

PUBLIC HEARING ON OHIO DEPARTMENT OF
AGRICULTURE'S CLEAN WATER PROGRAM FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS

PROCEEDINGS

taken before Carmen G. Maley, RPR, a Notary
Public in and for the State of Ohio, at the Ohio
State University Fawcett Center, 2400 Olentangy
River Road, Columbus, Ohio, on November 18,
2008, at 7:00 p.m.

1 APPEARANCES:

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PANEL MEMBERS:

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Peter Swenson

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Steve Jann

Matt Gluckman

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Michael Berman

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PROCEEDINGS

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MR. SWENSON: This is hearing on EPA's proposal to approve Ohio's request for the Ohio Department of Agriculture to run the Clean Water Act permit program for concentrated feeding operations in Ohio. Animal feeding operations are agricultural enterprises where animals are kept and raised in confined situations. Concentrated animal feeding operations, or CAFOs, as we'll refer to them tonight, in the state of Ohio must have a state-issued permit to lawfully discharge manure, litter or process waste water pollutants into lakes, rivers or streams. My name is Peter Swenson. I am the chief of the NPDES programs branch at EPA, Region 5, in Chicago. I will be presiding over tonight's hearing. Joining me on the panel tonight are Steve Jann and Matt Gluckman. Steve, would you raise your hand, and Matt Gluckman. Steve Jann and Matt Gluckman are from the water division where I work. And also, Michael Berman from the office of regional

1 counsel is on the panel tonight. Helping to
2 facilitate the hearing is Jennifer Ostermeier.
3 Jennifer, can stand you up, please.

4 If you intend to make a comment, you
5 signed in on a card. And you would have been
6 given a number. So when it's your time to come
7 and give a comment, Jennifer will call your
8 number. Please come up to one of the
9 microphones in the two aisles in front of the
10 auditorium. Jennifer is also going to help us
11 make sure we stay on time tonight. This is
12 probably a good time to ask everyone, if you
13 haven't done so, to silence your telephones and
14 pagers.

15 We are pleased to have this opportunity
16 to listen to your comments on EPA's proposed
17 approval of Ohio's request. In January 2007,
18 Ohio submitted its application to transfer
19 control of the permit program for the CAF0s from
20 the Ohio EPA to the Ohio Department of
21 Agriculture. Under the application, ODA would
22 administer parts of the program pertaining to
23 CAF0s and to storm water from construction of
24 animal feeding operations. On October 3rd, EPA

1 informed ODA that we consider Ohio's application
2 to be approvable contingent upon the state
3 adopting certain changes to Ohio law and rules,
4 as specified in September letters to EPA, and as
5 necessary, on any additional issues that -- or
6 changes made in response to any additional
7 issues that may be raised during tonight's
8 hearing or during the public comment period.

9 The letters I referred to, along with the rest
10 of the record for Ohio's application, are
11 available on EPA's web site. I believe there's
12 a fax sheet that does include some information,
13 including the web site address, so you can take
14 that with you tonight.

15 Also, there are a number of ways people
16 can provide comments to us on the proposed
17 decision. First of all, we will be accepting
18 written comments through December 16, and
19 information on submitting the comments is
20 provided on the fact sheets that are available
21 at the sign-in table, if you didn't pick one up
22 already. Also, comments made during tonight's
23 hearing will be recorded and will become part of
24 the record. You may also turn in written

1 comments at the sign-in table, if you have those
2 prepared. And finally, you can submit
3 electronic comments tonight. We have two
4 computers set up at a station. So if you want
5 to actually submit electronic comments through
6 our web site, we are set up to take those
7 tonight as well. We will be posting all written
8 comments we received to date on our web site
9 following today's hearing, and we will be adding
10 additional comments as we receive them during
11 the remainder of the comment period. We will
12 also post the transcript of this hearing on our
13 web site as soon as that transcript becomes
14 available.

15 We have received requests to extend the
16 comment period on this decision, and also to
17 hold an additional public hearing on the
18 proposed transfer. We have not reached a
19 decision regarding these requests as yet. Any
20 extension of the comment period or additional
21 hearings would be announced in the Federal
22 Register, in newspapers, by mail, and on EPA's
23 web site. This hearing is designed to allow you
24 to make comments for EPA to consider. We will

1 not be responding to your questions or comments
2 today. After December 16, EPA will be reviewing
3 all comments, and we will respond to all
4 comments in a responsiveness summary that will
5 be posted on EPA Region 5's web site. Again
6 that addresses that on the fact sheet. The time
7 that will be needed for us to complete the
8 summary is going to depend on the number of
9 comments and the nature of those comments.

10 Once the responsiveness summary is
11 written, we will tell Ohio whether we approve
12 its application or whether further changes are
13 needed. We may seek additional public comment
14 if further changes are needed. We would publish
15 a decision to approve the application in the
16 Federal Register, and we would post it on our
17 web site.

18 I wanted to share some ground rules for
19 how we're going to conduct the hearing tonight.
20 First of all, I want to make sure that everyone
21 who wants to say something gets the opportunity
22 to do so. So if you wish to speak and you
23 haven't filled out a card, please do so. This
24 will help us to determine -- and judging from

1 the number of cards we got at the beginning of
2 the meeting, we do expect a large number of
3 commenters tonight. The Ohio Department of
4 Agriculture will make the first comment. And
5 then following that, any elected officials that
6 wish to comment will be asked to do so. Then we
7 will open it up to all other commenters to speak
8 in the order in which they filled out the cards.
9 Again, take a look at the number on your card.
10 We will call your numbers in order. This
11 hearing is scheduled to end at 9:30. As I said,
12 Jennifer will help us keep on track. Before we
13 begin, I wanted to just give a little bit of
14 background on the matter that we are
15 considering.

16 The Clean Water Act requires facilities
17 that discharge pollutants to bodies of water,
18 such as rivers, streams, lakes, to get a permit
19 to do so. These permits are called National
20 Pollutant Discharge Elimination System, or
21 NPDES, permits. These permits include
22 conditions that are intended to prevent water --
23 prevent pollution of surface waters. Congress
24 wrote the Clean Water Act to give state

1 governments the lead role in running the NPDES
2 program within their borders. In 1974, EPA
3 approved the Ohio environmental protection
4 agency, or Ohio EPA, to run the NPDES program in
5 the state of Ohio. As a result, Ohio EPA is
6 currently responsible for issuing all NPDES
7 permits in the state of Ohio. EPA retained its
8 ability to review state permits before they are
9 issued, and to object if we find a specific
10 permit does not meet the requirements of the
11 Clean Water Act.

12 In January 2007, Ohio submitted its
13 application to transfer operation of the NPDES
14 program for CAFOs from the Ohio EPA to the Ohio
15 Department of Agriculture. This request was in
16 response to legislation enacted by the state in
17 the year 2000. Under the application, Ohio
18 Department of Agriculture would administer the
19 parts of the program pertaining to CAFOs and
20 storm water runoff from the construction of
21 animal feeding operations. Ohio EPA would
22 continue to implement all other aspects of the
23 state's approved NPDES program. The Clean Water
24 Act regulations allow such splitting of

1 responsibilities between state agencies.

2 In April and November 2007 letters, EPA
3 informed the Ohio Department of Agriculture that
4 its proposed program appeared to meet most, but
5 not all, of the requirements of the Clean Water
6 Act and regulations. These letters identified
7 31 technical and legal issues that Ohio needs to
8 resolve before EPA will be able to approve its
9 application. In response, ODA submitted, in
10 September 2008, letters to EPA to pursue
11 specified statutory and administrative rule
12 changes. EPA believes that, upon adoption of
13 these changes, the state will have the
14 appropriate authority and standards it needs
15 under the Clean Water Act and regulations to
16 implement the NPDES program for CAFOs.

17 As I said, a number of people have
18 requested the opportunity to speak tonight. And
19 in order to accommodate all those requests, we
20 are asking that you keep your remarks to three
21 minutes. We may need to further adjust that
22 time if we get substantially more requests for
23 comments. When you are called to come up and
24 give your comment, please state your name before

1 you go into your remarks, and spell it for the
2 benefit of our court reporter, who is sitting
3 over here (indicating). If you have a written
4 copy of your remarks or other documents you
5 would like to submit, please drop them off at
6 the sign-in table just outside the door.

7 Jennifer, before I close, is there any
8 other detail that I should share? Jennifer is
9 going to be our timekeeper. To the extent that
10 we need to remind people about time, Jennifer
11 will let you know when your time is running out
12 or when your time is over.

13 On behalf of EPA Region 5, I would like
14 to thank you for coming to tonight's hearing.
15 Our first speaker will be Adam Ward, director of
16 legislative affairs for the Ohio Department of
17 Agriculture.

18 COMMENTER: Good evening, gentlemen. My
19 name is Adam Ward. I'm director of legislative
20 affairs for the Ohio Department of Agriculture.
21 It certainly is a pleasure to speak to you
22 tonight regarding the proposed change of the
23 Ohio National Pollutant Discharge Elimination
24 System permit program, concentrated animal

1 feeding facilities. This effort began March 15,
2 2001, when a new chapter of the Ohio Revised
3 Code was enacted pursuant to senate bill 141, to
4 transfer portions of the NPDES program to the
5 Ohio Department of Agriculture for permits and
6 enforcement over large poultry and livestock
7 operations.

8 ODA assumed the responsibility to issue
9 state only permits to install and permits to
10 operate for large concentrated animal feeding
11 facilities on August 19, 2002. Ohio EPA has
12 retained the authority for NPDES permits for
13 similar livestock and poultry operations.

14 Following three pieces of legislation, numerous
15 meetings and several rounds of adopting and
16 amending the rules, the state of Ohio, on
17 January 4, 2007, submitted its application to
18 the United States Environmental Protection
19 Agency seeking approval to amend the National
20 Pollutant Discharge Elimination System program
21 in Ohio, which has been administered by Ohio
22 EPA, in accordance with the federal Clean Water
23 Act since March of 1974.

24 ODA's NPDES delegation application was

1 1,600 pages long, contained three volumes,
2 weighed 10 pounds, and was seven inches thick.
3 The sheer size of this application provides some
4 explanation for the lengthy process. The NPDES
5 program regulates all sources of water pollution
6 from discharge, transport, pretreatment or
7 handling of wastewater, sewage, storm water and
8 sludge. However, Ohio propose only to transfer
9 the portions of the NPDES program from EPA to
10 the department of agriculture that distinctly
11 deal with animal feeding operations and
12 concentrated animal feeding operations, or
13 CAFOs.

14 The state of Ohio believes the
15 application package, the subsequent revisions,
16 once enacted, will provide sufficient
17 documentation for EPA to determine that Ohio's
18 department of agriculture possesses adequate
19 authority to implement the NPDES program. We
20 are pleased with U.S. EPA's announcement in
21 October that it had received and proposed
22 approval for Ohio's application to transfer
23 control, parts of the NPDES program from Ohio
24 EPA to the department of agriculture. This

1 culmination of hundreds of hours of operation
2 and review by the staff, not only at the
3 department of agriculture, but the staff at Ohio
4 EPA and the staff at the U.S. Environmental
5 Protection Agency, both at the headquarters and
6 Region 5, EPA's guidance and cooperation on both
7 levels is certainly appreciated and commended.

8 ODA is looking forward to working with
9 EPA to administer this very important Clean
10 Water Act protection program. Thank you.

11 MS. OSTERMEIER: Could commenter one
12 please come up to the microphone. Again, please
13 state your name, and spell your name, for the
14 court reporter.

15 COMMENTER: Edith Chase, C-H-A-S-E. I'm
16 from Kent, Ohio, representing Ohio Coastal
17 Resource Management Project, a non-profit
18 organization. And I have written comments, but
19 in order to stick within three minutes, I will
20 just mention a few of the highlights.

21 Thank you for coming to Columbus for
22 this. I had also submitted a letter to
23 Mr. Gluckman in advance, requesting a second
24 hearing up in northwest Ohio, such as Bowling

1 Green, where it would be easier to get comments
2 from the many stakeholders up there, and people
3 who live in the area and have practical
4 first-hand experience with CAFOs.

5 First of all, our organization opposes
6 Region 5's transfer of authority for NPDES from
7 Ohio EPA to the Ohio Department of Agriculture,
8 because all federal clean water requirements
9 have not been met. There is no effective
10 enforcement structure in place to ensure proper
11 manure management and protection of public
12 health and the environment, especially Lake
13 Erie. We are concerned that untreated animal
14 waste collected in lagoons are sprayed on fields
15 as fertilizer. But if they were sprayed on
16 their own property, the CAFO operator would be
17 responsible. But since they just give them to
18 manure operators, brokers, they just are not on
19 the property, and there is no accountability.

20 The Ohio Lake Erie Commission's report,
21 Lake Erie protection and restoration plan,
22 approved in September of this year, called for
23 anaerobic digester technology. So I would ask
24 Region 5, with cooperation from ODA and others,

1 to look into other technology and best
2 management practices to reduce the energy use
3 resource consumption and pollution from this
4 operation. I would like to ask that each CAFO
5 be a good neighbor to all those people and
6 communities who live nearby.

7 In conclusion, we oppose the transfer of
8 authority, because ODA has not deterred
9 noncompliance through effective enforcement.
10 Check the track record. We recommend strict
11 regulation of manure management to meet the new
12 court-ordered requirements, which will take
13 effect on February 27th. And we need additional
14 reporting requirements, disseminating
15 information to the public and covering
16 medium-sized CAFOs on a violation basis, and
17 only if there's a violation, and that would
18 comply with the federal rules. Thank you for
19 coming, and thank you, very much.

20 MS. OSTERMEIER: Number two, please.

21 COMMENTER: Trent Dougherty,
22 D-O-U-G-H-E-R-T-Y. I'm director of legal
23 affairs at the Ohio Environmental Council. The
24 OEC is a non-profit environmental advocacy

1 organization of approximately 100 member
2 organizations and thousands of members
3 throughout the state of Ohio. I thank you, very
4 much, for coming here and providing this
5 opportunity. I will try to keep my comments
6 brief, as there's a lot of folks that have
7 traveled much farther than I to comment today.

8 OEC's mission is to secure healthy land,
9 air and water to all who call Ohio home. And
10 consistent with this mission, we have opposed
11 the transfer of delegation since the beginning,
12 since eight years ago, with senate bill 141.

13 While we have opposed this transfer since day
14 one, we've also worked as objective and critical
15 partners with the Ohio Department of
16 Agriculture. We feel that the ODA does have
17 dedicated staff who, I believe, do feel that
18 they are doing the right thing. However, they
19 have little experience at protecting water
20 resources and dealing with the intricacies of
21 NPDES permitting.

22 Our primary goal is protection of water
23 quality and protection of the quality of life of
24 the people who live around these facilities. We

1 believe that this transfer is not a step forward
2 in that direction, but merely a lateral move
3 that provides just more questions with,
4 actually, more disappointing answers. Will we
5 be in a better position now to protect water
6 quality? The answer is no. Will we be able to
7 stop the activity of applying manure on frozen,
8 snow-covered ground? No, we are not. Will we
9 be stopping the brokering of manure without
10 producer liability? No, we are not. Will we be
11 stopping the practice of applying manure on
12 fields that have soil contents of nutrients
13 that, when those tests come back, there's no
14 reason to apply any more, probably for my
15 lifetime, or the lifetime of most of us put
16 together? No. Will this transfer guarantee
17 proper funding for the regulators? No.

18 What this does do is creates precedence
19 that I'm not sure we are all ready to deal with.
20 It is not a regulatory decision done in a
21 vacuum. The consequences will be varied. There
22 are other states with departments of agriculture
23 that want this authority that are not equipped,
24 even as much as ODA is. And not only is it for

1 transfer of CAF0, but there are other industries
2 knocking at the door wanting to move permitting
3 authority over water quality from EPA's
4 throughout the state, and in our own state, to
5 agencies that they work better with. I'm not
6 sure if we all are ready for the domino effect
7 that can occur. Thank you, very much.

8 MS. OSTERMEIER: Number three?

9 COMMENTER: Good evening. I'm Bob
10 Peterson, P-E-T-E-R-S-O-N. I have the pleasure
11 of serving -- welcome to beautiful, sunny, Ohio.
12 I have the pleasure of serving as president of
13 the Ohio Farm Bureau Federation, the state of
14 Ohio's largest general farm organization with
15 more than 234,000 family organizations. I farm
16 with my father and brother in rural Fayette
17 County. You know, tonight it is my pleasure to
18 present proponent testimony in support of the
19 transfer from Ohio EPA to Ohio Department of
20 Agriculture. Efforts to bring about this change
21 first began with issuance of a livestock task
22 force more than eight years ago -- more than ten
23 years ago. And nearly eight years ago, senate
24 bill 141 was passed, which permitted the

1 transfer of large livestock farms of Ohio EPA to
2 the Ohio Department of Agriculture. This was
3 signed into law and was an effective piece of
4 legislation.

5 The Ohio Department of Agriculture has
6 administered this state permitting program
7 beginning in August 2002. The General Assembly,
8 since that time, has twice passed legislation
9 signed into law to update Ohio's statutes to
10 enable NPDES delegation authority to be
11 transferred from Ohio EPA to Ohio Department of
12 Agriculture. Additionally, the department has
13 amended its rules numerous times to reflect
14 changes made in state statutes, in federal
15 rules, and to address issues identified by U.S.
16 EPA Region 5 that needed to be clarified to be
17 consistent with the code of federal regulations.

18 Prior to the Ohio Department of
19 Agriculture taking over responsibility for the
20 state permitting program, the Ohio EPA issued
21 only permits to install for concentrated animal
22 feeding operations that had no permit to operate
23 and had no routine inspection program. Now,
24 with Ohio Department of Agriculture, the state

1 requires both a permit to install and permit to
2 operate and conducts two on-site inspections
3 each year and additional inspections if needed.
4 As a matter of fact, the department of
5 agriculture's LEAP program staff has conducted
6 more than 1,200 inspections since the department
7 began regulating livestock farms in August 2002;
8 every six months, which is ten times the federal
9 requirement. Additionally, the state permitting
10 program is an overall environmental permitting
11 program designed to protect ground and surface
12 waters; the water that my family drinks, making
13 it twice as stringent as federal NPDES programs
14 as it is designed only to protect surface water.

15 Few states have permitting programs for
16 large livestock farms that include a permit to
17 install and to operate, and none are as
18 comprehensive and stringent as Ohio. Ohio law
19 does not allow any operation of discharge into
20 surface or groundwaters, regardless of their
21 size. These actions, taken over the last six
22 years, demonstrate the department of agriculture
23 has the expertise and ability to issue permits
24 and enforce compliance of livestock farms.

1 They've done a good job. As an example of the
2 responsible manner in which the department of
3 agriculture operates is how it responds to
4 complaints. State and federal law requires that
5 permitting program staff respond to all written
6 complaints. They have exceeded the requirement
7 by responding to oral complaints filed with it
8 as well. They care about Ohio and have done the
9 job effectively.

10 In closing, I would like to suggest,
11 we've been at this many, many years, trying to
12 get the transfer done, I would recommend that
13 you don't extend the comment period. We have
14 had plenty of comments. We in Ohio have waited
15 for this transfer far too long. I encourage you
16 to make the decision, and let's get this
17 transfer done and improve the environment here
18 in Ohio.

19 I would also like to share with you
20 1,600 comments from farmers and rural residents
21 of Ohio supporting this transfer. I will enter
22 those into the record. Thank you, very much.

23 MS. OSTERMEIER: Number four?

24 COMMENTER: Brian Welch, W-E-L-C-H. I

1 represent a grass roots group in central Ohio
2 called Acre, and we are opposed to the transfer
3 of the permitting process to the ODA. Factory
4 farms produce an estimated 500 million tons of
5 manure each year, three times the amount of
6 waste generated by the population -- human
7 population of the U.S. In Ohio, CAFOs generate
8 over 10.5 million tons of manure per year, with
9 some individual facilities creating more waste
10 than medium-sized cities. According to the EPA,
11 hog, chicken and cattle waste has polluted
12 35,000 miles of rivers in 22 states and
13 contaminated groundwater in 17 states.

14 Meanwhile, the livestock industry has
15 effectively lobbied to move regulatory oversight
16 to the Ohio Department of Agriculture. I do not
17 believe that the ODA should have environmental
18 regulatory oversight of CAFOs, particularly when
19 it comes to protecting your waterways. I do not
20 believe that granting the oversight to the ODA
21 will provide the appropriate level of scrutiny
22 or protection of our waters. The ODA's mission
23 is to provide regulatory protection to
24 producers, agribusinesses and the consuming

1 public; to promote Ohio agricultural products in
2 domestic and international markets.

3 The Ohio EPA has as its mission listed
4 as protecting the environment and public health
5 by ensuring compliance with environmental laws
6 and demonstrating leadership in environmental
7 stewardship. The Ohio EPA is an independent
8 source of oversight that is sorely needed.
9 Thank you.

10 MS. OSTERMEIER: Number five?

11 COMMENTER: My name is Gary Feliks,
12 F-E-L-I-K-S. First of all, thank you for giving
13 us the opportunity to address the group. We
14 hope you find that the results of last
15 Saturday's football game is not going to affect
16 you in any decisions made here, but we do
17 welcome you to our community.

18 I'm going to ask, in part -- I think if
19 I were you, I might find these events somewhat
20 amusing, because you say, here they come, and
21 they come march up, and they bring about their
22 points, and we don't accomplish much good, but
23 it seems to make us feel better. But I do
24 appreciate the fact you give us a chance to

1 speak, because we are very concerned about this
2 decision.

3 The department of agriculture, in our
4 estimation, has not done the job that it could
5 have done in the past eight years in governing
6 the CAFOs. And the protection of the water is
7 one of the last areas they, at this point, do
8 not have control, whereas they come out in very
9 strong statements saying they're enforcing what
10 we find, that when we compare historical fact to
11 reality, to what the report is, we find that
12 there's gross differences as to what is actually
13 going on. The incidents of failure on the part
14 of the CAFO, the incidents are in the thousands.
15 If you would like 20 bankers boxes full of data
16 of all of the supposed accidents or spills or
17 other offenses that occurred, we could certainly
18 provide those, but I think it comes at the core
19 of the situation.

20 You have an organization designed to
21 promote the concept at the same time responsible
22 for enforcing all the regulations. We tried
23 this with the nuclear energy commission, and it
24 didn't take long before we came up with the NRC.

1 I think if I were to come to you today and say,
2 I would like you to appoint the president of the
3 American Electric Power to be in charge of all
4 air stack emission standards. You would
5 probably say, that does not make good sense.

6 I would like for you to look beyond the
7 power and the money involved with this, and look
8 at the victims whose lives are at risk if you
9 allow them to continue to not adequately enforce
10 the rules that are out there and to systemically
11 change some of these rules. And if you look at
12 exactly the law that was giving them -- with
13 house bill 141, and you look at exactly the text
14 of what they're working with today, you are
15 going to find some significant differences,
16 because many of the rules and regs have been
17 altered or modified in some way to make it more
18 expedient for the CAFOs to exist.

19 We have a very serious problem in this
20 state and in this country. We are finding
21 nutrient-rich areas, bodies of water. It was
22 in -- I read it today in the American Chemical
23 Society, that we have huge areas of freshwater
24 rendered dead because of excessive nutrients.

1 This is going to be one more step to allow this
2 to continue, even more so in our area and areas
3 adjacent to the Great Lakes, one of the most
4 precious resources our country has. And to
5 render that useless or dead, in many regards, I
6 think, would be yet another crime committed in
7 the interest of low-cost food. We could have
8 low-cost coal, if we wanted to burn it, out of
9 West Virginia. But the EPA wisely said, no, we
10 need to clean that up.

11 I think we have to come up with a little
12 better standard, and perhaps take away the
13 authority, not just for the water, but also the
14 total governing authority for the CAFO, and put
15 it in the hands of someone who has no financial
16 interest whatsoever. Thank you.

17 MS. OSTERMEIER: Number six.

18 COMMENTER: Good evening. My name is
19 Jacob Wolfinger, W-O-L-F-I-N-G-E-R. I'm here
20 tonight representing Wolfinger Farms and the
21 Ohio Cattlemen Association. I farm full-time
22 with my brother and father, 1,300 acres of corn,
23 soybeans, hay and wheat, along with 150 cows and
24 annually feed 450 feeders and replacement

1 heifers. I read that the average farmer farms
2 30 years. What farmer wouldn't want to take
3 care of its water? With that said, no, farmers
4 do not want to be overregulated with the burden
5 of having people breathing down your neck over
6 regulations.

7 We believe that if the goal is to
8 collect the -- if the goal is to collect fines,
9 the EPA should be in charge. However, if we are
10 trying to protect the environment, the ODA
11 should be in charge, because the ODA already has
12 a working relationship with farmers. In
13 addition, the ODA will be able to make ten times
14 the inspections the EPA currently does, making
15 it easier to educate the farmers. I also
16 believe, like many grain farmers, the ODA is
17 already out there inspecting us, as far as how
18 we apply pesticides and chemicals, so why not
19 let those folks also regulate our livestock
20 operations? Thank you, very much, for your
21 time.

22 MS. OSTERMEIER: Number seven.

23 COMMENTER: Thank you for inviting us to
24 speak. My name is Tom Menke, M-E-N-K-E. I have

1 worked on a consulting basis with large animal
2 feeding operations in Ohio since 1977, and with
3 the permitting of such facilities since 1983.
4 From '83 until 2002, my business was involved in
5 the permitting of over 90 percent of the permits
6 for livestock facilities issued by the Ohio EPA
7 during that period. My business, Menke
8 Consulting, has prepared nearly 70 percent of
9 the confined animal feeding facility
10 applications processed by the Ohio Department of
11 Agriculture since they assumed that program in
12 2002. Our clients also represent 60% percent of
13 the NPDES permits for concentrated animal
14 feeding operations in Ohio, as well as many CAFO
15 NPDES permits in Indiana and Illinois, as well
16 as several NPDES permits for municipalities and
17 industries in Ohio. Beyond permitting, we
18 develop nutrient management programs and help
19 clients implement and monitor the plans.

20 Over the past six years, the Ohio
21 Department of Agriculture has administered a
22 permitting program for livestock farms far and
23 above U.S. EPA CAFO NPDES requirements, which
24 have just recently been revised at the federal

1 level. Even as amended, the U.S. EPA NPDES
2 requirements for CAFOs are still not as
3 stringent as ODA's rules are under Ohio's
4 livestock permitting authority.

5 Those farms with permits to operate
6 under the ODA, and who also have NPDES CAFO
7 permits administered by Ohio EPA, are facing
8 duplicative monitoring and reporting
9 requirements, as well as conflicting standards.
10 This causes confusion, more opportunity for
11 paperwork violations, and misunderstandings
12 among animal feeding operations about to whom is
13 my farm accountable?

14 There is no reason for two state
15 agencies to administer essentially competing
16 programs in Ohio, especially when this imposes
17 an additional layer of unnecessary bureaucracy.
18 This adds to the regulatory burden to those
19 valuable businesses to Ohio and costs the state
20 scarce budget resources. The Ohio EPA needs to
21 stretch their funds more efficiently to other
22 important environmental areas where the vast
23 majority of their authority already lies.

24 Ohio enacted legislation in 2000 that

1 was a culmination of many months of the
2 legislative process, public meetings and
3 continual revisions that have resulted in a
4 livestock regulatory program that has set a high
5 standard for the rest of the states. With my
6 contacts around the country, I'm still amazed
7 about what other states get away with and how
8 the livestock regulations we have in Ohio are
9 truly protective of water quality in addition to
10 other social issues that NPDES programs simply
11 cannot address.

12 The Ohio Department of Agriculture is
13 clearly where the federal CAFO NPDES program
14 belongs. This would create a more stable
15 business atmosphere for agriculture in Ohio,
16 along with bringing efficiency to the allocation
17 of government funds while being fully protective
18 of the environment. It all adds up to a good
19 formula for public and private success.

20 MS. OSTERMEIER: Eight?

21 COMMENTER: Good evening. My name is
22 Andra, A-N-D-R-A, Troyer, T-R-O-Y-E-R. First of
23 all I would like to thank you for coming here
24 this evening.

1 My husband and I are grain farmers in
2 Madison County, and I am a proponent for the
3 transfer of this authority. The department of
4 agriculture took full authority for the state's
5 permitting program in 2002. Ohio's livestock
6 environmental permitting program, as it's known,
7 exceeds federal standards for such programs, and
8 it has become a model for the nation. It has
9 been deemed by the Ohio Environmental Review
10 Appeals Commission to be a comprehensive,
11 proactive and effective approach to ensuring
12 that livestock farms large enough to require
13 permits attain and comply with stringent
14 standards.

15 Decisions about the livestock sector of
16 Ohio's agricultural economy and its regulations
17 must not be made lightly. Livestock farms and
18 food processors dependent on them contribute
19 almost 11 billion dollars annually to the
20 state's economic output and employ more than
21 47,000 Ohioans, either on the farm or in the
22 processing of dairy products, meat, eggs and
23 consumer goods. With this in mind, I wish to
24 share the following with you about the proposed

1 move of the NPDES delegation authority to the
2 department of agriculture.

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

14 Concentrated animal feeding operations
15 in Ohio are designed as no-discharge facilities,
16 unlike factories and cities that are allowed to
17 partially treat and release tons of pollutants
18 directly into the waterways. The department of
19 agriculture's focus in the livestock
20 environmental permitting program has been on
21 compliance and inspection. Its program of
22 stringent monitoring and enforcement is
23 protective of the environment.

24 There's not a single documented case in

1 Ohio of a livestock manure pond contaminating
2 groundwater, especially when designed in
3 ordinance with the United States Department of
4 Agriculture's natural resources conservation
5 standards, which are utilized by the Ohio
6 Department of Agriculture livestock permitting
7 program. Large livestock farms are bound by
8 manure management plans to apply only the amount
9 of manure that is useful. Thus, manure from
10 these facilities is applied on farm fields as
11 fertilizer in a manner calculated to avoid
12 discharges into waterways.

13 The regulatory portion of the Ohio
14 Department of Agriculture's mission, the portion
15 devoted to protecting the public, occupies 93
16 percent of its time and resources, and it is
17 paying off. Protecting the environment has much
18 more to do with proper management and recycling
19 of manure, about which the Ohio Department of
20 Agriculture knows a great deal. Thank you for
21 your time.

22 MS. OSTERMEIER: Number nine.

23 COMMENTER: Good evening, gentlemen. My
24 name is Mark Drewes, D-R-E-W-E-S. I'm a cash

1 grain farmer in Wood County, and also president
2 of the Ohio Corn Growers Association. I raise
3 wheat and soybeans for grain and also raise corn
4 and alfalfa for feed for permitted dairy,
5 Grayson's Dairy, in Wood County. I also supply
6 planned base for manure applications. My goal
7 is to provide supportive testimony to allow the
8 Ohio Department of Agriculture to administer
9 parts of the Ohio NPDES program currently under
10 the U.S. EPA role.

11 Over the course of the last four years,
12 my farming operation has been under the scrutiny
13 of ODA. During a CAFO permitting process during
14 this procedure, I have been impressed with the
15 degree of thoroughness and professionalism
16 provided by ODA personnel. I have worked
17 closely with Kevin Elder and his staff to
18 implement an environmentally-sound manure
19 management plan. It has not always been easy
20 and swift, but it has always been done to the
21 best intent of the people surrounding the dairy,
22 and also the people of the state of Ohio. All
23 questions and criticisms of our dealings with
24 the dairy farm, including my own, have been

1 answered soundly by the ODA.

2 You see, I grew up on a farm within a
3 mile of the dairy farm, and my parents also live
4 close by. My entire land base is surrounding
5 the dairy. I have more to lose than anybody by
6 unsound environmental -- an environmentally
7 unsound plan. In conclusion, I feel ODA has
8 convinced my family and myself that they are
9 best suited to taking over regulatory
10 responsibility for the permitting process, and I
11 hope you will see it that way also. Thank you
12 very much.

13 MS. OSTERMEIER: Number ten.

14 COMMENTER: My name is Mark Pepple,
15 P-E-P-P-L-E. Good evening. Presently, I'm an
16 ag lender. I also raise heifers and hogs on
17 contracts. I wish to provide opponent testimony
18 to support the United States Environmental
19 Protection Agency approval of Ohio application
20 and advise the Ohio NPDES program to allow the
21 Ohio Department of Agriculture to administer the
22 parts of this program pertaining to concentrated
23 animal feeding operations.

24 Being in ag lending, I've worked closely

1 with farmers obtaining livestock permits.
2 Before the ODA took over the permitting
3 procedures, it seemed such a duplication of time
4 I have had with the ODA doing the process than
5 having Ohio EPA doing the same process before a
6 permit was issued, plus a time factor of getting
7 a permit.

8 ODA has been doing an excellent job
9 working with the farmers. ODA has the
10 safeguards in place of the livestock facilities
11 to operate within a rural community. Thank you.

12 MS. OSTERMEIER: Number 11.

13 COMMENTER: My name is Ray Noecker,
14 N-O-E-C-K-E-R. I'm president of the Ohio Pork
15 Producers Council. I also own and operate a hog
16 and cattle farm -- grain farm near Ashville,
17 Ohio. The Ohio Pork Producers Council is very
18 interested in the proposed transfer of control
19 of the NPDES program for concentrated feeding --
20 animal feeding operations from the Ohio
21 Environmental Protection Agency to the Ohio
22 Department of Agriculture.

23 OPPC is a statewide organization with
24 represent 3,900 pork producers in Ohio that work

1 together for the pork industry. OPPC has worked
2 with the ODA on environmental rules and
3 regulations. OPPC representatives have attended
4 the concentrated animal feeding facility
5 meetings to stay active in the process at ODA as
6 it relates to the permitted livestock
7 facilities. ODA works positively with farms as
8 they apply for both permits to install and
9 permits to operate to ensure that the farm is
10 conducting itself in the best interest of the
11 environment, the neighbors and the livestock
12 industry as a whole.

13 OPPC strongly recommends that the Ohio
14 EPA transfer the NPDES programs for concentrated
15 animal feeding operations to the Ohio Department
16 of Agriculture. Since the current LEAP program
17 is housed at ODA, it seems to be a natural fit
18 for the NPDES program to reside there also. It
19 will make it easier for the ODA to work with the
20 livestock farmers and families in Ohio as they
21 go through the permitting process. OPPC
22 appreciates the opportunity to comment on the
23 proposed transfer of the Clean Water Act
24 National Pollutant Discharge Elimination System

1 program for concentrated animal feeding
2 operations from the Ohio Environmental
3 Protection Agency to the Ohio Department of
4 Agriculture. Thank you for your time.

5 MS. OSTERMEIER: Number 12.

6 COMMENTER: Good evening. My name is
7 Jerry Lahmers, L-A-H-M-E-R-S. My farming
8 operation is located in the hill country of
9 eastern Ohio. My family runs a cow/calf herd on
10 the steeper land and raises row crops of alfalfa
11 on land more suitable for those crops. These we
12 sell either as grain or through beef from our
13 feedlot. Coincidentally, the land has been in
14 my family and has existed since homesteading
15 time over 150 years, so we have an extreme
16 interest in environmental quality.

17 I'm here to provide proponent testimony
18 for the transfer. I wish to present the
19 perspective of the animal agriculture producer.
20 As a group, those of us in agriculture
21 production probably have one of the highest
22 affiliations with protecting the environment.
23 Land, water and air are the basic elements of
24 our production system. Allowing Ohio Department

1 of Agriculture, ODA, to perform the NPDES
2 permitting and inspection supports this
3 principle in a number of ways.

4 ODA is a regulatory agency with minimal
5 agriculture promotion responsibilities. ODA has
6 extensive regulatory compliance history and
7 experience. One of the areas I'm very familiar
8 with, after 30 years working as a food animal
9 veterinarian in private practice, is ODA's
10 enforcement of the pasteurized milk regulations
11 from farm to the consumer. They have done due
12 diligence in ensuring that the consuming public
13 has a safe, wholesome dairy product supply.

14 ODA has an understanding of Ohio
15 agriculture, the issues, production and
16 management systems, and environmental concerns
17 created by Ohio weather and geology. ODA is,
18 obviously, located in Ohio, which makes them
19 accessible to citizens and producers with
20 concerns. Finally, there is the matter of
21 efficiency. If ODA is allowed to administer
22 parts of the NPDES that pertain to concentrated
23 animal feeding operations, then only one set of
24 paperwork will be needed to obtain both a state

1 and federal NPDES permit. This will be less
2 burdensome to the applicant, and thus less of an
3 impediment in sustaining a viable agriculture
4 industry in Ohio. NPDES role should be to
5 protect the environment and not have an
6 unnecessary negative impact on the Ohio economy.
7 Thank you for allowing me to express my concerns
8 and views on this very important matter.

9 MS. OSTERMEIER: Number 13.

10 COMMENTER: Good evening. I'm Steve
11 DeBruin, D-E, capital B-R-U-I-N. I am a local
12 veterinarian in the area. I practice over five
13 or six counties, primarily with cattle, dairy
14 and beef both.

15 In my 25 years of practicing primarily
16 food animal veterinarian medicine in the central
17 Ohio area, I personally witnessed the
18 relationship between the Ohio Department of
19 Agriculture milk inspectors and local dairy
20 farmers, who together ensure a wholesome and
21 sanitary milk supply. In addition to observing
22 milk safety regulations, I have also witnessed
23 the Ohio Department of Agriculture and local
24 farmers working together on critical issues of

1 environmental protection while simultaneously
2 addressing the vital need to maintain a
3 cost-effective, local food production system.

4 While I witnessed countless instances of
5 producers working with ODA, there are a couple
6 of examples that demonstrates clearly two
7 specific points. First, that the ODA does
8 regulate without wavering from its scientific
9 principles and standards. And secondly, the ODA
10 and farmers working together can also reach a
11 win-win situation, both in the environment and
12 agricultural enterprise.

13 The first situation occurred in response
14 to an oral complaint received by the ODA. The
15 ODA is required to respond to oral complaints,
16 while I believe the EPA is only required to
17 respond to written complaints. The oral
18 complaint was received from a property owner
19 concerned that manure was being spread too close
20 to his home. And when the ODA got there, the
21 proper setbacks from streams, wells and property
22 lines were being followed, and the ODA
23 determined the complaint was not valid.

24 Also during that investigation, the ODA

1 observed that the nutrient spreader had only a
2 single discharge pipe, which caused the
3 nutrients to be spread in a narrow band. With
4 that, that decreased the effectiveness of the
5 fertilizer being applied, and also possibly
6 increased the chances of a runoff problem in the
7 future. A simple plate was added to spread the
8 fertilizer over a wider area to minimize both
9 problems. Now the fertilizer was utilized more
10 effectively by the farmer, and we addressed the
11 chance of runoff problem. It was also
12 interesting to note there was no adversarial
13 relationship between the two parties involved.

14 The second situation that I observed
15 involved a dairy farmer that wanted to expand.
16 The barn had already been built, but due to
17 weather, the lagoon was not yet finished. I
18 observed the ODA stand fast in their decision
19 not to let the dairy fill the barn with animals
20 until the lagoon was completed. This provided
21 evidence to all involved that the permits
22 process was working and that environmental
23 protection was a key concern.

24 There are many other stories I could

1 share with you folks tonight demonstrating how
2 the ODA stands on scientific, not emotional
3 ground, which protects both the farmer and
4 environment. Every farmer I work with wants a
5 clean environment for their livestock, families
6 and generations to come. The ODA demonstrated
7 to me the resolve and knowledge to educate
8 producers on how to efficiently implement
9 necessary corrections to ensure that Ohio's
10 environmental resources are protected. Thanks.

11 MS. OSTERMEIER: Number 14.

12 COMMENTER: My name is John Douglass,
13 D-O-U-G-L-A-S-S. I'm a dairy producer from
14 Wayne County. My family and staff milk 1,600
15 dairy cows on our farm, Catalpadale Farms, near
16 Marshallville. We're the third generation on
17 the farm. Thank you for this opportunity to
18 provide testimony to support the proposed
19 transfer of control of the Clean Water Act
20 National Pollution Discharge Elimination System,
21 or NPDES program for concentrated animal feeding
22 operations, from the Ohio EPA to the ODA.

23 Although my dairy has an NPDES permit
24 from the Ohio EPA, I believe that ODA can

1 operate the NPDES program as effectively as it
2 operates its state permitting program. The
3 department of agriculture has been enforcing
4 Ohio's state permitting program, one of the
5 strictest state environmental permitting
6 programs in the nation. Ohio law meets federal
7 standards in all environmental areas and exceeds
8 U.S. EPA standards in many areas. For example,
9 the department requires two full inspections
10 annually at my farm, while U.S. EPA recommends
11 its states and regions inspect at least once
12 every five years to determine compliance of that
13 permit.

14 Transferring NPDES delegation authority
15 to ODA will benefit livestock farmers that need
16 to obtain both a state permit and the federal
17 permit. Producers would need to file paperwork
18 with one agency and not two. This will not only
19 be more efficient for livestock producers, but
20 it will better utilize taxpayers' dollars as one
21 agency instead of two will be responsible for
22 inspecting and enforcing regulatory compliance.
23 Since the livestock environmental permitting
24 program is already housed at ODA, it seems

1 logical for the NPDES program to reside there
2 also.

3 Like other businesses, dairy producers
4 are modernizing and expanding in order to
5 continue to support their families while
6 providing a safe and wholesome food supply. Not
7 only would the transfer of authority for NPDES
8 to ODA be more efficient, it would make it
9 easier for the department of agriculture to work
10 with the producers in Ohio as they go through
11 the permitting process to develop or expand
12 their operations.

13 I urge you to approve Ohio's application
14 and transfer of the delegation of NPDES
15 permitting from EPA to ODA. Thank you.

16 MS. OSTERMEIER: Number 15?

17 COMMENTER: My name is Vicki Askins,
18 A-S-K-I-N-S. Thank you for allowing me to
19 testify today about Ohio's application to
20 transfer control of the Clean Water Act NPDES
21 program for CAFOs from the Ohio EPA to the ODA.

22 The livestock environmental permitting
23 program rules were originally developed,
24 reviewed and recommended by a diverse group of

1 scientific professionals, including
2 representatives from the ODNR, USGS, NRCS, and
3 Ohio EPA. That's why I'm concerned that many of
4 these important, scientifically-based
5 regulations have either been rescinded or
6 revised to include "Director's discretion" over
7 the past few years. That's also why I'm
8 concerned that some of the proposed rules we're
9 discussing today seem to have nothing to do with
10 the NPDES delegation. Under the pretext of
11 adding regulations to meet the requirements of
12 the Clean Water Act, the ODA is also
13 unexplainably reducing their current regulations
14 that protect aquifers, floodplains, and water
15 source protection areas.

16 After studying the ODA's program and
17 approved permits for almost five years, I
18 believe the ODA has taken the position that all
19 large CAFOs are good for Ohio and all
20 applications for permits should be approved
21 under all circumstances. What worries me the
22 most is the apparent coziness between the CAFO
23 developers and the ODA administration. The
24 friendliness is unusual at best and dangerous at

1 worst. We have found what appears to be
2 fraudulently-manipulated data in these approved
3 ODA permits. The ODA replied to our concerns
4 that they do not require documentation for some
5 of the critical data in these permits, instead
6 relying on questionable data prepared by the
7 developer.

8 The primary concern of the NPDES program
9 is protection of water quality; while the ODA
10 program focuses on facility construction and
11 management. The deficiencies found in the
12 current ODA permitting program indicate that
13 this agency is not prepared to assume more
14 regulatory authority.

15 The ODA already has the permitting and
16 regulatory authority over these CAF0s. Where
17 would the checks and balances be if they were
18 also granted authority of the NPDES permits?
19 Former ODA Director Fred Dailey was quoted that
20 they want to be a one-stop shop for CAF0s.
21 Please, don't let this happen. Thank you.

22 MS. OSTERMEIER: 16?

23 COMMENTER: My name is Pam Williams,
24 W-I-L-L-I-A-M-S. I am here today to register my

1 strong objection to the transfer of authority of
2 the NPDES permitting program from Ohio EPA to
3 the Ohio Department of Agriculture.

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

20 For a year we have been trying to point
21 out flaws in the ODA's permitting system. The
22 two most concerning to us are, first, the lack
23 of meaningful local control over the siting of
24 these megafarms, and second, the fact that there

1 are presently no concentration limits on these
2 megafarms. We were told by ODA that any change
3 had to come from the legislature, yet just last
4 week 35 rules were submitted for revision. Some
5 of these revisions address this transfer
6 request, but the rest are unrelated. None of
7 these proposed changes address the siting and
8 concentration issues.

9 Make no mistake, ODA's main focus is not
10 the protection of communities or the
11 environment. ODA says its primary mission is to
12 provide regulatory protection to producers,
13 agribusiness and the consuming public to promote
14 Ohio agricultural products in domestic and
15 international markets, and educate the citizens
16 of Ohio about our agricultural industry. How is
17 ODA supposed to regulate environmental impact
18 and environmental violations for an industry it
19 is supposed to protect and promote? This
20 doesn't make sense. ODA can't press on the
21 brakes and the gas at the same time.

22 The Ohio EPA, on the other hand, was
23 charged with the mission to protect the
24 environment and public health by ensuring

1 compliance with environmental laws and
2 demonstrating leadership in environmental
3 stewardship. Allowing both agencies to do their
4 jobs assures that both the interests of
5 agriculture and the community can be addressed.
6 Eliminating this checks and balance from the
7 system seems irresponsible and, frankly,
8 unnecessary.

9 Our community and our environment face
10 the threat like no other before. As technology
11 has advanced, the size and environmental impact
12 of large scale CAFOs has increased to an
13 unprecedented level, yet the rules that regulate
14 them have not kept pace. The concentration of
15 these farms and their environmental impact on
16 rural communities demands independent and
17 disciplined oversight. It is vital for the
18 health of our families that the agency charged
19 with environmental and health protection, not
20 the agency charged with agriculture protection
21 and promotion, has this important
22 responsibility. No other state allows their
23 agricultural agency to have authority over the
24 NPDES program. How will the families in my

1 community and our environment be protected if
2 this is allowed?

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

19 MS. OSTERMEIER: Number 17?

20 COMMENTER: Good evening, gentlemen.
21 Thank you for the opportunity to testify on this
22 important issue. My name is Joe Steiner. I
23 farm in southwest Ohio. I wish to provide
24 testimony in support of the U.S. EPA approval of

1 Ohio's application to revise the Ohio NPDES
2 program to allow ODA to administer parts of the
3 program concerning to CAFOs and AFOs. This
4 transfer has been said to have -- as stated
5 before, it has been authorized under senate bill
6 141.

7 My farming operation is located in
8 Warren County. I farm 850 acres and grow corn
9 soybeans, soft red winter wheat, and commercial
10 hay. Some might wonder why I care about this
11 issue when I don't raise livestock. As a corn
12 and soybean producer, I understand that my
13 largest customer is the livestock industry.
14 Ohio's livestock industry used 701,000 tons of
15 soybean meal in 2006. That's equivalent to 15
16 percent of the state's annual production of
17 soybeans, and over 75 percent of our annual
18 soybean meal that is produced in Ohio. Ohio
19 corn producers grew over 470 million bushels of
20 corn in 2006. Ohio needs a large, moderate
21 efficient livestock industry so that all of
22 Ohio's agriculture has the opportunity for
23 success.

24 Since the passage of senate bill 141,

1 ODA has been responsible in its role as the
2 permitting agency for the state. The rules for
3 permitting have been transparent and effective
4 in allowing CAFOs to move forward with the
5 construction and operation of the facilities.
6 The rules are more comprehensive and stringent
7 than is required by federal law. As a
8 regulator, ODA has been effective in moving
9 forward with the process of permitting. In the
10 cases of noncompliance, ODA has worked with
11 stakeholders towards resolution of these issues.

12 The Ohio general assembly has updated
13 its statutes, and ODA amended its rules several
14 times to allow for the delegation of this
15 authority to ODA. I understand a little more
16 has to be tweaked, but they're ready to do that.
17 ODA has demonstrated its ability to be a
18 regulator of CAFOs. Ohio has prepared for this
19 change in the administration, and this change
20 will help streamline the livestock producer's
21 process of building a CAFO without any risk of
22 noncompliance being handled inappropriately.

23 Again, as a Ohio corn and soybean
24 producer, Ohio needs a modern, efficient

1 livestock industry. And to accomplish this, ODA
2 needs to administer the NPDES program in Ohio.

3 MS. OSTERMEIER: Number 18?

4 COMMENTER: My name is Thomas Fleming,
5 F-L-E-M-I-N-G. Hello. Thank you for the
6 opportunity to provide testimony in support of
7 the transfer of control of the NPDES program for
8 CAFOs from the Ohio EPA to the Ohio Department
9 of Agriculture.

10 My name is Tom Fleming. I'm a dairy
11 producer from Allen County. My son and I milk
12 160 cows on our family farm. I stand before you
13 today as both a dairy producer and also as chair
14 of the Ohio Dairy Producers Association, which
15 represents hundreds of Ohio's dairy producers.

16 As dairy producers, regardless of the
17 size of our operations, we take caring for the
18 environment very seriously. Because we live on
19 or near the land that our families farm, we
20 understand the importance of protecting our
21 natural resources. We depend on this land for
22 our business and our quality of life. Dairy
23 producers recognize that we must operate our
24 farms in the best interest of the environment,

1 our neighbors and the livestock industry as a
2 whole.

3 We believe the Ohio Department of
4 Agriculture has the expertise to issue permits
5 and enforce regulatory compliance for livestock
6 farms in the state of Ohio that will be required
7 to apply for and obtain an NPDES permit. Ohio's
8 permitting program is an overall environmental
9 permitting program designed to protect both
10 ground and surface waters, which is twice as
11 stringent as the federal NPDES program, which is
12 designed only to protect surface water. In
13 fact, Ohio law does not allow any size operation
14 to discharge into surface or groundwaters.
15 Ohio's permitting program for large livestock
16 farms prohibits any discharge in waterways
17 throughout the state and requires all manure and
18 potentially contaminated runoff to be contained
19 and applied to crop land. This is a win-win
20 agreement for the environment, communities,
21 citizens, neighbors and animal agriculture in
22 our state.

23 On behalf of the Ohio Dairy Producers
24 Association, we support the proposed transfer of

1 control for the NPDES program for CAFOs from the
2 Ohio EPA to the Ohio Department of Agriculture
3 and urge you to approve Ohio's application.

4 Thank you.

5 MS. OSTERMEIER: Number 19?

6 COMMENTER: Good evening. My name is
7 Gloria Green, G-R-E-E-N. I'm with the League of
8 Women Voters of the Perrysburg area. The League
9 of Women Voters of the Perrysburg area, located
10 at the geologic mouth of the Maumee River, whose
11 watershed is the largest flowing into the Great
12 Lakes and contributes almost half of the
13 nutrients into Lake Erie, urges U.S. EPA Region
14 5 to delay any approval for transfer of the
15 National Pollutant Discharge Elimination System
16 permitting authority from the Ohio EPA to the
17 Ohio Department of Agriculture until all federal
18 Clean Water Act requirements are met. This
19 includes prohibiting the land application of
20 untreated liquified manure and untreated sludge
21 from concentrated animal feed operations on
22 fields within a drinking water source protection
23 area, and ensuring that an enforcement structure
24 is in place that is sufficient to detour

1 noncompliance.

2 As a result of our study, the League of
3 Women Voters of Bowling Green, and the League of
4 Women Voters Lake Erie Basin Committee study of
5 CAFOs, we are increasingly concerned that
6 untreated animal waste collected in open-air
7 lagoons are sprayed as liquid manure onto fields
8 as fertilizer, which can foul the air as well as
9 ground and surface water. CAFOs have
10 proliferated in the name of economic
11 development, but without adequate regulation and
12 enforcement to protect Ohio's water resources.
13 This has shown specific problems in Ohio are
14 described in the Environmental Integrity Project
15 Report of October 2006, while national issues
16 are described in reports issued in April 2008 by
17 the Union of Concerned Scientists and the Pew
18 Commission on Industrial Farm Animal Production.

19 The Federal Register, October 31, 2008,
20 states that the U.S. EPA has finalized
21 court-ordered federal rules that place new
22 restrictions on manure waste produced by
23 livestock feeding operations, and that EPA
24 expects these rules to go into effect on

1 February 27, 2009. We urgently request that the
2 U. S. EPA Region 5 not make any decision until
3 the new and revised rules are in place.

4 As a result of our study, the Ohio EPA
5 already has the expertise and trained staff.
6 Number two, avoid setting a significant
7 precedent, and number three, to protect the
8 waters of the state and Ohio's great lake, Lake
9 Erie, from agriculture pollution.

10 I have an attachment, the November 14
11 Toledo Blade article by Tom Henry, Mediator
12 Supports \$223,500 Dairy Fine, Two Michigan
13 Megafarms Cited for Problems. This exhibit is
14 attached. Maumee River, Lake Erie watershed is
15 in south central Michigan. Thank you.

16 MS. OSTERMEIER: Number 20?

17 COMMENTER: Thanks for coming, and I
18 rise in strong opposition to this transfer. We
19 used to have an EPA that acted as an independent
20 agency, independent of companies and various
21 state agencies, that may be applicable to
22 represent, even zealously protect environmental
23 interests. The basis for having the body was
24 that the environment belongs to all of us.

1 Therefore, we need the EPA in order to protect
2 the communities to whom it belongs, protect it
3 from harm by us and as individuals, or as
4 companies, or even from other state and federal
5 agency policy or practice that can be deemed
6 evenly potentially harmful.

7 So now, probably for budgetary reasons,
8 since it makes no sense in any other light, we
9 are told our watchdog is going to be fed and
10 trained by the department of agriculture, whose
11 departmental budget is affected by agricultural
12 interests in promoting, safe farming, they'll
13 say. But growth? Farming is the main interest.
14 It is a department who, up to now, demonstrated
15 to us some very troubling lack of concern or
16 negative opinion of CAFOs, otherwise, the issue
17 of CAFOs should be settled for now in favor of a
18 moratorium until sufficient oversight policies
19 can be developed by the department as open
20 admissions. They are citing criteria, and other
21 things have been insufficient, and the operators
22 can prove their processes will be operated as
23 advertised with no harmful effect. We are far,
24 possibly decades, away from that day. We need

1 the EPA to stand between the interest of the
2 department and the corporations and other
3 citizens and our environment. If we are to
4 believe it works out, it seems like having a
5 wolf guard the henhouse.

6 The bigger issue here is that all these
7 CAFOs -- the people that have spoken here don't
8 seem to represent the large CAFOs we are talking
9 about. We are talking about the issue of
10 smaller farms, with whom we have no issue, but
11 these CAFOs with 5,000 heads of cattle being
12 proposed have not been around long enough for
13 certain to be certain that they don't cause any
14 damage in the long-term. There is no complete
15 record looking 20, 30, 50 years down the road to
16 show that it has no harmful effects. There's a
17 shorter record, and it's all me and you have to
18 go by. And it clearly raises many flags.

19 How can it not be regarded as
20 experimental? If you look at all the facts we
21 do have on the big CAFOs as of now, and there is
22 ample evidence that these operations can cause
23 harm to the environment and communities nearby
24 that might be possible to operate one of these

1 things, perfectly and honestly, with no
2 problems, but it is yet to be proven in our
3 eyes.

4 Whose interests are being served here?
5 Is it the community who owns the environment, or
6 is it these corporations and this department?
7 What's more important, the companies, many of
8 whom lied, bent the law, changed names to get
9 around basic law. We know who these people are.
10 So do they. It is well-documented.

11 So in regards to all this experimental
12 operation, we think it is all wrong. And to
13 have the department of ag oversee such a huge
14 experiment with all of our lives is a huge
15 mistake.

16 THE REPORTER: Sir, your name, please.

17 COMMENTER: Andy Mauck, M-A-U-C-K.

18 MS. OSTERMEIER: 21?

19 COMMENTER: My name is Richard Sahli,
20 S-A-H-L-I. I have practiced environmental law
21 in Ohio for the past 25 years, including four
22 years as chief council of the Ohio EPA. And I
23 have represented over a dozen communities
24 dealing with problems from CAF0s.

1 During this time, I have come to know
2 the mentality and ideology of the ODA only too
3 well. It is crystal-clear to me, and to every
4 community where the ODA has permitted a CAFO,
5 that the department has neither the will nor the
6 desire to stand firm against its industry pals
7 and effectively enforce the federal NPDES
8 program. For this reason, I strongly urge the
9 U.S. EPA to deny the requested transfer as the
10 ODA has not seriously attempted to enforce its
11 existing permit program. It has not staffed
12 itself in a manner adequate for enforcement, and
13 it does not have the political independence or
14 the enforcement mentality equal to countering
15 the environmental threat posed by modern
16 industrial-scale agriculture. Please do not
17 condemn the Ohioans living near these facilities
18 by entrusting their protection to an agency that
19 does not care about them and thinks in a manner
20 directly counter to their basic needs. Ohio EPA
21 is far more experienced and likely to run a
22 meaningful enforcement program than the ODA
23 would ever be capable or willing to do.

24 The existing ODA program has done

1 minimal enforcement work that consists almost
2 entirely of merely notifying companies of their
3 violations, with no effort to seek effective
4 sanctions. As a result, ODA's program has
5 proven incapable of deterring noncompliance and
6 created an atmosphere within the industry that
7 anything goes. This fact is documented for you
8 in ODA's program description which states:
9 Between 2002 and 2006 the department received
10 281 citizen complaints and uncovered an
11 undisclosed number of violations during
12 inspections. But it made only two referrals to
13 the attorney general's office for enforcement
14 and adopted only four enforcement orders.
15 Numbers like these establish there is only a
16 token enforcement program at ODA that is
17 incapable of protecting Ohio's environment. The
18 department is also insufficiently staffed for
19 anything more than a token effort, as it has
20 only four inspectors, and therefore too few work
21 hours for the court time and professional
22 evidence gathering needed for a genuine
23 enforcement program.
24 This anything goes philosophy at ODA is

1 apparent from major defects within the
2 department's permit program, which further
3 demonstrates its lack of any real concern for
4 Ohio's environment. The first is that Ohio's
5 water quality sampling and TMDL program has
6 repeatedly demonstrated that animal manure is an
7 increasing problem in surface waters across the
8 state. ODA has ignored this data and made no
9 changes in the permitting program to address
10 this well-documented problem. Serious existing
11 problems in the priceless Darby Creek,
12 watershed, the Scioto, Maumee, Wabash, and
13 numerous other rivers, are growing worse while
14 the ODA does nothing.

15 The U.S. EPA cannot give NPDES authority
16 to ODA until there's a reliable system put into
17 place that ensures that surface waters impacted
18 by livestock manure will improve. One of the
19 main causes for the worsening surface water
20 quality is ODA's encouragement of a
21 barely-regulated system of waste brokers that
22 allows CAFOs a loophole to dispose of their
23 waste with minimal oversight. When the
24 legislation awarding CAFO permitting to the ODA

1 was passed, the department's position was that
2 it strictly control land application by
3 requiring CAFOs to document each application and
4 the nutrient assimilation capacity of each
5 application area. However, the industry has
6 dominated the ODA's rule making process and has
7 snuck in a loophole, whereby brokers can pay a
8 nominal licensing fee and they can take waste
9 without documenting its destination or if the
10 land used can take the waste. The ODA has
11 established no program for policing these
12 brokers. It is, for all intents and purposes,
13 the lawless wild west all over again for Ohioans
14 living near application sites.

15 MS. OSTERMEIER: Sir, you have gone a
16 minute over your time thus far. Everybody else
17 has pretty much stayed to their three minutes.

18 COMMENTER: Thank you, gentlemen.

19 MS. OSTERMEIER: Number 22?

20 COMMENTER: Good evening, gentlemen. My
21 name is Jeff Wuebker representing our family
22 operation, Wuebker Farms, LLC, the Ohio Soybean
23 Association and the Darke County Farm Bureau. I
24 also might add that my brother and I live on our

1 family farm with our six children, ranging from
2 age 2 to 9. And we also drink from the same
3 well as our livestock. Our family farming
4 operation consists of my brother, Alan, and
5 myself. We have about 1,000 crop acres and an
6 1,800 sow contract farrowing operation, meaning
7 we produce about 40,000 12-pound baby pigs per
8 year.

9 This hearing tonight, went you get down
10 to it, is about poop. And we all now how well
11 farmers manage this great resource, including
12 myself. We've all used this -- our farm has
13 used this poop on our cropping acres since the
14 early 1990s, saving our operation thousands of
15 dollars, and reducing thousands of pounds of
16 commercial fertilizer that is so necessary for
17 this country to survive. Over the years, I have
18 run our skid loader under high-rise poultry
19 barns to clean the nutrient-dense poop from the
20 barns and turn it into one of the best natural
21 fertilizers in the world. We continue to use
22 poultry manure today on our farm on an as-needed
23 basis. This fall we spread about 240 tons of
24 turkey manure from our neighbor's operation on a

1 rented farm. We have 3.5 million gallons of
2 swine manure each year from our own swine
3 operation that is dragline injected on our
4 nearby farms and neighbors' farms.

5 What I'm saying to the regulators
6 tonight, unless you have sat in a skid loader
7 seat under the chicken house, unless you have
8 carefully applied manure on fields like a
9 valuable fertilizer, or you have run your
10 Polaris Ranger up and down that creek, checking
11 each and every tile so no manure is getting into
12 your underground drainage system, you really do
13 not know poop like I do and many of the farmers
14 do in the room tonight. Thank you.

15 Before returning to the family farm in
16 2001, I worked for a company that worked closely
17 with many of the livestock producers in our
18 region. From that work ten years ago, I learned
19 the value of having an agency that knows how to
20 regulate agriculture and a staff to effectively
21 communicate to farmers and ensure a safe and
22 stable environment for all parties involved.
23 That agency is the Ohio Department of
24 Agriculture. 15 years ago, I personally sat in

1 a truck with another colleague as we educated
2 state EPA employees on the differences between
3 wheat, oats and corn and the importance of a
4 crop rotation and timing of manure applications.
5 If EPA employees don't understand basic
6 agricultural practices and their importance to
7 the farmer, how will they be able to effectively
8 understand the nutrient management plans and
9 common best management practices associated with
10 these practices?

11 Ask any one of the state's permitted
12 facilities -- and I go to church with a lot of
13 these fellas -- that undergo the twice a year
14 inspections, and they will tell you they are
15 tough. ODA inspectors look at all manure
16 application records and rates. They check soil
17 test levels carefully and watch for excessive
18 nitrogen and phosphorus levels. U.S. EPA only
19 requires an inspection once every five years,
20 which is no comparison to Ohio's program.
21 That's why I'm speaking for the proposal
22 tonight.

23 COMMENTER: Good evening. My name is
24 Heffel finger, H-E-F-F-E-L-F-I-N-G-E-R. Sorry

1 about that. German heritage. I live in
2 southern Van Wert County. I farm ground that's
3 been in our family's farm since the 1950's with
4 my wife Kendra; our young son, Luke; and my
5 brother Kevin is involved in our operation.
6 Before Ohio Department of Agriculture taking
7 over the state permitting program, Ohio EPA
8 issued permits to install animal feeding
9 operations, but no permit to operate or had no
10 inspection programs. Under Ohio Department of
11 Agriculture, the state requires a permit to
12 install and operate a feeding operation. Many
13 states do not have the permitting program for
14 large livestock farms as comprehensive as Ohio's
15 permitting program.

16 I believe the department of agriculture
17 has operated the state permitting program in an
18 effective and knowledgeable manner. With the
19 NPDES authority being transferred to the Ohio
20 Department of Agriculture, the filing of
21 paperwork would be more efficient for livestock
22 producers and a better use of taxpayer money, as
23 one agent is responsible for enforcing the
24 rules. Thank you.

1 MS. OSTERMEIER: Number 24?

2 COMMENTER: Good evening, gentlemen,
3 ladies. Welcome to Ohio. I appreciate your
4 sitting here tonight to listen to our comments
5 about the concerns many folks have about this
6 delegation. Ideally, an environmental
7 compliance system would properly balance the
8 need for a healthy environment with our needs
9 for a supportive business climate. Both of
10 these interests are extremely important.

11 The proposed delegation being considered
12 this evening is clearly driven by the intense
13 desire of the agriculture and business community
14 for a more friendly business environment. That
15 aspect of the proposed delegation could earn
16 near universal support, provided that the
17 interests for a healthy environment could also
18 be maintained. Governor Strickland, along with
19 virtually all of his agent directors, has
20 pledged their support for added measure of
21 tentativeness to the interest of business,
22 especially during this economic downturn.
23 During this administration, the various agency
24 heads have cooperated especially well to address

1 the various regulatory issues in support of the
2 business community. But this delegation being
3 considered tonight represents far more than just
4 an added measure of sensitivity and dedication
5 to solving problems. It represents a profound
6 restructuring of our national environmental
7 compliance system.

8 No one doubts that this delegation will
9 result in a more user friendly business
10 environment for livestock producers, but what of
11 the need that we all share for healthy air and
12 water? Reasonable people wonder if this
13 decentralized system for environmental
14 compliance represents the best structure for
15 protecting air and water quality upon which we
16 all rely.

17 As U.S. EPA finalizes its proposed
18 delegation of authority to the Ohio Department
19 of Agriculture, our neighboring state is
20 developing a plan to request a similar
21 delegation of NPDES authority over CAFOs to
22 their department of the Indiana state chemists.
23 The question -- setting aside the question of
24 the level of devotion of these individual agency

1 members within these various departments,
2 reasonable people might once again wonder if
3 such a fragmented compliance system is better
4 able to oversee the important societal need for
5 a healthy environment. Presuming this
6 delegation goes forwards, EPA will oversee this
7 while agra's charges may be without the benefit
8 of U.S. EPA coordination. Once again,
9 reasonable people wonder if this is a better
10 system for safeguarding the environment.

11 I'm a livestock farmer, and I count many
12 others amongst friends and family. I know the
13 livestock producers have been vigorously
14 supported this redelegation. But I admonish my
15 colleagues, friends and neighbors: Be careful
16 what you wish for. Reasonable people have
17 concerns that such a disjointed environmental
18 compliance system might lead to a less rigorous
19 oversight of some very massive livestock
20 facilities, especially during times that state
21 budgets are stretched thin. Unless rigorous
22 oversight might lead to more inadvertent and
23 inappropriate discharges, the public perception
24 of the livestock industry could be badly damaged

1 by such an occurrence. So we certainly hope the
2 desire of Ohio's livestock industry to achieve a
3 more farmer-friendly environmental compliance
4 structure is not being misdirected in support of
5 a less effective compliance instrument which
6 could have an unintended and unfortunate
7 consequence for Ohio's livestock industry.

8 MS. OSTERMEIER: Number 25?

9 COMMENTER: My name is Ronald Wyss,
10 W-Y-S-S. I'm here as a private citizen, but I'm
11 the Hardin County Commissioner elect for the
12 January 2nd term in 2008. I'm not an official
13 yet, but I will be soon. I intend to work for
14 the best interest of the constituents of Hardin
15 County. I would like to address rule number
16 901:10-2-02, letter G, number 1, letter B. The
17 elevation of the top of the manure storage
18 facility shall be at the summation of the
19 elevation of the 100 year flood plain plus a
20 minimum freeboard height of two feet. Recent
21 floods across the country have registered flood
22 levels exceeding ten feet or more above previous
23 recorded maximum flood levels. To build a
24 lagoon in a 100-year flood plain makes little

1 sense. To build a lagoon in a 100-year flood
2 plain with the top of the lagoon two feet in
3 excess of that level is just unacceptable.

4 Also, rule number 901:10-2-14, letter E,
5 numbers 1 through 4. Phosphorous application
6 criteria, especially 4D, for a single
7 phosphorous application a year, the application
8 rate shall not exceed 500 pounds per acre of
9 phosphorous. I have taken the CLM training
10 three times and have done other research on
11 phosphorous levels in soil. The CLM training
12 stated that 300 pounds in the -- at 300 pounds
13 the soil was full; the cup was running over.
14 Why are we allowing 500 pounds of phosphorous be
15 applied at one time on soil that already has 299
16 pounds.

17 According to the Ohio Department of
18 Natural Resources presentation at the CLM
19 meeting, the soil does not have the capacity to
20 hold more than 300 pounds. These rates are
21 especially disturbing when we consider 50 pounds
22 per acre yield potential stops increasing. It
23 takes 50 pounds of phosphorous to grow the best
24 crop you can grow. 500 pounds is ten times more

1 than the amount needed to grow the best possible
2 crop, and 16 times, if you include the 299
3 pounds that would already be there. This could
4 easily be interpreted as improved nutrient
5 dumping.

6 Scientific data collected all over the
7 United States indicates increasing agricultural
8 runoff resulting in increasing nutrient loads
9 that are degrading our rivers, lakes, streams
10 and bays. Data presented by Dr. David Baker of
11 the National Center for Water Quality Research
12 indicates the rising phosphorous levels in Lake
13 Erie and the direct connection of agricultural
14 runoff. The misapplication of phosphorous and
15 the poorly-timed application approved by the
16 U.S. EPA and ODA make little sense in light of
17 this information. We need to change the rules
18 to allow no more than -- to allow the maximum
19 allowable P levels of 100 pounds per acre. It
20 is a tool to allow over application of
21 phosphorous. Now, Douglas Beagle stated at the
22 Conservation Tillage Conference in 2008 that the
23 P index was not a solution to the problem, it
24 was merely a moat put around the problem.

1 I have witnessed, in Hardin County, many
2 apparent violations of the rules. I have
3 witnessed noncompliance of setbacks, lack of
4 incorporation and what appeared to be over
5 application. There has not been a documented
6 case of over application, according to the Ohio
7 Department of Agriculture, in Hardin county. At
8 the most recent CLM training, Kevin Elder
9 coached the attendees by saying he with the most
10 records wins in court. What chance of having a
11 complaint addressed do citizens have when the
12 manure applicator and ODA write and control all
13 of the records?

14 I urge you not to give more authority to
15 an organization that has a direct conflict of
16 interest. Respectfully submitted. Thank you.

17 COMMENTER: Antoinette Marsh. I'm a
18 citizen of Columbus. CAFOs involve animals, and
19 unfortunately their manure, and most
20 importantly, associated pathogens. This evening
21 we heard many people talk about nutrient issues
22 to the environment. However, ODA has the
23 potential to better integrate the system
24 regarding disease detection and potential

1 hazardous discharge associated with point
2 sources. For example, when an infectious agent,
3 such as leptospirosis or salmonella, is detected
4 in a pig or beef operation, ODA has the
5 feasibility to red flag an operation for greater
6 scrutiny of potential discharges as compared to
7 the Ohio EPA. Specifically, ODA is the primary
8 agency in the state that tests and monitors
9 pathogens of Ohio livestock.

10 ODA is more equipped to understand the
11 great significance of these pathogens to Ohio
12 citizens and agriculture or the importance of
13 detection. ODA understands why a quick response
14 is required to stop a discharge when an
15 infectious pathogen is detected that could be
16 transmitted through a point source discharge.
17 Thank you.

18 MS. OSTERMEIER: Number 27? Adam
19 Berger, B-E-R-G-E-R. I'm a representative of
20 the Ohio chapter of the Sierra Club. The Sierra
21 Club opposes transfer due to serious concerns
22 over ODA program deficiencies and the present
23 impact of CAFOs on the public health and water
24 quality. The question here is, who has the

1 mission and core competency to address public
2 health and water quality issues?

3 U.S. EPA admitted in front of us that
4 there is presently not enough regulatory
5 oversight or enough legislation right now
6 concerning Ohio ODA. Furthermore, the proposal
7 effectively transfers control of CAFOs to an
8 administrative body biased in favor of the
9 agricultural industry. Furthermore, it is an
10 abdication to move the response from Ohio EPA,
11 which is legally obligated to protect public
12 health and the environment.

13 We previously heard what the mission of
14 the ODA is, and that is to provide regulatory
15 protection to producers, agribusinesses and the
16 consuming public. In contrast, the Ohio EPA's
17 mission is protecting the environment and public
18 health by assuring compliance with environmental
19 laws and demonstrating leadership and
20 environmental stewardship. Clearly, we can see
21 through the mandate, who has the core competency
22 to address environmental and water quality
23 issues here.

24 Furthermore, the EPA must consider the

1 ODA's poor track record before handing over
2 authority to regulate water pollution generated
3 by CAFOs. The Ohioans are going to suffer
4 serious consequences without proper guidelines
5 and enforcement. ODA's record of enforcement is
6 dismal and relies on warning notes of levels
7 with limited escalation with repeat violators.
8 ODA issues on average one penalty per year with
9 an average fine of \$450. This poor showing
10 affects the citizens of Ohio, not the polluter.
11 One particularly egregious example of that is
12 the Buckeye Egg Farm, which has numerous
13 pollution incidents. In 2003, ODA allowed Ohio
14 Fresh Eggs to purchase Buckeye Egg Farm and has
15 since amassed 36 ODA notices of deficiency
16 without a single fine being levied against it.

17 We could potentially see greater
18 environmental impacts with bigger farms. For
19 example, there is currently a farm permit whose
20 proposed farm dwarfs that of Buckeye. The owner
21 of the proposed farm has a bad track record and
22 was cited for numerous violations in Michigan.
23 To make matters worse, it is close to the Little
24 Darby Creek with a diverse ecosystem and jewel

1 of the park system.

2 ODA fails to effectively regulate the
3 transfer of manure. CAFOs can transfer manure
4 elsewhere for land application, and apply a
5 limit for harm caused by the manure. ODA
6 revised reporting overage and reporting
7 requirements. It is the position of the Ohio
8 Sierra Club also that there should be at least
9 30 more days to review and comment on this
10 important decision. One additional hearing
11 should be held in northwest Ohio where the
12 majority of these facilities exist. In light of
13 ODA's weak track record, Ohio deserves a better
14 equipped body to protect the drinking water and
15 quality of life. Thank you.

16 MS. OSTERMEIER: Number 28?

17 COMMENTER: Good evening. I'm Ryan
18 McClure, M-C-C-L-U-R-E. I'm a fifth generation
19 farmer in southeastern Paulding County in the
20 northwest corner of the state.

21 My family and I were primarily a grain
22 farm up until two and a half years ago when my
23 family and I built a 2,000 head wean to finish
24 barn. One year later, we made the decision to

1 construct a second building, doubling our
2 capacity, taking us to 4,000 head. At that
3 time, we filed for a permit to install with the
4 Ohio Department of Agriculture. This took about
5 12 months to obtain and was a very thorough
6 process. In that time, we learned a lot about
7 the facility we were about to build, and also
8 about the value of the manure to be used on our
9 farm instead of commercial fertilizer. After
10 the permit to install, we then obtained the
11 permit to operate.

12 Being a permitted facility, I would like
13 to take time to explain a small part of the
14 permit to operate. When ODA took over the CAFO
15 regulations, they installed many safeguards to
16 prevent potential problems with facilities like
17 ours. There are two mandatory inspections,
18 which you have heard of this evening, where all
19 the records from water usage to compost
20 facilities to proper manure application on the
21 land are reviewed.

22 When we approached the time to apply our
23 manure, we first looked to an approved weather
24 source and confirmed that there is no more than

1 a 50 percent chance of a half inch of rain
2 within the next 24 hours. If there is such a
3 forecast, we are not allowed to apply the
4 manure. After we get a window to apply the
5 manure, there are forms to fill out, field
6 drawings, weather reports, manure analysis,
7 projected next crop withdraw of nutrients, and
8 mandatory tile checks for the following days.
9 We have been very impressed with our time spent
10 with the inspectors and their willingness to
11 help diffuse possible problems. With our ODA
12 inspector having an ag background, we feel we
13 can work better together to raise a good product
14 and also be better stewards of our land. With.

15 This being said, I think it would be
16 very beneficial for the ODA to obtain full
17 regulating power of the NPDES permit pertaining
18 to CAFOs. Thank you.

19 COMMENTER: Chris Weaver, W-E-A-V-E-R.
20 Good evening, and thank you for the opportunity
21 to provide testimony in support of transferring
22 the control of the Clean Water Act National
23 Pollutant Discharge Elimination System program
24 for concentrated animal feeding operations from

1 the Ohio Environmental Protection Agency to the
2 Ohio Department of Agriculture.

3 My parents, Leon and Nancy, and I
4 operate Bridgewater Dairy in Montpelier, Ohio,
5 also in northwest Ohio. At our family farm, we
6 milk 3,000 cows and are permitted for 3,900
7 dairy cows. We also raise 1,000 acres of
8 alfalfa, 2,400 acres of corn for grain and
9 silage, 300 acres of soybeans and 300 acres of
10 wheat. We moved here from California and began
11 the Ohio dairy operation in 1998. We are part
12 of Continental Dairy Products, a dairy marketing
13 co-operative with over 50,000 dairy farms in
14 Michigan, Ohio and Indiana.

15 We take pride in being good stewards of
16 our land. Our farm is permitted by the ODA's
17 livestock environmental permitting program, and
18 we have worked closely with their staff to
19 protect our national resources.

20 We can personally attest to the fact
21 that Ohio has one of the most rigorous state
22 permitting programs in the nation. Our farm is
23 the only Ohio member of Continental Dairy
24 Products. All others are located in Michigan

1 and Indiana. Few states have permitting
2 programs for large livestock farms that include
3 a permit to install and operate, and none are as
4 comprehensive as Ohio's permitting program.
5 Ohio is the only state that requires an
6 environmental background check of the farms
7 operators and owners, and the only state with
8 the certified livestock managers certification
9 program.

10 ODA officials conduct a full inspection
11 of each permitted farm every six months, which
12 is ten times the federal requirement. We
13 welcome the opportunity to demonstrate how we
14 take care of our land and animals in a
15 responsible way. You see, we believe that if we
16 manage our nutrients correctly and treat the
17 land appropriately, that land will create better
18 crops that will in turn create better milk
19 production for our cows. Furthermore.

20 State and federal law requires that
21 permitting program staff respond to all written
22 complaints. ODA's livestock permitting program
23 staff exceeded this requirement by responding to
24 all oral complaints filed with it as well. This

1 demonstrates that the department of agriculture
2 is accountable to all stakeholders involved in
3 protecting the environment, our communities and
4 the neighbors. The Ohio Department of
5 Agriculture operates the state permitting
6 program in an effective and knowledgeable
7 manner.

8 I believe that ODA can run the NPDES
9 program in a similar manner and encourage you to
10 approve the delegating authority from the Ohio
11 EPA to Ohio ODA.

12 MS. OSTERMEIER: Number 30?

13 COMMENTER: Roy Klopfenstein.

14 K-L-O-P-F-E-N-S-T-E-I-N. Good evening,
15 gentlemen. My name is Roy Klopfenstein. I'm a
16 farmer and livestock producer from northwest
17 Ohio, Paulding County, to be exact. I began my
18 farming career in the late '70s. I farmed with
19 my dad up until his retirement in the '90s. My
20 wife and I are blessed with four boys. In 2003,
21 looking for further opportunities, we became a
22 feed provider for one of those large dairies.
23 Working with that dairy this past January, we
24 also became a partner in that operation. We are

1 now a permitted facility with our expansion to
2 be complete at the end of the year.

3 I count ODA, not only as a regulatory
4 agency, but as an educational one also. I
5 consider them part of my success, not only to my
6 community, but to my sons to have a further
7 long-term, good operation. Few states have
8 permitting programs for large livestock farms
9 that include a permit to install and a permit to
10 operate. None are as comprehensive and
11 stringent as Ohio's. Ohio is the only state
12 that requires an environmental background check,
13 something which I was unaware of when I began
14 this permitting process.

15 Operators have to have a certified
16 livestock management certificate. I hold
17 certificate number 17, one which I acquired when
18 I started supplying the dairy, just for my
19 education. This program is an extremely
20 important one for the continuing education of a
21 livestock producer. It helps us to follow
22 guidelines. It brings best management
23 practices. It shows a commitment to success, a
24 commitment to the environment by ODA. A

1 furthering education program is not available
2 through Ohio EPA.

3 In closing, I support this transferring
4 of the NPDES authority to the Ohio Department of
5 Agriculture. Thank you.

6 MS. OSTERMEIER: I believe number 31 has
7 left. Number 32?

8 COMMENTER: Good evening. My name is
9 Paul Herringshaw, H-E-R-R-I-N-G-S-H-A-W. I'm
10 from Bowling Green, Ohio in Wood County which,
11 by the way, is also northwest Ohio. I farm
12 1,500 acres raise corn, wheat, soybeans and
13 alfalfa and provide silage and haylage to a
14 700-cow dairy facility that is permitted by the
15 Ohio Department of Agriculture to expand to
16 2,200 cows. I wish to testify in support of the
17 United States Environmental Protection Agency's
18 approval of Ohio's application to revise the
19 Ohio NPDES program to allow the Ohio Department
20 of Agriculture to administer the parts of the
21 program pertaining to animal feeding operations.

22 I witnessed the permitting process for
23 the dairy I provide silage and haylage to in its
24 effort to expand the operation to 2,200 cows. I

1 have seen how the Ohio Department of Agriculture
2 works and what their priorities are concerning
3 concentrated animal feeding operations, commonly
4 known as CAFOs. The Ohio Department of
5 Agriculture works to protect the environment and
6 the citizens of Ohio, while at the same time
7 provide regulations that are reasonable and
8 sensible. The dairy not only keeps detailed
9 records of where they apply manure, but records
10 of weather conditions and weather forecasts so
11 not to apply manure if a significant rain event
12 is forecasted. They keep track of the number of
13 applications and gallons applied per
14 application. These rules are not only for
15 protection of the neighbors in the area, but
16 they are designed to be workable for the dairy.
17 We work together to test my soil and the manure
18 so we both know what is happening, so my fields
19 are not over fertilized and the waterways of
20 Ohio are protected as well. In addition, ODA
21 requires two inspections per year for each CAFO
22 operation, which is stricter than the EPA rules.
23 The Ohio Department of Agriculture has
24 proven they are capable to handle the task. By

1 approving the transfer of the NPDES permitting
2 process to the Ohio Department of Agriculture,
3 the interest of Ohio will be better served. Not
4 only will the environment be protected, but
5 animal operations, such as the dairy I work
6 with, will deal with one agency that has a
7 proven track record of reliable and sensible
8 regulation. This should create an additional
9 benefit for the citizens of Ohio in the
10 efficient use of citizen tax dollars, as only
11 one agency will be involved in the permitting
12 process instead of two. It is time to move
13 forward.

14 MS. OSTERMEIER: Number 33?

15 COMMENTER: My name is Carl Link,
16 L-I-N-K, and I'm the missing link. I live in
17 Mercer County and am a livestock producer.
18 Mercer County is on the western side of the
19 state, and we have 65 CAFOs within 30 miles of
20 where I live. So we're very highly
21 concentrated. We are the number one in
22 agriculture receipts and number one inorganic
23 resource in our county. I also sit on the
24 advisory board for the department of agriculture

1 on the permitting process. So I have been very
2 familiar with what happens with the ODA over the
3 years.

4 Ohio's got one of the best programs in
5 the country. By best, I mean science-based
6 programs that protect the environment and the
7 people involved. Other states look at us for
8 direction. Ohio has a program that producers
9 know what is expected of them. A lot of people
10 have programs that's wishy-washy. People know
11 what's required of them. The CAFOs are
12 inspected twice a year, which I have had many
13 times. But due to that, there's constant
14 improvement with the farmers to improve over the
15 regulations. That came from one of the
16 inspectors. I'm not CAFO myself, CAFO producer,
17 myself.

18 I've seen an excellent working
19 relationship with the Ohio EPA and the ODA over
20 the years by sitting on this board. To me, it
21 makes sense that we have one department that
22 enforces the same rules that the Ohio EPA and
23 U.S. EPA -- that makes sense, they have one
24 department for the rules.

1 MS. OSTERMEIER: Number 34?

2 COMMENTER: Good evening. Thank you for
3 the opportunity to speak. My name is Lane
4 Osswald. My family farms in Preble County,
5 located in west central Ohio. We are a
6 diversified farming operation consists of
7 grains, vegetables and swine production. I'm a
8 33-year old father of three, soon to be four
9 children, a husband and full-time farmer. I'm
10 here this evening to provide proponent testimony
11 to support U.S. EPA's approval of Ohio's
12 application to revise the Ohio NPDES program to
13 allow the ODA to administer parts of the program
14 pertaining to CAF0s in Ohio. As a relatively
15 young farmer, I'm looking up the road to see
16 what is coming next in agriculture. With the
17 current economic situation, that looking has
18 generally narrowed to ideas that will maintain
19 or improve profitability of our farming
20 operation. Recently, an opportunity to build
21 contract finishing barns for swine presented
22 itself in our community. When I started to
23 research this venture, I realized that the
24 permit process would be one of the slower, more

1 challenging parts of this venture. I would have
2 to be approved by the Ohio Department of
3 Agriculture and by Ohio EPA. Even though I was
4 sure we could meet the regulations, it would be
5 cumbersome to keep both departments'
6 requirements and deadlines straight. Animal
7 agriculture, like many other industries, has
8 determined that large numbers of animals per
9 unit is required to remain profitable.
10 Expansion of existing farms like ours or new
11 operations should not be hindered by being
12 required to work with two different agencies
13 with two different time schedules to appreciate
14 the same goal when the Ohio Department of
15 Agriculture can do it all by itself. The
16 department has problem it can establish and
17 enforce regulations that go above and beyond the
18 EPA requirements. It can also expedite permits
19 and services by having all of the needed
20 information in one office.

21 Respectfully, please consider
22 transferring the authority soon to ensure
23 livestock agriculture in Ohio remains viable and
24 growing.

1 MS. OSTERMEIER: 35? 36?

2 COMMENTER: My name is Glen Feichtner,
3 F-E-I-C-H-T-N-E-R, and I will be representing
4 Ohio Cattlemen's Association. And I wish to
5 testify for the transfer of the NPDES program
6 from the Ohio EPA to the Ohio Department of
7 Agriculture. My operation is in Crawford
8 County, where I farm over 900 acres and feed out
9 over 300 head of cattle. As president of the
10 Ohio Cattlemens Association, in 2001 I wrote an
11 article about senate bill 141 in which some
12 people said the permitting process moving from
13 the Ohio EPA to the Ohio Department of
14 Agriculture was like putting the fox in charge
15 of the henhouse. That was not the case then and
16 will not be the case with the NPDES now.
17 Serving on the concentrated animal feeding
18 facility's rules advisory committee of the
19 livestock environmental permitting program, I
20 have watched Kevin Elder and his staff go above
21 and beyond to ensure the environmental integrity
22 of the program. The general public does not
23 have to worry about the transfer, as the
24 permitting process transfer has worked. And I

1 see no reason the NPDES transfer won't work just
2 as well.

3 In closing, livestock farmers, both
4 large and small, are also consumers of air and
5 water. We would be environmentally and
6 financially foolish to foul that ecosystem.
7 Thank you.

8 MS. OSTERMEIER: At this time, we've
9 actually reached the end of the numbered public
10 comments that we were -- the cards we gave out
11 this evening. We have some time left. So if
12 there's anybody who didn't get an opportunity to
13 finish their comments, if you would like --
14 we're going to limit it to two minutes -- to
15 come up and complete that, you are invited to
16 come up at this time.

17 MR. SWENSON: Is there anyone else that
18 wants to make a statement?

19 MS. OSTERMEIER: Is there anyone else
20 wanting to make a statement?

21 COMMENTER: My name is Pete Dull,
22 D-U-L-L. I'm a hog farmer from Montgomery
23 County. Our farm received the environmental
24 stewardship award for swine farms in Ohio this

1 year. It's a family farm. I guess I should
2 be -- if you take this in the right way, I can
3 be a little humorous, because I would like to
4 see it stay with the EPA, because when the
5 EPA -- we got permitted in 1994 with the EPA. I
6 never saw an inspector except for once during
7 the next eight years. Once we got inspected,
8 our permit was taken over by ODA. I've got one
9 coming tomorrow. I need to get home and make
10 sure my records are in good shape, because in
11 2002 we've been inspected twice a year, and it's
12 a several-hour deal.

13 They inspect around the buildings, they
14 look at our records, from keeping track of every
15 load of manure we haul, where it came from,
16 where it went, the weather conditions, wind
17 speed, humidity, what the water holding capacity
18 of the ground was. We are required to keep that
19 for every load of manure we haul. We also -- we
20 farm 2,700 acres on our farm, and we have to get
21 that soil tested over two years. We have to get
22 every pit tested for the manure nutrients in the
23 manure and make those out, basically so the
24 crops use the manure so it won't be wasted. So

1 that's some of the stuff we go through. That's
2 why I say I would rather go back to the EPA,
3 because it will save me a lot of headaches.

4 MS. OSTERMEIER: Thank you.

5 COMMENTER: My name is John Foote,
6 F-O-O-T-E. And I'm not a farmer, but they're
7 building a megadairy close to my home. One of
8 the things that -- I worked in a factory 40 some
9 years. One of the things that scared anybody in
10 the factory was, the EPA's going to do this or
11 the EPA's going to change the law. Most large
12 manufacturing facilities has an engineer that
13 does nothing but check the rules for the EPA and
14 make sure we do it. I know some of my
15 operations in that, I had the person that was --
16 the engineer checking that was checking me
17 awfully close. Over the span of time, the
18 regulations kept getting stronger, and more and
19 more you had to keep on top of it.

20 The reason I'm saying this, that was a
21 factory, and that's the way it should have been.
22 There should have been the regulations. When
23 you talk about the CAFOs, you heard farmers talk
24 about how they do their farms. But a CAFO is

1 really a factory. I think the EPA should still
2 have the oversight on this. I think the
3 governments -- you talked before about anything
4 came up, how you tell the state to do different
5 regulations. I think they need to consider
6 these CAFO as factories, because that's
7 basically what they are. There should be a
8 little bit different regulation there for them.
9 And also, my mom told me years ago, you don't
10 put all your eggs in one basket. Right now, if
11 this goes back, the only people we can talk to
12 about anything is the department of agriculture.
13 Right now at least we have two directions we can
14 go if we want to get our point across. That's
15 all. Thank you.

16 MS. OSTERMEIER: Is there anybody else
17 who would like to make a comment? We've got
18 about another 20 minutes. We will be here until
19 9:30.

20 MR. SWENSON: I want to thank everyone
21 who has come tonight. We will not close the
22 hearing until 9:30, so we will be here.
23 Certainly, if you need to leave, you can do
24 that. Once again, thank you to everyone who has

1 provided comments.

2 --0=-

3 Thereupon, the proceedings of November
4 18, 2008, were concluded at 9:30 p.m.

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1 CERTIFICATE

2 I, Carmen G. Maley, a Notary Public in
3 and for the State of Ohio, do hereby certify
4 that I reported the foregoing proceedings and
5 that the foregoing transcript of such
6 proceedings is a full, true and correct
7 transcript of my stenotypy notes as so taken.

8 I do further certify that I was called
9 there in the capacity of a court reporter, and
10 am not otherwise interested in this proceeding.

11 In witness whereof, I have hereunto
12 set my hand and affixed my seal of office at
13 Columbus, Ohio, on this _____ day
14 of _____, 2008.

15
16 _____
17 Carmen G. Maley, RPR
Notary Public, State of Ohio.

18 My commission expires: August 24, 2009
19
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21
22
23
24