. 25-112-PTO-001

Beulah Park Horse Stables
3664 Grant Avenue
Grove City, Ohio 43123

In accordance with Sections 903.02 and 903.03 of the Ohio Revised Code, the Ohio Department of Agriculture (ODA) hereby revokes Permit to Operate No. 25-112-PTO-001 for the following Facility:

Beulah Park Horse Stables
3664 Grant Avenue
Grove City, Ohio 43123

Upon notification by the Facility that they intended to close, and upon submission of a closure plan in accordance with Ohio Administrative Code Section 901:10-2-18. ODA Division of Livestock Environmental Permitting has inspected the Facility and Beulah Park Horse Stables has complied with the terms of the closure plan.

THEREFORE, by the authority vested in my office by law, it is hereby

ORDERED:

1. That the Permit to Operate No. 25-112-PTO-001 issued to Beulah Park Horse Stables is hereby revoked.

2. That a certified copy of this Order be sent to Beulah Park Horse Stables.

Effective Date of this Order: Upon journalization.

David T. Daniels, Director

Date June 9, 2014

Entered, Ohio Department of Agriculture Journal this 9th day of June 2014 by Carrie Ellis.

CERTIFICATION

STATE OF OHIO

COUNTY OF LICKING, SS

I, David T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER NO. 2014-147** which was entered upon the order journal of the Ohio Department of Agriculture on the 9th day of June, 2014.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio this 9th day of June, 2014.

David T. Daniels / HFW
David T. Daniels, Director
Ohio Department of Agriculture

NOTICE

This Order may be appealed to the Environmental Review Appeals Commission in accordance with the Revised Code section 3745.04 by filing a notice of appeal with the Environmental Review Appeals Commission within **thirty (30) days** of the date of mailing of this Order. Revised Code section 3745.04 states, in part:

> ...(B) Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it. However, the director has and retains jurisdiction to modify, amend, revise, renew, or revoke any permit, rule, order, or other action that has been appealed to the commission. The modification, amendment, revision, renewal, or revocation is subject to applicable public participation and public notice requirements and is subject to an appeal under this section or section 3745.07 of the Revised Code, as applicable. Not later than thirty days after the issuance of the modification, amendment, revision, renewal, or revocation, the director shall file with the commission and serve on each party to the existing appeal a statement notifying the commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the commission and serving on all parties an objection to the modification, amendment, revision, renewal, or revocation. The objection shall be filed with the commission not later than thirty days after the director files the statement with the commission regarding the modification, amendment, revision, renewal, or revocation. The objection shall state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The commission shall not charge a fee for the filing of such an objection. ...
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> (D) An appeal shall be in writing and shall set forth the action complained of and the grounds upon which the appeal is based.
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> The appeal shall be filed with the commission within thirty days after notice of the action. Notice of the filing of the appeal shall be filed with the appellee within three days after the appeal is filed with the commission. ...
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> (E) As used in this section and sections 3745.05 and 3745.06 of the Revised Code, "director of environmental protection" and "director" are deemed to include the director of agriculture and "environmental protection agency" is deemed to include the department of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

BEFORE THE OHIO DEPARTMENT OF AGRICULTURE

In the matter of: Blue Stream Dairy

Respondent.

SETTLEMENT AGREEMENT

1. This agreement is made between Blue Stream Dairy ("Respondent"), and the Ohio Department of Agriculture ("ODA").
2. The above parties hereby stipulate to the jurisdiction of the ODA over this matter.
3. This Settlement Agreement is made as a compromise between the parties, for the complete and final settlement of all claims, differences, and causes of action arising out of, connected with or in any matter related to matters referred to in ODA's Notice of Opportunity for Hearing letter dated March 25, 2014.
4. The parties agree that the terms of this settlement agreement is a compromise and that the settlement agreement binds the parties hereto, their agents, assigns, and successors in interest.
5. As a result of an investigation conducted by ODA, Respondent was notified by Notice of Opportunity for Hearing letter dated March 25, 2014, that ODA intended to impose a civil penalty based on allegations that he had violated Ohio R.C. Chapter 903.
6. Based on the foregoing, as full and complete settlement of this matter and in the mutual interest of the parties, Respondent and ODA, hereby agree to the following settlement of the case currently pending before the Department of Agriculture:

   Respondent agrees to pay ODA the sum of Five Thousand ($5,000.00) Dollars as a civil penalty with the signing of this Agreement.

7. It is hereby understood that this settlement agreement and the facts stipulated herein shall not be binding on any of the parties unless it has been signed and executed by the parties below. If the parties are unable to reach a settlement agreement on the terms herein, this document shall become null and void and without any force or effect.
8. It is understood that this settlement agreement is entered into by both parties as a resolution of the issues of this case and is in not an admission of guilt or wrongdoing on the part of Respondent.
9. Respondent waives any and all claims or causes of action he may have against the State of Ohio, ODA, officers, employees and/or agents of either, arising out of the matters which are the subject of this settlement agreement.
10. This agreement shall be considered a public record in accordance with Ohio Revised Code Section 149.43.

for Blue Stream Dairy

David T. Daniels, Director
Ohio Department of Agriculture

5-30-14
Date

6-9-2014
Date

Michael D. Mustard, Esq.
Counsel for Blue Stream Dairy

David D. Gorman
Senior Staff Counsel

6-2-2014
Date

6/5/2014
Date

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
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June 13, 2014

Blue Stream Dairy, Inc.
220 South Elizabeth Street
Box 126
Spencerville, OH 45887

Certified Mail:
91 7108 2133 3939 4695 2964

Re: Notice of Violation and proposed Administrative Penalty
Permit to Operate #: 81-110-PTO-001

Dear Blue Stream Dairy, LLC,

This letter is to inform you that your facility was recently the subject of an investigation that was conducted by The Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP). At the conclusion of the investigation, the ODA found your facility to be in violation of Ohio law.

In accordance with Revised Code (R.C.) Section 903.16(E), ODA proposes to impose an administrative penalty for a violation of your Permit to Operate (PTO). R.C. 903.16(E) reads in part:

> (E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or director's authorized representative determines that the owner or operator is not in compliance with the best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

Your permit allows for 20.6 million gallons of manure storage in four ponds at the facility and a satellite pond on TR 124 with a capacity of 2.2 million gallons, which was recently approved through a Major Operational Change.

On June 9, 2014, the ODA was informed by Burt Brown that Blue Stream Dairy was transferring manure to an un-permitted satellite pond on land owned by Ohio Decorative Products on CR 71 about 1,800 feet south of CR 82. On June 12, 2014, DLEP staff conducted an inspection of that pond and confirmed that manure was recently transferred for storage. The construction and use of this unauthorized manure storage pond is a violation of your PTO. As a result of this violation, ODA is proposing to impose a five thousand dollar ($5,000.00) administrative penalty pursuant to R.C. 903.16(E).

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for a hearing must be made to the

Ohio Department of Agriculture, Attention: Dave Gorman, ODA Legal Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, Telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on June 13, 2014.

Please note that if your company is a corporation or a limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at a hearing. A court reporter will be present to make a record of the proceeding and swear in witnesses who are called. You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed administrative penalty should not be ordered against you. However, as a corporate entity, you must be represented by an attorney at the administrative hearing. The Assistant Attorney General assigned to the Department will represent the Department at this hearing.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider a waiver of your right to an administrative hearing and may issue a final order without a hearing. If you have questions, please contact Mr. David Gorman, ODA Legal Counsel, at (614) 728-6430.

If you have any questions or concerns about this notice of violation please do not hesitate to contact me.

Sincerely,

Kevin Elder,
Division Chief

Cc: Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Dan Bruner, DLEP Inspector
David Gorman, ODA Legal Counsel

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

June 16, 2014

Certified Mail:

91 7108 2133 3939 4695 2957

Blue Stream Dairy, LLC
3242 Mentzer Church Road
Convoy, Ohio 45832

Re: Notice of Deficiencies (NOD)
Permit to Operate (PTO) #: 81-110-PTO-001

Dear Blue Stream Dairy, LLC:

This letter is to inform you that your facility was the subject of a complaint and investigation that was conducted by the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (DLEP). At the conclusion of the inspection, ODA determined Blue Stream Dairy, LLC failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-14(C)(4) and O.A.C. 901:10-2-16 (A)(1)(c)(iii-iv).

VIOLATION: FAILURE TO MONITOR AND RECORD INSPECTIONS OF TILE OUTLETS THAT LED TO TWO DISCHARGES

On April 23, 2014, an investigation was made by my staff member of a complaint received by our office on April 22, 2014. The investigation found manure had entered a catch basin leading into an unnamed ditch that begins at Lare Road and runs parallel to Highway 30. Several field tile outlets were visible entering the catch basin and one of the tiles that was coming in appeared to come from the direction of a Blue Stream Dairy field: "Fulk 26 A-G" on the south side of Highway 30. The field "Fulk 26 A-G" across Highway 30 from the catch basin had manure applied on April 10, 12, and 18, 2014 by using a center pivot irrigation system. The discharge had traveled into Middle Creek and then to Blue Creek.

A second incident was found upon investigation of the original spill. Manure was applied to the fields identified as "Dairy A-C" on April 12 and 18, 2014. On April 22, 2014, manure was discovered entering Sponseller Ditch from a field tile. Manure was found heading downstream to Blue Creek. From observations during this inspection, there were simultaneous discharges from both of the fields where manure had been applied. It was concluded that the discharges were the result of land application of manure through the center pivots owned and operated by Blue Stream Dairy, LLC. From a review of the tile maps and after further investigation, it was determined in both cases that the manure travelled a path around the tile shutoff valves, which were closed during each application of manure. Based on ODA-DLEP's investigation, the tile shutoffs were not properly installed to capture and block all drainage from the center pivot fields. In addition, even though the tile shutoffs were closed, periodic inspections of the outlets should have been completed to assure they were functioning adequately. No records were provided to

document these inspections. In addition, the discharge was found by someone other than Blue Stream Dairy.

CORRECTIVE ACTIONS REQUIRED

The two existing center pivot fields (Fulk 26 A-D and Dairy A-C) shall not be used for liquid manure application until the following corrective actions have been completed and written approval is granted by ODA-DLEP to resume manure application on these two fields.

As corrective measures, the field tile records from the Blue Stream "Dairy A-C" field, "Fulk 26A-G" field and adjacent neighboring fields controlled by Blue Stream Dairy shall be secured and studied to determine the configuration and proximity of any interconnection that exists with these systems. An exploratory trench shall be dug along the north side of the "Fulk 26 A-G" field and along the west edge of the "Dairy A-C" fields. All drain tiles will be located and documented on a map. All tile encountered shall be repaired or terminated as necessary and shall be directed in the main tile with a shutoff structure or additional shutoff structures shall be installed to prevent such an occurrence from the center pivot fields. In addition, the connecting drain line from the "Fulk A-G" field that travels under Highway 30 to the catch basin at Lare Road shall be permanently terminated and plugged. All explorations, tile location maps and functioning tile shutoff locations shall be provided to ODA-DLEP for review by no later than **July 15, 2014.**

The subsurface pump line located at the northeast corner of the Blue Stream Dairy property and which transfers manure to the center pivot field to the northeast shall be replaced and/or repaired. Upon completion of the repair/replacement, a standard pressure test on the line shall be completed and all documentation/findings of the pressure test shall be submitted to ODA-DLEP. Also, a second shutoff structure shall be installed on the drain tile main further back toward the Blue Stream Dairy field: Dairy A-C. Documentation on the repairs to this manure transfer line and the pressure tests, as well as the installation of the shutoff structure shall be completed by no later than **July 15, 2014.**

Lastly, both center pivots shall be calibrated and ODA-DLEP shall be contacted during the calibration practice. The minimal amount of manure application that is necessary for calibration is allowable with ODA-DLEP present. Calibration shall be completed by no later than **July 15, 2014.**

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violation as Category I and the gravity of the violation as high. Therefore, if Blue Stream Dairy, LLC fails to comply with the Corrective Actions required above, Blue Stream Dairy, LLC will be subject to the assessment of a civil penalty in the amount of up to $10,000.00 for each violation for each day from the date of the initial failure to address the required items.

Please feel free to contact this office if you have questions of what is required of you to resolve the violations documented in this Notice of Deficiencies. I look forward to your cooperation in this matter.

Respectfully,

Kevin Elder
Division Chief

Cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement
Michael L. Rodgers, Chief Legal Counsel, ODA
Dave Gorman, Legal Counsel, ODA
Cathy Alexander, Ohio EPA
Dan Bruner, Livestock Inspector, ODA
Andy Ety, Livestock Engineer, ODA

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June 18, 2014

CERTIFIED MAIL 91 7108 2133 3939 4695 2940

Andrew Wilson
3485 Wilson Road, NE
Somerset, Ohio 43783

RE: Failure to Obtain a Permit to Operate (PTO)

Dear Mr. Wilson:

As discussed with you by phone on June 16, 2014, the Ohio Department of Agriculture (ODA) Division of Livestock Environmental Permitting (DLEP) received a written complaint (dated June 11, 2014) containing allegations that two, contiguous, 2400 head swine finishing barns are under your common ownership as the result of a recent property transfer of one of the barns. ODA-DLEP understands that you are also operating both of the barns. This letter is to inform you that you must obtain a Permit to Operate (PTO) from the Ohio Department of Agriculture, Division of Livestock Environmental Permitting to own a swine finishing facility of this size.

Ohio Revised Code Section 903.01(M)(4) defines a Large Concentrated Animal Feeding Facility (CAFF) as an animal feeding facility that stables or confines 2,500 head of swine weighing 55 pounds or more. Revised Code Section 903.03(A)(2) and Ohio Administrative Code Section 901:10-1-10(B) prohibits the ownership and operation of a CAFF without first obtaining a PTO from the Director of ODA. Based on the allegations raised in the Complaint, the design capacity of your two swine finishing barns totals approximately 4,800 head of swine, which exceeds the statutory limit for a CAFF without a permit. Since you failed to obtain a PTO from ODA prior to owning and operating a facility with 4,800 head swine weighing 55 pounds or more, your existing facility is in violation of Revised Code Chapter 903.03(A)(2) and Ohio Administrative Code Section 901:10-1-10(B).

To bring your facility into compliance with Revised Code Chapter 903 and Ohio Administrative Code Chapter 901:10, **you shall submit a complete PTO application, with appropriate fees, to ODA-DLEP by no later than September 1, 2014. After initial submittal, any revisions and responses from you and/or your consultant must be expedited.**

Failure to submit a complete PTO application seeking authorization to operate your existing 4,800 head swine facility within the required timeframe will result in escalated enforcement action against you and your facility. Escalated enforcement includes, but is not limited to; an enforcement referral to the Ohio Attorney General's office to commence civil litigation; the levying of penalties and/or fines; or the issuance of orders to depopulate. Please note that pursuant to Revised Code 903.16 and Ohio Administrative Code Section 901:10-5-04, the

maximum penalty for owning and operating a CAFF in the State of Ohio without an ODA permit is up to **$10,000 per day** for each day of violation. DLEP takes these violations very seriously and will pursue the necessary enforcement action to ensure compliance.

I understand that you are meeting with your lender and swine integrator this week about the restructuring after your divorce. At your request, we are including an example of a swine permit and the permit application forms that will need to be completed. My staff is willing to help you in any way possible, but it is your responsibility to assume the lead role and complete the required corrective action by applying for a Permit to Operate. If you have any questions or would like to set up a meeting to further discuss this matter, please feel free to contact me or my staff.

Respectfully,

Kevin Elder
Division Chief

Cc: Kelly McCloud, Assistant Attorney General, Environmental Enforcement Section
Dave Gorman, ODA Legal Counsel
Andy Ety, ODA-DLEP

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July 2, 2014

ST Ohio Heifer Center
Paul Detwiler
11000 Huntington Road
South Charleston, Ohio 45368

Inguran, LLC
Maurice Rosenstein
22575 State Highway 6 South
Nanasota, Texas 77686

Certified Mail:

Re: Warning Letter – Complaint – Failure to follow PTO Requirements
Permit To Operate (PTO) #: 12-065-PTO-002

Dear Gentlemen,

On June 11, 2014, the Ohio Department of Agriculture ("ODA") Division of Livestock Environmental Permitting ("DLEP") received a written complaint alleging that a deliberate and improper disposal of manure occurred at your facility. After receipt of the complaint, DLEP conducted an investigation on June 16, 2014, to determine if your facility was in compliance with the requirements of Permit to Operate ("PTO") #12-065-PTO-002, Ohio Revised Code ("R.C.") Chapter 903, and Ohio Administrative Code ("O.A.C.") Chapter 901:10.

During the June 16, 2014 investigation, Mr. Detwiler informed the DLEP Inspector of an emergency application of liquid manure, which occurred on April 7, 2014. This emergency application was due to a water line break in the calf housing area, which required the immediate removal of the water/manure from the area by a vacuum tank. Mr. Detwiler indicated that because soil conditions were unsuitable to support land application equipment in the typical application areas, he decided to transport the liquid manure in the vacuum tank to a driveway and dump the manure from the side of the vacuum tank onto grass-covered land. A review of the facility's manure application record from April 7, 2014 revealed several violations/issues:

1. There were no soil tests for the grass-covered area where manure was applied.
2. The land used to receive the manure is not currently identified as an approved land application area in the operating record of the facility's Manure Management Plan (MMP).
3. The manure application rates were not based upon soil tests or the Available Water Capacity chart as required. Furthermore, this information was not included on the April 7, 2014 manure application records.
4. The use of this type of vacuum tank to land apply manure is an improper land application method. The proper equipment for land application must be utilized at all times to ensure best management practices are followed during manure application.
5. The water line malfunction and subsequent manure spillage occurred on April 7, 2014. However, ODA-DLEP was not informed of the spillage until the June 16, 2014 complaint investigation.

Based on the events discovered during the June 16, 2014 complaint investigation, ODA-DLEP has determined that ST Ohio Heifer Center has violated O.A.C. Rules 901:10-2-13, 901:10-2-14, 901:10-2-16, and 901:10-2-17.

O.A.C. Rule 901:10-2-13 states that the Manure Management Plan shall contain information on the soil of the land application areas. Soil samples shall be analyzed to plan for nutrient utilization at recommended agronomic rates and to minimize nutrient runoff to waters of the state. Upon review of the manure application records in the MMP, no soil test records were provided for the area where manure was applied on April 7, 2014. Therefore, your facility is in violation of O.A.C. Rule 901:10-2-13.

O.A.C. Rule 901:10-2-14(B)(1) states that the manure application rate shall be based on the land application area's soil tests conducted in accordance with rule 901:10-2-13 of the Administrative Code. Upon review of the manure application records in the MMP, the application rate was not based upon any soil test information. Therefore, your facility is in violation of O.A.C. Rule 901:10-2-14(B)(1).

O.A.C. Rule 901:10-2-16(A)(1)(c)(ii) requires the owner or operator of a facility to list or otherwise describe those acres of land in the operating record for land application of manure, whether the land is owned or leased. Upon review of the operating record and supporting documentation in the PTO, the grass-covered area where manure was applied on April 7, 2014 is not an approved area for land application. Therefore, your facility is in violation of O.A.C. Rule 901:10-2-16(A)(1)(c)(ii). Additionally, the use of a vacuum to land apply manure is an improper land application method and a violation of O.A.C. Rule 901:10-2-14. The proper equipment for land application must be utilized at all times to ensure best management practices are followed during manure application.

In the event of a manure spill, O.A.C. Rule 901:10-2-17 requires an owner or operator to follow an Emergency Response Plan to immediately contain, clean-up, and remove a manure spill. The Emergency Response Plan included in the PTO required the following measures and reporting procedures to be taken in the event of a manure spill:

1. The circumstances which created the spillage;
2. Determine the size of the spillage and identify the equipment and personnel needed to contain, clean-up, and remove the spillage;
3. Contact the appropriate people with needed equipment to assist with containment, clean-up, and removal;
4. Contain, clean-up, and remove the spillage; and
5. Identify and notify the proper authorities, including providing notice to the ODA-DLEP no later than 24 hours following first knowledge of the spillage..

The water line malfunction and subsequent manure spillage occurred on April 7, 2014. However, ODA-DLEP was not informed of the spillage until the June 16, 2014 complaint investigation. The failure to properly report the manure spillage to ODA-DLEP within 24 hours after it occurred is a violation of O.A.C. Rule 901:10-2-17.

The ODA takes these violations seriously and any future violations of R.C. Chapter 903, O.A.C. Chapter 901:10-2 or the terms and conditions of your PTO, will result in escalated enforcement. Furthermore, please note that the ODA is particularly concerned about the allegation raised in the June 11th written complaint regarding alleged past practices of deliberate and improper manure disposal at your facility. Although, this Warning Letter does not reflect violations of any other Ohio or Federal laws and regulations, be advised that other state or federal agencies can initiate civil and/or criminal action against you for violations of their respective laws. Please feel free to direct any questions concerning this Warning Letter to Christine Pence, Livestock Inspector, at cpence@agri.ohio.gov or 614-778-4661.

Sincerely,

Kevin Elder
Chief, Division of Livestock Environmental Permitting

CC: Justin A. Ramirez
Christopher Simpson, Clark SWCD
Hunter Young, OEPA-DSW
Christine Pence, Inspector, ODA-DLEP
Kelly McCloud, AAG, Ohio Attorney General's Office
David Gorman, ODA Legal Counsel
Andy Ety, ODA-DLEP

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COMPLAINT INVESTIGATION

Date of Complaint: June 11, 2014

Time of Complaint: 2:47 p.m.

Complaint Received By: Kevin Elder, Chief, ODA-DLEP via email and forwarded to Christine Pence, Ohio Department of Agriculture Livestock Permitting Program on June 16, 2014.

Inspector: Christine Pence

Complainant (name and address):
Justin A. Ramirez
No address or contact information provided other than e-mail: jramirez0537@gmail.com

Complaint Information:
Facility Involved:
ST-The Ohio Heifer Center
11000 Huntington Road
South Charleston, OH 45368

Complaint Information:

From: Justin A. Ramirez [mailto:jramirez0537@gmail.com]
Sent: Wednesday, June 11, 2014 2:47 PM
To: Elder, Kevin
Subject: Formal complaint for ST Ohio heifer center

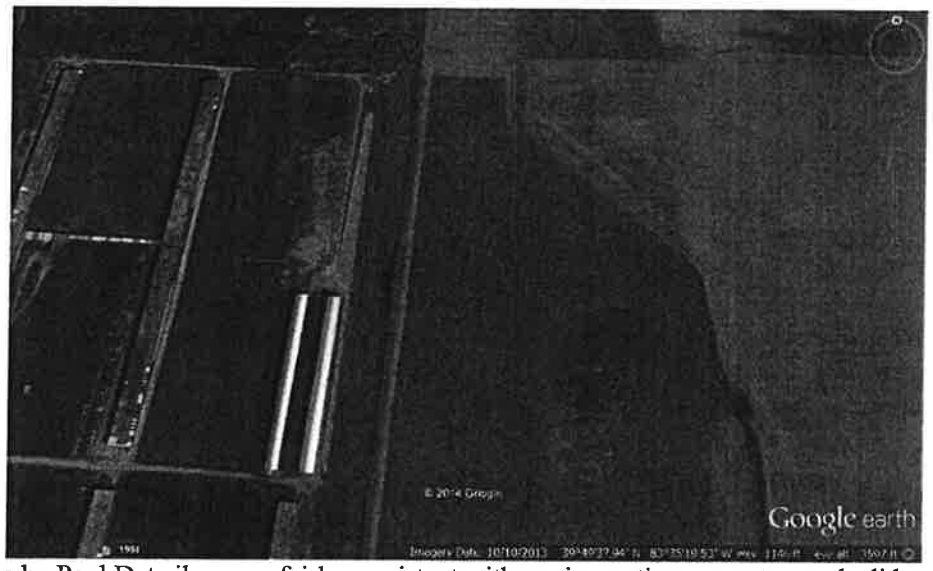
Hello Mr. Elder,

I would like to file a formal complaint against Sexing Technologies- Ohio Heifer Center. I am a former employee from there. I was in fear of my job, otherwise I would have reported this sooner. I am concerned that they have deliberately disposing of manure improperly for some time now. I have video evidence I will attach to this email that took place on 4/22/14. I had wanted to keep this anonymous and i was wondering if this would be possible. If not then I would still like to file this complaint. I believe that once it rains, it will then flow down into the ditch off of Huntington road, and then on to the neighboring farms. Furthermore, I believe the concentration of manure may affect the drinking water. I witnessed the supervisor Paul Detailer ordering employees to dispose of the manure in this manner. I often heard comments "If ODA knew about this, we would be in a lot of trouble" therefore these comments make me believe they are fully aware of what they are doing. Please let me know what is to come of this complaint.
Thank you
Justin

Follow-up Visit:
Date: June 16, 2014
Time: 11:00 a.m.

Inspector Findings: Upon arrival to the facility, Paul Detwiler was not available in person, however he was notified by phone and given a summary of the complaint and gave verbal permission to conduct an inspection of the area in question from the complaint. Paul also provided me with a verbal summary of an incident that occurred on April 7, 2014 that led to the emergency application of manure. There was a significant water leak in the hoop barn that resulted in the vacuuming of liquid manure from the calf housing area to be removed. Ground conditions in the fields included in the Manure Management Plan (MMP) at the facility used for manure application were not suitable for land application equipment (soft soils), therefore Paul removed the manure from the vacuum tank by driving on the driveway and discharging the manure from the side of the vacuum tank. I (Christine Pence) inspected the area back by the hoop calf barns where the complainant indicated in the video that manure was applied.

During the inspection, I observed newly mowed vegetation along the east side of the hoop barns and west of the property boundary chainlink fence. Also, on the east side of the driveway along the east side of the hoop barn was some small clumps/piles of manure. More applied manure was evident north of the hoop barns on the east side of the driveway in the grassy area. The map below shows the area where applied manure was observed in the pink shaded area. The blue line represents a drainage area that flows south. The manure application records that were provided to me by Paul Detwiler were fairly consistent with my inspection, except records did not include the area where manure was applied adjacent to the driveway across from the hoop barns.



Other observations:

- Manure application records, manure analyses (solid/liquid) weather data, soil tests and incident report were provided to Christine Pence.
- A facility incident report was provided to Christine Pence from the water line break that occurred on April 7, 2014 and subsequent manure removal/land application.
- Manure application records and supporting documents did not include updated soil tests for the area where the manure was applied. Soil tests were provided for all other areas at the facility that are normally used to apply contaminated stormwater from the pond at the facility.
- No evidence of offsite flow of manure due to the heavy vegetation and distance to waters of the state.

Conclusion:
From the investigation and review of the documents that were provided to Christine Pence, ODA-DLEP Inspector, the following is a summary of the investigation:

The Facility's Emergency Response Plan includes that in the event of a manure spill, actions will be taken including:

1. Determine size of spill and equipment and personnel needed to contain and clean up spill.
2. Contact appropriate people with needed equipment.
3. Stop the spill
4. Contain and clean up spill
5. Notifiy authorities including OEPA, ODA, etc.

ODA-DLEP was not notified of the spill that occurred on April 7, 2014.

Manure was not properly land applied. The equipment used to vacuum manure from the barns is not designed to land apply, it is meant to vacuum manure and transfer to a manure storage structure. Manure was basically dumped from the vacuum tank over various areas in the grassland. The manure should have been transferred to the contaminated stormwater pond, placed in the designated manure storage barn to be further processed, or properly land applied. Additionally, the land that received the manure is not included in the MMP; therefore no soil tests were on file.

A Warning Letter is attached to this Complaint Report, outlining the violation of Ohio Administrative Code Rules.

Included with this report are photos from the investigation, Incident Report and original written complaint.

Christine Pence
ODA-DLEP Inspector

CC: Justin A. Ramirez
Christopher Simpson, Clark SWCD
Hunter Young, OEPA-DSW
Kevin Elder, Chief ODA-DLEP
Paul Detwiler, Feedlot Manager, ST-The Ohio Heifer Center
Maurice Rosenstein, Owner/Operator, Inguran, LLC

Photo below taken by Christine Pence on Jun 16, 2014. Viewing south along east side of hoop calf barn. Note the heavy mowed vegetation.

Photo below viewing from same position and photo above, but viewing north at area used for manure application. Some manure residue still evident.

Below is the Incident Report from Paul Detwiler forwarded to Christine Pence.

The Ohio Heifer Center

Manure Incident Report

April 7th, 2014

On Monday, April 7th while driving to the farm received a phone call from farm manager Matt Grube indicating a waterer was turned over in hoop barn 802 and water line PVC pipe to the waterer had snapped, below the turnoff value. It was the waterer closest to the drive way, south end of the hoop barn. The southern end, estimate 100 feet, was submerged in water and manure, up to 8 inches deep. After cleaning, part of our SOP for cleaning the hoops is to create a bedding dike to hold liquid manure in the barn, which worked well in this case. Two bales of hay placed in the drainage swale between the barn to prevent entrance into the drainage swale in the case the vacuum tank was not able to keep up with the liquid.

Four tankers were removed to clean up the area effected by the water line break. Since this was nearly all water, I decided against taking it to the manure barn. Consideration was given to dumping into the water lagoon by the commodity barn, but ruled out due not have a gravel drive up to the edge of the lagoon and not wanting to deposit onto the pad and use more water to wash it down. This left me with the best remaining option, which was to land apply behind the hoop barns.

The Mensch tanker two options for discharge...door lifts for fast, uncontrolled exit and a nozzle for more controlled exit spray discharge. It takes some practice to get it right....and this was my first time really running the machine by myself. Let's just say Grandpa would not have been real proud of my application.

As a practice at OHC, we do not land apply manure. I want to save all my hay ground for the water from the commodity lagoon. In this emergency situation, land application of the manure water seemed the best option.

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MANURE DISCHARGE INVESTIGATION
SEPTEMBER 15-16 2014

Croton Hatchery and Breeder Pullet

10214 Crouse-Wilson Road
Johnstown, Ohio 43031

8251 Benner Road
Johnstown, Ohio 43031

Monday September 15

I received a call from Sheryl Logue, Compliance Officer with Trillium Farm Holdings, LLC ("Trillium"), at 8:50 a.m. She stated that there had been a release into a small stream located behind the Breeder Pullet Site at 8251 Benner Road from the irrigation of wastewater from the Hatchery site wastewater pond.

I arrived at the site at approximately 11:00 a.m. Andy Ety of ODA-DLEP ("ODA") had been there earlier to assess and advise on the containment/remediation efforts. Dave Gatten of Trillium Compliance was there, along with ODNR, Division of Wildlife (DOW) personnel. The 18 inch tile outlet had been plugged with bentonite to stop the flow of wastewater. A dam had been constructed downstream, approximately 100 feet, to contain wastewater still present in the stream. Trillium Compliance had taken water samples upstream, at the tile outlet, and at various points downstream. (Lab reports attached). DOW personnel were also taking water samples.

Dave Gatten and I walked into the corn field where the 19.84 acre center pivot had operated. Soil conditions outside the center pivot were dry. Soil underneath the center pivot was at 100% saturation, with standing water in the wheel tracks of the center pivot. These tracks were approximately 3-4 inches deep. Dave explained that the center pivot had unintentionally been run for more than 24 hours continuously and was discovered that morning at 8:00 a.m. The resulting over-application of wastewater overwhelmed the absorptive capacity of the soil and resulted in the release via drainage tile into the stream. Since the situation seemed stable and adequate containment measures were in place, I left the site.

At approximately 5:30 p.m., I returned to the site. Earlier that afternoon, Trillium Compliance had begun taking contaminated water out of the stream and hauling it to Layer 3's egg wash pond. A total of 7,000 gallons was removed from the stream. That evening, Sheryl Logue of Trillium Compliance called me and informed that a small drainage tile outlet, 10 feet upstream from the 18 inch main, was discovered to be leaking a small amount of wastewater into the stream. An additional dam was placed upstream by Phil Budd of Trillium to prevent the flow of any clean water into the contaminated area. In addition, Trillium personnel discovered the 18 inch tile main was to be leaking along the outside of the main. In response, a 3-foot section west of the outlet was removed and a small "sump" was created to collect any leachate. A dirt dam was then placed between the sump and the tile outlet. These measures stopped the flow at the tile main. Water seepage stopped on its own at the 4 inch tile upstream.

Tuesday, September 16

Phil Budd checked the outlets for containment at 12:15 a.m. and 2:50 a.m. Everything was stable. At about mid-day, Phil excavated a new 2000-3000 gallon containment area adjoining the existing "sump" and began the removal of contaminated water to Layer 3's egg wash pond. As of September 18, 47,250 gallons of wastewater had been removed from this containment area.

I met with Trillium personnel, including J.T. Dean and Doug Mack to discuss further remediation efforts and possible strategies to prevent a reoccurrence.

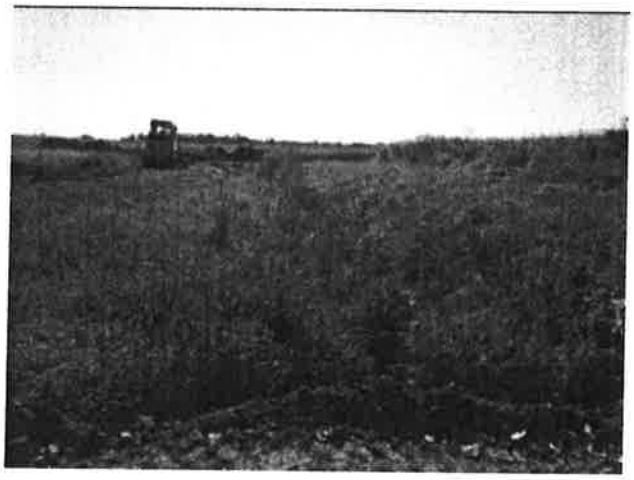
At about 4:00 p.m., Dave Gatten and I checked the tile outlet and containment areas again. Everything was stable. We then checked downstream areas of the stream (Bowl Run) at Parsons Road and at Appleton Road. Both sites had what visibly appeared to be clean water flowing in the stream.

Monday, September 29

- Andy Ety of ODA checked the tile outlet and containment areas. Everything was stable. However, the water in the tile main containment "sump" had not been removed, nor was the site repaired to its original condition (i.e.: tile completely pumped, tile outlet repaired, sump area filled and re-graded, dikes removed and streams restored, etc.).

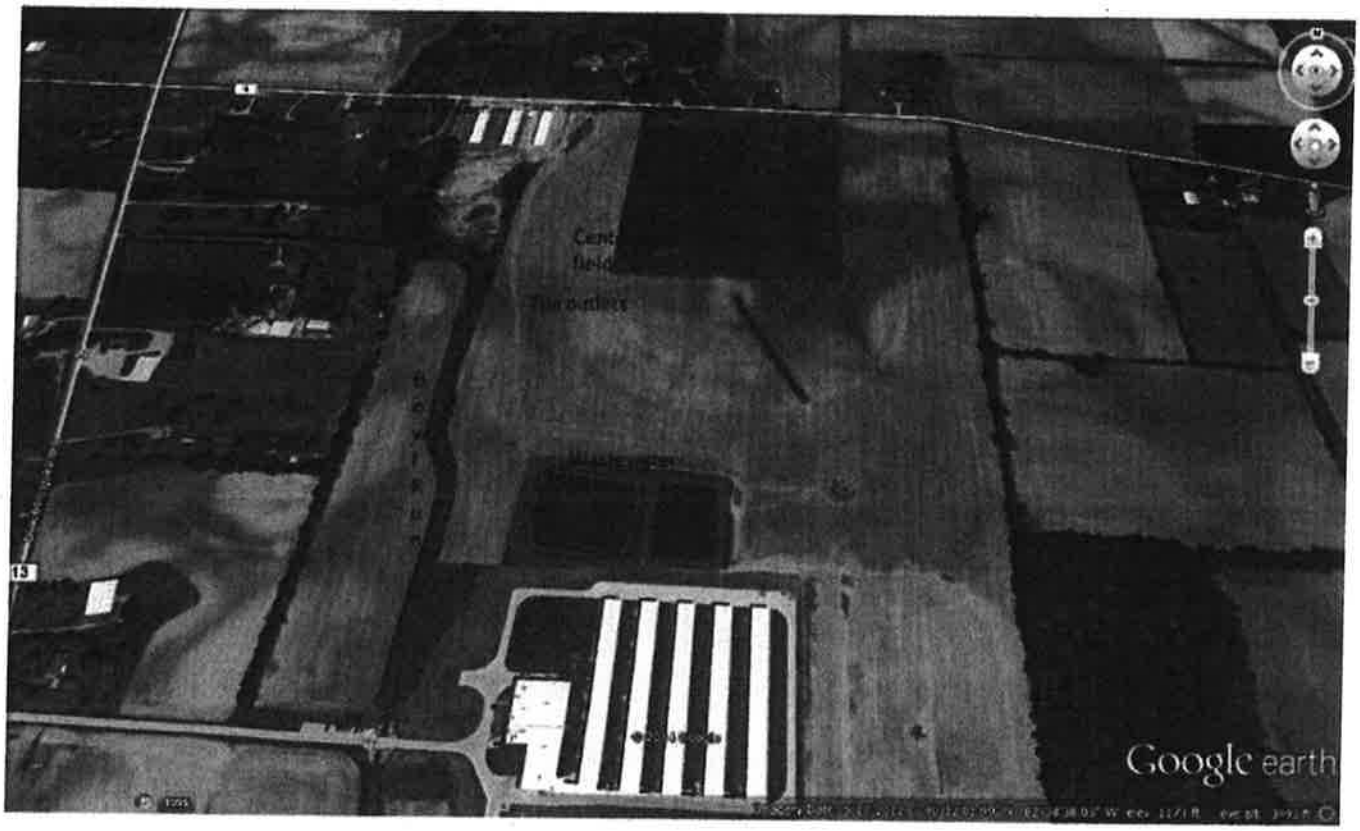
Excavated 18 inch tile main

2000-3000 gallon containment/pumping area



Downstream dike in foreground 9-29-14

Upstream dike, 9-29-14



Conclusions

From Trillium Compliance wastewater application and center pivot calibration records, it was determined that a total of 401,387 gallons of wastewater was applied on the 19.84 acres under the center pivot. While the center pivot was set to apply only .25 inch/acre (6,789 gallons/acre) per full-circle revolution, the pivot completed 3 revolutions over the 26 hour period from 5:50 a.m. September 14 through 7:56 a.m. September 15, for an effective rate of 20,232 gallons per acre. This clearly exceeds the 13,000 gallons per acre maximum allowed per application event for liquid manure on fields with subsurface drainage.

While the wastewater application records indicate that a tile outlet check was completed sometime during the day on September 14, there is no indication that any further tile outlet checks were completed later that day or overnight, even though the center pivot continued to apply wastewater. Only when it was discovered that the center pivot was still running, early morning of September 15th, was the tile outlet checked again. Tile outlet checks were clearly not frequent enough to detect tile outlet flow in a timely manner.

Report prepared by Mark Fritz, ODA-DLEP inspector
October 1, 2014

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

October 3, 2014

Ohio Fresh Eggs, LLC
10513 Croton Road
Croton, Ohio 43013

Trillium Farm Holdings, LLC
241 St. Andrews Way
Sioux Center, Iowa 51250

Certified Mail 91 7108 2133 3939 4695 2629

Re: Warning Letter – Discharge to Waters of State at Croton Hatchery and Breeder Pullet

Gentlemen:

Violations were reported to Ohio Department of Agriculture, Division of Livestock Environmental Permitting (ODA-DLEP) by Trillium Farm Holdings on September 15, 2014. An investigation by ODA inspector Mark Fritz, conducted that same day and following, confirmed that ODA requirements for the application of liquid manure were not followed, resulting in a discharge to waters of the State.

The ODA investigation determined that Trillium Farm Holdings, LLC failed to comply with the following Ohio Administrative Code Rules as they relate to the application of liquid manure:

> **OAC Rule 901:10-2-16(A)(3)(c)** requires that periodic observations of subsurface drain outlets be made during and after application.

Application records provided to ODA show that the center pivot wastewater application began at 5:50 a.m., September 14th, and continued uninterrupted until 7:56 a.m., September 15th. A tile outlet check was made sometime the morning of September 14th, but no other checks are recorded for that day or for the overnight period following. When the center pivot was turned off at 7:56 a.m. and the tile outlet finally checked, a significant flow of wastewater from the 18-inch tile outlet into a tributary of the Otter Fork of the Licking River was found.

> **OAC Rule 901:10-2-14, Appendix F, Table 1 – Most Limiting Manure Application Rates for Tiled Fields** establishes a maximum rate of 13,000 gallons per acre for tiled fields.

The application rate for this event totaled 20,231 gallons per acre, with no monitoring of the available water capacity of the soil during this 26-hour period.

Corrective Actions Required:

1. The 18" tile shall be allowed to drain into the diked area (i.e.: remove bentonite plug) and all remaining effluent in the ditch or sump pit shall be removed and properly land applied

or placed in storage. Following completion of this work, the dikes in the ditches shall be removed and the area restored to its original state. This work shall be completed by no later than October 10, 2014.

2. A water control or tile stop structure shall be installed on the 18 inch main tile outlet of the center pivot field by no later than November 1, 2014. Installation of this structure shall conform to Natural Resources Conservation Service (NRCS) specifications, which can be found at the Licking NRCS-USDA Service Center in Newark, Ohio. Inflatable tile plugs are intended for emergency use and will not meet this requirement.
3. ODA shall be notified at least 24 hours prior to the beginning of installation of this structure.
4. A written procedure must be developed to ensure that future center pivot irrigation applications are closely monitored and do not continue uninterrupted and unmonitored. This written procedure must be submitted to ODA by October 15, 2014.

The ODA takes these violations seriously. Please be aware that future violations of these land application requirements or failure to comply with the Corrective Actions listed above may result in escalated enforcement.

Please read the enclosed complaint investigation report and direct any questions concerning this Warning Letter to ODA inspector Mark Fritz at mfritz@agri.ohio.gov or 614-282-9729 or to my office. I look forward to your cooperation in this matter.

Sincerely,

Kevin H. Elder
Division Chief

Enclosures:

- Complaint Investigation Report
- Trillium lab reports

Cc: David Gorman, Legal Counsel, Ohio Department of Agriculture
Kelly McCloud, Ohio Attorney General
Andy Ety, Engineer, ODA-DLEP
Mark Fritz, Inspector, ODA-DLEP
Licking SWCD
Hunter Young, OEPA

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October 23, 2014

Heartland Dairy Holdings, LLC
John Glessner
1947 N Main Lindsay Rd.
Mesa Arizona 85213

Certified Mail Return 91 7199 9991 7032 3701 5457

Re: Director's Notice of Deficiency in Noncompliance
Permit to Operate: 54-121-PTO-002 and Ohio Administrative Code Requirements

Mr. Glessner:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), you are hereby issued a Notice of Deficiency resulting in Noncompliance (NOD). ODA has determined that you have violated Permit to Operate (PTO) 54-121-PTO-002 and have failed to comply with the Ohio Administrative Code (O.A.C.)

VIOLATION: Failure to install depth markers

The installation of additional depth markers beyond the MOL mark has not been completed in Ponds 2 or 3. During a routine inspection on April 24, 2014, the inspector noted that no permanent depth markers had been installed in Pond 2, beyond the Maximum Operating Level (MOL) mark. The inspector also noted that there were only 3 additional markers beyond the MOL mark in Pond 3. A Required Action in the subsequent routine inspection report stated "Manure levels in Ponds 2 and 3 must be lowered and additional level markers installed no later than September 15, 2014, or enforcement action may ensue". During another routine inspection on September 24, 2014, the inspector noted that no additional depth markers had been installed, as manure levels had not been lowered sufficiently to install them. Finally, in response to an e-mail inquiry by the inspector on October 23, it was determined that the depth markers were still not installed.

ODA has determined that OAC 901:10-2-06(A)(2) has been violated, which requires *"If not already installed at the facility, a liquid level board, staff gauge, depth marker or other appropriate device, approved by the director, shall be installed within the interior of the liquid manure storage pond or manure treatment lagoon to monitor manure levels. This device shall indicate levels every one foot in vertical elevation and shall indicate levels as described in paragraph (D)(1) of rule 901:10-2-08 of the Administrative Code."*

CORRECTIVE ACTIONS REQUIRED

You have **21** days from the date of this letter within which you must correct this deficiency by installing permanent markers at one foot vertical elevations to a depth representing at least 50% of the total depth of the storage. These markers must be permanent and clearly visible to facilitate the accurate weekly recording of manure levels as required in your permit.

PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-4-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation is a first-cited violation, with a category of seriousness as Category II, and the gravity of the violation as low. Therefore, if you fail to comply with the Corrective Actions required above, you will be subject to the assessment of a civil penalty in an amount up to $800 for each day from the date of receipt of this Notice to the date of re-inspection. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

Please feel free to contact this office with any concerns or questions as to what may be expected from Heartland Dairy Holdings, LLC in order to return to compliance. I look forward to your cooperation in this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: Mercer SWCD
Kelly McCloud, Assistant Attorney General
David Gorman, ODA Senior Staff Counsel
Andy Ety, DLEP Engineer
Mark Fritz, DLEP Inspector

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November 7, 2014

5C's Farm Inc.
06383 Cicero Road
Hicksville OH 43526

Re: Warning Letter – Permit to Operate Renewal Submittal and Replacement of Manure Barn Cover

Dear Mr. Cleland:

According to rule 901:10-1-02 of the Ohio Administrative Code (O.A.C.), a Permit to Operate (PTO) is valid for 5 years from the day it is issued. Furthermore, a PTO renewal application for an expiring PTO shall be submitted to the Director at least 180 days prior to its expiration date. The Permit to Operate, #20-079-PTO-001, for 5 C's Farm Inc. was issued on March 23, 2010 and will expire on March 23, 2015. An application to renew the PTO was due to this office no later than September 24, 2014, but no application has been received to date. If a properly revised Permit to Operate for 5C's Farm Inc. is not received by this office by January 1, 2015, escalated enforcement action will be taken against 5 C's Farm, Inc.

In addition, an inspection by my staff on November 6, 2014 revealed that the cover over the north third of the manure storage barn located at the NW corner of SR 18 and Rosedale Road has still not been replaced. The Manure Storage Barn that is an integral part of your Permit to Operate and the cover needs to be replaced as has been discussed with you in the past to prevent contaminated stormwater from reaching waters of the state and to fulfill the requirements set forth in your existing PTO. This cover needs to be reinstalled by no later than January 1, 2015.

We take these violations seriously and ask for your prompt attention to completing these tasks. Please keep my staff informed of any progress you make on completing these required actions. If you have any questions or concerns, you may call this office for further clarification.

Sincerely,

Kevin Elder
Division Chief

Cc: Tom Menke, Menke Consulting
Andy Ety, DLEP Engineer
Dan Bruner, DLEP Inspector
Kelly McCloud, Asst. Attorney General

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Administrative Office
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-466-2732 • Fax: 614-466-6124
www.agri.ohio.gov • administration@agri.ohio.gov

December 4, 2014

5C's Farm Inc.
William Cleland Jr.
06383 Cicero Road
Hicksville OH, 43526

91 7199 9991 7032 3701 5440

Permit to Operate (PTO) No. 20-079-PTO-001

Certified Mail Return Receipt Requested

Re: Notice of Deficiencies Resulting in Noncompliance- 5C's Farm Inc.

Dear Mr. Cleland:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Ohio Revised Code (ORC) Section 903.16, 5C's Farm Inc. is hereby issued a Notice of Deficiency Resulting in Noncompliance (NOD). ODA has determined that your facility has violated Permit to Operate (PTO) 20-079-PTO-001. ODA has determined that 5C's Farm Inc. has failed to comply with Ohio Administrative Code (O.A.C.) §901:10-2-18(C)(1)(2)(3) and O.A.C. §901:10-1-09(I)(1)(2).

VIOLATION:

Based on my staff's inspection on November 6, 2014, it was found that you have recently "closed" a manure storage structure without first notifying our office or submitting a closure plans required in O.A.C. §901:10-2-18(C):

"If a permittee seeks to close permanently a manure storage or treatment facility or to close the entire facility temporarily without terminating permit coverage, the permittee must submit a closure plan. The owner or operator shall notify the director in writing and allow the director an opportunity to inspect the facility to verify that the facility or a portion of the facility is closed for purposes of Chapter 903. of the Revised Code and in accordance this rule. Thereafter, the director will notify the owner or operator in writing that the facility is closed in accordance with this rule."

In addition, O.A.C. §901:10-2-18(C)(3) states:

"If the closure would constitute a modification as defined in rule 901:10-1-01 of the Administrative Code, the owner or operator shall apply for a permit modification removing the closed portions of the facility from the permit and recalculating the storage volume for the facility. If applicable, the owner or operator shall also submit an application for a permit to install."

No closure plan was submitted and the "concrete pits under barn No. 3", as identified in the PTO as manure storage for approximately 1,000 cattle, has been permanently closed by filling in of the pits. Furthermore, a manure pen-pack structure has been constructed on top of the previous concrete pits, which would either require a Permit to Install (PTI) or a Major Operational Change (MOC) to be submitted and approved prior to commencing construction. Neither a PTI or MOC have been received by this office.

C. CORRECTIVE ACTIONS

5C's Farm Inc. is required to submit a detailed explanation (i.e. closure plan) of how the concrete pits were "closed." This must include a description of how the liquid and solid manure was removed and the material and method used for compaction of the fill used for filling the pits. This explanation shall be submitted to ODA Division of Livestock Environmental Permitting (DLEP) no later than January 1, 2015.

5C's Farm Inc. must also submit either an application for a Permit to Install or an application for a Major Operational Change, whichever is applicable, for the new pen-pack manure storage system that was constructed for Barn No. 3. This must include any applicable technical information in support of the change including, but not limited to, site plans and engineering plans that show the location and extent of work performed. In addition, a revised manure management plan, including revisions to show the concrete pits removed and replaced with a pen-pack system, as well as detailed manure storage calculations shall be provided. Lastly, any revisions to the General Information form shall be provided, as well as the appropriate fee for the requested change. This information shall be submitted to ODA DLEP no later than **January 1, 2015**.

C. PENALTY ASSESSMENT

Pursuant to OAC §901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with OAC §901:10-5-04. In addition to paragraph (D) of OAC §901:10-5-04, ODA DLEP staff has referred to the penalty matrix in OAC §901:10-5-04(E) and (F) to determine that this is the first cited violation of the above identified laws and rules, that the category of seriousness of the violations is Major and the gravity of the violation is low. The appropriate penalty in this matter is $1,600 per day from the date of receipt of this NOD, unless the deficiencies are corrected in accordance with the corrective actions above.

If 5C's Farm Inc. fails to comply with any of the corrective actions required herein by **January 1, 2015**, you will be subject to the assessment of civil penalties. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to me or any of my staff. I look forward to your continuing cooperation in this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: David Gorman, ODA, Senior Staff Counsel
Kelly McCloud, Assistant Attorney General
Andy Ety, DLEP Engineer
Dan Bruner, DLEP Inspector

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February 5, 2015

Miami Valley Dairy, LLC
9235 Wildman Road
South Charleston, Ohio 45368

Certified Mail: 91 7199 9991 7032 3701 6614

Re: Notice of Violation and Proposed Administrative Penalty
Permit to Operate #: 12-183-PTO-002

Dear Miami Valley Dairy,

Pursuant to the Ohio Department of Agriculture's (ODA) authority in Ohio Revised Code (ORC) § 903.16, the Division of Livestock Environmental Permitting (DLEP), noted violations by Miami Valley Dairy, LLC related to Ohio's concentrated animal feeding facilities laws. **Specifically, Miami Valley Dairy, LLC has violated Ohio Administrative Code (OAC) § 901:10-2-14 by applying liquid manure to frozen or snow-covered ground without prior permission from ODA**. Therefore, pursuant to ORC § 903.16(E), ODA DLEP proposes to impose a **$2,000.00** administrative penalty.

On January 28, 2015, an ODA-DLEP inspector observed application of sand pit manure solids actively taking place on frozen and snow covered ground. You had not been granted prior permission by the director or the director's designated representative to apply manure to frozen or snow-covered ground. **Failure to obtain permission prior to applying manure to frozen or snow-covered ground is a violation of OAC § 901:10.2-14(G)(1)(a).**

Based upon the 2012-2014 sand pit manure (solid) analyses, the moisture of the sand laden manure has been less than 26% moisture. **The application of manure on frozen or snow-covered ground with less than fifty percent moisture is a violation of OAC § 901:10-2-14(G).**

Additionally, the field receiving manure had less than 90% residue as corn silage was removed in 2014 and no cover crop established. **The application of manure on frozen or snow-covered ground with less than 90% coverage from cover crop residue after harvesting is a violation of OAC § 901:10-2-14(G)(1)(d).**

Finally, manure was applied up to and through a grass waterway adjacent to the Dairy as the equipment was crossing the grass waterway dropping manure. Also, manure was applied within 200 feet of the grass waterway on the south side of it. **The application of manure on frozen or snow-covered land within two hundred feet of surface waters and conduits to surface**

waters, (including grass waterways and surface drains) is a violation of OAC § 901:10-2-14(G)(1)(g).

As a result of these violations, ODA is proposing to impose a two thousand dollar ($2,000.00) administrative penalty pursuant to ORC § 903.16(E).

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action before ODA imposes the penalty. Any request for a hearing must be made to the Ohio Department of Agriculture, Attention: Dave Gorman, ODA Legal Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, or you may call him at (614) 728-6430. **Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on February 5, 2015.**

If you should request a hearing, you have the right to be present in person, or you may present your arguments and contentions in writing Please note that if your company is a corporation or a limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at a hearing. A court reporter will be present to make a record of the proceeding and swear in witnesses who are called. You may present evidence and examine witnesses appearing for and against you to show cause why the proposed administrative penalty should not be ordered against you. However, as a corporate entity, you must be represented by an attorney at the administrative hearing. The Assistant Attorney General assigned to ODA will represent ODA at this hearing. If you do not wish to have a hearing on the allegations set forth in this letter, you may pay the proposed fine. Please send a check or money order made payable to the "Treasurer, State of Ohio" and mail it to the address set forth at the top of the first page of this letter.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider a waiver of your right to an administrative hearing and may issue a final order without a hearing.

The following statues and rules are applicable to matter. They are reproduced for your reference.

Ohio Revised Code § 903.10
Administrative rules for permits to install and permits to operate.

The director of agriculture may adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

[. . .](C) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (C)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application

of manure and prevent the contamination of water in drainage tiles that may be caused by that application. [. . .]

Ohio Revised Code § 903.16
Requiring corrective actions and assessing civil penalties.

(E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination under this division, the director's imposition of an administrative penalty under this division, or both. The director's determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

Ohio Administrative Code § 901:10-2-14
Contents of manure management plan: land application methods.

(G) General criteria for frozen and snow-covered ground. In addition to complying with all of the criteria in paragraphs (A) to (F) of this rule, the following actions are required for surface application of manure to land with frozen or snow-covered ground.

If manure can be injected or incorporated then the land application site is not frozen or snow covered and therefore subject to paragraphs (A) to (F) of this rule.

The owner or operator shall comply with rule 901:10-2-08 of the Administrative Code and this rule and use best efforts to avoid surface application of manure to frozen or snow covered ground by ensuring enough manure storage capacity by November of each year for a minimum of one hundred twenty to one hundred eighty days.

Manure injection or manure incorporation performed within twenty-four hours at the land application site is the preferred alternative to surface application of manure. Solid manure with less than fifty per cent moisture shall be stockpiled at the land application site in lieu of manure application on frozen or snow covered ground.

Surface application of manure on frozen or snow-covered ground is prohibited unless performed in accordance with all of the following requirements in paragraph (G)(1) of this rule.

(1) Application.

(a) Prior approval for each surface application of manure shall be obtained from the director or his designated representative. [...]

(d) Applications are to be made on land with at least ninety per cent surface residue cover at the time of application such as good quality hay or pasture field, all corn grain residue remaining after harvest, and all small grain residue cover remaining after harvest. Vegetation or residue shall not be completely covered by ice or snow at the time of application. [...]

(g) Setbacks from surface waters and conduits to surface waters, (including grassed waterways and surface drains) shall be a minimum of two hundred feet. Setbacks shall have at least ninety per cent surface residue cover and vegetation or residue shall not be completely covered by ice or snow at the time of application.

Ohio Revised Code § 119.07
Notice of hearing - contents - notice of order of suspension of license - publication of notice - effect of failure to give notice.

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice.

The notice shall also inform the party that at the hearing the party may appear in person, by the party's attorney, or by such other representative as is permitted to practice before the agency, or may present the party's position, arguments, or contentions in writing and that at the hearing the party may present evidence and examine witnesses appearing for and against the party. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.

When a statute specifically permits the suspension of a license without a prior hearing, notice of the agency's order shall be sent to the party by registered mail, return receipt requested, not later than the business day next succeeding such order. The notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within thirty days of the time of mailing the notice. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code, the agency shall immediately set the date, time, and place for the hearing and forthwith notify the party thereof. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party.

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because the party fails to claim the notice, the agency shall send the notice by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

If any notice sent by registered or ordinary mail is returned for failure of delivery, the agency either shall make personal delivery of the notice by an employee or agent of the agency or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. When notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the notice shall be deemed received as of the date of the last publication. An employee or agent of the agency may make personal delivery of the notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

As an additional reminder, if you fail to request a hearing within 30 days of the mailing of this letter, ODA will consider it a waiver of your right to an administrative hearing and will proceed to collect the fines for these violations. If you have any questions or concerns about this notice of violation please do not hesitate to contact me.

Sincerely,

Kevin Elder,
Division Chief

Cc: Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Christine Pence, DLEP Inspector
David Gorman, ODA Legal Counsel

Ohio | Department of Agriculture
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February 5, 2015

Mr. Sybrand T.C. van Raaij, Owner and Manager
Van Raay Dairy Limited Partnership
12471 Thomas Road
South Charleston, Ohio 45368

Via Certified Mail: 91 7199 9991 7032 3701 6621

Re: Notice of Violation and Proposed Administrative Penalty
Permit to Operate (PTO): 12-156-PTO-002

Dear Mr. van Raaij,

Pursuant to the Ohio Department of Agriculture's (ODA) authority in Ohio Revised Code (ORC) § 903.16, the Division of Livestock Environmental Permitting (DLEP), noted violations by Van Raay Dairy Limited Partnership related to Ohio's concentrated animal feeding facilities laws. **Specifically, Van Raay Dairy Limited Partnership has violated Ohio Administrative Code (OAC) § 901:10-2-14 and Appendix B by over-applying liquid manure to your fields.** Therefore, pursuant to Ohio Revised Code (ORC) § 903.16(E), ODA DLEP proposes to impose a **$3,000.00** administrative penalty.

On December 17, 2014, ODA DLEP conducted a routine inspection of the records of manure application as performed by Van Raay Dairy. During each of three (3) liquid manure application events on April 12, 2014, October 28, 2014, and November 8, 2014, the application rate of liquid manure for Field F50 (50 acres) was over 20,000 gallon/acre, which exceeded the allowable maximum application rate of 13,576 gallons per acre for tiled fields. **As the liquid manure application rate exceeded the maximum allowable rate by at least 6,424 gallons per acre, Van Raay Dairy Limited Partnership violated OAC § 901:10-2-14(C)(1)(d) and Appendix B.**

Additionally, during the inspection it was determined that the manure application rates of phosphate (P_2O_5) on Field F50 was over 250 pounds per acre. The allowable manure application rate of phosphate is limited to 250 pounds per acre. **Since the rate of phosphate applied was over 500 pounds per acre for the 2015 crop year, Van Raary Dairy Limited Partnership exceeded the maximum allowable rate by approximately 260 pounds per acre and violated OAC § 901:10-2-14, Appendix F, Table 1.**

As a result of these violations, ODA is proposing to impose a three thousand dollar ($3,000.00) administrative penalty pursuant to ORC 903.16(E).

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action before ODA imposes the penalty. Any request for

a hearing must be made to the Ohio Department of Agriculture, Attention: Dave Gorman, ODA Legal Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, or you may call him at (614) 728-6430. **Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this Notice. This Notice is being mailed to you on February 5, 2015.**

If you should request a hearing, you have the right to be present in person, or you may present your arguments and contentions in writing Please note that if your company is a corporation or a limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at a hearing. A court reporter will be present to make a record of the proceeding and swear in witnesses who are called. You may present evidence and examine witnesses appearing for and against you to show cause why the proposed administrative penalty should not be ordered against you. However, as a corporate entity, you must be represented by an attorney at the administrative hearing. The Assistant Attorney General assigned to ODA will represent ODA at this hearing. If you do not wish to have a hearing on the allegations set forth in this letter, you may pay the proposed fine. Please send a check or money order made payable to the "Treasurer, State of Ohio" and mail it to the address set forth at the top of the first page of this letter.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider a waiver of your right to an administrative hearing and may issue a final order without a hearing.

The following statues and rules are applicable to matter. They are reproduced for your reference.

Ohio Revised Code § 903.10
Administrative rules for permits to install and permits to operate.

The director of agriculture may adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

[. . .](C) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (C)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application. [. . .]

Ohio Revised Code § 903.16
Requiring corrective actions and assessing civil penalties.

(E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if

the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination under this division, the director's imposition of an administrative penalty under this division, or both. The director's determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

Ohio Administrative Code § 901:10-2-14
Contents of manure management plan: land application methods.

(C) General criteria for manure application. The manure application rate shall be based on the most limiting factor of rates derived from paragraphs (B) to (G) of this rule, including factors derived from all appendices to this rule, whichever factor is determined to be the most restrictive factor for purposes of protecting waters of the state.

(1) For liquid manure: [...]

(d) The application rate shall not exceed the available water capacity of the soil as described in appendix B to this rule; [...]

Appendix B to rule § 901:10-2-14 Available Water Capacity (AWC).
Note: Liquid manure applications to tiled fields must be less than or equal to 13,576 gal/ac.

(E) The manure application rate for phosphate shall be determined using the soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code and the following criteria: [...]

(3) Phosphate applications between two-hundred fifty pounds per acre and five hundred pounds per acre are not recommended but may be made if the values for liquid manure exceed sixty pounds phosphate per one thousand gallons and if the values for solid manure exceed eighty pounds phosphate per ton and application is subject to these additional requirements:

(a) No manure application shall occur on land with soil tests that exceed more than one hundred parts per million Bray P1;

(b) No manure application shall occur on frozen or snow-covered ground;

(c) The manure shall be incorporated within twenty-four hours;

(d) No additional phosphate application shall be made for a minimum of three years on fields with soil tests that measure less than forty parts per million Bray P1 or equivalent; and

(e) No additional phosphate application shall be made for a minimum of five years on fields with soil tests between forty and one-hundred parts per million Bray P1 or equivalent.

Appendix F, Table 1 to rule § 901:10-2-14 Most Limiting Manure Application Rates.

(Oct.- March) - Subsurface Drained or High N Leaching Potential - P205 - Crop Needs or Crop Removal <250 Lbs/ac

Ohio Revised Code § 119.07
Notice of hearing - contents - notice of order of suspension of license - publication of notice - effect of failure to give notice.

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice.

The notice shall also inform the party that at the hearing the party may appear in person, by the party's attorney, or by such other representative as is permitted to practice before the agency, or may present the party's position, arguments, or contentions in writing and that at the hearing the party may present evidence and examine witnesses appearing for and against the party. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.

When a statute specifically permits the suspension of a license without a prior hearing, notice of the agency's order shall be sent to the party by registered mail, return receipt requested, not later than the business day next succeeding such order. The notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within thirty days of the time of mailing the notice. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code, the agency shall immediately set the date, time, and place for the hearing and forthwith notify the party thereof. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party.

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because the party fails to claim the notice, the agency shall send the notice by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

If any notice sent by registered or ordinary mail is returned for failure of delivery, the agency either shall make personal delivery of the notice by an employee or agent of the agency or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. When notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the notice shall be deemed received as of the date of the last publication. An employee or agent of the agency may make personal delivery of the notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

As an additional reminder, if you fail to request a hearing within 30 days of the mailing of this letter, ODA will consider it a waiver of your right to an administrative hearing and will proceed to collect the fines for these violations. If you have any questions or concerns about this notice of violation please do not hesitate to contact me.

Sincerely,

Kevin Elder,
Division Chief

Cc: Cathy Alexander, Ohio EPA
Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Christine Pence, DLEP Inspector
David Gorman, ODA Legal Counsel

Ohio Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
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8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

February 12, 2015

Bockey Ag-Lime
Mike Bockey
9339 Brickner Road
Delphos, Ohio 45833
Email: janboc@watchtv.net
Certification Number: 159

Certified Mail:
91 7199 9991 7032 3701 6553

Re: Warning Letter – Land Application Violations- Frozen or Snow Covered Ground

Dear Mr. Bockey:

This letter is to inform you that your land application at the Schwartz Farm, owned and operated by Mr. Robert Etzkorn and located south and west of the intersection of St Rt. 116 and St. Rt. 117, was recently the subject of a complaint submitted to the Ohio Department of Agriculture (ODA), Division of Livestock Environmental Permitting (ODA-DLEP). At the conclusion of the inspection, ODA determined Bockey Ag-Lime failed to comply with Ohio Administrative Code (OAC) 901:10-2-14.

At my staff's investigation on January 28, 2015 it was determined that solid manure had been applied to a 77-acre field that was frozen and snow covered. The ODA Rules and best management practices that were specifically not adhered to are as follows:

1. *OAC 901:10-2-14(G) Solid manure with less than 50% moisture shall be stockpiled at the land application site in lieu of manure application on frozen or snow covered ground.* **The manure was not stockpiled and Bockey Ag-Lime decided to land apply the manure on frozen/snow covered ground, which is a violation of ODA rules.**

2. *OAC 901:10-2-14(G)(1)(a) Prior approval for each surface application of manure shall be obtained from the director or his designated representative.* **No permission was requested and no permission was granted.**

3. *OAC 901:10-2-14(G)(1)(d) Applications are to be made on land with at least ninety per cent surface residue cover at the time of application such as good quality hay or pasture field, all corn grain residue remaining after harvest, and all small grain residue cover remaining after harvest. Vegetation or residue shall not be completely covered by ice or snow at the time of application.* **There was not 90% surface residue cover on the field where manure was applied during the frozen/snow covered conditions. The vegetation was completely covered with snow at the time of application.**

4. *OAC 901:10-2-14(G)(1)(f) Manure shall not be applied on more than twenty contiguous acres. Contiguous areas for application are to be separated by a break of at least two hundred feet. Areas that are furthest from streams, ditches, waterways, and\or surface waters are to be utilized in preference to areas with the potential for surface water runoff.* **The field consisted of a total of 77 acres and more than 20 contiguous acres had manure applied during frozen/snow covered conditions.**

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Administrative Office
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-466-2732 • Fax: 614-466-6124
www.agri.ohio.gov • administration@agri.ohio.gov

March 2, 2015

Meerland Dairy LLC
c/o Martien de Haan
16039 Pleasantview Rd.
South Solon Ohio, 43153

Via Certified Mail No. 91 7199 9991 7032 3701 6430

Re: Notice of Deficiencies Resulting in Noncompliance - Meerland Dairy LLC
Permit to Operate (PTO) No. 24-170-PTO-003

Mr. de Haan:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Ohio Revised Code (ORC) § 903.16, ODA hereby issues you this Notice of Deficiency Resulting in Noncompliance (NOD) due to several serious violations of the law. **Specifically, you violated Ohio Administrative Code (OAC) § 901:10-2-04(E) by allowing leachate from the silage bunkers and mortality compost area to reach the storm water pond. You also violated OAC § 901:10-2-08(D)(13) by allowing mortality compost material to come into direct contact with the water in the "clean" storm water pond.**

In conformance with ORC 903.16(A)(1), ODA is hereby issuing this Notice of Deficiency along with required corrective actions.

A routine ODA inspection of your facility on November 7, 2014 revealed that silage leachate appeared to have drained over the walls of the west and east silage bunkers and possibly through cracks in the concrete walls of the east bunker. Upon closer inspection by ODA on January 21, 2015, this leachate was determined to have migrated to the drainage ditches to the west, south, and east of the silage bunker area. These ditches drain to a "clean" storm water pond, overflowing to a constructed wetland which is designed to discharge through a 12-inch diameter tile to the east of the facility. Furthermore, it was determined at both the November 7, 2014 inspection and the January 21, 2015 inspection that leachate originating from the mortality composting area was allowed to drain south to the storm water pond. It appeared that the total volume of mortality compost material on the concrete pad exceeded that which it could effectively hold and some of the mortality compost material had migrated off the concrete pad. Allowing leachate from the silage bunkers and mortality compost area to reach the storm water pond is a violation of OAC § 901:10-2-04(E), which requires storm water runoff to be kept separate and uncontaminated.

An inspection of your facility on January 21, 2015 revealed that mortality compost material was being stored in a large pile on the northwest bank of the "clean" storm water pond, in direct contact with the water. The storm water pond overflows to a constructed wetland east of the facility. This is a violation of OAC § 901:10-2-08(D)(13) which requires that dead livestock are stored and managed to prevent discharges to waters of the state.

Corrective Actions

You must correct the above deficiencies by performing the following actions within the stated timeframes:

1. Immediately upon receipt of this letter, you must continue to ensure the weir gates are closed in the drainage control structure at the southeast corner of the wetland area to prevent potential discharge from the storm water pond through the 12-inch diameter outlet tile. Note that in accordance with ODA rules, contaminated storm water is considered liquid manure. Therefore, the water from the storm water pond must be properly stored and handled as a liquid manure source to be land applied or distributed and utilized (D&U) by others in accordance with ODA rules. Within 10 days from the date of this letter, you must submit in writing to ODA your plan to manage the anticipated storm water volume for the next 180 days. Furthermore, you must manage the water level in the storm water pond to minimize the risk of contaminating the monitoring well located just south of the storm water pond. At all times, the water level in the storm water pond must remain below the ground level at the base of the well casing.

2. Immediately upon receipt of this letter, you must ensure that all mortality compost material is completely removed from the northwest bank of the storm water pond and is properly stored and handled as a solid manure source to be land applied or distributed and utilized (D&U) by others in accordance with ODA rules. This area must be graded, seeded, and vegetation restored within 90 days from the date of this letter.

3. Within 45 days from the date of this letter, you must submit to ODA a written plan to implement controls that would permanently prevent silage leachate from reaching the drainage ditches in the future. Within 180 days from the date of this letter, the approved controls must be fully implemented and the vegetative areas around the silage bunkers must be graded, seeded, and restored.

4. Within 45 days from the date of this letter, you must submit to ODA a written plan to implement permanent controls to manage mortality losses to prevent storm water contamination in the future. Within 180 days from the date of this letter, the approved controls must be fully implemented and the vegetative areas around the existing mortality compost area must be graded, seeded, and restored.

5. Within 180 days from the date of this letter, you must clean out the drainage ditches around the silage bunkers to remove any residual leachate material in order to prevent any future nutrient loading of the storm water pond. These areas must be graded, seeded and vegetation restored.

The applicable laws are reprinted below for your reference:

ORC § 903.16 Requiring corrective actions and assessing civil penalties.

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

> (1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.
>
> (2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.
>
> (3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing. [...]

OAC § 901:10-2-04 Manure storage and treatment facilities.

[...] (E) Stormwater pollution prevention plans. Each owner or operator of a concentrated animal feeding operation shall prevent pollution of stormwater resulting from an animal feeding facility by submitting plans to satisfy this rule and rule 901:10-3-11 of the Administrative Code to do the following:

> (1) Maintain separation of uncontaminated stormwater runoff from contaminated water with designs and installations that include, but are not limited to, settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions;
>
> > (a) Grade the area around the livestock buildings and the manure storage or treatment facility;

(b) Divert stormwater runoff and roof water away from the manure storage or treatment facility or other structures in the production area.

(c) Use spill prevention and good housekeeping techniques to ensure that stormwater discharges from the following areas comply with Ohio water quality standards: immediate access roads and rail lines used or traveled by carriers; or raw materials, products, waste materials, or by-products used or created; refuse sites; sites used for storage and maintenance of material handling equipment; sites used for handling material other than manure and shipping and receiving areas.

(d) Install systems that are designed to capture and treat contaminated runoff and prohibit discharge of contaminated discharge. The owner or operator may use the following criteria, provided that in no case shall grassed filter strips satisfy effluent limitations for large facilities in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code.

(i) The "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" which includes the following which are available for review at the Ohio department of agriculture website http://agri.ohio.gov/:

(a) "Pond, No 378," January 2003;

(b) "Constructed Wetland Conservation Practice Standard, No. 656," January 2010, but provided there shall be no discharge;

(c) "Heavy Use Area Protection Practice, No. 561," December 2012;

(d) "Composting Operation, No. 317," March 2010;

(e) "Critical Area Planting, No. 342," March 2012;

(f) "Dike, No. 356," June 2002;

(g) "Diversion, No. 362," June 2002;

(h) "Grade Stabilization Structure, No. 410," May 1, 1988;

(i) "Pipeline, No. 516," June 2002;

(j) "Roof Runoff Structure, No. 558," June 2002;

(k) "Sediment Basin, No. 350," June 2002;

(ii) The "Ohio Livestock Manure And Wastewater Management Guide, Bulletin 604, The Ohio State University Extension, January 2006," which is available for review at the Ohio department of agriculture's campus in Reynoldsburg, Ohio and

(iii) USDA natural resource conservation service - NHCP which is available for review at the Ohio department of agriculture's campus in Reynoldsburg, Ohio .

(2) Construct coverings over any structures in the production area where manure may be exposed to direct precipitation; or

(3) Install vegetative cover and protect stream channels and areas adjacent to such channels from a concentrated animal feeding operation.

(4) The owner or operator may submit plans that implement alternative practices to the director for approval provided that any alternative practices must be demonstrated to be equivalent to the practices listed in paragraph (F)(1) of this rule unless the owner or operator or the director determine that additional total storage capacity is required to meet permit conditions. All of the practices listed are subject to the design standards for precipitation events in paragraphs (C) and (D) of this rule.

OAC § 901:10-2-08 Contents of the manure management plan: inspections, maintenance and monitoring

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

[...] (13) Ensure proper management of dead livestock as required by rule 901:10-2-15 of the Administrative Code to ensure that there shall be no discharge of mortality to waters of the state and no disposal in a manure storage or treatment facility that is not specifically designed to treat animal mortalities. [...]

If you fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to me at 614-387-0469 or any of my staff. I look forward to your continued cooperation in this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector
David Gorman, ODA Senior Staff Counsel
Kelly McCloud, Assistant Attorney General

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

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March 2, 2015

AJ Evers and Sons
C/o Mr. and Mrs. Gene Evers
1105 Goettemoeller Road
Maria Stein, Ohio 45860

Via Certified Mail: 91 7199 9991 7032 3701 6447

Re: Notice of Violation and Proposed Administrative Penalty
Permit to Operate # 54-080-PTO-001

Dear AJ Evers and Sons,

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Ohio Revised Code (ORC) § 903.16, this letter is to notify you that ODA's Division of Livestock Environmental Permitting (DLEP) proposes to impose an administrative penalty for violations of the law. **Specifically, AJ Evers and Sons violated Ohio Administrative Code (OAC) § 901:10-2-14 because: (1) you applied manure on frozen ground without permission from ODA; (2) the manure you applied had less than 50% moisture content; (3) two of the fields you applied manure on had less than 90% crop residue with no cover crops planted; (4) manure was applied to fields where soil tests indicated phosphorus exceeding one hundred fifty parts per million, Bray P1; and (5) precipitation of at least ½ inch was predicted within 24 hours of the manure application.**

Under ORC § 903.16(E) the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install or permit to operate issued for the facility. In conformance with ORC § 903.16(E), ODA DLEP proposes to impose a **$3,000.00** administrative penalty.

On January 9, 2015, ODA DLEP inspector, Christine Pence, conducted an inspection of your operating records. As a result of that inspection, it was determined that solid poultry manure had been applied to frozen ground on January 2, 3, and 5, 2015. You had not been granted prior permission by the director or the director's designated representative to apply manure on frozen ground. This is a violation of OAC § 901:10-2-14 (G)(1)(a), which requires you to obtain permission prior to applying manure to frozen or snow-covered ground.

In addition, the September, 2014 layer manure (solid) analyses confirmed that the moisture of the manure was less than 30%. You violated OAC § 901:10-2-14(G), because this rule requires that

solid manure with less than 50% moisture shall be stockpiled at the land application site in lieu of manure application on frozen or snow covered ground.

Also, two of your fields receiving manure had less than 90% residue as soybeans were removed in 2014 and no cover crop was established. This is a violation of OAC § 901:10-2-14(G)(1)(d), which requires that applications be made on land with at least 90% surface residue cover.

Additionally, manure was applied to fields where soil tests indicated phosphorus exceeding one hundred fifty parts per million, Bray P1. This is a violation of OAC § 901:10-2-14(E)(1)(b) and Appendix E, Table 2, which prohibit the application of manure on land with phosphorus soil tests that exceed more than one hundred fifty parts per million Bray P1.

Finally, the surface application of manure took place on January 2, 3 and 5, 2015 when there was predicted at least a 50 % chance of at least ½ inch precipitation. The National Oceanic and Atmospheric Administration (NOAA) weather forecast data for Celina, Ohio from 7:00 a.m., Saturday, January 3, 2015 through 8:00 a.m., Sunday, January 4, 2015 predicted a total of 1.39 inches of rainfall. The NOAA weather forecast data for Celina, Ohio from 8:00 p.m., Monday, January 5, 2015 through Tuesday, January 6, 2015 predicted a total of 3.7 inches of snow. This is a violation of OAC § 901:10-2-14(C)(6), because land application of manure by means of surface application shall not occur if the forecast contains a greater than 50% chance of precipitation as determined in "Managing Manure Nutrients at Concentrated Animal Feeding Operations, Appendix M, United States Environmental Protection Agency, EPA-821-B-04-006, August 2004," exceeding an amount of one-quarter inch for hydrologic soil group D soils and one-half inch for hydrologic soil group A, B, and C soils, for a period extending twenty-four hours after the start of land application.

Based on the foregoing facts, ODA proposes to impose a three thousand dollar ($3,000.00) administrative penalty in accordance with ORC § 903.16(E).

If you disagree with this proposed administrative penalty you have the right to appeal this decision in accordance with ORC Chapter 119. Any request for a hearing must be made to the Ohio Department of Agriculture, Attention: David Gorman, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, or you may call him at (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within **thirty (30)** days of the date of mailing of this Notice. This Notice is being mailed to you on March 2, 2015.

At the hearing, you may appear in person, be represented by an attorney, or you may represent your position, arguments or contentions in writing. At the hearing, you may present evidence and examine witnesses appearing for and against you to show cause why the proposed action should not be levied against you. Please note, however, that if your company is a corporation, only an attorney admitted to practice law in Ohio may represent your company at a hearing. The Assistant Attorney General assigned to ODA will represent the department at this hearing.

If you do not wish to have a hearing on the allegations set forth in this letter, you may pay the proposed fine. Please send a check or money order made payable to the "Treasurer, State of Ohio" and mail it to the address set forth at the top of the first page of this letter.

The following statues and rules are applicable to matter. They are reproduced for your reference.

Ohio Revised Code §903.16
Requiring corrective actions and assessing civil penalties.

[...] (E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination under this division, the director's imposition of an administrative penalty under this division, or both. The director's determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

Ohio Revised Code § 901:10-2-14
Contents of manure management plan: land application methods.

[...] (C) General criteria for manure application. The manure application rate shall be based on the most limiting factor of rates derived from paragraphs (B) to (G) of this rule, including factors derived from all appendices to this rule, whichever factor is determined to be the most restrictive factor for purposes of protecting waters of the state. [...]

(6) Land application of manure by means of surface application shall not occur if the forecast contains a greater than fifty per cent chance of precipitation as determined in "Managing Manure Nutrients at Concentrated Animal Feeding Operations, Appendix M, United States Environmental Protection Agency, EPA-821-B-04-006, August 2004," exceeding an amount of one-quarter inch for hydrologic soil group D soils and one-half inch for hydrologic soil group A, B, and C soils, for a period extending twenty-four hours after the start of land application. Record weather conditions in the operating record for conditions at the time of application and for twenty-four hours prior to and following application. A copy is available for review at the Ohio department of agriculture website http://agri.ohio.gov/. [...]

(E) The manure application rate for phosphate shall be determined using the soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code and the following criteria:

(1) Prior to the land application of manure, land application areas shall be assessed with either the phosphorus index risk assessment procedure in appendix E, table 1 to this rule or the phosphorus soil test risk assessment procedure in appendix E, table 2 to this rule. The manure application rate for phosphate shall be limited in compliance with the applicable provision in the:

(a) Generalized interpretation of phosphorus index and management column in appendix E, table 1, to this rule, or

(b) The application criteria in appendix E, table 2, to this rule. [...]

(G) General criteria for frozen and snow-covered ground. In addition to complying with all of the criteria in paragraphs (A) to (F) of this rule, the following actions are required for surface application of manure to land with frozen or snow-covered ground.

If manure can be injected or incorporated then the land application site is not frozen or snow covered and therefore subject to paragraphs (A) to (F) of this rule.

The owner or operator shall comply with rule 901:10-2-08 of the Administrative Code and this rule and use best efforts to avoid surface application of manure to frozen or snow covered ground by ensuring enough manure storage capacity by November of each year for a minimum of one hundred twenty to one hundred eighty days.

Manure injection or manure incorporation performed within twenty-four hours at the land application site is the preferred alternative to surface application of manure. Solid manure with less than fifty per cent moisture shall be stockpiled at the land application site in lieu of manure application on frozen or snow covered ground.

Surface application of manure on frozen or snow-covered ground is prohibited unless performed in accordance with all of the following requirements in paragraph (G)(1) of this rule.

(1) Application.

(a) Prior approval for each surface application of manure shall be obtained from the director or his designated representative.

(b) Except as required by paragraph (G)(1)(g) of this rule, the application rate is limited to ten wet tons per acre for solid manure with more than fifty per cent moisture.

(c) Except as required by paragraph (G)(1)(g) of this rule, the application rate is limited to five thousand gallons per acre for liquid manure.

(d) Applications are to be made on land with at least ninety per cent surface residue cover at the time of application such as good quality hay or pasture field, all corn grain residue remaining after harvest, and all small grain residue cover remaining after harvest. Vegetation or residue shall not be completely covered by ice or snow at the time of application. [...]

Appendix E Table 2 of Rule 901:10-2-14: Phosphorus Soil Test Risk Assessment Procedure

[...] BrayP1 > 150 ppm	No additional P2O5 - Use P2O5 drawdown strategies; [...]

Ohio Revised Code § 119.07
Notice of hearing - contents - notice of order of suspension of license - publication of notice - effect of failure to give notice.

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice.

The notice shall also inform the party that at the hearing the party may appear in person, by the party's attorney, or by such other representative as is permitted to practice before the agency, or may present the party's position, arguments, or contentions in writing and that at the hearing the party may present evidence and examine witnesses appearing for and against the party. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.

When a statute specifically permits the suspension of a license without a prior hearing, notice of the agency's order shall be sent to the party by registered mail, return receipt requested, not later than the business day next succeeding such order. The notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within thirty days of the time of mailing the notice. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code, the agency shall immediately set the date, time, and place for the hearing and forthwith notify the party thereof. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party.

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because the party fails to claim the notice, the agency shall send the notice by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

If any notice sent by registered or ordinary mail is returned for failure of delivery, the agency either shall make personal delivery of the notice by an employee or agent of the agency or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. When notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the notice shall be deemed received as of the date of the last publication. An employee or agent of the agency may make personal delivery of the notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department will consider this a waiver of your right to an administrative hearing and will issue a final order without a hearing. If you have any questions or concerns about this notice of violation please do not hesitate to contact me at 614-387-0469.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE

Kevin Elder,
Division Chief

Cc: Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector
David Gorman, ODA Legal Counsel

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

March 13, 2015

Wenning Poultry Farm
1500 Union City Road
Ft. Recovery, Ohio 45846

RE: Warning Letter – Violation of OAC Rule 901:10-2-14 – Stockpiled Manure
Permit to Operate (PTO) #: 54-024-PTO-002

Dear Wenning Poultry Farm:

A Violation of Ohio Department of Agriculture laws and regulations were discovered during an investigation conducted on March 6, 2015, following a complaint reported to the Paulding SWCD on March 4, 2015. On March 6, 2015, the Ohio Department of Agriculture, Division of Livestock Environmental Permitting (ODA-DLEP) found violations of Ohio law which included the following:

- Rule 901:10-2-14(C)(3) and Appendix A, Table 2 of the Ohio Administrative Code (OAC) provides as follows: Maintain a distance of 300 feet setback between stockpiled manure and waters of the state.

As a result of the complaint investigation, the following observations were noted:

- Approximately 600 tons of poultry manure was dumped in a corn residue field located on the west side of County Road 71, south of SR 114. The field is owned by Wenning Farm Holdings, LLC.
- Manure stockpile setbacks were not observed as the manure pile was measured to be 225 feet from waters of the State to the south of the pile. ODA rules require a setback distance of a minimum of 300 feet from waters of the state.
- Manure was not initially stacked appropriately, by means of shaping the pile to shed precipitation away from the pile in a loaf or other appropriate methods. The manure was stacked as it was dumped from the trucks and the concern is that it could trap precipitation and cause wet manure that may be conducive to fly breeding as the weather warms. Best Management Practices should be implemented to properly place, stack and monitor manure stockpiles.

Upon further investigation, the source of the manure was from Wenning Poultry Farm and transported/stockpiled on land owned by Wenning Farm Holdings, LLC. None of these acres are covered in the current PTO, as it is indicated that all solid manure is removed through Distribution & Utilization. Also, the Wenning Poultry Farm PTO's Insect & Rodent Control Plan says stockpiling is not utilized. In addition to the manure transported to Paulding County land owned by Wenning Farm Holdings, LLC, additional manure piles from Wenning Poultry Farm were observed on March 6, 2015 on land located on the northeast corner of Moore Road and SR 49 in Mercer County, also owned by Wenning Farm Holdings, LLC.

Finally, based upon the Mercer County Auditor's records, Wenning Farm Holdings, LLC own a pullet barn located at 1140 Moore Road. This facility, along with adjoining parcels to the west, is contiguous to Wenning Poultry Farm. Ultimately, this pullet barn shall be covered under the Permit to Operate since it is contiguous and under common ownership with the permitted facility.

To correct the deficiencies described above, Wenning Poultry shall complete the following tasks:

1. **Wenning Poultry Farm shall have all the manure appropriately land applied in accordance to ODA rules prior to the planting of the 2015 crop. Manure application records shall be maintained and will be reviewed at the second routine ODA-DLEP inspection in 2015.**
2. **By no later than May 15, 2015, Wenning Poultry Farm shall provide to ODA-DLEP a complete Manure Management Plan (MMP) on all acres under the control of Wenning Poultry Farm where manure will be stockpiled or land applied.**
3. **By no later than May 15, 2015, Wenning Poultry Farm shall update other relevant sections within the existing Permit to Operate (PTO) that may currently indicate that all manure is distributed to others.**
4. **By no later than May 15, 2015, Wenning Poultry Farm shall provide a Permit to Install modification and an updated PTO to include the Moore Road pullet facility.**

ODA-DLEP understands that you are currently working towards completing a PTI modification and updated PTO for the installation of additional digester capacity. The required items listed above could be incorporated into the same submittal provided it is submitted for review by May 15, 2015.

Please assure that the issues noted herein are prevented in the future. We take these issues seriously and appreciate your prompt correction and cooperation. If future complaints occur or these deadlines are not met, commencement of enforcement actions could possibly result in monetary penalties.

Respectfully,

Kevin Elder
Division Chief

Enclosure

CC with report:

- Deb Hubbard, Paulding SWCD
- Jocelyn Henderson, ODNR-DSWR
- Christine Pence, ODA-DLEP
- Dan Bruner, ODA-DLEP
- Andy Ety, ODA-DLEP

Ohio | Department of Agriculture
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March 24, 2015

FNW Enterprise, LLC
11002 Reed Road
Versailles, Ohio 45380

Re: Warning Letter - Failure to Obtain Manure Analysis as required per Permit to Operate #: 10-095-PTO-002

Gentlemen,

This letter serves to inform you of a violation of your Permit to Operate (PTO) that was discovered during the routine inspection on February 25, 2015 of FNW Enterprise, LLC. During that inspection, it was found by the ODA-DLEP inspector that a manure analysis for the solid cattle manure had not been completed in 2014.

Ohio Administrative Code (OAC) 901: 10-2-10 requires that, at minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids.

Please assure that the violation noted above is prevented in the future. We take these issues seriously.

Respectfully,

Kevin Elder
Division Chief

CC: Darke SWCD
Christine Pence, DLEP

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Legal Office
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-728-6430 • Fax: 614-995-4585
www.agri.ohio.gov • legal@agri.ohio.gov

April 17, 2015

Blue Stream Dairy, Inc.
220 South Elizabeth Street
Spencerville, OH 45887
Certified Mail No. 91 7108 2133 3939 1138 2130

Re: Director's Order 2015-067

To Whom It May Concern:

Enclosed please find a certified copy of Ohio Department of Agriculture ("ODA") Director's Order 2015-067 which imposes an emergency order to commence corrective actions to return to compliance with maximum operating levels in all liquid manure storage ponds at the facility and develop an Emergency Action Plan. This Order was issued pursuant to ODA's authority contained in Ohio Revised Code § 903.18. Please see page 4 of this Order for your appeal rights. Please note that this letter is being mailed to you on April 17, 2015. You have thirty (30) days from the date of mailing to file an appeal of this Order.

Sincerely,

OHIO DEPARTMENT OF AGRICULTURE

Timothy G. Schirmer
Senior Staff Counsel

Enclosure

cc: Kevin Elder, Chief, DLEP

OHIO DEPARTMENT OF AGRICULTURE
STATE OF OHIO

In re: Blue Stream Dairy, Inc. **Order No: 2015-** 067

Blue Stream Dairy, Inc.
220 South Elizabeth Street
Spencerville, OH 45887
Permit to Operate (PTO) No. 81-110-PTO-003

EMERGENCY ORDER

The Ohio Department of Agriculture (ODA) Division of Livestock Environmental Permitting (DLEP) completed an inspection of Blue Stream Dairy, Inc. on April 16, 2015. This facility is regulated by ODA pursuant to Chapter 903 of the Ohio Revised Code ("O.R.C.") and under Permit to Operate (PTO) No. 81-110-PTO-003, which was issued to Blue Stream Dairy, Inc. on December 31, 2014. The current operating levels in the ponds, the constant production of manure, the unpredictability of the weather conditions, and the facility's failure to ensure adequate storage availability for the winter and early spring months as required in the permit, have created an emergency in light of the serious threat of overflows. Pursuant to ODA's authority under O.R.C. Section 903.18, the Director has determined that an emergency exists, requiring immediate action to protect public health or safety or the environment. Blue Stream Dairy, Inc. is hereby ordered to comply immediately with this Emergency Order.

Findings of Fact and Conclusions of Law

ODA-DLEP staff conducted an inspection at Blue Stream Dairy, Inc., on April 16, 2015 and found the following:

1. Manure Pond 1 is above Maximum Operating Level (MOL).
2. Manure Pond 2 is above Maximum Operating Level (MOL).
3. Manure Pond 3 is above Maximum Operating Level (MOL).
4. Manure Pond 4 is above Maximum Operating Level (MOL).
5. Solid Settling Basin is at Maximum Operating Level (MOL).
6. Satellite Pond Paulding 124 is above Maximum Operating Level (MOL).
7. Satellite Pond Payne 71 was near Maximum Operating Level (MOL) but exact elevation is not readily available as the pond was just recently permitted and level markers have not been installed.

Based on the foregoing and on the serious threat of manure and/or contaminated stormwater overflows from the facility during current weather conditions, I conclude as a matter of law that an emergency exists, that requires immediate action to protect the public health or safety or the environment.

By the authority vested in my office pursuant to ORC 903.18, it is hereby

ORDERED that:

1. Blue Stream Dairy, Inc. shall immediately commence corrective actions to return to compliance with maximum operating levels in all liquid manure storage ponds at the facility as required in the Permit to Operate. **This action shall be completed within 10 days of the receipt of these Emergency Orders.**

2. Blue Stream Dairy Inc. shall immediately develop an Emergency Action Plan (EAP) to address manure production and runoff from the facility from the date of these Emergency Orders through September 15, 2015. The estimated manure volume generated by the facility for this time period is approximately 7.2 million gallons, which includes the volume that is currently stored above Maximum Operating Levels. The Emergency Action Plan shall describe how the entire 7.2 million gallons will be removed by no later than May 31, 2015. **The Emergency Action Plan shall be completed and submitted to ODA-DLEP within 10 days of the receipt of these Emergency Orders and shall include all of the action items listed below:**

    a. A plan for the completion of construction of Manure Storage Pond #5 at the main facility and construction of Manure Storage Ponds #7 and #8 at the CR 71 site as described in Permit to Install No. 81-110-PTI-003. Make every effort to expedite construction of these additional manure storage facilities.

    b. A plan to apply manure at any time that area weather and field conditions become suitable and meet the land application criteria of OAC 901:10-2-14. This includes making arrangements in advance for land application equipment and available land for manure application.

    c. A listing of fields and acres, including maps if these acres are not currently included in the Manure Management Plan, which will be utilized for manure application during this timeframe. If the land is not controlled by Blue Stream Dairy, Inc., then either agreements, or another form of assurance, must be provided to demonstrate that the land will not be planted until manure can be applied.

    d. Local waste water treatment plants (WWTP) shall be contacted to see if it is feasible for any of them to receive additional waste from your facility. A list of WWTPs contacted shall be provided to ODA along with a statement as to whether they can, or cannot, receive additional waste from your facility. If the WWTP can receive additional waste, a contract shall be provided that states the volume to be distributed and a timeframe for distribution.

    e. Non-owned satellite liquid storage facilities in the area shall be evaluated to determine if there is available storage volume that could be utilized by your facility.

f. Any temporary alterations that can be made to the facility or facility practices either to eliminate clean stormwater discharging to the manure storage ponds or to lessen the amount of manure/contaminated stormwater being generated at the facility shall be made.

g. The possible reduction or removal of the number of cows at the facility in order to reduce the amount of manure to be handled between the date of these Emergency Orders and September 15, 2015.

h. No more than 1,104 mature dairy cows may be housed at the Blue Stream Dairy site until after September 15, 2015, provided there is documentation that there is sufficient manure storage at the Blue Steam Dairy site until May 31, 2016 for the total number of mature dairy cows proposed at that time.

i. Blue Stream Dairy, Inc. shall comply with all terms and conditions contained in the permits and with all applicable laws and rules.

3. The Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.

4. Blue Stream, Inc. shall immediately comply with these orders.

5. A certified copy of this order shall be served upon Blue Stream, Inc.

Effective Date of this Order: Upon journalization.

David T. Daniels / HTW

David T. Daniels, Director
Ohio Department of Agriculture

April 17, 2015
Date

Entered, Ohio Department of Agriculture Journal this 17th day of April, 2015, by

Connie L Ellis.

NOTICE OF APPEAL RIGHTS

This EMERGENCY ORDER takes effect immediately.

Pursuant to O.R.C. Section 903.18(A), this EMERGENCY ORDER may be appealed to the Ohio Department of Agriculture for an administrative hearing. The administrative hearing will be conducted in accordance with O.R.C. Chapter 119. Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the EMERGENCY ORDER. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: Timothy G. Schirmer, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6213. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty (30) days of the date of mailing of this notice. This notice is being mailed to you on April 17, 2015. O.R.C. Section 119.18(A) states:

> Notwithstanding sections 903.16 and 903.17 of the Revised Code, if the director of agriculture determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. The director's order is appealable in accordance with section 119.12 of the Revised Code. No emergency order shall remain in effect for more than one hundred twenty days after its issuance.

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

You may present evidence and examine witnesses appearing for and against you, to show cause why these Emergency Order should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Certification

STATE OF OHIO

COUNTY OF VAN WERT, SS:

I, David T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No.** 067 which was entered upon the order journal of the Ohio Department of Agriculture on the 17th day of April, 2015.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 17th day of April, 2015.

David T. Daniels 17th

David T. Daniels Director
Ohio Department of Agriculture

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
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www.agri.ohio.gov • lepp@agri.ohio.gov

April 22, 2015

Blue Stream Dairy, Inc.
220 South Elizabeth Street
Box 126
Spencerville, OH 45887

*Certified Mail:*__ 91 7199 9991 7032 3702 0055

Re: Notice of Violation and proposed Administrative Penalty

To Whom It May Concern:

Pursuant to the Ohio Department of Agriculture's (ODA) authority in Ohio Revised Code (ORC) Sections 903.15 and 903.16, this letter is to advise you that the Division of Livestock Environmental Permitting (DLEP) noted violations at your facility related to Ohio's concentrated animal feeding facility laws. **Specifically, Blue Stream Dairy, Inc., violated Ohio Administrative Code (OAC) Sections 901:10-2-8(C), 901:10-2-16(A)(3)(c) and 901:10-2-16(A)(3)(d) for failure to inspect equipment, failure to properly document periodic observations of subsurface drain outlets and concentrated flow areas for liquid manure flow and failure to properly document use of drain outlet plugs or devices, respectively.**

Blue Stream Dairy, Inc., engaged in acts in violation of OAC Sections 901:10-2-08(C), 901:10-2-16(A)(3)(c) and 901:10-2-16(A)(3)(d). OAC Section 901:10-2-08(C) states that an owner or operator must periodically inspect equipment used for land application of manure for leaks. OAC Section 901:10-2-16(A)(3)(c) states that when liquid manure is applied to a land application area with subsurface drains and concentrated flow areas, periodic observations of subsurface drain outlets and concentrated flow areas for liquid manure flow during and after application shall be included in the land application area records recorded and maintained in the operating record. OAC Section 901:10-2-16(A)(3)(d) states that when liquid manure is applied to a land application area with a subsurface drain, the use of drain outlet plugs and other devices shall be documented and included in the land application area records recorded and maintained in the operating record. On December 16, 2014, the Ohio Environmental Protection Agency (OEPA) discovered manure entering the ditch along Mentzer-Church Road directly east of Blue Stream Dairy. OEPA contacted ODA DLEP in regards to this matter. ODA DLEP conducted an investigation December 17, 2014 and determined that manure had been applied to Blue Stream Dairy field A-C on December 14, 2014. ODA DLEP's investigation further determined that manure was discharged into waters of the state. This manure discharge was the responsibility of Blue Stream Dairy and caused by the premature opening of the tile shut-off valves before the manure could be fully assimilated into the application field. ODA DLEP did not find any land application area records in the operating records for Blue Stream Dairy. Therefore Blue Stream Dairy, Inc., violated OAC Sections 901:10-2-08(C), 901:10-2-16(A)(3)(c) and 901:10-2-16(A)(3)(d) by failing to inspect equipment, failing to record periodic observations of the subsurface drain outlets and concentrated flow areas for liquid manure flow during and after application to a land application area with

subsurface drains in the land application area records recorded and maintained in the operating record and failing to record the use of drain plugs or other devices when upon liquid manure application to a land application area with a subsurface drain in the land application area records recorded and maintained in the operating record.

Pursuant to the above, ODA proposes a civil penalty of Five Thousand Dollars and 00/100 Cents ($5,000.00).

If you disagree with ODA's proposed finding you may request a hearing before ODA imposes the penalty. If you wish to request a hearing, please send your request to Mr. Timothy G. Schirmer, ODA Legal Counsel, Legal Section, Ohio Department of Agriculture, 8995 East Main Street, Reynoldsburg, OH 43068-3399, or you may call him at (614) 728-6213. **You must request a hearing within 30 days of the mailing of this letter. This letter is being mailed to you of April 22, 2015.**

Based on R.C. Chapter 119, you are further advised that, at the hearing, you have the right to be present in person, or you may present your arguments and contentions in writing. Please be advised however, in accordance with rulings from the Ohio Supreme Court, as a corporate entity Blue Stream Dairy, Inc. must be represented by an attorney at the hearing. The Assistant Attorney General assigned to the department will represent the department at the formal hearing. During the hearing, you will have the right to present evidence and examine witnesses appearing for and against you.

If you do not wish to have a hearing on the allegations set forth in this letter, you may pay the proposed fine. Please send a check or money order made payable to the "Treasurer, State of Ohio" at the address set forth at the top of the first page of this letter.

Be advised that if you fail to request a hearing within 30 days of the mailing of this letter, the ODA will consider it a waiver of your right to an administrative hearing and will proceed to collect the fines for these violations.

The applicable laws are reprinted below for your reference:

903.16 Requiring corrective actions and assessing civil penalties.

(E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or director's authorized representative determines that the owner or operator is not in compliance with the best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

901:10-2-08 Contents of the manure management plan: inspections, maintenance and monitoring.

A manure management plan is a plan developed to minimize water pollution and protect waters of the state. The manure management plan shall include best management practices for reuse and recycling nutrients, prevent direct contact of confined animals with waters of the state, and ensure proper mortality management.

(C) The owner or operator must periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks.

Ohio Administrative Code 901:10-2-16 Permit to operate and operating record requirements.

(A) An operating record shall be generated as part of the permit to operate and NPDES permit.

The operating records shall be maintained on forms identified by the permit and other forms approved for use by the department. The operating record shall be retained for a minimum period of five years, shall be made available to the director upon request, and shall record and document the following information:

(3) Land application area records shall be recorded and maintained in the operating record. Records for each land application area shall include:

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

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

Sincerely,

Kevin Elder,
Division Chief

Cc: Mehek Cooke, Chief Legal Counsel
Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Dan Bruner, DLEP Inspector
Timothy G. Schirmer, ODA Legal Counsel

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May 8, 2015

Ohio Fresh Eggs, LLC
10513 Croton Road
P.O. Box 247
Croton, Ohio 43103
Certified Mail No. 91 7199 9991 7032 3702 0130

Trillium Farm Holdings, LLC
241 St. Andrews Way
Sioux Center, Iowa 51250
Certified Mail No. 91 7199 9991 7032 3702 0123

Re: Notice of Deficiencies and Proposed Corrective Actions
Permit to Operate (PTO) No. 45-133-PTO-002

To Whom It May Concern:

Pursuant to the Ohio Department of Agriculture's ("ODA") authority in Ohio Revised Code ("O.R.C.") Sections 903.15 and 903.16, this letter is to advise you that the Division of Livestock Environmental Permitting ("DLEP") noted violations at your facility related to Ohio's concentrated animal feeding facility laws. **Specifically, Ohio Fresh Eggs, LLC, ("Ohio Fresh Eggs") and Trillium Farm Holdings, LLC, ("Trillium Farm Holdings") violated O.R.C. Section 903.06(C) for operating a concentrated animal feeding facility in violation of that facility's insect and rodent control plan and Ohio Administrative Code ("O.A.C.") Section 901:10-1-10(G) for violation of the terms and conditions associated with a permit to operate, respectively.**

Ohio Fresh Eggs and Trillium Farm Holdings committed four separate violations of O.R.C. Section 903.06(C) and O.A.C. Section 901:10-1-10(G). O.R.C. Section 903.06(C) states: "The owner or operator of a concentrated animal feeding facility shall not violate the facility's insect and rodent control plan." O.A.C. Section 901:10-1-10(G) states: "No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit." The first two violations of O.A.C. Section 901:10-1-10(G) are as follows. The Insect and Rodent Control Plan ("IRCP"), contained in Permit to Operate ("PTO") Number 45-133-PTO-002 issued to Ohio Fresh Eggs and Trillium Farm Holdings for the Croton Layer #3 facility states: "Ohio Fresh Eggs, LLC and Trillium Farm Holdings, LLC will contact the ODA-DLEP on the same day that manure moisture in the manure storage barns or the physical condition of the manure on the belts shows excess moisture and/or exceeds sixty percent (60%) and provide ODA-DLEP the possible remedial actions including the remedial action chosen for each incident." *See*, paragraph 28. The IRCP associated with PTO 45-133-PTO-002 further states: "O[hio] F[resh] E[ggs] will maintain the effective dryness of the manure in the manure storage barns in order to prevent excessive fly breeding and maintain the required moisture of the manure to prevent slumping of the manure." *See*, paragraph 31. Between April 13 and May 6, 2015, ODA

DLEP received approximately twelve complaints regarding flies in the area surrounding the Croton Layer #3 facility. On April 21, 2015, ODA conducted a routine inspection of the Croton Layer #3 facility and found that the manure stored in Manure Storage Barn South ("MSB-S") at the Croton Layer #3 facility had excessive moisture. ODA conducted subsequent inspections on April 29, May 1 and May 4, 2015. The fly level in MSB-S was "moderate" and the larvae level was "few to moderate" during the inspection on April 21, 2015. Fly levels during subsequent inspections were "moderate to abundant." Ohio Fresh Eggs and Trillium Farm Holdings never contacted ODA DLEP regarding these fly levels or excess manure moisture or provided ODA DLEP with possible remedial actions associated with each incident. Moreover, Ohio Fresh Eggs and Trillium Farm Holdings did not maintain the effective dryness of the manure in the manure storage area. This failure to maintain effective dryness resulted in the excess moisture noted above and created an environment conducive to fly breeding. These events constitute separate violations of the terms and conditions of PTO 45-133-PTO-002 and the IRCP contained therein, specifically paragraphs 28 and 31. Therefore, Ohio Fresh Eggs and Trillium Farm Holdings violated O.R.C. Section 903.06(C) and O.A.C. Section 910:10-1-10(G).

The third violation of O.R.C. Section 903.06(C) and O.A.C. Section 901:10-1-10(G) is as follows. The IRCP associated with PTO 45-133-PTO-002 states: "If a moderate level of flies is present, the Site Production Manager will complete one corrective action within twenty-four (24) hours of the first indication of the moderate level of flies." *See*, paragraph 9. On April 21, 2015, ODA inspected the Croton Layer #3 facility. The Daily Barn Inspection Report (FEM-3) and the Fly Control Log (FEM-4) were reviewed during this inspection. These records reported a "moderate" level of flies in Barn #37 on April 16, 2015. These records further reported a "moderate" level of flies in MSB-S on April 17, 2015. No corrective actions within twenty-four (24) house of the first indication of a "moderate" level of flies were documented or recorded as completed in Barn #37 on April 16, 2015, and MSB-S on April 17, 2015. This is a violation of the terms and conditions of PTO 45-133-PTO-002 and the IRCP contained therein. Therefore, Ohio Fresh Eggs and Trillium Farm Holdings violated O.R.C. Section 903.06(C) and O.A.C. Section 910:10-1-10(G).

The fourth violation of O.R.C. Section 903.06(C) and O.A.C. Section 901:10-1-10(G) is as follows. The IRCP associated with PTO 45-133-PTO-002 states: "The Buildings will be maintained and managed in such a manner to minimize the activity and reduce the presence of insects and rodents. Through a multifaceted approach utilizing the best management practices, proactive monitory of the barns and timely corrective actions, the presence and negative effects of insects and rodents will be controlled and minimized." *See,* IRCP Part 1 – Integrated Pest Management Narrative. During an ODA inspection at Croton Layer #3 on April 21, 2015, Barns #34 and #36 had an excess build-up of debris and feathers in the area between manure belts. This excess build-up of debris and feathers was primarily located at the front of the barns. Pupae were present in this excess build-up of debris and feathers. Records from the facility state that both barns had "moderate" levels of flies and larvae. The birds in these barns were also molting. The most recent FEM-3 did not contain documentation of the excess build-up of debris and feathers. This is a violation of the terms and conditions of PTO 45-133-PTO-002 and the IRCP contained therein. Therefore, Ohio Fresh Eggs and Trillium Farm Holdings violated O.R.C. Section 903.06(C) and O.A.C. Section 910:10-1-10(G).

Pursuant to the above and the authority contained in O.R.C. Section 903.16, ODA proposes the following corrective actions. To correct violations one and two described above, Ohio Fresh Eggs and Trillium Farm Holdings shall submit a written explanation of the possible causes for the higher moisture levels in the manure storage barns at Croton Layer #3 by May 15, 2015. Ohio Fresh Eggs and Trillium Farm Holdings shall also remove all manure in MSB-S in a manner that complies with the Manure Management Plan contained in PTO No. 45-133-PTO-002 by May 22, 2015. **ODA will perform a partial inspection of the manure storage barns at the Croton Layer #3 facility by May 26, 2015, to ensure compliance with these provisions.** To correct violation three, Ohio Fresh Eggs and Trillium Farm Holdings shall submit a written explanation of the possible causes for the failure to follow the fly control procedures outlined in the ICRP of PTO No. 45-133-PTO-002 and remedial actions that will be taken to correct these deficiencies by May 15, 2015. **A review of all operating records associated with the IRCP for the Croton Layer #3 facility will be held on May 26, 2015.** To correct violation four, Ohio Fresh Eggs and Trillium Farm Holdings shall submit a written explanation of the possible causes for the failure to maintain barn cleanliness and remedial actions that will be taken to correct these deficiencies by May 15, 2015. Given the current Avian Influenza concerns, specifically the H5N2 strain, ODA-DLEP will not inspect the Layer barns for follow-up. **Therefore, ODA DLEP requests proof of compliance by a dated and properly labeled picture on or by May 15, 2015.**

Pursuant to O.R.C. Section 903.16, failure to comply with any of the corrective actions outlined above may make Ohio Fresh Eggs and Trillium Farm Holdings subject to civil penalties up to and including twenty-five thousand dollars ($25,000.00) per seven days for each violation and potential escalated enforcement actions. Moreover, ODA may also choose to pursue action for breach of contract and/or contempt based on the Consent Order for Injunctive Relief and Civil Penalties associated with *State of Ohio, ex. rel Michael DeWine, Ohio Attorney General v. Ohio Fresh Eggs, LLC*, Licking County Court of Common Pleas, Case No. 11 CV 0480.

The applicable laws are reprinted below for your reference:

903.06 Insect and rodent control plan.

(C) On and after the date that is established in rules by the director, no person shall own or operate a concentrated animal feeding facility unless an insect and rodent control plan for the facility has been approved by the director. The owner or operator of a concentrated animal feeding facility shall not violate the facility's insect and rodent control plan.

903.16 Requiring corrective actions and assessing civil penalties.

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

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

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

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

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

Civil penalties shall be assessed under this division as follows:

(1) A person who has violated section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) A person who has violated the requirements established under division (C) of section 903.06 of the Revised Code shall pay a civil penalty in an amount established in rules for each violation. Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements established under division (A) of section 903.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation. Each thirty-day period during which a violation continues constitutes a separate violation.

(C) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.02, 903.03, or 903.04or division (A) of section 903.07 of the Revised Code; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 of the Revised Code; rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code; or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(D) (1) In lieu of seeking civil penalties under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating division (A) of section 903.07 of the Revised Code or the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 of the Revised Code.

(2) The director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating section 903.02, 903.03, or 903.04 of the Revised Code, rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code, or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(3) A person who has committed a violation for which the attorney general may bring an action for a civil penalty under division (D)(1) or (2) of this section shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

(E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination under this division, the director's imposition of an administrative penalty under this division, or both. The director's determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

Ohio Administrative Code 901:10-1-10 Prohibitions

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

Sincerely,

Kevin Elder,
Division Chief

CC: Mehek Cooke, Chief Legal Counsel
Andy Ety, DLEP Engineer
Gary Zwolinski, DLEP Engineer
Sam Mullins, DLEP Agriculture Environmental Inspector
Timothy G. Schirmer, ODA Legal Counsel
J.T. Dean – Trillium Farms
Doug Mack – Trillium Farms
Ramchand Almoro – Trillium Farms
Dave Hasemann – Trillium Farms
David Gatten – Trillium Farms
Sheryl Logue – Trillium Farms
Tabitha Smith – Trillium Farms
Denise Brooks – Licking County SWCD
Jim Young, DLEP Agriculture Environmental Inspector

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Legal Office
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-728-6430 • Fax: 614-995-4585
www.agri.ohio.gov • legal@agri.ohio.gov

May 8, 2015

AJ Evers and Sons
c/o Mr. and Mrs. Gene Evers
1105 Goettemoeller Road
Maria Stein, Ohio 45860

Certified Mail No.: 91 7108 2133 3939 4693 6728

Re: Hearing Officer's Report and Recommendation
Violation of Ohio Administrative Code § 901:10-2-14 and $3,000 Civil Penalty

Dear Mr. Evers:

Enclosed is a copy of Hearing Officer Michael J. Barren's Report and Recommendation. This Report and Recommendation ("Report") contains the findings as a result of the Ohio Revised Code Chapter 119 adjudication hearing held on April 30, 2015.

In accordance with Ohio Revised Code Chapter 119, you have ten days from the date that you receive the Report to submit any written objections to the Ohio Department of Agriculture. If you submit written objections, please make them to the attention of Mr. Timothy G. Schirmer, Senior Staff Counsel, Office of the Chief Legal Counsel, Ohio Department of Agriculture, 8995 East Main Street, Reynoldsburg, OH 43068. If you wish you may also submit your objections via e-mail (timothy.schirmer@agri.ohio.gov), however, please note that we must receive your original written objections by mail by the tenth day.

After the tenth day Mehek Cooke, Chief Legal Counsel, will submit the Report along with any objections received to Director Daniels for his consideration. Director Daniels will soon thereafter issue an order in your case. If you have any questions or concerns regarding the above, please feel free to contact me at (614) 728-6213 or at timothy.schirmer@agri.ohio.gov.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE

Timothy G. Schirmer, Esq.
Senior Staff Counsel

cc: Mehek Cooke, Chief Legal Counsel
Kevin Elder, Chief DLEP

STATE OF OHIO, DEPARTMENT OF AGRICULTURE

IN RE: AJ EVERS AND SONS LLC **Hearing Officer Michael J. Barren**

Hearing Date: April 30, 2015

To: Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, OH 43068

HEARING OFFICER'S REPORT AND RECOMMENDATION

A. PROCEDURAL HISTORY

By certified mail letter dated March 2, 2015, the Ohio Department of Agriculture ("ODA") notified Mr. and Mrs. Gene Evers and AJ Evers and Sons aka AJ Evers and Sons LLC[1] of its proposed intention to levy a $3,000.00 fine for violations of Ohio's Livestock Environmental Permitting Program laws (Ohio Rev. Code §903.16 and Ohio Administrative Code §901:10-2-14 (ODA Exhibit D). AJ Evers requested a hearing (ODA Exhibit R). The hearing was scheduled for Thursday, April 30, 2015, at 1:00 p.m. at the Ohio Department of Agriculture, 8995 East Main Street, Reynoldsburg, Ohio 43068. The Ohio Department of Agriculture issued a hearing notice to AJ Evers by ordinary mail letter dated April 15, 2015 (copy attached). The hearing was held on April 30, 2015. The Ohio Department of Agriculture appeared at the hearing and was represented by counsel, Assistant Attorney General Kelly D. McCloud and Tasha N. Miracle. Mr. and Mrs. Gene Evers appeared without counsel as representatives of AJ Evers.[2]

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[1] ODA Exhibit 2 reflects the violation is asserted against AJ Evers and Sons. Gene Evers testified and confirmed at the hearing that at the time of the violations, he had formed and was operating as an Ohio limited liability company, AJ Evers and Sons LLC ("AJ Evers").

[2] AJ Evers elected to proceed with the hearing immediately and without counsel. After reviewing applicable Ohio law, the hearing officer permitted Mr. and Mrs. Evers to testify, but did not permit them to cross examine ODA witnesses or make legal argument in the nature of an opening or closing statement. *See* O.R.C. §119.13; *Cleveland Bar Association v. Pearlman* (2005), 2005-Ohio-4107; *Cleveland Bar Association v. CompManagement, Inc.* (2004), 2004-Ohio-6506; *Henize v. Giles* (1986), 22 Ohio St. 3d 213; *Disciplinary Counsel v. Alexicole, Inc.*

B. ALLEGATIONS AGAINST AJ EVERS AND SONS

The allegations against AJ Evers are set forth in ODA Exhibit D and include five (5) alleged violations of OAC §901:10-2-14:

1. AJ Evers applied manure on frozen ground without permission from ODA;
2. AJ Evers applied manure which had less than 50% moisture content;
3. AJ Evers applied manure on two fields with less than 90% crop residue with no cover crops planted;
4. AJ Evers applied manure to fields where soil tests indicated phosphorous exceeding one hundred fifty parts per million; and
5. AJ Evers applied manure when precipitation of at least ½ inch was predicted within 24 hours of the manure application.

C. EVIDENCE PRESENTED

The Ohio Department of Agriculture presented testimony of two witnesses: 1) Kevin Elder, Division Chief and Executive Director, Livestock Environmental Permitting Program for the Ohio Department of Agriculture; and 2) Christine Pence, Inspector, Division of Livestock and Environmental Permitting Program for the Ohio Department of Agriculture. The Ohio Department of Agriculture also presented documentary evidence marked as ODA Exhibits A through S. All exhibits were admitted into evidence at the hearing without objection.

Mr. Evers testified, and Exhibit 1 was introduced into evidence without objection. Mrs. Evers elected not to testify, but was present for all of the proceedings.

(2004), 2004-Ohio-6901; and *Campus Pitt Stop, L.L.C. v. Ohio Liquor Control Commission* (19th Dist. Ct. App. 2014), 2014-Ohio-227.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The testimony and documentary evidence establishes the violations. In addition, Mr. Evers admitted to each of the violations.

E. DECISION AND RECOMMENDATION

The Hearing Officer considered all of the facts and circumstances, including the evidence, and the statutory factors set forth in OAC 901:10-5-04. While the ODA testified that the violations were not serious violations, that normally no civil fine is imposed for a first violation, and that the violations did not pose any immediate threat to water quality (*See* ODA Exhibit E), the ODA considers the prior warning letter from 2010 to Mr. Evers and AJ Evers introduced as Exhibit A to be a prior violation. In addition, the ODA introduced evidence of prior warnings/alerts to Mr. Evers and AJ Evers in the course of prior inspections concerning similar violations. *See* Exhibit B, C. Moreover, although Ms. Pence testified AJ Evers was cooperative throughout the inspection and investigation of the January 15, 2015 complaint (*See* Exhibit S), she also testified that AJ Evers admitted to the violations and did not provide any legitimate reason justifying the violations. Mr. Evers' testimony similarly did not reveal any legitimate reason for the violations. Rather, it appears the violations were committed knowingly and were simply a business decision premised upon cost and convenience to AJ Evers, and had the complaints not been made, would likely have gone undetected. *See* ODA Exhibits E, S. Additionally, AJ Evers has substantial experience and was aware of all of the relevant facts and alternatives to removal of the manure without commission of any violations.

For the foregoing reasons, the Hearing Officer recommends that based upon the evidence presented, the admission and resulting finding of violations, the aggravating factors presented

into evidence, the knowledge and experience of AJ Evers, and the lack of any legitimate explanation for not utilizing alternatives to avoid violations, a fine of $3,000.00 is appropriate.

Dated: 5/5/15

Michael J. Barren, Hearing Officer

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Legal Office
8995 East Main Street, Reynoldsburg, OH 43068
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May 26, 2015

AJ Evers and Sons
c/o Mr. and Mrs. Gene Evers
1105 Goettemoeller Road
Maria Stein, Ohio 45860

Certified Mail No.

Re: Director's Order 2015-085

Dear. Mr. Evers:

Enclosed please find a certified copy of Ohio Department of Agriculture Director's Order 2015-085, which imposes a $3,000.00 civil penalty for violations of Ohio Revised Code § 903.16 and Ohio Administrative Code § 901:10-2-14. Please mail payment for this civil penalty to Ohio Department of Agriculture, 8995 East Main St., Reynoldsburg, OH 43068, Attn: Division of Livestock Environmental Permitting.

You may also choose to appeal this Order. Please see page 2 of this Order for your appeal rights. Please note that this letter is being mailed to you on **May 26, 2015**. You have fifteen (15) days from the date of mailing to file an appeal of this Order.

Sincerely,

OHIO DEPARTMENT OF AGRICULTURE

Timothy G. Schirmer
Senior Staff Counsel

Enclosure

cc: Kevin Elder, Chief
Kelly McCloud, Assistant Attorney General

DEPARTMENT OF AGRICULTURE
STATE OF OHIO

In re:
AJ Evers and Sons LLC

Order No. 2015-085

Civil Penalty

ORDER

On March 2, 2015, AJ Evers and Sons LLC ("AJ Evers") was served with a Notice of Violation and Proposed Administrative Penalty for violation of Ohio Administrative Code § 901:10-2-14. The proposed administrative penalty for this violation was three thousand dollars ($3,000.00).

AJ Evers requested an administrative hearing on March 9, 2015. That administrative hearing was held on April 30, 2015. Hearing Officer Michael J. Barren issued his Report and Recommendation on May 5, 2015. AJ Evers was sent the Report and Recommendation via certified mail on May 8, 2015. AJ Evers received that Report and Recommendation on May 11, 2015. AJ Evers did not submit any written objections within the ten (10) day period.

By the authority vested in my office by law, it is hereby **ORDERED**:

1. That the Hearing Officer's Report and Recommendation, attached hereto as Exhibit A, is affirmed and specifically adopted as my findings of fact and conclusions of law.

2. That a civil fine of $3,000.00 is hereby levied against AJ Evers and Sons LLC;

3. A certified copy of this Order be served upon AJ Evers and Sons LLC.

Effective date of this Order: upon journalization.

David T. Daniels, Director
Ohio Department of Agriculture

5/26/2015
Date

Entered, Ohio Department of Agriculture Journal this 26th day of May, 2015, by
Connie L Ellis.

NOTICE OF APPEAL RIGHTS

This Order may be appealed to the appropriate court of common pleas in accordance with the Revised Code section 119.12 by filing a notice of appeal with both the Ohio Department of Agriculture and with the appropriate court of common pleas within **fifteen (15) days** of the date of mailing of this Order. Revised Code section 119.12 states:

> Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, except that appeals from decisions of the liquor control commission, the state medical board, state chiropractic board, and board of nursing shall be to the court of common pleas of Franklin county. If any party appealing from the order is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin county.
>
> Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, ...
>
> Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. For purposes of this paragraph, an order includes a determination appealed pursuant to division (C) of section 119.092 of the Revised Code. ...

CERTIFICATION

STATE OF OHIO
COUNTY OF LICKING, SS

I, David T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No. 2015-** 085 which was entered upon the order journal of the Ohio Department of Agriculture on the 26th day of May, 2015.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 26th day of May, 2015.

David T. Daniels Director
Ohio Department of Agriculture

DEPARTMENT OF AGRICULTURE
STATE OF OHIO

STATE OF OHIO, DEPARTMENT OF AGRICULTURE

IN RE: AJ EVERS AND SONS LLC **Hearing Officer Michael J. Barren**

Hearing Date: April 30, 2015

To: Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, OH 43068

HEARING OFFICER'S REPORT AND RECOMMENDATION

A. PROCEDURAL HISTORY

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[2] AJ Evers elected to proceed with the hearing immediately and without counsel. After reviewing applicable Ohio law, the hearing officer permitted Mr. and Mrs. Evers to testify, but did not permit them to cross examine ODA witnesses or make legal argument in the nature of an opening or closing statement. *See* O.R.C. §119.13; *Cleveland Bar Association v. Pearlman* (2005), 2005-Ohio-4107; *Cleveland Bar Association v. CompManagement, Inc.* (2004), 2004-Ohio-6506; *Henize v. Giles* (1986), 22 Ohio St. 3d 213; *Disciplinary Counsel v. Alexicole, Inc.*

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(2004), 2004-Ohio-6901; and *Campus Pitt Stop, L.L.C. v. Ohio Liquor Control Commission* (19th Dist. Ct. App. 2014), 2014-Ohio-227.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The testimony and documentary evidence establishes the violations. In addition, Mr. Evers admitted to each of the violations.

E. DECISION AND RECOMMENDATION

The Hearing Officer considered all of the facts and circumstances, including the evidence, and the statutory factors set forth in OAC 901:10-5-04. While the ODA testified that the violations were not serious violations, that normally no civil fine is imposed for a first violation, and that the violations did not pose any immediate threat to water quality (*See* ODA Exhibit E), the ODA considers the prior warning letter from 2010 to Mr. Evers and AJ Evers introduced as Exhibit A to be a prior violation. In addition, the ODA introduced evidence of prior warnings/alerts to Mr. Evers and AJ Evers in the course of prior inspections concerning similar violations. *See* Exhibit B, C. Moreover, although Ms. Pence testified AJ Evers was cooperative throughout the inspection and investigation of the January 15, 2015 complaint (*See* Exhibit S), she also testified that AJ Evers admitted to the violations and did not provide any legitimate reason justifying the violations. Mr. Evers' testimony similarly did not reveal any legitimate reason for the violations. Rather, it appears the violations were committed knowingly and were simply a business decision premised upon cost and convenience to AJ Evers, and had the complaints not been made, would likely have gone undetected. *See* ODA Exhibits E, S. Additionally, AJ Evers has substantial experience and was aware of all of the relevant facts and alternatives to removal of the manure without commission of any violations.

For the foregoing reasons, the Hearing Officer recommends that based upon the evidence presented, the admission and resulting finding of violations, the aggravating factors presented

into evidence, the knowledge and experience of AJ Evers, and the lack of any legitimate explanation for not utilizing alternatives to avoid violations, a fine of $3,000.00 is appropriate.

Dated: 5/5/15

Michael J. Barren, Hearing Officer

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
A.B. Graham Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-387-0470 • Fax: 614-728-6335
www.agri.ohio.gov • lepp@agri.ohio.gov

June 1, 2015

Wenning Poultry Farm
1500 Union City Road
Ft. Recovery, OH 45846

Via Certified Mail No. 91 7199 9991 7032 3702 0147

Re: Notice of Deficiencies and Proposed Corrective Actions
Permit to Operate (PTO) No. 54-024-PTO-002

Dear Mr. Wenning:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Ohio Revised Code (ORC) Sections 903.15 and 903.16, this letter is to advise you that the Division of Livestock Environmental Permitting (DLEP) has found Wenning Poultry Farm to be in violation of Ohio's concentrated animal feeding facility laws. **Specifically, Wenning Poultry Farm violated Ohio Administrative Code (OAC) Section 901:10-2-09(A) by not including all land application areas in its Manure Management Plan (MMP). Wenning Poultry Farm also violated OAC Section 901:10-2-01(B)(6) by modifying a concentrated animal feeding facility without first obtaining the necessary permit modification.**

Wenning Poultry Farm violated OAC Section 901:10-2-09(A) by not including all land application areas in its MMP. OAC Section 901:10-2-09(A) states: "[an MMP] shall include...the land application areas...." On March 4, 2015, Paulding Soil and Water Conservation District received a complaint regarding Wenning Poultry Farm. That complaint was then forwarded to ODA. On March 6, 2015, ODA DLEP conducted an inspection at Wenning Poultry Farm. During that inspection, it was determined that manure from Wenning Poultry Farm was transported/stockpiled on land owned by Wenning Farm Holdings, LLC. This land is not included in the MMP contained in Permit to Operate No. 54-024-PTO-002. Therefore, this constitutes a violation of OAC Section 901:10-2-09(A).

Wenning Poultry Farm also violated OAC Section 901:10-2-01(B)(6) by modifying a concentrated animal feeding facility without first obtaining the necessary permit modification. OAC Section 901:10-2-01(B)(6) states: "The owner or operator shall not modify the concentrated animal feeding facility without obtaining a permit modification." ORC Section 903.01(B)(2) states that two or more adjoining animal feeding facilities under common ownership shall be considered a single animal feeding facility for the purposes of ORC Chapter 903. ODA DLEP's investigation also found that Wenning Poultry Farm owned the Moore Road pullet facility, bringing it under common ownership with the property covered by Permit to Operate No. 54-024-PTO-002. The Moore Road pullet facility is located on land adjoining the property covered by Permit to Operate No. 54-024-PTO-002. Wenning Poultry Farm never applied for a permit modification to include the Moore Road pullet facility in Permit to Operate No. 54-024-PTO-002. Wenning Poultry Farm's failure to obtain a

permit modification for this adjoining facility constitutes a violation of OAC Section 901:10-2-01(B).

Wenning Poultry Farm was informed of these violations in a Warning Letter dated March 13, 2015. A copy of this Warning Letter is attached hereto as Exhibit A. ODA gave Wenning Poultry Farm until May 15, 2015, to remedy these violations. Specifically, Wenning Poultry Farm was to provide ODA DLEP with a complete MMP for all acres under its control, including the location of planned or potential manure stockpiles and land application areas, distribution plan for manure and any other potential sites to be included in the Permit to Operate. As of June 1, 2015, Wenning Poultry Farm has failed to provide take these actions to address the aforementioned violations.

Pursuant to the above and the authority contained in ORC Section 903.16, ODA proposes the following corrective actions.

1. Wenning Poultry Farms shall provide ODA DLEP with a complete MMP on all acres under its control within forty-five (45) days of the date of this letter. This MMP shall include areas where manure will be stockpiled or land applied.

2. Wenning Poultry Farms shall provide ODA DLEP with updated sections of its Permit to Operate to correct the current statement that all manure is distributed to others within forty-five (45) days of the date of this letter.

3. Wenning Poultry Farms shall submit to ODA DLEP a Permit to Install modification and an updated PTO to include the Moore Road pullet facility within forty-five (45) days of the date of this letter.

903.16 Requiring corrective actions and assessing civil penalties.

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

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

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

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or

operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

[...]

901:10-2-09 Contents of manure management plan: nutrient budget.

(A) The manure management plan shall include the nutrient budget for the land application areas and quantity of nutrients to be managed by distribution and utilization for a twelve month period as derived from rules 901:10-2-10 and 901:10-2-11 of the Administrative Code.

(B) The total nutrient budget to be used for the land application areas under the control of the facility for the duration of the permit shall be based on the following:

(1) Targeted crop yields based on the actual crop yields;

(2) Soil productivity information;

(3) Historical yield data.

(4) Potential yield; or

(5) Combination of yield data.

(C) To the extent the manure is not managed through distribution and utilization, the manure management plan shall include the total summary of land application areas to be used for the duration of the permit and the land that is available for manure that is generated by the facility. The total summary shall be further characterized as follows:

(1) The total nutrient budget requirements on land application areas under the control of the owner or operator; and

(2) The quantity of commercial fertilizer nutrients or residual nutrients from all sources to be applied on land application areas under the control of the owner or operator for a twelve month period.

901:10-2-01 Permit to install: purpose and applicability.

[...]

(B) Administrative procedures for a permit to install.

[...]

(6) A permit to install may be modified in accordance with rule 901:10-1-09 of the Administrative Code. The owner or operator shall not modify the concentrated animal feeding facility without obtaining a permit modification.

If Wenning Poultry Farm fails to comply with any of the corrective actions required herein, you may be subject to civil penalties pursuant to OAC Section 901:10-5-04 and the potential for escalated

enforcement. ODA takes these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to me at 614-387-0469 or any of my staff. I look forward to your continued cooperation in this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: Andy Ety, DLEP Engineer
Christine Pence, DLEP Inspector
Timothy Schirmer, ODA Staff Counsel
Kelly McCloud, Assistant Attorney General

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
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March 13, 2015

Wenning Poultry Farm
1500 Union City Road
Ft. Recovery, Ohio 45846

EXHIBIT A

RE: Warning Letter – Violation of OAC Rule 901:10-2-14 – Stockpiled Manure
Permit to Operate (PTO) #: 54-024-PTO-002

Dear Wenning Poultry Farm:

A Violation of Ohio Department of Agriculture laws and regulations were discovered during an investigation conducted on March 6, 2015, following a complaint reported to the Paulding SWCD on March 4, 2015. On March 6, 2015, the Ohio Department of Agriculture, Division of Livestock Environmental Permitting (ODA-DLEP) found violations of Ohio law which included the following:

- Rule 901:10-2-14(C)(3) and Appendix A, Table 2 of the Ohio Administrative Code (OAC) provides as follows: Maintain a distance of 300 feet setback between stockpiled manure and waters of the state.

As a result of the complaint investigation, the following observations were noted:

- Approximately 600 tons of poultry manure was dumped in a corn residue field located on the west side of County Road 71, south of SR 114. The field is owned by Wenning Farm Holdings, LLC.
- Manure stockpile setbacks were not observed as the manure pile was measured to be 225 feet from waters of the State to the south of the pile. ODA rules require a setback distance of a minimum of 300 feet from waters of the state.
- Manure was not initially stacked appropriately, by means of shaping the pile to shed precipitation away from the pile in a loaf or other appropriate methods. The manure was stacked as it was dumped from the trucks and the concern is that it could trap precipitation and cause wet manure that may be conducive to fly breeding as the weather warms. Best Management Practices should be implemented to properly place, stack and monitor manure stockpiles.

Upon further investigation, the source of the manure was from Wenning Poultry Farm and transported/stockpiled on land owned by Wenning Farm Holdings, LLC. None of these acres are covered in the current PTO, as it is indicated that all solid manure is removed through Distribution & Utilization. Also, the Wenning Poultry Farm PTO's Insect & Rodent Control Plan says stockpiling is not utilized. In addition to the manure transported to Paulding County land owned by Wenning Farm Holdings, LLC, additional manure piles from Wenning Poultry Farm were observed on March 6, 2015 on land located on the northeast corner of Moore Road and SR 49 in Mercer County, also owned by Wenning Farm Holdings, LLC.

Finally, based upon the Mercer County Auditor's records, Wenning Farm Holdings, LLC own a pullet barn located at 1140 Moore Road. This facility, along with adjoining parcels to the west, is contiguous to Wenning Poultry Farm. Ultimately, this pullet barn shall be covered under the Permit to Operate since it is contiguous and under common ownership with the permitted facility.

To correct the deficiencies described above, Wenning Poultry shall complete the following tasks:

1. **Wenning Poultry Farm shall have all the manure appropriately land applied in accordance to ODA rules prior to the planting of the 2015 crop. Manure application records shall be maintained and will be reviewed at the second routine ODA-DLEP inspection in 2015.**
2. **By no later than May 15, 2015, Wenning Poultry Farm shall provide to ODA-DLEP a complete Manure Management Plan (MMP) on all acres under the control of Wenning Poultry Farm where manure will be stockpiled or land applied.**
3. **By no later than May 15, 2015, Wenning Poultry Farm shall update other relevant sections within the existing Permit to Operate (PTO) that may currently indicate that all manure is distributed to others.**
4. **By no later than May 15, 2015, Wenning Poultry Farm shall provide a Permit to Install modification and an updated PTO to include the Moore Road pullet facility.**

ODA-DLEP understands that you are currently working towards completing a PTI modification and updated PTO for the installation of additional digester capacity. The required items listed above could be incorporated into the same submittal provided it is submitted for review by May 15, 2015.

Please assure that the issues noted herein are prevented in the future. We take these issues seriously and appreciate your prompt correction and cooperation. If future complaints occur or these deadlines are not met, commencement of enforcement actions could possibly result in monetary penalties.

Respectfully,

Kevin Elder
Division Chief

Enclosure

CC with report:

- Deb Hubbard, Paulding SWCD
- Jocelyn Henderson, ODNR-DSWR
- Christine Pence, ODA-DLEP
- Dan Bruner, ODA-DLEP
- Andy Ety, ODA-DLEP

Ohio | Department of Agriculture
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June 24, 2015

Rockford Dairy
Heartland Dairy Holding
3101 Tama Road
Rockford, Ohio 45882

Via Certified Mail No. 91 7199 9991 7032 3701 6492

Re: Warning Letter – Rockford Dairy – Permit to Operate (PTO) No. 54-121-PTO-002

Dear Mr. Glessner:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Ohio Revised Code (ORC) Section 903.16, this letter is to advise you that the Division of Livestock Environmental Permitting (DLEP) has found Rockford Dairy to be in violation of Ohio's concentrated animal feeding facility laws. **Specifically, Rockford Dairy violated Ohio Administrative Code (OAC) Sections 901:10-2-4(E) and 901:10-2-16(A)(1) by allowing leachate from the silage bunker to discharge near a clean stormwater drainage area where that leachate could reach clean stormwater drainageways. Rockford Dairy failed to maintain accurate inspection records of protective vegetative cover and did not take corrective actions to address any deficiencies found on bare areas around the facility.**

Rockford Dairy violated OAC Sections 901:10-2-4(E) and 901:10-2-16(A)(1) by allowing leachate from the silage bunker to discharge to a clean stormwater drainage area and by failing to maintain accurate inspection records of the protective vegetative cover on bare areas of the facility. Additionally Rockford Dairy failed to take the corrective actions necessary to address the deficiencies with vegetation. OAC 901:10-2-4(E) states that owners or operators of concentrated animal feeding operations shall prevent pollution of stormwater by maintaining separation of uncontaminated stormwater runoff from contaminated water. OAC Section 901:10-2-16(A)(1)(e) requires that records of inspections of the protective vegetative cover maintained on all disturbed areas be maintained in a concentrated animal feeding facility's operating record. OAC Section 901:10-2-16(1)(j) requires that actions taken to correct any deficiencies found during inspections be recorded in a concentrated animal feeding facility's operating record. On March 26, 2015, ODA DLEP Inspector Christine Pence conducted a routine inspection at Rockford Dairy. Inspector Pence observed black residue, dead vegetation and bare soil in an area on the north side of the westernmost silage bunker caused from silage leachate escaping the bunker. Black residue, dead vegetation and bare soil were also found on the south side of the same silage bunker. These areas are located in close proximity to a clean stormwater drainageway, constituting a failure to separate contaminated and uncontaminated stormwater runoff. Leachate is likely to enter a clean stormwater drainage ditch and subsurface tile inlet on the north side of the facility; however no evidence of active discharge was occurring at the time of the inspection. Further, records of the protective vegetative cover included in Rockford Dairy's operating record did not reference

leachate found around the silage bunker or any actions taken to correct this problem. By failing to maintain separation of uncontaminated stormwater runoff from contaminated water and failing to maintain accurate inspection records of protective vegetative cover, Rockford Dairy violated OAC Sections 901:10-2-4(E) and 901:10-2-16(A)(1).

ODA's goal is for all regulated entities to be in full compliance with Ohio law. At this time, this Warning Letter serves as notice to you of these violations, rather than imposing a civil penalty. With that in mind, Rockford Dairy shall do the following:

1. **Immediately upon receipt of this letter, Rockford Dairy must ensure that no leachate is entering the clean stormwater drainageways or the subsurface tile inlet.**

2. **Within 45 days from the date of this letter, Rockford Dairy must submit a written plan to ODA-DLEP to implement controls that would permanently prevent leachate from reaching the clean stormwater drainageway in the future.**

3. **Within 90 days from the date of this letter, the approved controls must be fully implemented and the vegetative areas around the silage bunker must be graded, seeded and restored.**

Please be advised that ODA DLEP takes these violations very seriously and anticipate your prompt correction of the aforementioned violations.

The applicable laws as set forth above are listed in their entirety below:

ORC 903.16 Requiring corrective actions and assessing civil penalties.

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

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

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

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

[...]

OAC 901:10-2-04 Manure storage and treatment facilities.

[...]

(E) Stormwater pollution prevention plans. Each owner or operator of a concentrated animal feeding operation shall prevent pollution of stormwater resulting from an animal feeding facility by submitting plans to satisfy this rule and rule 901:10-3-11 of the Administrative Code to do the following:

(1) Maintain separation of uncontaminated stormwater runoff from contaminated water with designs and installations that include, but are not limited to, settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions;

(a) Grade the area around the livestock buildings and the manure storage or treatment facility;

(b) Divert stormwater runoff and roof water away from the manure storage or treatment facility or other structures in the production area.

(c) Use spill prevention and good housekeeping techniques to ensure that stormwater discharges from the following areas comply with Ohio water quality standards: immediate access roads and rail lines used or traveled by carriers; or raw materials, products, waste materials, or by-products used or created; refuse sites; sites used for storage and maintenance of material handling equipment; sites used for handling material other than manure and shipping and receiving areas.

901:10-2-16 Permit to operate and operating record requirements.

(A) An operating record shall be generated as part of the permit to operate and NPDES permit.

The operating records shall be maintained on forms identified by the permit and other forms approved for use by the department. The operating record shall be retained for a minimum period of five years, shall be made available to the director upon request, and shall record and document the following information:

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

[...]

(e) Records of inspections of the protective vegetative cover that is maintained on all disturbed areas (lagoon or pond embankments, berms, pipe runs, erosion control areas, etc.)

[...]

(j) Records of actions taken to correct any deficiencies found as a result of inspections conducted in the production area. If actions were not taken within thirty days of discovery, then the operating record shall record the reasons explaining why corrections could not be made immediately.

[...]

Sincerely,

Kevin H. Elder
Division Chief

CC: Craig Hall, Rockford Dairy
Mercer SWCD
Timothy G. Schirmer, ODA Senior Staff Counsel
Christine Pence, ODA-DLEP Inspector
Andy Ety, ODA-DLEP Engineer

Ohio | Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

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July 2, 2015

Van Deurzen Dairy, LLC
C/O Walter Van Deurzen
2500 County Road 110
Alger, Ohio, 45812

Via Certified Mail No. _ 91 7199 9991 7032 3702 0246

Re: Notice of Deficiencies and Proposed Corrective Actions – Van Deurzen Dairy LLC Permit to Operate (PTO) No. 33-086-PTO-002

Mr. Van Deurzen:

Pursuant to Ohio Department of Agriculture's ("ODA") authority under Ohio Revised Code ("ORC") Section 903.16, this letter is to advise Van Deurzen Dairy, LLC ("Van Deurzen Dairy"), that the Division of Livestock Environmental Permitting ("DLEP") has noted violations at your facility related to Ohio's concentrated animal feeding facility laws. **Specifically, Van Deurzen Dairy violated Ohio Administrative Code ("OAC") Sections 901:10-1-10 by violating the terms and conditions of its permit to operate (Permit to Operate No. 33-086-PTO-002) by allowing manure storage ponds to exceed maximum operating levels specified therein.**

Van Deurzen Dairy violated OAC Section 901:10-1-10 by violating the terms of its permit to operate by allowing liquid levels in the manure storage ponds to exceed the maximum operating levels specified in Permit to Operate 33-086-PTO-002. OAC Section 901:10-1-10(G) states: "No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit." Permit to Operate No. 33-086-PTO-002 specifies a maximum operating level of elevation 106.60 for manure storage ponds 1 and 2, and a maximum operating level of elevation 105.40 for manure storage ponds 3, 4, and 5. These levels are marked by a piece of bent rebar in each storage pond. On June 19, 2015, Van Deurzen Dairy notified ODA staff that liquid levels in the manure storage ponds were above the maximum operating levels and that two temporary manure storage impoundments were being constructed as an emergency measure. An ODA inspection of the facility on June 23, 2015, confirmed that operating levels in all five manure storage ponds were well above the maximum operating levels, as indicated by the operating level exceeding the bent rebar marking maximum operating level in each storage pond. Furthermore, the two temporary manure storage impoundments combined were found to contain an estimated 3 million gallons of additional manure. By allowing liquid levels in the manure storage ponds to exceed the maximum operating levels specified in Permit to Operate 33-086-PTO-002, Van Deurzen Dairy violated OAC Section 901:10-1-10(G).

Pursuant to the above and the authority contained in ORC Section 903.16, ODA proposes the following corrective actions:

1. Immediately upon receipt of this letter, Van Deurzen Dairy shall continue corrective actions to return operating levels to below the maximum operating levels identified in Permit to Operate No. 33-086-PTO-002. ODA expects you to explore all available means to lower the pond operating levels, including but not limited to, land application, transferring manure to another manure storage structure, transporting to a wastewater treatment facility, or removal of dairy cows.

2. Within 5 days of receipt of this letter, Van Deurzen Dairy shall submit to ODA a written plan identifying the corrective actions that will be implemented to lower pond levels and return to compliance by the deadline below. This plan shall identify the gallons of manure to be removed to achieve compliance and where the manure will be distributed. If manure is to be land applied, the plan shall identify the acres that would be available. If other means of disposal are proposed, those volumes and methods shall be provided (i.e. wastewater treatment plant, off-site storage structures, etc.).

3. By July 30, 2015, Van Deurzen Dairy shall return to compliance by lowering the manure levels in all storage ponds to below the maximum operating levels.

4. By July 30, 2015, Van Deurzen Dairy shall remove all liquid manure and residual solids from the interiors of the temporary manure storage impoundments constructed between ponds 3 and 4 and between ponds 4 and 5.

5. By August 15, 2015, Van Deurzen Dairy shall properly close the two temporary manure storage impoundments and remove the earthen dikes. Closure shall include grading, seeding, and restoring vegetation in the interior and surrounding areas of these structures.

6. By November 1, 2015, Van Deurzen Dairy shall submit to ODA a proposal to address manure storage and/or manure management strategies to prevent similar situations from occurring in the future.

The applicable laws are reprinted below for your reference:

ORC § 903.16 Requiring corrective actions and assessing civil penalties.

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

(A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

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

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

[...]

OAC 901:10-1-10 Prohibitions.

[...]

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

[...]

ODA's goal is for all regulated entities to be in full compliance with Ohio law. At this time, this Notice of Deficiency serves as notice to Van Deurzen Dairy of this violation and provides Van Deurzen Dairy with an opportunity to address this violation. If you fail to comply with any of the corrective actions required herein, you may be subject to the assessment of civil penalties and the potential for escalated enforcement. ODA takes this type of violation very seriously and anticipates that the aforementioned violation will be promptly corrected. Please feel free to direct any questions concerning this Notice of Deficiency to me at 614-387-0469 or any of my staff. I look forward to your continued cooperation in this matter.

Sincerely,

Kevin Elder
Division Chief

Cc: Tim Schirmer, ODA Senior Staff Counsel
Kelly McCloud, Assistant Attorney General
John Schroeder, ODA-DLEP Inspector
Andy Ety, ODA-DLEP Engineer

BEFORE THE OHIO DEPARTMENT OF AGRICULTURE

RECEIVED
JUL 06 2015
LIVESTOCK PERMITTING

In the Matter of: AJ Evers and Sons, LLC

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between AJ Evers and Sons, LLC ("Respondent") and the Ohio Department of Agriculture ("ODA") following Respondent's request to set up a payment play to pay a three thousand dollar ($3,000.00) civil penalty levied against Respondent in a Director's Order dated May 26, 2015, which is attached hereto as Exhibit A.

1. The parties stipulate to the jurisdiction of ODA over this matter pursuant to Ohio Revised Code Chapter ("ORC") 903.

2. The terms of this Settlement Agreement are binding upon the parties hereto, their agents, assigns and successors in interest.

3. On March 2, 2015, as a result of an investigation conducted by ODA, Respondent was notified by a Notice of Violation and Proposed Administrative Penalty, attached hereto as Exhibit B, that ODA proposed to assess a three thousand dollar ($3,000.00) civil penalty against Respondent pursuant to ORC § 903.16 for violation of Ohio Administrative Code § 901:10-2-14. Specifically these violations were for: (1) application of manure on frozen ground without permission from ODA; (2) application of manure that had less than fifty percent (50%) moisture content; (3) manure application on two fields with less than ninety percent (90%) crop residue with no cover crops planted; (4) manure application to files where soil tests indicated phosphorus exceeding one hundred fifty parts per million, Bray P1; and (5) precipitation of at least ½ inch predicted within twenty-four (24) hours of manure application.

4. On April 30, 2015, an administrative hearing was held in this matter. Hearing Officer Michael J. Barren presided over this hearing.

5. On May 5, 2015, Hearing Officer Barren issued his report and recommendation in this matter. Hearing Officer Barren found that the three thousand dollar ($3,000.00) civil penalty proposed by ODA was appropriate.

6. The Hearing Officer's Report and Recommendation was provided to Respondent on May 8, 2015. No objections were made thereto.

7. On May 26, 2015, ODA issued Director's Order 2015-085, attached hereto as Exhibit A, affirming Hearing Officer Barren's Report and Recommendation and specifically adopting that report as the findings of fact and conclusions of law and imposing a three thousand dollar civil penalty against Respondent.

8. Respondent shall pay a civil penalty of three thousand dollars ($3,000.00) to ODA by November 15, 2015. A one thousand dollar ($1,000.00) payment shall be made by July 15, 2015. Subsequent payments of five hundred dollars ($500.00) shall be made by the 15th day of each subsequent month. Respondent shall mail the payment to the address below:

   Ohio Department of Agriculture
   Attn: Division of Livestock Environmental Permitting
   8995 E. Main Street
   Reynoldsburg, Ohio 43068

   Respondent must have the letter postmarked on or before July 12, 2015 in order for this Agreement to be effective.

9. Nothing in this Agreement shall preclude ODA from seeking further disciplinary action against Respondent's license for any such future violation, in addition to the civil penalty. As already set forth in this Agreement, Respondent shall be afforded administrative hearing rights for any such further disciplinary action in accordance with R.C. Chapter 119.

10. Respondent's failure to timely comply with the foregoing terms of this Agreement shall constitute breach and ODA may take whatever action it deems necessary to collect any remaining balance.

11. This Settlement Agreement shall apply only to the parties hereto and does not create any rights or obligations on the part of any person or entity who is not a party to the Settlement Agreement.

12. This Settlement Agreement shall not be binding upon the parties until it has been fully signed and executed by the parties below.

13. The terms of this Settlement Agreement are binding upon the parties hereto, their agents, assigns and successors in interest.

14. Respondent waives any and all claims or causes of action they may have against the State of Ohio, ODA, officers, employees and/or agents of either, arising out of the matters which are the subject of this settlement agreement.

15. This document is a public record in accordance with O.R.C. 149.43 and shall be released by ODA if requested or is otherwise required by law.

[Remainder of this page intentionally left blank.]

Gene A Evers

Gene Evers
AJ Evers and Sons, LLC
1105 Goettemoeller Road
Maria Stein, OH 45860

7-1-2015
Date

David T. Daniels, Director
Ohio Department of Agriculture
8995 E. Main Street
Reynoldsburg, Ohio 43068

7/6/2015
Date

Timothy G. Schirmer Senior Staff Counsel
Ohio Department of Agriculture
8995 E. Main Street
Reynoldsburg, Ohio 43068

7/6/2015
Date

DEPARTMENT OF AGRICULTURE
STATE OF OHIO

In re: Van Deurzen Dairy, LLC **Order No: 2015-269**

Van Deurzen Dairy, LLC
C/O Walter Van Deurzen
2500 County Road 110
Alger, Ohio, 45812

91 7199 9991 7032 3702 0444

Permit to Operate (PTO) No. 33-086-PTO-002

EMERGENCY ORDER

The Ohio Department of Agriculture (ODA) Division of Livestock Environmental Permitting ("DLEP") completed an inspection of Van Deurzen Dairy, LLC, on July 1, 2015. This facility is regulated by ODA pursuant to Chapter 903 of the Ohio Revised Code ("O.R.C.") and under Permit to Operate ("PTO") No. 33-086-PTO-002, which was issued to Van Deurzen Dairy, LLC, on July 29, 2010. The current operating levels in the ponds, the constant production of manure, the unpredictability of the weather conditions, and the facility's failure to ensure adequate storage availability during the extended period of heavy precipitation during May, June, and July 2015 as required in the permit, have created an emergency condition in light of the serious threat of overflows. Pursuant to ODA's authority under O.R.C. Section 903.18, the Director has determined that an emergency exists, requiring immediate action to protect public health or safety or the environment. Van Deurzen Dairy, LLC, is hereby ordered to comply immediately with this Emergency Order.

Findings of Fact and Conclusions of Law

ODA-DLEP staff conducted an inspection at Van Deurzen Dairy, LLC, on July 1, 2015 and found that:

1. Manure Storage Ponds #1 to #5 are above Maximum Operating Level (MOL); and
2. Unapproved, non-engineered manure storage areas are being utilized for liquid manure storage.

Based on the foregoing and on the serious threat of manure and/or contaminated stormwater overflows from the facility during current weather conditions, I conclude as a matter of law that an emergency exists, that requires immediate action to protect the public health or safety or the environment.

By the authority vested in my office pursuant to ORC 903.18, it is hereby

ORDERED that:

1. Van Deurzen Dairy, LLC, shall immediately commence corrective actions to return to compliance with maximum operating levels in all liquid manure storage ponds at the facility **as required in the "Notice of Deficiencies and Proposed Corrective Actions" issued by ODA on July 2, 2015.**

2. Van Deurzen Dairy, LLC, shall immediately develop an Emergency Action Plan (EAP) to address manure production and runoff from the facility from the date of this Emergency Order through September 15, 2015. The estimated manure volume generated by the facility for this time period is approximately 19.1 million gallons, which includes the volume that is currently stored above Maximum Operating Levels and in temporary storage areas. The Emergency Action Plan shall describe how the entire 19.1 million gallons will be removed by no later than September 15, 2015. **The Emergency Action Plan shall be completed and submitted to ODA-DLEP within 10 days of the receipt of this Emergency Order and shall include all of the action items listed below:**

   a. A plan to apply manure at any time that area weather and field conditions become suitable and meet the land application criteria of OAC 901:10-2-14. This includes making arrangements in advance for land application equipment and available land for manure application.

   b. A listing of fields and acres, including maps if these acres are not currently included in the Manure Management Plan, which will be utilized for manure application during this timeframe. If the land is not controlled by Van Deurzen Dairy, Inc., then either agreements, or another form of assurance, must be provided to demonstrate that the land will not be planted until manure can be applied.

   c. Local waste water treatment plants (WWTP) shall be contacted to see if it is feasible for any of them to receive additional waste from your facility. A list of WWTPs contacted shall be provided to ODA along with a statement as to whether they can, or cannot, receive additional waste from your facility. If the WWTP can receive additional waste, a contract shall be provided that states the volume to be distributed and a timeframe for distribution.

   d. Non-owned satellite liquid storage facilities in the area shall be evaluated to determine if there is available storage volume that could be utilized by your facility. If so, then the plan shall provide the volume of manure storage available at these locations and how many gallons can feasible be transferred on a daily basis.

   e. Any temporary alterations that can be made to the facility or facility practices either to eliminate clean stormwater discharging to the manure storage ponds or to lessen the amount of manure/contaminated stormwater being generated at the facility shall be made.

If the Emergency Action Plan cannot adequately account for the removal of 19.1 million gallons of manure between the date of this Emergency Order and

September 15, 2015, as required in Paragraph 2 (above), the Emergency Action Plan must evaluate the following:

f. The possible reduction or removal of the number of cows at the facility in order to reduce the amount of manure to be handled between the date of this Emergency Order and September 15, 2015.

g. Whether a temporary manure storage structure could be properly designed and constructed in an environmentally secure manner at the facility. Evaluation of such a structure shall immediately commence and siting and geological information shall be provided to ODA-DLEP for review and approval prior to commencing construction. If constructed, any manure storage structure created under this Emergency Order is only authorized to be temporary and must be emptied and properly closed by no later than the expiration date of this Emergency Order, with a closure plan submitted for ODA-DLEP review by no later than October 15, 2015. A manure storage structure prepared under this Order can only be permanently authorized through the review and approval of a complete Permit to Install and Permit to Operate application.

h. No more than 4,888 mature dairy cows may be housed at the Van Deurzen Dairy, LLC site without written authorization from ODA to increase the facility design capacity. On June 3, 2015 ODA received your request to extend the expiration date of Permit to Install No. 33-086-PTI-002. ODA will make a final determination regarding this request once this Emergency Order is no longer in effect.

i. Van Deurzen Dairy, LLC shall comply with all terms and conditions contained in the permits and with all applicable laws and rules.

3. The Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.

4. Van Deurzen Dairy, LLC, shall immediately comply with this Emergency Order.

5. A certified copy of this order shall be served upon Van Deurzen Dairy, LLC.

Effective Date of this Order: Upon journalization.

David T. Daniels, Director
Ohio Department of Agriculture

7/14/2015
Date

Entered, Ohio Department of Agriculture Journal this 14th day of July, 2015, by

Carrie Ellis.

NOTICE OF APPEAL RIGHTS

This EMERGENCY ORDER takes effect immediately.

Pursuant to O.R.C. Section 903.18(A), this EMERGENCY ORDER may be appealed to the Ohio Department of Agriculture for an administrative hearing. The administrative hearing will be conducted in accordance with O.R.C. Chapter 119. Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the EMERGENCY ORDER. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: Timothy G. Schirmer, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6213. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty (30) days of the date of mailing of this notice. This notice is being mailed to you on July 14, 2015. O.R.C. Section 119.18(A) states:

> Notwithstanding sections 903.16 and 903.17 of the Revised Code, if the director of agriculture determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. The director's order is appealable in accordance with section 119.12 of the Revised Code. No emergency order shall remain in effect for more than one hundred twenty days after its issuance.

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

You may present evidence and examine witnesses appearing for and against you, to show cause why this Emergency Order should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Certification

STATE OF OHIO

COUNTY OF LICKING, SS:

I, David T. Daniels, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of **ORDER No.** 269 which was entered upon the order journal of the Ohio Department of Agriculture on the 14th day of July, 2015.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 14th day of July, 2015.

David T. Daniels Director
Ohio Department of Agriculture

DEPARTMENT OF AGRICULTURE
STATE OF OHIO