OHIO COASTAL RESOURCE MANAGEMENT PROJECT

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

RECEIVED
NOV 20 2008
BRANCH
EPA, Region 5

November 5, 2008

Mr. Matthew Gluckman
USEPA Region 5, NPDES Programs Branch, WN-16J
77 West Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman:

Regarding USEPA's Federal Register notice of the proposed approval and hearing on November 18, 2008 for Ohio's application to administer the NPDES program for Concentrated Animal Feeding Operations (CAFOs), the Ohio Coastal Resource Management Project urgently requests that USEPA Region 5 extend the public comment period for 60 to 90 days beyond the stated December 16, 2008 date, for the following reasons:

---Citizens will need more time to review the more than 1000 pages on EPA's website, in order to present comments pertinent to the issues.

---Since EPA has revised portions of the NPDES permitting requirements and Effluent Limitations Guidelines and Standards for CAFOs, in response to the order issued by the U.S. Second Circuit Court of Appeals (according to the Federal Register), Ohio may need to further revise its NPDES program to implement these federal revisions. It would therefore simplify this entire process to delay final action on Ohio's application until at least February 27, 2009.

OCRMP also strongly recommends that a second public hearing be held in Lima or Bowling Green, where there actually are CAFOs. This will facilitate input from stakeholders and people who have first-hand knowledge of CAFO issues.

Your cooperation would be very much appreciated.

Sincerely yours,

Edith Chase

Edith Chase
President

recycled paper

United
Producers, Inc.

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NOV 24 2008
NPDES PROGRAMS BRANCH
EPA Region 5

November 19, 2008

Mr. Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch
77 W. Jackson Blvd.
Chicago IL 60604

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

Extension of Comment Period

Additional Public Hearing

Dear Mr. Gluckman,

United Producers, Inc. sincerely appreciates U. S. EPA Region 5 completing its review of the state of Ohio's application to revise its NPDES program to allow the Ohio Department of Agriculture to administer parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio.

In its public notice printed in the Federal Register on October 15, 2008, U. S. EPA announced that the comment period for this proposal for which it is seeking public comment would close on December 16, 2008, and that one public hearing would be held for the purpose of receiving public comment.

Given that this action has been on-going for a number of years, we believe that the originally announced 60-day comment period is more than sufficient for this process. We also wish to bring to your attention that several additional opportunities have been afforded to the public regarding this process, which include but are not limited to the Department of Agriculture's CAFF advisory committee meetings where proposed rules pertaining to the proposed transfer of delegation authority have been thoroughly discussed for the past several years, but also public hearings where all stakeholders have been provided with the opportunity to comment on rules proposed by the Department of Agriculture pertaining to this respective proposal.

Furthermore, we believe one public hearing, as was held in centrally-located Columbus, Ohio, on the evening of November 18th, is sufficient for this process. Those who wish to comment on the proposal but for some reason were unable to attend the November 18th public hearing can still file comments regarding the proposed transfer of NPDES authority from Ohio EPA to the Ohio Department of

Agriculture with US EPA in writing by December 16th, so an additional public hearing is not necessary. Upon reviewing the sign-in sheet from the November 18th public hearing, you will also learn that it was attended by citizens from all regions of the state, including farmers from as far away as northwest Ohio's Williams County. Please consider this is an issue that affects the entire state of Ohio, not just one particular area or region. There are nearly 170 livestock farms in Ohio that have state permits with the Department of Agriculture, and almost every region of the state has at least one permitted livestock farm. As far as we're concerned, if an additional public hearing is held, it should not result in the public comment period being extended, and it should be held in the west central area (Celina, Greenville, Wapakoneta or Sidney) of Ohio where an overwhelming majority of the state's permitted livestock farms are located.

We thank you for positively considering our input regarding this very important matter.

Sincerely,



Mike Bumgarner
VP – Marketing Services

COMMISSIONERS
John E. Love
Robert A. Riepenhoff
Vincent T. Schroeder

BOARD OF COMMISSIONERS
OF PUTNAM COUNTY
245 E. MAIN STREET, SUITE 101
OTTAWA, OHIO 45875-1968
419/523-3656
FAX: 419/523-9213

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CLERK/ADMINISTRATIVE CLERK
Betty I. Schroeder
GRANTS/WAGE COORDINATOR
Lisa A. Greear

RECEIVED
NOV 04 2008
NPDES PROGRAMS BRANC
EPA Region 5

October 31, 2008

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

Dear Mr. Gluckman:

We are writing this in response to your request for comment on the issue of giving Ohio Department of Agriculture the regulatory responsibility for C.A.F.O.'s. We have been hearing about this issue for months. Please get this done since by now you certainly have had enough time. Ohio Department of Agriculture has the technical and regulatory ability to do an excellent job of permitting and regulating C.A.F.O.'s.

Sincerely,
Putnam County Commissioners

Robert A. Riepenhoff
John E. Love
Vincent T. Schroeder

United
Producers, Inc.

RECEIVED
NOV 24 2008
NPDES PROGRAMS BRANCH
EPA Region 5

November 18, 2008

Mr. Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch
77 W. Jackson Blvd.
Chicago IL 60604

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

Mr. Gluckman,

United Producers, Inc. appreciates the opportunity to comment on the proposed transfer of control of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). United Producers, Inc. is a regional livestock marketing cooperative that represents more than 16,000 Ohio livestock producers. Our producers pride themselves in being stewards of our land and water resources. They work hard to be excellent environmentalists. To remain viable in animal agriculture production they must take excellent care of their environmental resources and pride themselves on this.

United Producers, Inc. does stay active and abreast of the happenings going on at ODA as they relate to permitted livestock facilities. We work with both permitted and non permitted farms throughout Ohio to promote good environmental stewardship. We have been impressed with ODA's activities since they have taken over the Livestock Environmental Permitting Program (LEPP). ODA positively works with farms as they apply for both permits to install and permits to operate to ensure that the farm is conducting itself in the best interest of the environment, the neighbors and the livestock industry as a whole.

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

Again, we appreciate the opportunity to comment on the proposed transfer of control of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio

Department of Agriculture (ODA). If you have additional questions or concerns regarding these comments please feel free to contact me at (614) 433-2178.

Sincerely,

Mike Bumgarner
VP – Marketing Services

8351 N. High Street • Suite 250 • Columbus, OH 43235

OHIO FARM BUREAU®

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

RECEIVED
NOV 24 2008
NPDES PROGRAMS BRANCH
EPA Region 5

November 19, 2008

Mr. Matthew Gluckman
US EPA Region 5
NPDES Programs Branch
WN-16J
77 West Jackson Blvd.
Chicago, Illinois 60604

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

Extension of Comment Period

Additional Public Hearing

Dear Mr. Gluckman,

The Ohio Farm Bureau Federation, the state of Ohio's largest general farm organization with more than 234,000 members, sincerely appreciates U. S. EPA Region 5 completing its review of the state of Ohio's application to revise its NPDES program to allow the Ohio Department of Agriculture to administer parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio.

In its public notice printed in the Federal Register on October 15, 2008, U. S. EPA announced that the comment period for this proposal for which it is seeking public comment would close on December 16, 2008, and that one public hearing would be held for the purpose of receiving public comment.

Given that this action has been on-going for a number of years, we believe that the originally announced 60-day comment period is more than sufficient for this process. We also wish to bring to your attention that several additional opportunities have been afforded to the public regarding this process, which include but are not limited to the Department of Agriculture's CAFF advisory committee meetings where proposed rules pertaining to the proposed transfer of delegation authority have been thoroughly discussed for the past several years, but also public

280 N. High Street • P.O. Box 182383 • Columbus, Ohio 43218-2383
Phone: 614.249.2400 • Fax: 614.249.2200 • Web site: www.ofbf.org

hearings where all stakeholders have been provided with the opportunity to comment on rules proposed by the Department of Agriculture pertaining to this respective proposal.

Furthermore, we believe one public hearing, as was held in centrally-located Columbus, Ohio, on the evening of November 18th, is sufficient for this process. Those who wish to comment on the proposal but for some reason were unable to attend the November 18th public hearing can still file comments regarding the proposed transfer of NPDES authority from Ohio EPA to the Ohio Department of Agriculture with US EPA in writing by December 16th, so an additional public hearing is not necessary.

Upon reviewing the sign-in sheet from the November 18th public hearing, you will also learn that it was attended by citizens from all regions of the state, including farmers from as far away as northwest Ohio's Williams County. Please consider this is an issue that affects the entire state of Ohio, not just one particular area or region. There are nearly 170 livestock farms in Ohio that have state permits with the Department of Agriculture, and almost every region of the state has at least one permitted livestock farm. As far as we're concerned, if an additional public hearing is held, it should not result in the public comment period being extended, and it should be held in the west central area (Celina, Greenville, Wapakoneta or Sidney) of Ohio where an overwhelming majority of the state's permitted livestock farms are located.

We thank you for positively considering our input regarding this very important matter.

Sincerely,

John C. Fisher
Executive Vice-President

OHIO PORK PRODUCERS COUNCIL

5930 Sharon Woods Blvd.
Suite 101
Columbus, OH 43229-2666

Phone: 614.882.5887
Fax: 614.882.6077
www.ohiopork.org

November 14, 2008

RECEIVED
NOV 18 2008
NPDES PROGRAM BRANCH
EPA, Region 5

Mr. Matt Gluckman
EPS Region 5 Water Division
NPDES Programs Branch
77 W. Jackson Blvd.
Chicago, IL 60604

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

Mr. Gluckman,

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

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

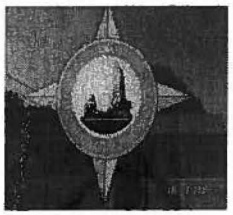
OPPC strongly recommends Ohio EPA transfer the NPDES program for concentrate animal feeding operations to the Ohio Department of Agriculture. Since the current LEPP is housed at ODA it seems a natural fit for the NPDES program to reside there also. This will make it easier for ODA to work with the livestock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

OPPC appreciates the opportunity to comment on the proposed transfer of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). For additional questions or concerns regarding these comments please feel free to contact me at 614-882-5887 or disler@ohiopork.org.

Sincerely,

Dick Isler

Dick Isler
Executive Vice President



Village of Cygnet
P.O. Box 190
Cygnet, OH 43413
419-655-2715

RECEIVED
NOV 10 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W. Jackson Blvd
Chicago, IL 60604

Dear Mr. Gluckman:

EPA Accepting Public Comments for Public Hearing
On the Ohio Department of Agriculture Clean-Water Program for
Concentrated Animal Feeding Operation

Nancy Myers, Mayor, Village of Cygnet (Wood County)
PO Box 190, Cygnet, OH 43413

As Mayor of the Village of Cygnet, I would like to voice our community's grave concern of giving transfer control of the Clean Water Act National Pollutant Discharge Elimination System Program for concentrated animal feeding operations from the Ohio EPA to the Ohio Department of Agriculture. The Village of Cygnet (Wood County) is a perfect example of why the **power should not be** in the hands of the **Department of Agriculture** for feeding operations. The Department of Agriculture gives public hearings on each farm where your concerns are voiced. Many of those opposing these farms felt their comments were totally ignored. They were sent a packet of information for both the Green and Naomi Farms. After reviewing these documents, we found the items to be almost identical even though the farms had entirely different issues. If this is the case, why would they grant a permit for farms to operate that could completely destroy a village that has been in operation for over 100 years without even a heartbeat.

A sterling example is the proposed farm approved as Naomi Dairy (located on Solether Road between Jerry City and Bays Roads). The huge lagoon would be located on Jerry City Road which is one mile from the Village of Cygnet's water wells. This is Cygnet's only water source for our village. From all articles read on concentrated farms, it shows a

tremendous amount of water needed to run one farm. The farm would be using well water one mile from Cygnet's wells. Being this close in proximity, you can almost guarantee they will run the village well's dry or contaminate our water with their waste being applied to farm fields in our water protection area.

Why did the Department of Agriculture not require they connect to the Northwest Sewer and Water District for their water and sewage supply. This would give them the water they need and not compromise Cygnet's water supply. The manure waste would go through the sewer system that should be powerful enough to treat before reaching our water ways and polluting our water sources.

Cygnet more than likely will have their water wells drained or contaminated and the response we receive from Ohio Department of Agriculture from an open hearing report was we could file a civil suit in court to see if we could collect damages. How fair is this to people that founded this village and paid taxes all these years when you allow someone without citizenship to set up shop and provide them with all our tax dollars. Cygnet has a huge debt on our sewage and water systems that meets the state's requirements. **Why** were these farms given permission to operate any different than those required by our village or families living in the country. It appears they have excessive money to make it possible by not following the same rules as an entire village has to comply. Cygnet has approximately 600 people and cannot afford more debt to correct an injustice by the State Department of Agriculture's failure to address our concerns If Cygnet runs dry or becomes contaminated, the Village will be required to take legal action against the farm as well as the State Department of Agriculture to recoup our losses and damage to homes in our village and residents. This will be a long drawn out time consuming case that will cost everyone hardships and a boatload of money that could have been solved with one denial. **Simply declare this farm's location has too many issues and concerns for human life and welfare and disapprove the permit.**

Other issues with this farm overlooked by Department of Agriculture was uncapped oil wells in this location. The dairy is in a flood plain where the creek has flooded four times since June of 2006. The creek flooded into the village. At the other end of town, water flows from a ditch which lies beside the farm and when heavy rains occur it dispenses water into yards where children play and live. This is the area our water wells are also located. The farm lagoon has a fault line running through the middle. The farms are required to have their lagoons going one way but since they did not have enough room they were allowed to run it the opposite way. The Village was informed that this farm has plans to place manure spreading in our water protection area. Neighbors will have decreased property values and qualify of life will never again be normal.

To add more insult to our village, the original owner of the farm (Naomi) where the permit was approved decided to drop the farm and sold some of his land to Dekker. When this went to the Dept. of Agriculture, they approved the original permit even though the original number of acres were not sold with this land deal and it should have been. After hearings they were still granted a permit to proceed. From what I learned from realty transfer in the newspaper yet another party has become involved in buying

more acreage. **How can all these rules be broken and a permit still be allowed? Are you still not convinced powers should be placed in the EPA's hand to see that people's lives are not compromised?**

I must bring to your attention rules are in place to protect everyone's rights. Why are these rights being ignored over and over again? The Department of Agriculture chooses not to answer any responses to their office. They just simply ignore letters and never respond? Why in the world would the state even consider making them the authority over these farms. It is quite obvious from where our village is concerned, they do not care about who is hurt in these ventures. **Who in the world is going to put a stop to this injustice.**

The control must be left in the hands of the Ohio and County EPA Offices. They have established procedures and checks to test the land and water and address issues that can wipe out life. If you put control of these farms in the hands of the State Department of Agriculture, it will cost millions of dollars to clean up their mess. Ohio cannot afford this injustice and mistreatment of human life with all the other crisis that faces our state! Do your job now and stop this authority from going to the Ohio Department of Agriculture. They have shown our small village that due to all the above concerns they simply do not care about human life!

Over the past several years corruption in our state has risen and the influx of mega dairies are being allowed to turn Wood County into a wasteland. At an open hearing in Wood County visitors were given ample opportunity to voice their concerns. Three public speakers voiced grave concern for these farms: Ms. Anne Graves, a microbiologist from Bowling Green; Dr. Ted Bowlus, a physician who serves as president-elect of the Wood County Board of Health; and Howard Oestreich, farmer of Wayne. Dr. Graves stated the digesters are a middle road—better than nothing. She went on to state no one seems willing to take responsibility for the proliferation of the large-scale dairy farms and the problems they cause to communities. She point blanked asked "who is responsible? Where does the buck stop? Sadly, as in all meetings no one could answer or if they knew the answer avoided the question. Dr. Bowlus gave the strongest argument and expressed grave concerns about public health risks associated with manure stored in giant lagoons and with pathogens like E. coli that may not be broken down in a digester. It's going to cause Wood County to be a wasteland. And last Mr. Oestreich hit the nail on the head in asking why don't they have to tie into the county water system and pay for the water like other businesses and why not be tied into the county sewer system to have this manure treated. It simply does not make sense that someone living in the country in Wood County has to install an elaborate septic system beyond normal expenses and a huge mega dairy gets away with spreading this manure on everyone's land and exposing us to disease.

Sincerely,

Nancy Myers

Nancy Myers
Mayor, Village of Cygnet

RECEIVED
NOV 19 2008
NPDES PROGRAMS
EPA, Region 5

Dear Director Gluckman,

I was born and raised in Ohio and I am asking you to help our quality of life. We have a duty as citizens to protect the environment, not only for ourselves, for future generations as well. Please do not relinquish the control of the NPDES program for CAFOs to the Ohio Department of Agriculture. The EPA is an agency that the citizens can depend on to protect them, the same cannot be said of the Ohio Department of Agriculture.

The Ohio Department of Agriculture has shown to be pro CAFO despite the overwhelming evidence of the negative effects they have on health and land. These effects have been studied by agencies such as: the CDC (Center for Disease Control), the GAO (Government Accounting Office), University of North Carolina Medical School, The University of Iowa Medical School and John Hopkins School Of Public Health. The Pew Charitable Trust funded a commission to look into CAFOs and in their 2008 report they confirmed: " The current industrial farm animal production system often poses unacceptable risks to public health, the environment and the welfare of the animals… the negative effects of the system are too great and the scientific evidence is too strong to ignore. Significant changes must be implemented and must start now."

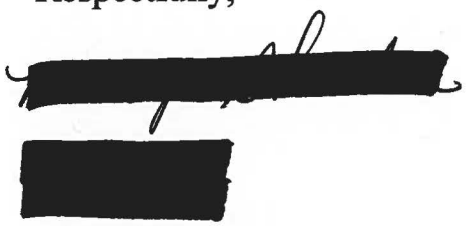
I know that living around or near a family farm is quite different than one that houses hundreds, if not thousands of animals that never get out to see the light of day. That is not farming, that is industry. These industries contaminate the land, air, food sources, water and those living near them experience quite a few health problems. These facts are documented.

The ODA has shown total disregard for residents best interests as they consistently impose CAFOs in areas where they are not wanted. The Ohio Department of Agriculture seems more interested in the CAFO operators and owners than to the citizens they are supposed to represent.

So, I am asking you to please take action to protect Ohio's citizens. Please do not let control of the NPDES program for CAFOs be transferred from the Ohio EPA to the Ohio Department of Agriculture. Protect those of us that depend on you and look to you to protect our air, water, land, our general quality of life.

Thank you for the time you took to read my concerns. I look forward to hearing from you on how you plan to continue to protect the present and future citizens of Ohio.

Respectfully,



[redacted]

Ada, Ohio 45810

November 6, 2008

RECEIVED
NOV 12 2008
NPDES PROGRAMS BRANCH
EPA Region 5

Dear Mr. Gluckman,

As a citizen of the state of Ohio I implore you to please help protect our quality of life in this fair state. To protect it not only for the present citizens, but also for the future citizens of our state, our children. Please do not let the control of the NPDES program for CAFOs be transferred from the Ohio EPA to the Ohio Department of Agriculture.

CAFOs are devastating the quality of life and rights to property for rural residents of the state of Ohio and the Ohio Department of Agriculture has shown itself to be pro CAFO at the expense of the local citizen's quality of life.

The negative effects of such operations, such as the contamination of air, water, soil, and foods with toxic chemicals, infectious diseases, antibiotic resistant bacteria, and E. coli 0157:h7 are well documented by such agencies as the Center for Disease Control (CDC), the Government Accounting Office (GAO), University of North Carolina Medical School, The University of Iowa Medical School, and Johns Hopkins School of Public Health, to list but a few. A prestigious commission funded by the Pew Charitable Trust concluded in their 2008 report, "The current industrial farm animal production system often poses unacceptable risks to public health, the environment and the welfare of the animals.... the negative effects of the system are too great and the scientific evidence is too strong to ignore. Significant changes must be implemented and must start now."

Living in the vicinity of an appropriately sized family farm is quite different than living near a CAFO with hundreds or thousands of animals. The odor, as well as the negative impact on rural quality of life, enjoyment of real property, rural economies, rural infrastructures, and appropriately sized family farms, is well documented.

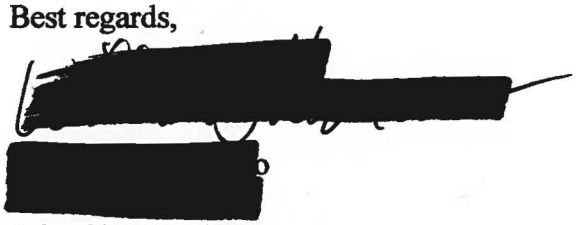
The Ohio Department of Agriculture has shown from its past actions that it does not have the best interests of the local rural citizens in mind when it has consistently imposed CAFOs in areas where the residents have shown themselves to not want them. The Ohio Department of Agriculture appears to prefer the interests of the CAFO operators and the industrial nature of these operations, to the well being of the citizens of Ohio.

Please take immediate action to protect the health and welfare of the present and future citizens of Ohio. Please do not let the control of the NPDES program for CAFOs be transferred from the Ohio EPA to the Ohio Department of Agriculture. Please protect our rural communities. Protect Ohio's family farmers, their farmland, and the water and air quality of the state of Ohio.

What will you do to protect the present and future citizens of this fair state? What will you do to protect the children and future children of this state? What will you do to protect my children? Your prompt attention, concern, and action, will be greatly appreciated by citizens of Ohio and their children's children.

Thank you for your time and consideration. I look forward to hearing from you about what actions you will implement for the protection or our children's future.

Best regards,



Ada, OH 45810

[redacted]
[redacted]
Oregon, OH 43616
419-693-3939

November 23, 2008

Mr. Matt Gluckman
EPA Region V
Water Division (WN-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

Re: Transfer of CAFO NPDES permitting from OEPA to ODA

Dear Mr. Gluckman:

I would not like to be in your shoes. This is a decision between the lesser of two BIG evils!

Over the years the OEPA has done little to protect the citizens of Ohio from toxins of any kind. This has also been evident in their "we really don't care attitude" about the CAFOs. On the other hand almost everyone in Ohio knows that the ODA is "in the pocket" of big agriculture.

I guess if it were my choice I'd keep with the OEPA as they don't have a direct vested interest in seeing the growth of polluting megafarms in Ohio.

If we must have these terrible megafarms in Ohio I don't see why the State leadership does not push for extensive waste digesting systems like is being done in Vermont by Vermont Power.

Good luck with your decision but I hope it is with OEPA and that for the protection of the citizens of Ohio you encourage them to seriously tighten up their enforcement of the megafarms.

Thank you.

Sincerely,

[redacted]

----The greatness of a nation and its moral progress can be judged by the way in which its animals are treated. Mohandas Gandhi----

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).
The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

Factory farms produce an estimated 500 million tons of manure every year - three times the amount of waste the human population of the U.S. produces. In Ohio, CAFOs generate over 10.5 million tons of manure per year, with some individual facilities creating more waste than medium-sized cities. According to the EPA, hog, chicken and cattle waste has polluted 35,000 miles of rivers in 22 states and contaminated groundwater in 17 states.

The ODA's mission is "to provide regulatory protection to producers, agribusinesses, and the consuming public; to promote Ohio agricultural products in domestic and international markets". The Ohio EPA has as its mission listed as "protect[ing] the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." The ODA has as its primary mission to help the Agriculture Industry and has not directive to protect the environment. Giving them oversight into the Clean Water Act through movement of permitting and oversight is in direct contrast to their directive of protection and promotion of the Ag industry here in Ohio.

I do not believe that the ODA should have environmental regulatory oversight of CAFOS, particularly when it comes to protecting our waterways. I do not believe that granting water permitting of CAFOs to ODA oversight will provide the appropriate level of scrutiny or protection of our waters. The Ohio EPA is an independent source of oversight that is sorely needed. My reasons include:

- ODA has little experience in managing water quality,
- With the brokerage of manure, there is little ability to go back to the CAFOs when there is a spill,
- Where will the additional funding come from for the ODA to manage this process?
- Once you move NPDES permits to ODA, what industry will next want to manage their permitting processes from the EPA to their organization?

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where the majority of these facilities exist.
In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources, and I believe that agency is the EPA.

Sincerely,

[redacted]
Hilliard, OH 43026

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

RECEIVED
DEC 02 2008
NPDES PROGRAMS BRANCH
EPA. Region 5

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).
The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

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In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources, and I believe that agency is the EPA.

Sincerely,

[redacted]

London, OH 43140

Thank you for listening to our concerns in this matter.

[redacted]

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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Sincerely,

[Your Name]
[Your Address]
[City, State ZIP]

[redacted]
London OHIO 43140

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

RECEIVED
DEC 0 9 2008
NPDES PROGRAMS BRANCH
EPA Region 5

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[redacted]

[Your Name]
[Your Address]
[City, State ZIP]

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

RECEIVED
DEC 0 9 2008
NPDES PROGRAMS BRANCH
EPA Region 5

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Sincerely,

[redacted]

London, Ohio 43140

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EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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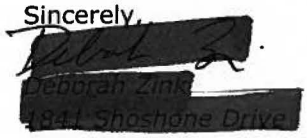
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Sincerely,



Deborah Zink
1841 Shoshone Drive
London, Ohio 43140]

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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Sincerely,

[redacted]
[redacted]
London, OH 43140

RECEIVED
NOV 19 2008
NPDES PERMITS BRANCH
EPA Region 5

Nov 15, 2008
Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604
Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry.

It is the OEPA, not the ODA, which is legally mandated to protect public health and the environment...and for good reason.

The most pressing public issues regarding factory farms concern public health and environmental impact. The best interests of Ohio's citizenry will NOT be served by OEPA abdicating responsibility regarding factory farms.

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where the majority of these facilities exist.

In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better-equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Chardon, OH 44024-9421

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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[redacted]

London, OH 43140

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77 W Jackson BLVD
Chicago, IL 60604

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Sincerely,



Joseph R. Fuchala
214 East Choctaw Drive

London, OH 43140

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

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Thank you,

[redacted]

[redacted]

W. MANSFIELD OH 43358

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

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77 W. Jackson Blvd.
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[redacted]

[redacted]

Raymond Ohio 43067

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA Region 5

October 20, 2008

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US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
25516 Coder-Holloway Rd
Raymond, OH 43067

RECEIVED
NOV 19 2008
NPDES PROGRAMS BRANCH
EPA Region 5

11/15/08

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US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,



Columbus, Ohio 43229

RECEIVED
DEC 0 9 2008
NPDES PROGRAMS BRANCH
EPA Region 5

November 24, 2008

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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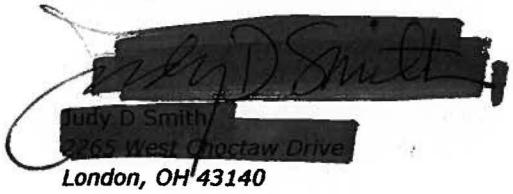
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Sincerely,



Judy D Smith
8265 West Choctaw Drive
London, OH 43140

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EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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But lets put all the above aside, and ponder an event that has been planned for years, and will be executed before you and your associates can blink an eye. Orleton Farms from Maumee are just waiting for this change.

IN MADISON COUNTY, OHIO, AS YOU MAY KNOW, THE LAND IS ALREADY PURCHASED, AND THE PLANS IN PLACE, FOR A 5000 Acre, 5000 DAIRY COW FARM.TWO MILES OR SO DOWN WIND OF THE VAST FIELDS FOR MANURE SPRAYING, AND SEVERAL LARGE CEMENT MANURE HOLDING TANKS, IS MONROE ELEMENTARY SCHOOL.

I can understand large scale farming, if done correctly. Having worked in hot classrooms for over 30 years, I know how on a bad air day, no matter how wide you open the windows, no matter how many fans, it stinks just on its own. Even with air conditioning – kids have to walk to school, run on the field, be outside.

THANKS FOR NOT LEAVING ANY KIDS BEHIND. IT IS CLEAR WHICH MIND SET YOU BELONG TO –WHO YOU WERE, AND ARE, ALLIGNED WITH. ALL IN THIS ADMINISTRATION WILL BE HELD ACCOUNTABLE.

YOU ARE RESPOSIBLE FOR THE HEALTH OF THESE KIDS. WOULD YOU PUT YOUR DAUGHTER IN MONROE ELEMENTARY SCHOOL WITH A MEGA DAIRY FARM NEXT TO THE PLAYGROUND? PLEASE DO ALL YOU CAN TO PREVENT THE TRANSFER FROM EPA TO THE ODA.

WE ALL CHERISH OUR CHILDREN'S FUTURE:



11/24/08

Michael Zaborowski
1895 Yuma Drive
London, Ohio 43140

RECEIVED
DEC 0 9 2008
NPDES PROGRAMS BRANCH
EPA Region 5

November 24, 2008

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA). The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

Factory farms produce an estimated 500 million tons of manure every year - three times the amount of waste the human population of the U.S. produces. In Ohio, CAFOs generate over 10.5 million tons of manure per year, with some individual facilities creating more waste than medium-sized cities. According to the EPA, hog, chicken and cattle waste has polluted 35,000 miles of rivers in 22 states and contaminated groundwater in 17 states.

The ODA's mission is "to provide regulatory protection to producers, agribusinesses, and the consuming public; to promote Ohio agricultural products in domestic and international markets". The Ohio EPA has as its mission listed as "protecting the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." The ODA has as its primary mission to help the Agriculture Industry and has not directive to protect the environment. Giving them oversight into the Clean Water Act through movement of permitting and oversight is in direct contrast to their directive of protection and promotion of the Ag industry here in Ohio.

I do not believe that the ODA should have environmental regulatory oversight of CAFOS, particularly when it comes to protecting our waterways. I do not believe that granting water permitting of CAFOs to ODA oversight will provide the appropriate level of scrutiny or protection of our waters. The Ohio EPA is an independent source of oversight that is sorely needed. My reasons include:

- ODA has little experience in managing water quality,
- With the brokerage of manure, there is little ability to go back to the CAFOs when there is a spill,
- Where will the additional funding come from for the ODA to manage this process?
- Once you move NPDES permits to ODA, what industry will next want to manage their permitting processes from the EPA to their organization?

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where the majority of these facilities exist. In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources, and I believe that agency is the EPA.

Sincerely,

[redacted]

London, OH 43140

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

RECEIVED
DEC 0 9 2008
NPDES PROGRAMS BRANCH
EPA Region 5

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Sincerely,

[redacted]
Kenneth M. Williams
2390 San Chez Trail
London, OH 43140-9006

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson BLVD
Chicago, IL 60604

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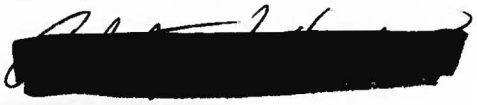
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Sincerely,



[redacted]
London, Ohio 43140

RECEIVED
NOV 03 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

October 27, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

I would like to request an extension to the public comment period regarding the transfer of Clean Water Act permitting to the Ohio Department of Agriculture. This decision is without precedent and demands a most thorough study of the details involved in this transfer. I would also ask that there be an <u>additional</u> public hearing in the northwestern part of Ohio, since this area is home to the majority of current and proposed CAFOs in Ohio.

Thank you,

[redacted]

[redacted]

POWELL OH 43065

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NOV 03 2008
NPDES PROGRAMS BRANCH
EPA. Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
WEST MANSFIELD, OHIO 43358

YORK TWP. UNION CO.

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NOV 03 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,



RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Oct 20, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

Raymond, OH 43067

RECEIVED
OCT 2 [illegible]
NPDES PROGRAMS [illegible]
EPA [illegible]

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
Raymond Ohio 43067

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

[redacted]

W. MANSFIELD, OH. 43358

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NOV 04 2008
NPDES PERMITS BRANCH
EPA, Region 5

10/27/2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
[redacted] Cashel Court
Dublin, OH 43017

RECEIVED
NOV 03 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
[redacted]
Dist Mansfield, Ohio 44358-9629

RECEIVED
NOV 18 2008
PROGRAMS BRANCH
EPA, Region 5

11/10/08

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

Columbus, OH 43220

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OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
West Mansfield, Oh
43358

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
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Thank you,

[redacted]

[redacted]

Dublin, Oh
43017

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

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US EPA Region 5
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Thank you,

[redacted]

[redacted]

W. MANSFIELD, OH. 43358

RECEIVED
OCT 27 2008
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US EPA Region 5
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Thank you,



K. Dani Davis
P.O. Box 29
Institute, WV
25112

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
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Thank you,

[redacted]
18400 St Rt. 47
Richwood, OH 43344

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

[redacted]

Raymond Ohio 43067

RECEIVED
NOV 13 2008
NPDES PROGRAMS BRANCH
EPA, region 5

11/10/08

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
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Thank you,

[redacted]

[redacted]
Columbus OH 43214

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

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US EPA Region 5
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Thank you,

[redacted]
[redacted] ST RT 41
Richwood Ohio
43344

RECEIVED
NOV 18 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Monday, November 10, 2008

I am writing concerning the proposed rule changes to the ODA Livestock Environmental Permitting Program in order to transfer authority for the NPDES Permitting Program from the Ohio EPA to the ODA.

It is my understanding that revisions are being proposed involving O.A.C. 901:10-2-02 and OAC 901:10-2-06 (A)(10). These amendments/rescissions would be unreasonable. The LEPP rules were originally developed, reviewed and recommended by a diverse group of scientific professionals, including representatives from the ODNR, USGS, NRCS, and Ohio EPA. Unfortunately, many of these important regulations have been rescinded or revised to include "Director's discretion" over the past few years.

The ODA should not reduce or rescind any of their current regulations which protect our aquifers and floodplains in the process of attempting to obtain authority for NPDES permits.

We are neighboring property owners (¼ mile)
our son likes there
and we need to protect our water [illegible].

[redacted]
[redacted]
Bowling Green, O
43402

11/14/08

RECEIVED
NOV 18 2008
NPDES PROGRAMS BRANCH
EPA Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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NOV 18 2008
NPDES PROGRAMS BRANCH
EPA REGION 5

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US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
[redacted] Greenhaven Ave
Galloway, Ohio 43119

RECEIVED
NOV 18 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

11/14/08

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

Jamie Hamby

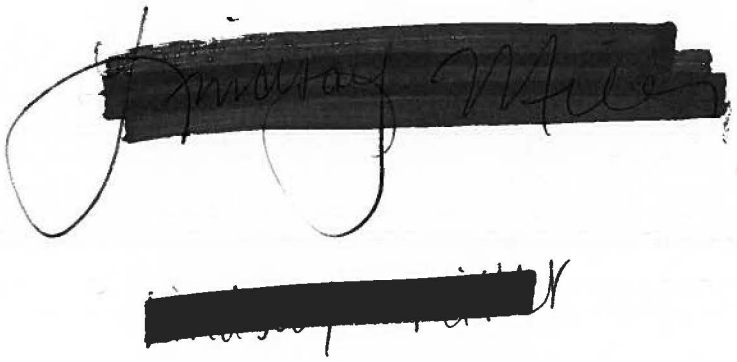
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NOV 18 2008
NPDES PROGRAMS BRANCH
EPA Region 5

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NPDES Programs Branch (WN-16J)
US EPA Region 5
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NPDES PROGRAMS BRANCH
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US EPA Region 5
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Thank you,

[redacted]

SIERRA CLUB
FOUNDED 1892
Ohio Chapter

RECEIVED
OCT 29 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

October 23, 2008

Matt Gluckman
EPA Region 5 NPDES Program Division
77 West Jackson Blvd.
Chicago, IL 60604

Re: Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs) in Ohio

Dear Mr. Gluckman:

The Sierra Club Ohio Chapter, on behalf of our 18,000 members, respectfully submits this letter to EPA Region 5 concerning the revision of Ohio's NPDES program for CAFOs. We join the Ohio Environmental Council in their request to 1) Extend the public comment period from the current 60 days (concluding December 16, 2008) to a total of 90 days (concluding no earlier than January 15, 2009); 2) and holding at least one additional public hearing in Northwest Ohio to supplement the open house and hearing to be held in Columbus in November.

Ohio is the only state to request the transfer of NPDES permitting authority over CAFOs to the agricultural department. We request that Region 5 strongly consider the precedence of this decision before moving forward and provide additional time and opportunities for the public to weigh in on such an important decision.

The Ohio Department of Agriculture's application contains thousands of legal and technical documents, and this vast amount of information must be reviewed and understood in order for the public and interested parties to provide meaningful comments. We believe that an additional 30 days for public comment is reasonable and appropriate for this reason.

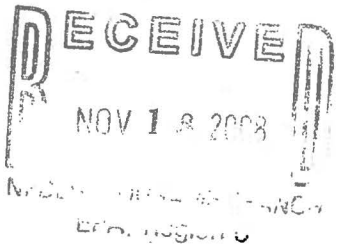
It would also benefit the public to hold an additional public meeting and hearing in Northwest Ohio, where a majority of the currently sited and proposed CAFOs exist. Columbus is an appropriate location for an initial meeting and hearing, but most of the people who live and work near CAFOs will not have the opportunity to attend a meeting in Columbus. It is beneficial to extend public meeting opportunities beyond Columbus in order to make the most informed decision. We request at least one additional public hearing following the November 18 meeting in Columbus, which could be held in either Bowling Green, OH or Lima, OH.

Thank you for your time and consideration. Please call 614-461-0734 x311 if you have questions.

Sincerely,

[redacted]
Brandi Whetstone, Conservation Program Coordinator
[redacted] · Columbus, OH 43215 · (614) 461-0734 · www.ohio.sierraclub.org

November 3, 2008



Dear Environmental Protection Agency:

We, the concerned citizens of Hardin and Hancock Counties of Ohio, and other areas similarly situated, hereby formally petition and request that you participate in bringing a Moratorium to the building and installation of factory/industrial farms in the State of Ohio.

The negative effect of such operations, such as the contamination of air, water, soil, and foods with toxic chemicals, infectious diseases, antibiotic resistant bacteria, and E. coli 0157:h7 are well documented by such agencies as the Center of Disease Control (CDC), the Government Accounting Office (GAO), University of North Carolina Medical School, The University of Iowa Medical School, and Johns Hopkins School of Public Health, to list but a few. A prestigious commission funded by the Pew Charitable Trust concluded in their 2008 report, "The current industrial farm animal production system often poses unacceptable risks to public health, the environment and the welfare of the animals.... The negative effects of the system are too great and the scientific evidence is too strong to ignore. Significant changes must be implemented and must start now."

Please take immediate action to protect the health and welfare of the citizens of Ohio, to protect the children of Ohio, to protect rural communities, to protect Ohio's family farmers, their farmland, and the water and air quality of Ohio by helping to bring a Moratorium to the building and installation of large animal feeding operations in the state of Ohio. Your prompt attention, concern and action will be greatly appreciated by the citizens of Ohio and their children's children.

Respectfully submitted,

Kerris and Nancy Wright
[redacted] C.R. 113
[redacted]
wrights@wcoil.com

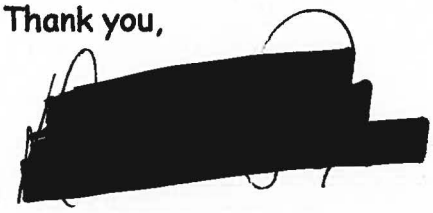
RECEIVED
NOV 03 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

I would like to request an extension to the public comment period regarding the transfer of Clean Water Act permitting to the Ohio Department of Agriculture. This decision is without precedent and demands a most thorough study of the details involved in this transfer. I would also ask that there be an additional public hearing in the northwestern part of Ohio, since this area is home to the majority of current and proposed CAFOs in Ohio.

Thank you,



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NOV 03 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

10/28/08

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

MARY CERNY
179 AYDEN RD.
COLUMBUS, OH 43214

RECEIVED
NOV 13 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

11/8/08

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

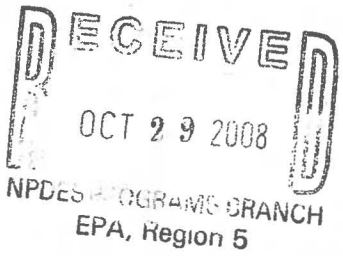
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Thank you,

[redacted]

[redacted] Cochrane
[redacted] Dennison Ave.
Columbus, OH 43201

October 23, 2008



[redacted]
West Mansfield, Ohio 43358

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

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Thank you.

Sincerely,

[redacted]
James B. Elliott

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
[redacted]
West Mansfield Ohio 4335

OHIO PORK PRODUCERS COUNCIL

5930 Sharon Woods Blvd.
Suite 101
Columbus, OH 43229-2666

Phone: 614.882.5887
Fax: 614.882.6077
www.ohiopork.org

November 14, 2008

RECEIVED
NOV 18 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Mr. Matt Gluckman
EPS Region 5 Water Division
NPDES Programs Branch
77 W. Jackson Blvd.
Chicago, IL 60604

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

Mr. Gluckman,

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

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

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

OPPC appreciates the opportunity to comment on the proposed transfer of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). For additional questions or concerns regarding these comments please feel free to contact me at 614-882-5887 or disler@ohiopork.org.

Sincerely,

[redacted]

Executive Vice President

RECEIVED
OCT 27 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

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Thank you,

[redacted]
Raymond, Oh 43067

Our Creeks have been polluted in the past We need the EPA to stay on top of this matter. We need to protect our air, water, and quality of life.

Thank you

OHIO COASTAL RESOURCE MANAGEMENT PROJECT

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

RECEIVED
NOV 10 2008
BRANCH
EPA, Region 5

November 5, 2008

Mr. Matthew Gluckman
USEPA Region 5, NPDES Programs Branch, WN-16J
77 West Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman:

Regarding USEPA's Federal Register notice of the proposed approval and hearing on November 18, 2008 for Ohio's application to administer the NPDES program for Concentrated Animal Feeding Operations (CAFOs), the Ohio Coastal Resource Management Project urgently requests that USEPA Region 5 extend the public comment period for 60 to 90 days beyond the stated December 16, 2008 date, for the following reasons:

---Citizens will need more time to review the more than 1000 pages on EPA's website, in order to present comments pertinent to the issues.

---Since EPA has revised portions of the NPDES permitting requirements and Effluent Limitations Guidelines and Standards for CAFOs, in response to the order issued by the U.S. Second Circuit Court of Appeals (according to the Federal Register), Ohio may need to further revise its NPDES program to implement these federal revisions. It would therefore simplify this entire process to delay final action on Ohio's application until at least February 27, 2009.

OCRMP also strongly recommends that a second public hearing be held in Lima or Bowling Green, where there actually are CAFOs. This will facilitate input from stakeholders and people who have first-hand knowledge of CAFO issues.

Your cooperation would be very much appreciated.

Sincerely yours,

[redacted]

President

recycled paper

RECEIVED
NOV 13 2008
NPD ANCH

November 8, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

I would like to request an extension to the public comment period regarding the transfer of Clean Water Act permitting to the Ohio Department of Agriculture. This decision is without precedent and demands a most thorough study of the details involved in this transfer. I would also ask that there be an additional public hearing in the northwestern part of Ohio, since this area is home to the majority of current and proposed CAFOs in Ohio.

Thank you,

[redacted]

[redacted]

Grove City, OH 43123

Dec 2, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

In Ohio, factory farms generate over 10.5 million tons of animal waste per year, with some individual facilities creating more waste than medium-sized cities. Rich in phosphorus and nitrogen, animal waste is a major source of water pollution in Ohio. These chemicals enter waterways, killing fish and other aquatic life and contaminating our drinking water.
The environmental and public health impacts of factory farms are

tremendous. The EPA must consider the Ohio Department of Agriculture's dismal track record before handing over authority to regulate water pollution. For example, ODA's enforcement is lax and does little to promote compliance with the law. Ohio Fresh Eggs, formerly Buckeye Egg, has amassed 36 notices without a single fine levied against it since 2003.

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where these farms are controvesial.

In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Cleveburg, OH 44101

Dec 2, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted]
Columbus, OH 43202-1232

Dec 2, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted]
Worthington, OH 43085-2229

Dec 2, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted]
ADA, OH 45810-1634

Nov 28, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

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Sincerely,

[redacted]
London, OH 43140-9034

Nov 27, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted] Dr
Cincinnati, OH 45232-1627

Nov 27, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted]
Cincinnati, OH 45213-1771

Nov 27, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted]
Columbus, OH 43214-1967

Nov 26, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

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Sincerely,

[redacted]
London, OH 43140-9007

Dec 1, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

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Sincerely,

[redacted]
London, OH 43140-9018

October 23, 2008

[redacted]
West Mansfield, Ohio 43358

RECEIVED
NOV 04 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman,

I would like to request an extension to the public comment period regarding the transfer of Clean Water Act permitting to the Ohio Department of Agriculture. This decision is without precedent and demands a most thorough study of the details involved in this transfer. I would also ask that there be an additional public hearing in the northwestern part of Ohio, since this area is home to the majority of current and proposed CAFOs in Ohio.

Thank you,

Sincerely,

[redacted]
Twyla A. Elliott

RECEIVED
NOV 13 2008
NPDES PROGRAMS BRANCH
EPA Region 5

11/8/08

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

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NPDES PROGRAMS BR...
EPA, Region 5

Nov. 4, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]

[redacted]
[redacted]
Blacklick OH 43004

RECEIVED
NOV 03 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

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Thank you,

[redacted]
West Mansfield Ohio
43358

Dec 6, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

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In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Yellow Springs, OH 45387-9719

Dec 6, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

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Sincerely,

[redacted]
Cincinnati, OH 45241-1445

Dec 11, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

In Ohio, factory farms generate over 10.5 million tons of animal waste per year, with some individual facilities creating more waste than medium-sized cities. Rich in phosphorus and nitrogen, animal waste is a major source of water pollution in Ohio. These chemicals enter waterways, killing fish and other aquatic life and contaminating our drinking water.
The environmental and public health impacts of factory farms are

tremendous. The EPA must consider the Ohio Department of Agriculture's dismal track record before handing over authority to regulate water pollution. For example, ODA's enforcement is lax and does little to promote compliance with the law. Ohio Fresh Eggs, formerly Buckeye Egg, has amassed 36 notices without a single fine levied against it since 2003.

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where these farms are controvesial.

In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Millfield, OH 45761-9753

[redacted]
LaRue, OH 43332
December 4, 2008

Matthew Gluckman
NPDES Program Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman:

This letter is in reference to the Confined Animal Feeding Operations (CAFOs).

We are DEFINITELY AGAINST the transfer of the National Pollutant Discharge Elimination System (NPDES) permitting procedure from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

My reasoning is as follows:

One of the goals of the ODA is to promote agriculture. The ODA is highly influenced by the Farm Bureau. The Farm Bureau boasts of a large membership of farmers, but in reality are mostly Nationwide Insurance members.

We are on the ODA mailing list and receive a constant stream of permits to install and to operate, which are never refused even in already stressed areas.

Does or will the ODA have enough inspectors?

My wife and I live 1500 feet from an Ohio Fresh Eggs factory with 2.4 million laying hens. Ohio Fresh Eggs was formally the infamous AgriGeneral (AG), Buckeye Egg Farm (BEF) in Marseilles Township, Wyandot County, Ohio, who all have had egg wash water spills. AG and BEF had over application of egg wash water, improper application of manure spread close to wells, streams and houses and BEF had a large diesel spill. The egg factory has lowered our well 17 feet.

In our experience, ODA inspectors have had a tendency to be on the side of the CAFOs by blaming us for causing fly outbreaks with having tall grass in our attached 1/2 acre lot or a farm with sheep 1 ½ mile away.

In order to provide governmental checks and balances, we request that the NPDES permitting procedures be left in the authority of the OEPA.

Thank you for your consideration.

[redacted]

Sincerely,

[redacted]

Dec 3, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

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tremendous. The EPA must consider the Ohio Department of Agriculture's dismal track record before handing over authority to regulate water pollution. For example, ODA's enforcement is lax and does little to promote compliance with the law. Ohio Fresh Eggs, formerly Buckeye Egg, has amassed 36 notices without a single fine levied against it since 2003.

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where these farms are controvesial.

In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Rayland, OH 43943-7994

[redacted]

[redacted]

Dec 5, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

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In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Findlay, OH 45840-3229

[redacted]
December 4, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman:

I am interested in submitting comments on Ohio's application to transfer control of the NPDES program for CAFOs from Ohio EPA to Ohio Department of Agiculture.

I (Rosella Bear) am against the transfer of the NPDES Permitting Program from Ohio EPA to the ODA. I feel that ODA does not have enough staff or expertise to take over the authority from OEPA as now they only have two inspectors to cover the whole state of Ohio. How can they justify that they can also now be able to monitor the waterways, water quality, and aquifers around the huge CAFOs that are being permitted every week? ODA is an agency that promotes agriculture and I feel that ODA will have a conflict of interest in dealing with large CAFOs. Bigger is NOT better as my husband I have experienced. We have a CAFO only 1500 ft. from our residence. Some days, and a lot of them in a years time, that have been unpleasant to enjoy being outdoors. It STINKS because of all the chicken manure being hauled from Ohio Fresh Eggs, Marseilles Site. The storm water pond that collects all the water runoff has not been taken care of properly. They have had egg wash water applied too heavily and had ditches filled with the rotten egg wash water. I wonder what all of these factors is doing to our health. I believe that OEPA should be the governing body over the NPDES and not ODA. I believe that ODA is not taking caution when allowing so many permits to be granted. Neighbors who live around these CAFOs would like to think our water supply isn't being contaminated by these large CAFOs. Amendments or rescissions would be unreasonable.

PLEASE TO NOT REDUCE OF RESCIND ANY OF THE CURRENT REGULATIONS WHICH PROTECT OUR AQUIFERS AND FLOODPLAINS.

Thank you for your consideration.

Respectfully Submitted,

[redacted]

[redacted]

RECEIVED
DEC 15 20
NPDES PROGRAMS B
EPA Region 5

[redacted] 12/8/08

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W Jackson Blvd.
Chicago, Illinois 60604

Dear Mr. Gluckman,

I am writing regarding transferring the NPDES Program from the EPA to the Ohio Department of Agriculture.

At the present time, the ODA promotes, permits, and supposedly enforces regulations on CAFO operations. If the ODA is given overside of the NPDES permitting program, the circle will be complete; the fox will have complete control of the hen house.

The ODA does not enforce their own existing CAFO Rules and freely change the Rules when an existing Rule is an obstacle to a proposed CAFO site. Past actions are an excellent indication of future actions, therefore, once in control, the ODA can and most likely will adjust NPDES rules to fit their needs.

The PEW Commission Report on CAFO's should provide all of the documentation needed to deny this change.

Please do not give the ODA the last piece of the puzzle. Protect our wells, streams, rivers, and lakes by denying this change!

[redacted]

[redacted]
Cygnet, OH 43413

cc: Governor Ted Strickland
Senator Mark Wagner
Senator Sherrod Brown

[redacted]
Morrow, OH 45152-8489

Dec 8, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.

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The environmental and public health impacts of factory farms are tremendous. The EPA must consider the Ohio Department of Agriculture's dismal track record before handing over authority to regulate water pollution. For example, ODA's enforcement is lax and does little to promote compliance with the law. Ohio Fresh Eggs, formerly Buckeye Egg, has amassed 36 notices without a single fine levied against it since 2003.

I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where the majority of these facilities exist.

In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
Mrs. Julie Rozell

[redacted]

[redacted]

Comments Due Dec. 16, 2008(Postmarked)
Additional information at: http://www.epa.gov/region5/water/npdestek/odacafo.htm.

Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Re. Transfer of CAFO NPDES permitting form OEPA to ODA

Dear Mr. Gluckman:

In this time economic crisis, it makes little sense to transfer the NPDES permitting process from OEPA to ODA. OEPA is the agency responsible for NPDES permits in Ohio and transferring the authority to ODA would require increased responsibility and training for ODA employees. Efficiency and effectiveness in government are something USEPA should encourage with the limited federal funding available for states to administer these programs.

In addition OEPA, because it is responsible for the modeling for NPDES discharge permits, is most familiar with the watersheds and most able to provide protective discharge levels and enforcement of the permits.

ODA is by its nature and name is an advocate for agriculture. OEPA is by its nature and name is an advocate for the environment. Therefore to keep a balance in the administration of agricultural programs with check and balances in the administration of environmental programs, NPDES permit authorization for CAFO's should be kept with OEPA.

Sincerely:

[redacted]

Name(Also print address below)

[redacted]

Oregon, OH 43618

[redacted]
Worthington, Ohio 43085
[redacted]

December 9, 2008

RECEIVED
DEC 10 2008
NPDES BRANCH
EPA, Region 5

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

RE: My comments relating to the transference of the NPDES permitting process for CAFOs from Ohio EPA to the Ohio Dept. of Agriculture

Dear Mr. Gluckman;

Below are my observations on the level of attention to detail that I have observed employed by the Ohio EPA, the Ohio Dept. of Natural Resources, and the Ohio Dept. of Agricultural relating to the oversight of the NPDES Program, the management of concentrated animal feeding facilities (CAFFs or CAFOs) and related non-point source surface and ground water pollution issues since 1979.

I chose NOT to attend the public meeting and the public hearing because occasionally when I speak in public about the releases of animal manure contamination into the watersheds of Ohio, Farm Bureau and/or one of the producer organizations files a complaint with Bobby Moser, Vice President Ag. Admin and Dean College of Food, Agricultural, & Environmental Science, The Ohio State University against me. The typical request is that my adjunct assistant professor appointment in the Dept. of Food, Agricultural & Biological Engineering be removed as I surely cannot be speaking for the university. This is clearly an act of intimidation on their part because I am an extremely credible Ohio scientist who has worked long in the fields of surface and ground water protection. However, at the age of 60, I no longer scare easily, if I ever did, so I want to make certain that my information is submitted for the record.

Having unexpectedly put my department through this upheaval of formal complaints twice now, I am quite unwilling to do so again in a situation where I know such a complaint would be forthcoming, hence my decision to write instead of appearing at the hearing. While I will send a copy of this letter to the chairs of my department (Dr. Tom Bean) and the School of Environment and Natural Resources (Dr. Jerry Bigham) and to the acting associate Dean for the College of Engineering (Dr. Ann Christy) for their records, please be assured that the opinions expressed in this letter are entirely my own and DO NOT represent the position of The Ohio State University in this matter. I state this mostly because The Ohio State University does NOT have one opinion and/or speak in one voice on issues relating to animal manure management anyway, so I cannot represent what does not exist.

My experiences with the NPDES permitting process and Ohio EPA's management of the program began in 1979 when I was working for the Mid-Ohio Regional Planning Commission (MORPC), preparing the Central Scioto River Basin 208 Existing Conditions Report for Ohio EPA as part of the US EPA national inventory process. I have had opportunity to interact with the NPDES section of Surface Water at Ohio EPA many times since then, relating to a number of types of NPDES applications ranging the gambit from waste water treatment plant discharge requirements to sediment retention pond releases at solid waste and hazardous waste landfills. While I did not always agree with the Agency that the facilities, as designed, could meet the released water quality levels assigned, I have been generally satisfied with the knowledge and level of education and training exhibited by the staff at Ohio EPA. I have worked with staff from all five district offices and at the main headquarters here in Columbus. Ohio EPA has been operating since 1972, has always managed the NPDES permitting process and has a great deal of experience in this application. They also have the background and support of the Ohio surface water quality inventories and modeling for Ohio watersheds in house and so are able to assign loading rates that are at least based on some level of scientific reality. While we have NOT reached the Clean Water Act goals of swimable and fishable for all streams in Ohio, in general, the water quality of our surface waters in the state are better today than they were in 1979 when I formally began working with surface water issues as administered under the Clean Water Act, in part because of the attention of Ohio EPA Surface Water staff to the ground rules of the NPDES process.

In 1980, I was one of five people state-wide who were hired by soil and water conservation districts to work on non-point source pollution issues, including concentrated animal feeding facilities. The program was organized under the umbrella of the Ohio Department of Natural Resources (ODNR), Division of Soil & Water Conservation (DSW). My direct employer was the Franklin (Columbus) Soil & Water Conservation District. I had worked with them as a graduate student preparing my MS thesis in Geology & Mineralogy from The Ohio State University and at my MORPC appointment. After my years as an employee at Franklin SWCD, I became an "Earth Team" volunteer, and then I was elected to the Board of Supervisors for nine years, after which I was appointed to the Associate Board where I still serve in a technical and educational capacity. I have now been associated with Franklin SWCD for 32 years.

The State of Ohio funding and appointment for the ODNR directed non-point source pollution issues lasted two years during which time I was involved in the design and building of several confined animal feeding operations and manure management facilities. I was trained to undertake these assignment by agricultural engineers from The Ohio State University, the USDA Soil Conservation Service (now NRCS), and ODNR DSW. While many of the facilities being built today are using designs that we implemented for up to a few hundred animals in the 1980s, these designs are now being stretched to accommodate thousands of animal units.

It is common for engineering designs to fail to scale up appropriately and successfully. For the most part, many of the animal manure designs have not been

successful when expanded. Therefore, when they fail, it should not be considered an "accidental" failure, but rather the failure of the design and management of the underdesigned and underfitted facilities to address the sewage needs for small cities of animals. There is absolutely no dispute that these facilities have had spills and other discharges. The records at Ohio EPA Surface Water and ODNR Wildlife fish-kill records more than substantially document the management/design failures. What is at question, is the adequacy of the designs and implementations of the waste water treatment systems that are being installed on Ohio farms which house concentrated animals on very small acreages. No small community would be allowed to manage their sewage in these primitive management systems. US EPA is requiring the removal of combined overflow sewage systems in our larger and older cities in Ohio. Yet, under the program administered by the Ohio Department of Agriculture, whole cities of animals have their raw wastes basically dumped into holes in the ground. That waste is later spread, generally raw and untreated, directly on agricultural fields where not uncommonly, it has been washed off the surface and/or out of agricultural field tiles by subsequent rainfall events and/or snow melts.

While engineers in my department at Ohio State, the Dept. of Food, Agricultural & Biological Engineering have been working diligently to design manure containment and management systems more appropriate to the scale of today's CAFO operations, which should provide a better success rate and/or render the manure at least treated before it is released into the environment, for the most part, our efforts are rebuffed and/or ignored. Often, the argument is that they are too expensive for the producer to install. There has been no noticeable support from the Ohio Department of Agriculture to require a significant upgrading of facilities. For example, Ohio is allowing systems to be installed that are no longer considered adequate at the larger diaries in Michigan. In addition, there has been no noticeable effort on the part of the Ohio Department of Agriculture to require the implementation of the most current surface and subsurface investigation techniques developed here in Ohio for Ohio's soils and geology to minimize contaminant migration from holding facilities and/or application sites to Ohio's surface and ground waters.

How is the producer's argument of costs any different from a community claiming that a reduction of their combined sewer overflow system is too expensive to install? Sewage is sewage, regardless of the source. All raw sewage carries pathogens, and in these cases, pharmaceuticals, hormones and cleaning solutions, into the environment. We learned in the 1800s, how to collect and treat human sewage, thereby reducing the cases of cholera and typhoid in this country. Yet to date, no one in a political position in Ohio seems to think that there is anything wrong with releasing raw animal sewage that could contain cryptosporidium or other animal to human pathogens into the environment. How many people have to die before we pay attention? Didn't we learn enough from Milwaukee and Walkerton?

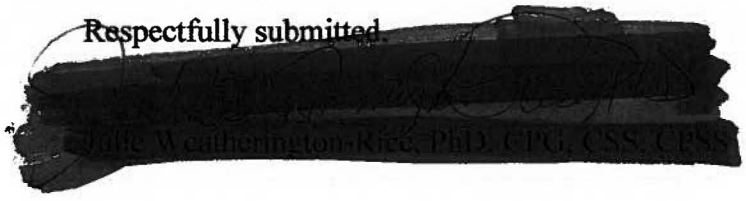
Given the political nature of the CAFO program as administered at the Ohio Department of Agriculture, I have little expectation that they would be able to conduct a credible NPDES program. They have no experience and little will. By leaving the

program at Ohio EPA, we have a check and balance to the oversight of the CAFO facilities here in Ohio. We critically need oversight from as many agencies as possible since we continue to build facilities that can only fail.

For identification purposes only, I hold the position of Senior Scientist at the firm of Bennett & Williams Environmental Consultants Inc. in Columbus, Ohio where I have worked for 22 years. Besides serving as an Associate Board member to the Franklin SWCD, I also serve as a scientific advisor to the Ohio Environmental Council. I hold adjunct teaching positions at both the Department of Food, Agricultural & Biological Engineering at The Ohio State University and at the Pontifical College Josephinum where I am currently teaching Introductory Geology. I serve as one of the co-coordinators for the Ohio Fracture Flow Working Group, a part of the Ohio Academy of Science where I am also a fellow. I hold the Ohio Academy of Science position on the Ohio EPA Lake Erie Phosphorus Task Force where I also represent my OSU appointment. I have an undergraduate degree in Earth Science Education, an MS in Geology and Mineralogy (including hydrogeology) and a PhD in Soil Science, all from The Ohio State University. I am a Certified Professional Geologist (AIPG), a Certified Soil Scientist (AOP) and a Certified Professional Soil Scientist (ARCPAC). I can forward you a recent copy of my resume if more information on my credentials would be useful.

However, please note, all observations and resulting conclusions presented in this public comment are my own. I've worked with the environmental impacts of contaminants on Ohio's water for almost forty years. I have learned who I trust and who I do not. I do not trust the Ohio Department of Agriculture to adequately administer the NPDES permitting process. US EPA will make the decision that politically they must. I recognize that. However, if the NPDES permitting process related to CAFOs is transferred to the Ohio Department of Agriculture, I want the record to show that I question their ability and political will to maintain the quality of efforts exhibited by Ohio EPA. When failures occur, and they will, I don't want to hear how no one warned US EPA that they would happen. I want the public record to document my warnings. In addition, I am attaching a copy of the editorial page of the Columbus Dispatch, Wednesday, Dec. 3, 2008, which also negatively mentions the issue of the transference of the NPDES permitting program to ODA.

Respectfully submitted,



Julie Weatherington-Rice, PhD, CPG, CSS, CPSS

JWR/jr

Copies: Tom Bean
Jerry Bigham
Ann Christy
Mike Angle (ODNR)
Rick Wilson (OEPA – Surface Water)
Jack Shaner (Ohio Environmental Council)

Columbus Dispatch Wednesday, December 3, 2008 Editorials page A-12

Don't muddy the waters

Environmental-protection experts should regulate water pollution from mines

The Ohio Environmental Protection Agency should be in charge of protecting the state's waterways from pollution, whether that pollution comes from a factory pipe, a large-scale farm or the by-products of mining coal. A proposed bill to put state mining officials in charge of granting water-pollution permits for coal mines is a bad idea.

State Sen. Timothy J. Grendell, R-Chesterland, is behind the bill to switch authority from the EPA to mining bureaucrats in the Ohio Department of Natural Resources.



This proposal is similar to a 2001 state law — also a bad idea — that transferred the state EPA's authority to regulate large-scale livestock farms to the Department of Agriculture. That transfer still isn't final, because the U.S. EPA, which has ultimate responsibility for enforcing the 1972 federal Clean Water Act, hasn't approved it.

In a recent public-comment meeting, opponents of the farm-regulation switch pointed out that the Department of Agriculture's mission is to promote farming in Ohio, not to be a watchdog.

The same potential for conflict of interest exists in putting ODNR's Division of Mineral Resources Management in charge of water-pollution permits for mines.

The timing of the bill lends weight to the suspicion that the real goal is to allow an end run by a major mine company that has been denied a permit by the EPA.

Murray Energy Corp., owner of Ohio's largest underground coal mines, wants to bury Casey Run, a 2-mile-long stream in eastern Ohio, under a 1.85-billion-gallon coal-slurry lagoon.

Slurry is water contaminated with coal dust after it has been used to wash coal. In 2005, a broken slurry pipeline from a Murray Energy-owned mine blackened 2,300 feet of Belmont County's Captina Creek, killing thousands of fish in a habitat that supports the endangered hellbender salamander.

Casey Run is a tributary of Captina Creek. EPA scientists, in recommending denial of the permit for the massive lagoon, said it would pose "insurmountable" environmental concerns for the high-quality water resource.

Murray officials say they'll have to close two mines employing about 1,000 people if they can't build the slurry lagoon, but EPA and ODNR officials said the company could find other ways to dispose of its waste.

Another supposed justification for the bill is a claim that the Ohio EPA takes too long to review mining permits. This appears to be a moot point. The bill would give mine regulators a six-month deadline for approving or denying permits. In recent months, the EPA has eliminated its backlog of applications and has pledged to handle new ones within six months.

Murray Energy's checkered track record of multiple environmental and safety violations in Ohio and elsewhere, including the Crandall Canyon mine cave-in that killed six men in Utah in August 2007, argues against easing regulation of the company.

Regardless of one company's history, safeguarding Ohio's waterways should remain with the agency for which environmental protection is the core mission.

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DEC 1 - 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Comments Due Dec. 16, 2008(Postmarked)
Additional information at: http://www.epa.gov/region5/water/npdestek/odacafo.htm.

Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Re. Transfer of CAFO NPDES permitting form OEPA to ODA

Dear Mr. Gluckman:

In this time economic crisis, it makes little sense to transfer the NPDES permitting process from OEPA to ODA. OEPA is the agency responsible for NPDES permits in Ohio and transferring the authority to ODA would require increased responsibility and training for ODA employees. Efficiency and effectiveness in government are something USEPA should encourage with the limited federal funding available for states to administer these programs.

In addition OEPA, because it is responsible for the modeling for NPDES discharge permits, is most familiar with the watersheds and most able to provide protective discharge levels and enforcement of the permits.

ODA is by its nature and name is an advocate for agriculture. OEPA is by its nature and name is an advocate for the environment. Therefore to keep a balance in the administration of agricultural programs with check and balances in the administration of environmental programs, NPDES permit authorization for CAFO's should be kept with OEPA.

Sincerely:

[redacted]

Name(Also print address below)

[redacted]

WALBRIDGE, OHIO 43465

[redacted]

December 13, 2008

Matthew Gluckman
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago IL 60604-3590

Dear Mr. Gluckman:

I am a lifelong resident of northwest Ohio and the following is my comment regarding the action of the Ohio General Assembly transferring environmental rule-making and enforcement regarding farms, especially concentrated agricultural feeding operations or "megafarms" to the Ohio Department of Agriculture.

I am a physician and have great concern about the adverse public health consequences of giving to the very agency which promotes the growth of agricultural businesses the responsibility of preventing them from polluting our environment. Industrial scale feeding operations here have already caused harm to our air quality and are a growing risk to our drinking water from contamination of ground water and streams. In our region of Ohio and adjacent southern Michigan these megafarms have been very resistant to citizens' efforts to prevent their polluting the air, and water supplies and food crops. Although these companies have denied or resisted this, in their actual practices the health of the public appears to be the least of their concerns.

I strongly oppose allowing the Ohio Department of Agriculture to make or enforce policy regarding the environmental/public safety aspects of agriculture, particularly concerning industrial scale animal feeding operations.

Thank you for your consideration.

Respectfully,

[redacted]

cc: The Honorable Ted Strickland, Governor, State of Ohio

Comments Due Dec. 16, 2008(Postmarked)
Additional information at: http://www.epa.gov/region5/water/npdestek/odacafo.htm.

Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Re. Transfer of CAFO NPDES permitting form OEPA to ODA

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Sincerely: [redacted]

Name(Also print address below)

[redacted]

KELLEYS Is Ohio
43438

December 11, 2008

Matthew Gluckman
US EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Gluckman:

I am writing about Ohio's proposal to turn oversight of large animal farms over to the Ohio Department of Agriculture. I am a retired teacher and farmer and have lived in rural northwestern Ohio all my life, and I think this is really a bad idea. I don't understand why anyone would think it was a good one. The state department of agriculture promotes the idea of CAFOs because the people there think that this is the way to maintain low prices for consumers in the grocery. The idea of industrial farming is anathema to anyone who wants quality food, rather than just cheap food, but that idea is at the center of the megafarm method of producing food. The department of agriculture works hand in hand with those agribusinesses, essentially seconding every proposal they make. Asking the department of agriculture to police the megafarms for adherence to clean water, clean air, and fair employment practices is a perfect example of asking the fox to guard the henhouse. It's an old cliche, but it is perfect—or would be except there are very few henhouses left here—just places where multiple chickens are kept indoors in cages so small that the birds can't turn around—and largely because of industrial farming practices a fox in northwestern Ohio is a real rarity these days.

The biggest concern about the CAFOs is the amount of animal waste they produce, of course, and what they do with it. In spite of claims that it is handled in an environmentally sound way, everyone who lives around here knows that isn't true much of the time. It gets spread on frozen fields and washes into the streams, or the lagoons fail and it leaches into the water table. If anyone in the EPA really cares anymore about enforcing the federal Clean Water Act, he or she would not be in favor of turning over regulation and oversight of these mega-manure producers to the department of agriculture. Please don't allow that to happen. Instead, encourage the Ohio EPA to do its job and regulate these megafarms in such a way as to protect our water and our rural way of life.

Sincerely yours,

[redacted]

Comments Due Dec. 16, 2008(Postmarked)
Additional information at: http://www.epa.gov/region5/water/npdestek/odacafo.htm.

Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Re. Transfer of CAFO NPDES permitting form OEPA to ODA

Dear Mr. Gluckman:

In this time economic crisis, it makes little sense to transfer the NPDES permitting process from OEPA to ODA. OEPA is the agency responsible for NPDES permits in Ohio and transferring the authority to ODA would require increased responsibility and training for ODA employees. Efficiency and effectiveness in government are something USEPA should encourage with the limited federal funding available for states to administer these programs.

In addition OEPA, because it is responsible for the modeling for NPDES discharge permits, is most familiar with the watersheds and most able to provide protective discharge levels and enforcement of the permits.

ODA is by its nature and name is an advocate for agriculture. OEPA is by its nature and name is an advocate for the environment. Therefore to keep a balance in the administration of agricultural programs with check and balances in the administration of environmental programs, NPDES permit authorization for CAFO's should be kept with OEPA.

Sincerely:

[redacted]

Name(Also print address below)

[redacted]
Swanton, OH 43558-8864

December 13, 2008

Mr. Matthew Gluckman
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago IL 60604-3590

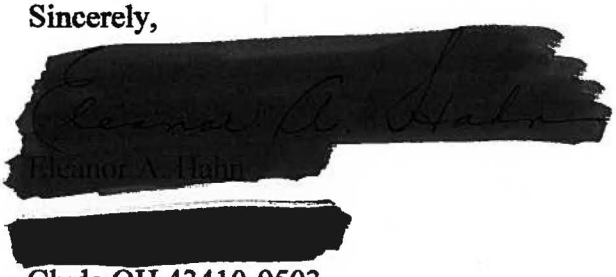
Dear Sir:

I cannot tell you how many people in Sandusky County were against the acceptance of adding CAFOs to our farming community. Our pols have paid their constituents no mind to our voiced and written objections; must be that we are just ordinary people with no ties/money to lobbyists to influence them. Our leaders are "supposed" to be well educated and in tune to the people that elected them, but my local, state and federal representatives lend us their deaf ears.

Just how stupid can our state legislators be to not recognize the fact that it has never proven to be a wonderful piece of legislation to have a permitting body be the same body policing the situation. The EPA was established to govern the protection of our natural resources and NOW we want to diminish that power! I just saw that Ohio was one of the states on the worst political list (following Alabama no less) for the actions of our publicly elected officials. How appalling! Ohio used to be a wonderful state, a leader, and now we've become the laughing stock of the Midwest. We've put up with all the jokes about our great cities and now we want to invite the nation to point at us and joke at our inadequacies to protect and keep the air and water clean for all the people. The Netherlands does not want these large farms, so why are we letting them destroy our countryside. The particular individuals installing the CAFOs in our area and Michigan have proven to be notoriously bent on getting around any legal governing. AND.... now we want to give the stewardship of the farming areas to the Ohio Department of Agriculture to protect us from the actions of the CAFOs. These two organizations are strolling around Columbus hand-in-hand which simply means they are extolling how easy it is to ravish the watersheds, Lake Erie and the will of its people. Ask our family farmers what they think of CAFOs. Better do it soon as they will be no family farms. The CAFOs drain the farms subsidies so we are in essence choosing to support foreign interests over and above our rural communities. I do not want them to have my tax dollars, and we, right now, do not have dollars to dole out!

I implore the U.S. EPA not to sign off as you will be signing off the lives of the people of the State of Ohio and maybe, just maybe, we can once again become that GREAT STATE OF OHIO! I thank you for your consideration, and, hopefully, other Ohioans will be heard and there will be no regrets in the future of Ohio, nor in the future of FAMILY FARMS.

Sincerely,



Eleanor A. Hahn

[redacted]

Clyde OH 43410-9503

RECEIVED
DEC 1 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

To:
Matt Gluckman,
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

From:
[redacted]
Bloomdale, OH 44817-9739
[redacted]

Re: Comments Ohio transfer of NPDES permits from OEPA to Ohio Department of Agriculture.

We have been farmers for over 50 years. During that time we have been and continue to be careful stewards of the land that we owned and rented from other landowners. We built buffer strips along ditches and grassed waterways even before USDA began to encourage them by giving monetary aid to landowners. We also have participated in Conservation Reserve Programs to protect the Portage River that runs through our property. We have tiled our Great Black Swamp cropland for drainage and know how quickly the tile drains after rain events. We are NOT opposed to agriculture or animal husbandry.. We say this to give you background on our knowledge about agriculture. We are, however, requesting that the Ohio Department of Agriculture be denied the authority to administer the Clean Water Act National Pollutant Discharge System (NPDES) Program for concentrated animal feeding operations (CAFOs).

In 2003 the Ohio legislature passed HB 152 which removed all local regulation over factory farms, leaving the citizens of Ohio dependent upon state and federal regulations to protect our health and welfare. To illustrate this, the Perry Township, Wood County, Ohio zoning board when revising and updating the zoning regulations voted to regulate CAFOs by zoning them agribusiness and by cutting the numbers of animals in half that were needed to require a township permit. Based on recommendation from the county prosecutor's office, the township trustees voted down the zoning board recommendation for fear of lawsuit. They were advised that only the State of Ohio can regulate CAFOs because they are considered agriculture. As you can see, there is no way a local entity has any control over the possibilities for environmental degradation of our water or air. Therefore, if EPA gives the ODA control over these NPDES permits, the citizens lose the possibility for checks and balances in this process.

In addition, a major portion of the responsibility of the Ohio Department of Agriculture is promoting agricultural products. This, along with the responsibility to regulate the CAFOs seems to be a conflict of interest. Instead, we think the OEPA's Division of Surface Water should retain the responsibility for the NPDES permitting because their responsibility is to protect, enhance and restore all waters of the state. Two heads are better than one big one it seems to us. With only four inspectors for all of the CAFOs in Ohio, how would ODA be able to handle NPDES regulation, too?

The Ohio Department of Agriculture has been given the oversight and permitting process for CAFOs. Originally those rules were based on the review and recommendations of a diverse group from the ODNR, USGS, NRCS, and Ohio EPA. We have studied those original rules and concluded that if enforced properly, could help protect our water and health. However, since 2002 when they were enacted, changes have been made that make no sense to us. In 2002 OAC 901:10-2-02 (e) Manure storage pond or manure treatment lagoon regulations provided stringent aquifer protections as follows:: "Twenty-five vertical feet of low permeability material, including the liner thickness, separation from an aquifer yielding one hundred gallons or more per minute sustained over twenty-four hour period." In 2005, that changed to 15 vertical feet and currently the ODA is considering lowering that distance to 5 vertical feet. What science has changed that makes this change sensible? It is our opinion that ODA is changing these requirements to meet the needs of the CAFOs submitting permits because they can't meet the more stringent numbers. This flies in the face of protecting our water supply in

southern Wood County where the latest permit alteration of plans only has 9.7 feet from the bottom of a lagoon expected to hold over 18,000,000 gallons of manure to the aquifer. Other lagoons on the property bring the total manure storage to over 25 million gallons. Multiply that amount by 4 to get the total storage for the four permitted Dairy CAFOs in southern Wood County. Are we being protected?

The rules also are concerned with a CAFO being in a Karst area and being near a mine, but no regulation is included for the many uncapped old oil wells that were drilled and left behind in the early 1900's. Southern Wood County was a major area for this. Maps show thousands of these wells in fields across our area (See ODNR records). This area is permitted for over 8000 dairy cows in four places within an 8 mile radius with one more 2000 head CAFO proposed. Citizens have repeatedly brought this to the attention of legislators and ODA officials to no avail. Just one of these old wells under a manure lagoon would be a direct route for manure and its pathogens to the aquifer. ODA appears not to be concerned. Do you really think they are concerned with the protection of our water in Wood County?

The manure management plans of the CAFOs are also a concern for us. Having farmed and used soil samples on a yearly basis to determine the amount of fertilizer to apply on the soil for crop nutrient, we were careful to not over apply as this was neither good stewardship nor cost effective. It appears that the CAFO manure nutrients allowed to be applied to the farm fields of southern Wood County are always well above the averages recommended for most farm fields. Unrealistic crop yields are used to calculate these application rates and no soil test data is apparently validated by ODA in the permitting process as the data does not need to be a part of the permit application. In addition, while nutrient testing of the manure is required, no pathogen testing is required. It seems to us that pathogen pollution is as important as the possible pollution from the nitrogen and phosphorus. Once the manure leaves the CAFO site, there is little to no oversight given to the disposal of the untreated manure. It seems "out of sight, out of mind" is the thought process here. With the subsurface drainage tile systems of Wood County, and the water content of the manure being so high, the manure and its contaminants could well be in our ditches and waterways and Lake Erie in a "New York minute". Our experience is that the water from rain begins to drain into the ditches within an hour or so. Thus, the liquid manure and its contents may do the same. We have attached two articles concerning migration of manure into drainage tile in Ohio. If ODA has not enough concern to make this a part of the permitting process, how can EPA think they will protect our waterways when charged with the NPDES oversight?

PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA: A Report of the Pew Commission on Industrial Farm Animal Production is a project of the Pew Charitable Trusts and Johns Hopkins Bloomberg School of Public Health. One of their recommendations is that CAFOs be phased out of existence because of the problems they found in relation to public health and the environment.

Therefore, because of the conflict of interest of the ODA between promotion of agriculture and regulation of CAFOs; the changing of regulations to meet the needs of the permittee; the lack of regulation for old oil wells; and inattention to crop nutrients and pathogen disposal, we strongly suggest keeping the NPDES oversight with the OEPA rather than giving the responsibility to the Ohio Department of Agriculture. It seems to us that this change is a dangerous precedent to set.

Attachments: "Smoking out Worms"
"Frank Gibbs: Liquid manure is too wet"

Smoking Out Worms

Nightcrawlers may be at least partly responsible for the sometimes rapid movement of liquid animal manure and chemicals such as fertilizer nutrients and pesticides through soil to underground drainage pipes.

Farmers with large livestock feedlots need to recycle voluminous quantities of manure by applying it to their fields as fertilizer. Often they store it in special ponds as a liquid slurry. To reduce odor and nutrient losses, farmers generally use special equipment to inject the liquid manure under the soil surface, rather than just spray it on top of fields.

But in Ohio at least, USDA's Natural Resources Conservation Service (NRCS) and the Ohio Department of Natural Resources receive complaints each year about animal wastes turning up in water pouring out of drainage pipes—often called "tiles," from the days when they were made of ceramic—at the edges of fields and in nearby streams, shortly after manure injection into the fields.

Soil scientist Martin J. Shipitalo, at the ARS North Appalachian Experimental Watershed Laboratory in Coshocton, Ohio, and Frank Gibbs, with NRCS in Findlay, Ohio, studied pipe-drained no-till fields with liquid manure applications. "We wanted to see what role wormholes might play in funneling manure to below-ground pipes quickly, before it can be held by the soil and used by plants," Shipitalo says.

No-till fields in poorly drained areas of the United States, such as northwestern Ohio—and fertilized with liquid manure—are especially conducive to worms. Nightcrawlers *(Lumbricus terrestris)* especially like the combination of no-till, drainage pipes, and manure. No-till involves no plowing before planting, so it leaves leftover parts of previous crops on the surface. This provides food for the worms, as does the manure.

The crop residue also offers shelter for worms and helps increase their populations. It also keeps wormholes intact, since there's no plowing to break them up. And the drainage pipes aerate the soil nicely—especially the soil used to cover the pipes. The plastic pipes have drainage holes, the same as the pipe used by homeowners to funnel rainwater away from their homes.

Nightcrawlers Go Deeper

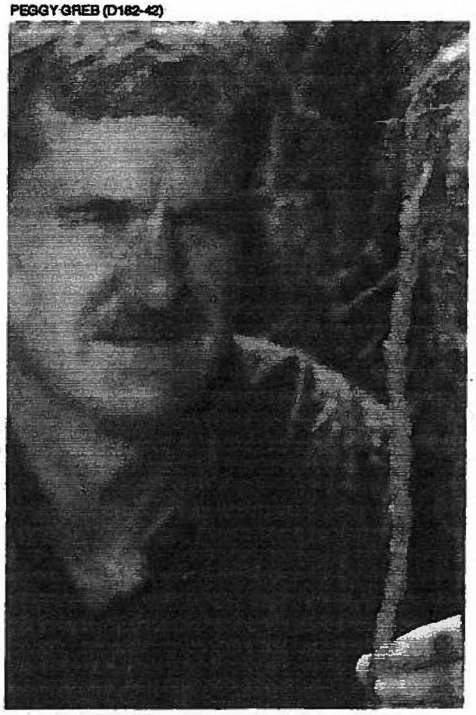
These types of fields tend to have higher than usual numbers of nightcrawlers and other worms, which congregate close to pipes, Shipitalo says. "Unfortunately for drainage problems, nightcrawlers dig deeper and wider holes, or burrows, than many other earthworms do. These holes can become a shortcut for conducting pesticides or manure or surplus fertilizers to groundwater or streams. Normally, soil acts as a filter for potential pollutants if they stay in the soil long enough for microbes to break them down or—in the case of fertilizers—for plants to use them," Shipitalo says.

JENNIFER SMELTZER (D209-1)



To see whether wormholes funnel manure to drain pipes, ARS scientists trace wormhole connections to pipes by blowing smoke through pipes and watching it pour out of surface wormholes.

PEGGY GREB (D182-42)



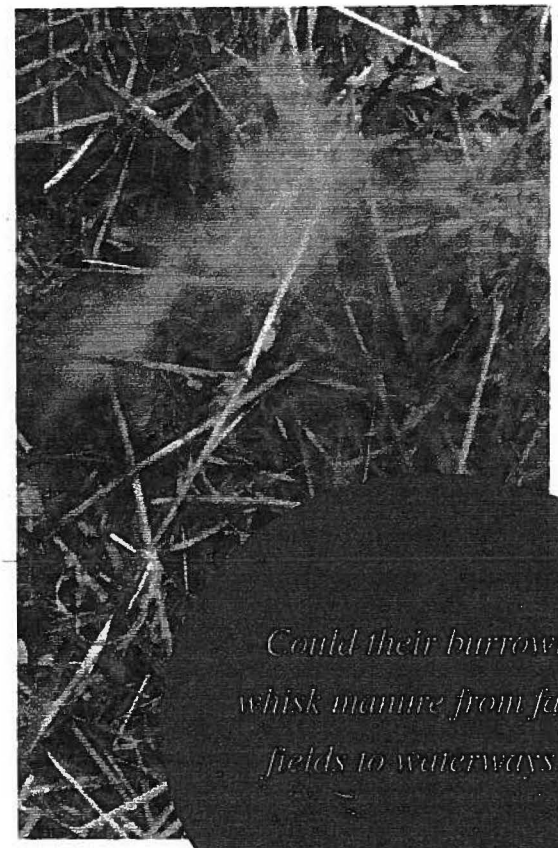
After pouring plastic resin into the hole of an earthworm and excavating the soil around the mold that formed, soil scientist Martin Shipitalo observes the plastic replica of the worm's burrow.

Down the Drain

Underground draining of fields is a common practice in parts of the country where natural drainage is poor. It's increasing in popularity, with pipes now being buried shallower and closer together.

Shipitalo and Gibbs traced wormhole connections to drainage pipes by blowing smoke through the pipes and watching for it to pour out of nearby surface wormhole entrances. "In a study of 388 nightcrawler burrows, we found that the burrows tended to drain into the pipes when they were within 2 feet of a tile line," Shipitalo says.

"To test how fast manure-laden water could move through the burrows to the



Could their burrowing whisk manure from farm fields to waterways?

tiles, we used a brilliant blue dye and a fluorescent dye. We poured the blue water into the burrows that had emitted smoke and the fluorescent dye in the other burrows," Shipitalo says.

On average, the researchers found that water moved through the burrows that were within 2 feet of the pipes—and had emitted smoke—twice as fast as through the other worm burrows. Having the pipes as drainage outlets helped drain the burrows quickly, showing they could move manure quickly as well. Injecting liquid manure under pressure may further increase its flow rate into drainpipes through worm holes.

Often such rapid leaching is via cracks in the soil or bedrock, through which polluted water flows, but there were no visible cracks in the fields studied. Another possible cause of waste drainage is overapplying liquid manure. But this was not the case in the Ohio experiments, in which the scientists were careful to apply only as much liquid manure as the soil could hold without becoming saturated.

Earthworm burrows can have a greater effect than soil cracks on chemical and manure movement because the burrows tend to stay open year round, while soil cracks tend to close up when the soil gets wet.

The scientists also filled the wormholes with a plastic resin to create molds of them. They studied the molds to see whether wormhole geometry had anything to do with speeding the flow of water to the pipes. It didn't. But they were able to predict waterflow speed based on the holes' proximity to the pipes.

Shut It Off!

One possible solution would be to avoid injecting liquid manure within 2 feet of a drainage pipe, if pipe locations are known. Another possibility would be to break up wormholes by tilling the surface above each pipe before applying manure.

"The most practical and best suggestion, though," Shipitalo says, "would be to install shutoff valves so the drains can be shut during manure application and for a short time afterwards. Ohio farmers are currently doing this, with cost-sharing from the Ohio Department of Natural Resources.

"Catch basins could be another answer," he continues. "These pits would collect water draining from the pipes at the field edges and capture it for reuse. These techniques would help whether the manure was leaking through wormholes, soil cracks, or other openings."—By **Don Comis**, ARS.

PEGGY GREB (D161-24)



Soil scientist Martin Shipitalo (right), assisted by NRCS resource soil scientist Frank Gibbs, uses a funnel inserted into the opening of an earthworm burrow and a Mariotte device to measure water infiltration rate in an individual earthworm burrow.

This research is part of Water Quality and Management, an ARS National Program (#201) described on the World Wide Web at www.nps.ars.usda.gov.

Martin J. Shipitalo is with the USDA-ARS North Appalachian Experimental Watershed Laboratory, P.O. Box 488, Coshocton, OH 43812-0488; phone (740) 545-6349, ext. 212, fax (740) 545-5125, e-mail martin@coshocton.ars.usda.gov.

Frank Gibbs is with the USDA-Natural Resources Conservation Service, 7868 County Road 140, Suite F, Findlay, OH 45840; phone (419) 422-5438, ext. 139, fax (419) 425-4147, e-mail frank.gibbs@oh.usda.gov. ✱

Frank Gibbs: Liquid manure is too wet

[Print]

By DAVID GREEN

Don't blame tile lines for discharges of liquid manure into drains, says soil scientist and farmer Frank Gibbs, and don't blame the rich soil with its worm holes leading to the tile.

Put the blame on the watered down manure. That's where the problem lies.



Gibbs, from the National Resources Conservation Service office in Findlay, Ohio, spoke to farmers last Wednesday at the annual Center for Excellence Field Day at Bakerlads Farm north of Clayton.

Gibbs told how he came to this conclusion several years ago, after he got a call from a producer in Ohio who had a problem. He was applying manure from his swine operation at only about half the recommended rate, but it was still finding its way into tile and drains.

A DNR officer told the farmer that he wouldn't cite him for discharges this time, but it had to be stopped.

"I went down there thinking I'd see big cracks in the ground," Gibbs said, "but the soil moisture was ideal. Impeccable shape. I saw lots and lots of night crawler holes and I thought, 'My God, could this be what's going on here?'"

Gibbs got ahold of some dye—similar to the kind used to check for leaks in a toilet tank—dumped it into the manure lagoon and agitated the mixture. After he dug down to a six-inch tile, manure was injected into the soil with a drag line. The tile was dry when the experiment began.

"We wondered how long it might take to percolate down to the tile lines. Twenty minutes? Should we go to lunch?"

There was no time for lunch, Gibbs said. The dye was there within seconds, and every time a pass was made over a lateral tile line, another pulse of colored liquid came through.

Gibbs wondered if the pressure from the applicator pump was the cause, so they next tried a gravity-feed system. Same problem. One more idea came to mind. This time they avoided the watery manure from the lagoon and loaded some of the thicker slurry from the pit under the hog barn.

"It didn't go anywhere," Gibbs said. "It behaved like manure. We dug up some areas with a back hoe and it was laying right where it was shot."

He knew then not to fault the tile nor the healthy soil.

"The problem is simple. We're watering manure down to where it behaves like water. Let me repeat that. We're watering manure down to where it behaves like water. You don't need to be a rocket scientist to understand that."

Gibbs has heard the suggestion that no-till soil is at fault. Get rid of the worm holes and there's no conduit for the manure.

Not true.

"Preferential flow will occur in conventional tillage through cracks and around the soil structure," he said. "We need to stop confusing the issue with tillage. The issue is that we're adding too much water."

This is a situation that needs to be addressed, Gibbs said.

"We need to keep on top of this. We really do. I think some basic research could solve the problem."

Maybe the percentage of solids needs to be up to four or five percent, he said. Or, from what he learned in Europe, even higher.

The Dutch method

With so many Dutch farmers investing in this area, Gibbs decided to take a trip to the Netherlands to see how they farmed in that country. He was in for a surprise.

He didn't see any of the watered down manure that the large dairies are using here. The solid content was at about eight percent.

He noticed a plastic membrane spread over a storage lagoon with rain water waiting to be pumped from an overnight storm. Gibbs figured it was to keep the water out of the lagoon, but he was wrong. It was to control odor.

Gibbs watched as a farmer loaded his applicator with manure and inserted a paper form into equipment that recorded his position by GPS. Once in the field, additional data was stamped onto the form. A sample bag of manure was collected to send for analysis by a government agency.

If manure exceeds the allowable nitrate rates, Gibbs was told, the farmer receives a bill from the government.

The Dutch farmer joked about having one government official for every farmer, but it isn't the heavy regulation that's hurting agriculture in Holland, he said, it's simply a lack of space.

Gibbs returned home knowing that the practice of watering down manure didn't come from Europe.

"That's our technology," he said. "We're going to all the work of writing up Comprehensive Nutrient Management Plans and then where does it go? Into the tile. We just need a little bit of research to figure this thing out so we don't have to scrap the whole thing."

Gibbs said he's made attempts to urge agricultural agencies to study the issue, but it's never gone far.

"Everybody's going off in other directions," he said. "We need to work together. We don't have to destroy our soils. We don't need to rip our tile out.

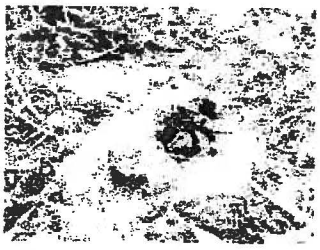
"What we should do is look at solids. Eight percent isn't that much. I don't know why we can't tweak that."

- Aug. 30, 2006

Stop it in the root zone

A visit to Wisconsin gave soil scientist Frank Gibbs additional hope for the future.

"They have some really good things going on there," he said.



For example, the custom manure applicators have formed an association. They have standards and training, for those who choose to join the group. They work closely with the EPA. They practice cleanup of spills for when something goes wrong.

Gibbs was impressed with the beautiful crops growing on rolling hills. The key was the soil.

"They've got hay and they've got alfalfa and they put manure on it," he said.

In this area, it's almost always corn and soybeans, year after year. It's the root system of a plant such as alfalfa that breaks up the soil to prevent compaction.

Custom applicators have to work with what they're given, Gibbs said, and sometimes control structures are in order. Gibbs has built shut-off valves at the property line to stop the flow of liquid manure. A catch basin is added to collect the flow—a septic tank will do the job—and the manure can be pumped out and applied in a safe area between tile lines.

It's just a Band-Aid approach, Gibbs said, not a solution, but it's better than using rubber tile plugs in which case a farmer has no idea if the manure has left the tile. Besides, he asks, do we know where all the tile is? And if we miss one, who's fault is it?

That's when the arguing and finger-pointing begins. When manure flows into a drain, who is at fault—the farmer who owns the animals, the owner of the land where it's being applied, or the person in charge of the application?

"If we do it the wrong way," Gibbs said, "it's going to be a mess."

Any time manure enters a tile line, it's wasted. At that point, Gibbs said, the nutrient is too deep to be

absorbed by plants.

"We have to stop it in the root zone," Gibbs said.

Smoke test highlights no-till

As a long-time proponent of no-till farming, Frank Gibbs often tries to convince other farmers to give it a try.

One of his early attempts was to dig out a cubic foot of his no-till soil and place it next to a sample from his neighbor's sugar beet field that suffered from a lot of compaction due to trucks. Then he would pour a bottle of water onto each and watch it soak into his soil and run off his neighbor's.



"It was kind of hokey," Gibbs said. "Farmers would say, 'You're from the government. You probably poked holes in it.' I needed a different way to show the value of no-till."

He remembered a blower contraption a friend created for planting beans—it never worked right—and as a fan of Red Green, Gibbs got out the duct tape to rig up a device for blowing smoke into a tile line.

"I could make smoke come out of millions of worm holes," he thought.

The smoke test shows good soil conditions and at the same time, it shows the avenue that liquid manure takes to reach tile lines. It takes the easiest route, Gibbs said, the path of least resistance. Through worm holes and cracks in the glacial till, manure can quickly makes its way to tile.

To set up the Center of Excellence Field Day at Bakerlads Farm, Gibbs dug a hole to reach a tile line. He found two hand-laid tile lines, then a plastic line, then another older line. Tile is everywhere.

He set up his blower, dropped in a smoke bomb and watched for smoke to start rising out of a soybean field. Smoke started to run toward the bean field, but the line made a turn and headed back into the cornfield. That's the trouble with tile lines, he said, you never know how many there are or where they end up.

Watching smoke rise out of the soil is a great demonstration, Gibbs said, and a real attention-getter.

"It's hard for folks to deny this stuff happens when there's smoke coming up under their feet."

Comments Due Dec. 16, 2008(Postmarked)
Additional information at: http://www.epa.gov/region5/water/npdestek/odacafo.htm.

Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

RECEIVED
DEC 1 - 2008
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EPA, Region 5

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ODA is by its nature and name is an advocate for agriculture. OEPA is by its nature and name is an advocate for the environment. Therefore to keep a balance in the administration of agricultural programs with check and balances in the administration of environmental programs, NPDES permit authorization for CAFO's should be kept with OEPA.

Sincerely,

[redacted]

Name(Also print address below)

[redacted]

Harbor View Ohio 43434

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EPA, Region 5

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Sincerely:

[redacted]

Name(Also print address below)

[redacted]

Oregon, Ohio 43616-3589

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DEC 1 · 2008
NPDES PROGRAMS BRANCH
EPA, Region 5

Matthew Gluckman

U.S. EPA Region 5

77 West Jackson Blvd

Chicago, Illinois 60604-3590

December 15, 2008

Dear Sir:

I am writing in OPPOSITION to the proposed transfer of regulatory power of megafarms from the EPA to the Ohio Department of Agriculture.

I am a resident of Bowling Green in Wood County Ohio. I have witnessed the growth of these mega dairy farms in our rural county and the environmental damage that has been done and will be done by them. Unfortunately, our state Department of Agriculture has done little to regulate/monitor them often changing regulations to meet the farms' changing needs.

I believe that a second public hearing and an extension of the public comment period is warranted because of the grave, often irreversible damage that can be done by the proliferation of these farms. Transferring regulatory power to Ohio's Department of Agriculture is a tragic mistake.

Sincerely,

[redacted]
Joanne A Navin
507 Harvest Lane
Bowling Green, Ohio 43402
jnavin@bgsu.edu

Comments Due Dec. 16, 2008(Postmarked)
Additional information at: http://www.epa.gov/region5/water/npdestek/odacafo.htm.

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NPDES PROGRAMS BRANCH
EPA, Region 5

Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
Chicago, Illinois 60604

Re. Transfer of CAFO NPDES permitting form OEPA to ODA

Dear Mr. Gluckman:

In this time economic crisis, it makes little sense to transfer the NPDES permitting process from OEPA to ODA. OEPA is the agency responsible for NPDES permits in Ohio and transferring the authority to ODA would require increased responsibility and training for ODA employees. Efficiency and effectiveness in government are something USEPA should encourage with the limited federal funding available for states to administer these programs.

In addition OEPA, because it is responsible for the modeling for NPDES discharge permits, is most familiar with the watersheds and most able to provide protective discharge levels and enforcement of the permits.

ODA is by its nature and name is an advocate for agriculture. OEPA is by its nature and name is an advocate for the environment. Therefore to keep a balance in the administration of agricultural programs with check and balances in the administration of environmental programs, NPDES permit authorization for CAFO's should be kept with OEPA.

Sincerely:

[redacted]

Name(Also print address below)

[redacted]

[redacted]

Swanton, OH

43558

[redacted]
TOLEDO OH 43615
12-12-08

GLICKMAN,
U.S. EPA

PLEASE DO NOT
ALLOW THE OHIO DEPARTMENT
OF AGRICULTURE TO ENFORCE CAFO
ENVIRONMENTAL REGULATIONS,
SINCE THE ODOA PROMOTES
CAFOs, AND THIS IS CLEARLY A
CONFLICT OF INTERESTS.

I LOOK FORWARD TO A
FUTURE IN WHICH CAFOs WILL BE
OUTLAWED AND BANNED, AND THEIR
DANGERS TO LAND, AIR, WATERWAYS,
ANIMALS, PEOPLE, MEDICINE [ANTI-

this leaflet was given to me last year - sums up hazards of CAFOs.

~~ANIMAL FACTORIES~~ THREATEN BIO-SECURITY *(cont'd)*

~~CAFOs~~ Standard Antibiotic Use Causes Mutant Antibiotic-Resistant Microbial Strains, So Doctors Can No Longer Rely on Antibiotic Cures

('Public health is united in the conclusion... no controversy about where antibiotic resistance in food-borne pathogens comes from... [it] is due to the heavy use of antibiotics in livestock.'): [Dr. Frederick Angulo, epidemiologist for Center for Disease Control, quoted p.142 Robbins*]
(1997, World Health Org. called for ban on routine feeding of antibiotics to livestock):[p.139]

'Animal Factories' Also Linked to Worst Non-Microbial Diseases

(Regular consumers of animal products multiply their risk of cancer, heart disease, kidney and colon disease, diabetes, osteoporosis, arthritis, obesity, depression, autism, Alzheimer's, MS): [40 years' research compiled by Cornell professor T. Colin Campbell in *The China Study*]
[See also prevention/cure diet/lifestyle programs of Dr. John McDougall and Dr. Dean Ornish]

House Pets &Livestock Sickened by Feeds Containing ~~CAFO~~ 'Byproducts'

('According to the USDA, more than ten million diseased, dead, dying, and debilitated cattle, calves, pigs, sheep, and lambs were rendered [ground &dried at low temp's] in 1995. The 282 rendering plants... process 40 billion pounds... condemned parts of slaughtered livestock and poultry, liquids and scrapings from slaughterhouse floors, roadkill, euthanized cats and dogs. ...approximately 36%, about 7 million tons, is put into pet food [and 61% fed to livestock]. Animal tankage is potentially hazardous... inedible and condemned tissues and organs are contaminated with antibiotics, anabolic steroids, heavy metals, dioxins, long-acting pesticides... Farmers in the United Kingdom can no longer legally feed tankage to animals... I advise pet owners to...avoid...those labels that say 'meat byproducts' and 'tallow.' An excellent source for all pet owners and veterinarians is Ann N. Martin's book, *Food Pets Die For: Shocking Facts About Pet Food.*'): [p.43-45 *Eating with Conscience* by Dr. Michael W. Fox]

Cows Victimized by Diarrhea, Tail Mutilation, Infections, Lameness

('Cows are ruminants, having evolved to [feed] on grass and forage, not on high-energy grain fed to increase milk production. As a result of this forced diet, their digestive tracts rebel continuously giving them a perpetual case of diarrhea that coats their tails in multiple layers of manure. The response of many farmers is to simply cut off the tails, which is the cow's only natural protection against flies. These cruel and unnecessary cow mutilations occur on ... mega-farms that have hundreds of milkers. ... Mastitis [painful udder infection] in dairy cows costs producers over $2 billion per year. And milk condemned because of antibiotic residues in factory cows treated for mastitis, costs the dairy industry $50 million per year. ... The modern factory farm pushes cows into high-gear milk production that literally burns them out by two to three years of age [although a cow's normal productive life is 12 15 years]. 30 40% of hamburgers eaten in U.S. come from the slaughter of these burned-out, used-up dairy cows. Crippling lameness in dairy cows is another serious problem in factory farming ...due to intentional overfeeding...rapid growth and bodies too heavy for the...bones to support. [p.28, 32-33, *Eating with Conscience* by Dr. Michael Fox]

Wildlife Killed Off in Streams and Lake Erie's Ominous 'Dead Zone'

('40% of Nitrogen and 35% of Phoshates contaminating the nation's rivers, lakes and streams [causing 'algae blooms,' deoxygenation of water, death of fish & wildlife in 'dead zones'] come from livestock wastes and feed fertilizers': [p.37 Eating with Conscience/Fox*]
Nitrogen & Sulfur gases from manure & chem. fertilizers cause 'acid rain' hurting all wildlife.)

Local/Global Warming Worsened by Methane Gas from Cattle, Cows

('Global-warming gases from Livestock account for more global warming than emissions from all vehicles out together'): [U.N./FAO report cited above]
(Methane, 23 times more global warming than CO2, issues *primarily* from the digestive process & belching of cattle (incapable of being captured for fuel use), *secondarily* from manure.)
('Biodigesters' for capturing methane fuel from manure and using it to generate electricity, would be prohibitively expensive for all the smaller CAFOs.'): [Kelly Harvey, Ohio Dept. Agriculture]

Popular Demand for Safer, Healthier, Free-Range, Pasture-Fed Livestock → Increased by Fast-Food-Chain Commitments to Purchase Uncaged Animals

[See article at right, "Burger King Shifts Policy on Animals," *New York Times* 3-28-07, C1,2.]

*Sources Consulted: John Robbins' *Food Revolution*, Dr. Michael Fox's *Eating with Conscience*, Mason & Singer's *Animal Factories*, Nicols Fox's *Spoiled*, Eric Schlossen's *Fast-Food Nation*, Jim Bender's *Pesticide-Free Farming*, Jane Goodall's *Harvest for Hope*, Andrew Kimbrell's *Fatal Harvest: Tragedy of Industrial Agriculture;* Sandra Grabenstein's *Living Downstream;* Peter Annin's*Great Lakes Water Wars* Joel Salatin bks, film *Supersize Me*, vegsource.com, factoryfarm.org, notmilk.org, carthwatchohio.org

Continued From First Business Page

...ical ...ad- ...orld's ...chain, ...begin ...ingly ...on." ...plies in ...mills, ...ment of ...or to ...from ...move ...ering ...said ...a sa ...Burger ...Burger King's announcement is the latest success for animal welfare advocates, who were once dismissed as fringe groups, but are increasingly gaining mainstream victories.

Last week, the celebrity chef Wolfgang Puck announced that the meat and eggs he used would come only from animals raised under strict animal welfare codes. And in January, the world's largest pork processor, Smithfield Foods, said it would phase out confinement of pigs in metal crates over the next decade.

Some city and state governments have banned restaurants from serving foie gras and prohibited farmers from confining veal calves, and pigs in crates.

Temple Grandin, an animal science professor at Colorado State University, said Smithfield's decision to abandon crates for pregnant sows had rolled the pork industry. That decision was brought about in part by questions from big customers like McDonald's, the world's largest hamburger chain, about its confinement practices.

"When the big boys move, it makes the entire industry move," said Ms. Grandin, who serves on the animal welfare task forces for several food companies, including McDonald's and Burger King. Burger King's decision is somewhat at odds with the rebellious, politically incorrect image it has cultivated in recent years

DISEASE-RIDDEN ~~'ANIMAL FACTORIES'~~ THREATEN AMERICA'S BIO-SECURITY!

* **Salad Greens Infected by Livestock's *E. coli*, ninth time in ten years**
  ('Perhaps you, too, were confused by the [Sept. 2006] spinach debacle. We are unfortunately accustomed to hearing about E. coli in ground beef and other meat products. But how did E. coli get into bagged spinach? ...how does produce from four fields [in CA] come to infect more than 200 people, killing three, in 26 states. How does [irrigation] water come to be contaminated? ...huge industrial-scale cattle operations create huge amounts of manure. . when it rains, the piles leach into waterways... E. coli accompanies it into the water. ...the system that moves produce efficiently also moves pathogens, pesticide residues, and other contaminants.'): [from "Killer Spinach" by Caitlin O'Brien, p.25-27, *Earth Island Journal*, Winter 2007]
  ('No one disputes that Salmonella, Campylobacter, E. coli and other bacteria that sicken, cripple, and kill U.S. consumers, stem from factory farms.'): [p.118 Robbins*]
* **Cruelty to Animals = Cruelty to Workers, Communities, Consumers**
  (Livestock, unlike pets, have no legal protections. When freedom-loving animals which traditionally foraged on grassy pastures, are incarcerated in cages or pens... too cramped to move, inhaling ammonia fumes from the waste of thousands of other crammed-in livestock, suffering painful diseases, ingesting feeds containing sedatives, antibiotics, animal waste, pesticide residues... their intestines become breeding-grounds for dangerous mutant microbes that transfer to humans via airborne dust, *contaminated water and food products*, etc.)
* **Property Values Plummeting Wherever ~~*CAFOs*~~ Are Built**
  ('We can't sell our house-- no one will buy anywhere near a CAFO. Our rural communities are being ruined.'): [Wood Co. resident] *CAFO = Confined Animal Feeding Operation*
* **Air Pollution Aggravated by 'Worse-than-Manure' Fumes**
  (Liquefied manure, awaiting application to farm fields, is stored in enormous open 'lagoons' with gagging stench that reeks for miles & attracts disease-carrying flies.)
  (Manure spread on fields under contract, multiplies stench, flies & dust plaguing residents.)
  ('Toxic gases from manure cause asthma, bronchitis, eye/nose/throat irritation, nausea, diarrhea, headaches, mental impairment'): [Univ. of Iowa swine-farm studies]
* **Ohio Water Sources Contaminated by Manure Runoff from ~~*CAFOs*~~**
  ('330,000 dead fish linked to livestock, according to Ohio wildlife officials'): [p. 4, *Giving Away the Farm* -- Environmental Integrity Project, Wash.D.C., Oct. 2006]
  (Researchers fear Lake Erie and Bowling Green water-intakes may become contaminated.)
* **Water Supplies Depleted by Confined Livestock Operations**
  ('990 gallons of water to produce one gallon of milk'): [United Nations FAO report, *Livestock's Long Shadow*, published by U.N. Food & Agriculture Org. in 2006, 400pp.]
  (With water tables dropping worldwide, we cannot squander clean water on livestock): [Annin*]
* **Sickness & Death, Financial Strain on Victims' Families & Hospitals**
  (U.S. Center for Disease Control estimates food-borne microbial disease causes annually 5,000 deaths, 325,000 hospitalized, 76 million sickened, and up to $83 billion in pain and suffering, reduced productivity, and medical expenses.): ['Bugs Are Breaking Out All Over' p.4 *Nutrition Action* Dec. 2006,pub.by Center for Science in Public Interest, Washington DC]
* **Mega-Dairies and other 'Animal Factories' Violate International Treaties Banning 'Germ Warfare'/'Biological Warfare' -- also Violate Citizens' Constitutional Rights to Safety of Person and Property, Tranquility, Protection from Cruel &Unusual Punishment**
  [American Experience: *The Living Weapon*, PBS 2-5-07; U.S. Const. Preamble, Am's 4, 8]
  (European countries that banned CAFOs quickly reduced microbial deaths): [p.133 Robbins*]
* **Thousands of Small Farmers Driven Out of Business by ~~*CAFO*~~ Invasions**
  ['60 Minutes' Mike Wallace interviews re.U.S. Farm Bureau; *And On This Farm: Hog Factories in Missouri*, Field Pictures, 1998; *Living a Nightmare: Animal F's in Michigan* (Sierra Club)]
* **Local Communities, Lacking Power to Collect Damages from ~~*CAFOs*~~, Are Forced to Clean Up Toxic Spills, Repair Damaged Roads, Treat Diseases#**
  (The Supreme Court of the State of Iowa declared unconstitutional the state's 'Right to Farm' laws which have exempted 'Animal Factories' from lawsuits and damage claims.) #[films above]
* **Federal Subsidies, Tax Abatements, Regulation Expenses, Hurt Taxpayers**
  ('The federal government uses taxpayer dollars to subsidize pesticides, irrigation, animal-feed, waste-management, disease control... crop losses, high animal mortalities.'): [p.24 Fox*]

photos from John Robbins' ***Food Revolution***



Many farm animals are chained in individual cages so small they cannot take a single step in their entire lives.



The cages in which pigs are confined barely allow any movement at all.



More than 99 percent of the hens who lay the eggs eaten in the United States are debeaked and kept in cages where the excrement from the birds in the upper tiers collects above them, often falling through onto their heads.



Turkey accommodations aren't exactly spacious.

[redacted]
Perrysburg, Ohio 43551

December 5, 2008

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EPA, Region 5

Mr. Matt Gluckman
EPA Region V
Water Division(WN-16J)
77 W. Jackson Blvd.
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In addition OEPA, because it is responsible for the modeling for NPDES discharge permits, is most familiar with the watersheds and most able to provide protective discharge levels and enforcement of the permits.

Enclosed is a satellite picture following a June, 2006 rain, showing sediment runoff in Maumee Bay, an estuary of the Maumee River. This is not an unusual occurrence. Landowners must keep the sediment and untreated manure water on the land, NOT IN THE WATER! No CAFO discharge is essential!

ODA is by its nature and name is an advocate for agriculture. OEPA is by its nature and name is an advocate for the environment. Therefore to keep a balance in the administration of agricultural programs with check and balances in the administration of environmental programs, NPDES permit authorization for CAFO's should be kept with OEPA.

Sincerely,

[redacted]
Perrysburg, Ohio 43551-1082

Enclosure - Maumee River estuary satellite picture, ETC.

Dear Matt —
at the Columbus Public Hearing
I spoke with you; and promised
to send you this picture

[redacted]

Frank Gibbs: Liquid manure is too wet | Print | Fayette, Ohio

By DAVID GREEN

Don't blame tile lines for discharges of liquid manure into drains, says soil scientist and farmer Frank Gibbs, and don't blame the rich soil with its worm holes leading to the tile.

Put the blame on the watered down manure. That's where the problem lies.

gibbs.smoking-crowd Gibbs, from the National Resources Conservation Service office in Findlay, Ohio, spoke to farmers last Wednesday at the annual Center for Excellence Field Day at Bakerlads Farm north of Clayton.

Gibbs told how he came to this conclusion several years ago, after he got a call from a producer in Ohio who had a problem. He was applying manure from his swine operation at only about half the recommended rate, but it was still finding its way into tile and drains.

A DNR officer told the farmer that he wouldn't cite him for discharges this time, but it had to be stopped.

"I went down there thinking I'd see big cracks in the ground," Gibbs said, "but the soil moisture was ideal. Impeccable shape. I saw lots and lots of night crawler holes and I thought, 'My God, could this be what's going on here?'"

Gibbs got ahold of some dye—similar to the kind used to check for leaks in a toilet tank—dumped it into the manure lagoon and agitated the mixture. After he dug down to a six-inch tile, manure was injected into the soil with a drag line. The tile was dry when the experiment began.

"We wondered how long it might take to percolate down to the tile lines. Twenty minutes? Should we go to lunch?"

There was no time for lunch, Gibbs said. The dye was there within seconds, and every time a pass was made over a lateral tile line, another pulse of colored liquid came through.

Gibbs wondered if the pressure from the applicator pump was the cause, so they next tried a gravity-feed system. Same problem. One more idea came to mind. This time they avoided the watery manure from the lagoon and loaded some of the thicker slurry from the pit under the hog barn.

"It didn't go anywhere," Gibbs said. "It behaved like manure. We dug up some areas with a back hoe and it was laying right where it was shot."

He knew then not to fault the tile nor the healthy soil.

"The problem is simple. We're watering manure down to where it behaves like water. Let me repeat that. We're watering manure down to where it behaves like water. You don't need to be a rocket scientist to understand that."

Gibbs has heard the suggestion that no-till soil is at fault. Get rid of the worm holes and there's no conduit for the manure.

Not true.

THIS IS STILL BEING APPROVED BY ODA !

IS THERE ANY DOUBT THAT LIQUID MANURE IS IN LAKE ERIE? OUR WATER INTAKE [illegible] IS NEARBY AT ANCHOR POINT!

"Preferential flow will occur in conventional tillage through cracks and around the soil structure," he said. "We need to stop confusing the issue with tillage. The issue is that we're adding too much water."

This is a situation that needs to be addressed, Gibbs said.

"We need to keep on top of this. We really do. I think some basic research could solve the problem."

Maybe the percentage of solids needs to be up to four or five percent, he said. Or, from what he learned in Europe, even higher.

The Dutch method

With so many Dutch farmers investing in this area, Gibbs decided to take a trip to the Netherlands to see how they farmed in that country. He was in for a surprise.

He didn't see any of the watered down manure that the large dairies are using here. The solid content was at about eight percent.

He noticed a plastic membrane spread over a storage lagoon with rain water waiting to be pumped from an overnight storm. Gibbs figured it was to keep the water out of the lagoon, but he was wrong. It was to control odor.

Gibbs watched as a farmer loaded his applicator with manure and inserted a paper form into equipment that recorded his position by GPS. Once in the field, additional data was stamped onto the form. A sample bag of manure was collected to send for analysis by a government agency.

If manure exceeds the allowable nitrate rates, Gibbs was told, the farmer receives a bill from the government.

The Dutch farmer joked about having one government official for every farmer, but it isn't the heavy regulation that's hurting agriculture in Holland, he said, it's simply a lack of space.

Gibbs returned home knowing that the practice of watering down manure didn't come from Europe.

"That's our technology," he said. "We're going to all the work of writing up Comprehensive Nutrient Management Plans and then where does it go? Into the tile. We just need a little bit of research to figure this thing out so we don't have to scrap the whole thing."

Gibbs said he's made attempts to urge agricultural agencies to study the issue, but it's never gone far.

"Everybody's going off in other directions," he said. "We need to work together. We don't have to destroy our soils. We don't need to rip our tile out.

"What we should do is look at solids. Eight percent isn't that much. I don't know why we can't tweak that."

– Aug. 30, 2006

Stop it in the root zone

A visit to Wisconsin gave soil scientist Frank Gibbs additional hope for the future.

"They have some really good things going on there," he said.

gibbs.smoking-earth For example, the custom manure applicators have formed an association. They have standards and training, for those who choose to join the group. They work closely with the EPA. They practice cleanup of spills for when something goes wrong.

Gibbs was impressed with the beautiful crops growing on rolling hills. The key was the soil.

"They've got hay and they've got alfalfa and they put manure on it," he said.

In this area, it's almost always corn and soybeans, year after year. It's the root system of a plant such as alfalfa that breaks up the soil to prevent compaction.

Custom applicators have to work with what they're given, Gibbs said, and sometimes control structures are in order. Gibbs has built shut-off valves at the property line to stop the flow of liquid manure. A catch basin is added to collect the flow—a septic tank will do the job—and the manure can be pumped out and applied in a safe area between tile lines.

It's just a Band-Aid approach, Gibbs said, not a solution, but it's better than using rubber tile plugs in which case a farmer has no idea if the manure has left the tile. Besides, he asks, do we know where all the tile is? And if we miss one, who's fault is it?

That's when the arguing and finger-pointing begins. When manure flows into a drain, who is at fault—the farmer who owns the animals, the owner of the land where it's being applied, or the person in charge of the application?

"If we do it the wrong way," Gibbs said, "it's going to be a mess."

Any time manure enters a tile line, it's wasted. At that point, Gibbs said, the nutrient is too deep to be absorbed by plants.

"We have to stop it in the root zone," Gibbs said.
Smoke test highlights no-till

As a long-time proponent of no-till farming, Frank Gibbs often tries to convince other farmers to give it a try.

gibbs.lighting One of his early attempts was to dig out a cubic foot of his no-till soil and place it next to a sample from his neighbor's sugar beet field that suffered from a lot of compaction due to trucks. Then he would pour a bottle of water onto each and watch it soak into his soil and run off his neighbor's.

"It was kind of hokey," Gibbs said. "Farmers would say, 'You're from the government. You probably poked holes in it.' I needed a different way to show the value of no-till."

He remembered a blower contraption a friend created for planting beans—it never worked right—and as a fan of Red Green, Gibbs got out the duct tape to rig up a device for blowing smoke into a tile line.

"I could make smoke come out of millions of worm holes," he thought.

The smoke test shows good soil conditions and at the same time, it shows the avenue that liquid manure takes to reach tile lines. It takes the easiest route, Gibbs said, the path of least resistance. Through worm holes and cracks in the glacial till, manure can quickly makes its way

to tile.

To set up the Center of Excellence Field Day at Bakerlads Farm, Gibbs dug a hole to reach a tile line. He found two hand-laid tile lines, then a plastic line, then another older line. Tile is everywhere.

He set up his blower, dropped in a smoke bomb and watched for smoke to start rising out of a soybean field. Smoke started to run toward the bean field, but the line made a turn and headed back into the cornfield. That's the trouble with tile lines, he said, you never know how many there are or where they end up.

Watching smoke rise out of the soil is a great demonstration, Gibbs said, and a real attention-getter.

"It's hard for folks to deny this stuff happens when there's smoke coming up under their feet."

Close Window

IV

MAUMEE BAY SEDIMENT RUNOFF JUNE, 2006 FROM MAUMEE RIVER WATERSHED



GEOLOGICAL MOUTH OF MAUMEE RIVER AT PERRYSBURG, OH (FT. MEIGS)

(FT. MEIGS)

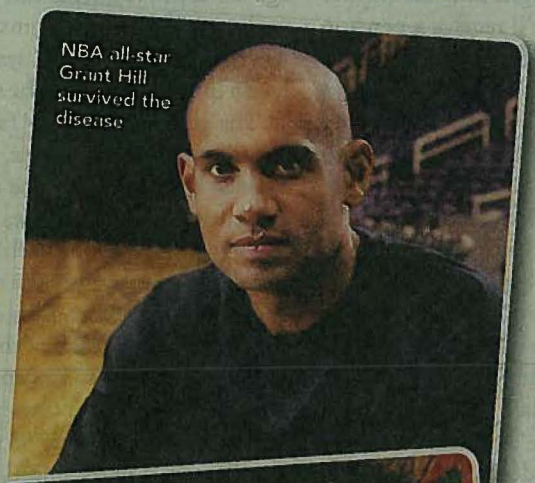
43351-1082

DEADLY UG INVADES JR TOWNS

TOLEDO BLADE SUN. 12/7/08

An infection that resists antibiotics has been finding new victims

Ranit Mishori



NBA all-star Grant Hill survived the disease



Simon Sparrow, left, then 1, with his sister Elena, 4, died of the infection

PHOTO BY JEFF NEWTON (HILL)

FEW YEARS AGO, I BEGAN noticing an unusual number of patients coming in with what they described as spider bites. In clinics and emergency rooms across the U.S., colleagues were seeing it, too: Young people and hale, complaining about a skin sore ple, often red and swollen, some- painful. The only thing was, very nts recalled being bitten by a spider of insect.

, in most of these cases, it wasn't an a bug—a bacterium called methicil- ylococcus aureus, better known to s MRSA. These patient complaints what is now a MRSA epidemic. ecent article in the *Journal of the Amer- ion*, MRSA caused more than 94,000 fections and nearly 19,000 deaths in ne study in *The New England Journal* MRSA 59% of the time when adults y rooms with skin infections.

iew. It has been plaguing our hos- It kills by infecting the blood and patients or those recovering from st doctors knew—or thought—that spital patient in weakened condi- t going to find you.

ger true," says Dr. Robert Daum, infectious-diseases specialist at Chicago. "Hospital transmission ing the epidemic disease we see strains of MRSA have been born alls and are finding anybody and ncludes, says Dr. Rachel Gorwitz of the Centers for Disease Control and Prevention, "otherwise healthy people in the community, including children."

Consider Susan Wagoner, 49, a businesswoman from Scottsdale, Ariz. MRSA first appeared as a small abscess on her upper leg. Even though she was treated with antibiotics, the abscess grew larger, and then another one developed elsewhere. The pain became excruciating. As weeks turned into months, her illness forced Wagoner to quit her job, and she says, "I began looking into funeral arrangements."

Grant Hill, the NBA all-star, contracted MRSA a few years ago as a skin infection near his ankle, and he had to spend a week in the intensive-care unit. "I was lucky to survive," Hill says.

Not so lucky was an 18-month-old in Chicago named Simon Sparrow, in good health before MRSA got into his lungs. Once it took hold there, even the most aggressive treatment could not rescue the toddler.

These new strains of MRSA—not all as deadly as the one that afflicted Simon—are showing up all over the community: in homes, schools, gyms, military bases, prisons, or any place people get in close proximity with each other. They are transmitted through skin-to-skin contact with uncovered infections, such as shaking hands or bumping up in a football game. MRSA also can spread by sharing objects that are contaminated: towels, clothing, and razors. Indeed, the pattern of infection has earned this variant of the bug a new name: CA-MRSA, for community-associated.

The infection usually shows up as a skin sore. At that point, it's generally not life-threatening and can be treated by draining the pus, with or without antibiotics. The only problem is that the antibiotics used for most bacterial infections won't work.

It's the R in MRSA, which stands for "resistant," that tells the story. Just after antibiotics were introduced, tiny organisms—Staphylococcus aureus—became "immune" to our first line of antibiotic drugs. These variants survived, thrived, and spread. "Staph Aureus is a very smart bug," says Dr. Daum. "It figured out every antibiotic we humans have thrown at it and has developed resistance mechanisms to them one by one."

The nightmare scenario is a world in which we don't have a pharmaceutical answer for some of the most common germs making us sick. Our experience with MRSA and other infections suggests we've taken a step or two in that direction. The current epidemic, says Dr. Daum, has put "tremendous pressure on our antibiotic treatment armamentarium."

Still, it is way too soon to panic. In most cases, doctors can find drugs that kill the bug. Some—such as Bactrim,

continued

clindamycin, and tetracycline—haven't commonly been used to treat staph infections. There's also a range of superpowerful antibiotics that have been used successfully in hospitals.

Yes, bugs are smart, and we can't change that. But the resistance of bacteria also stems from human misuse. We all know people who want to take antibiotics even though their infection is likely caused by a virus. Or doctors who prescribe antibiotics just because patients demand them. Or people who use leftover antibiotics given to them by friends and relatives. Or people who fail to finish the entire dose of a prescription, allowing the "toughest" germs to survive and reproduce.

Many experts believe that antibiotics given to animals also contribute to the development of resistance in humans and that the use of antibacterial soaps is another problem.

Just the other day, a patient came to see me with an infection on her chest. When I mentioned MRSA, it scared her. "Is it that bad bug I've heard about?" she asked. I told her "yes" but was able to add, "This is still something we can take care of." The question is, how long will that be true?

HOW TO PROTECT YOURSELF

- **Know the signs of MRSA. A staph infection may appear as a boil, bump, or insect bite.**
- **See your doctor if a skin lesion becomes red, warm to the touch, is filled with pus, painful, or accompanied by a fever.**
- **Wash your hands regularly. Plain soap and water or alcohol-based gels (with at least 60% alcohol) are enough.**
- **Do not share personal items, such as towels or razors.**
- **Cover all cuts and scrapes with a bandage until they heal, especially if the wound oozes pus.**

Doctoring dairy farm practices questioned

By BILL RYAN
Sentinel Farm Editor

Bigger is not always better, especially when it comes to large-scale livestock operations.

At least, that is the view of members of the Pew Environmental Group and Ohio Environmental Council who are touring Ohio to help raise awareness of problems and potential problems they see with the operation of most concentrated animal feeding operations, often referred to as CAFOs.

One of the greatest concerns and one which has not received a great deal of publicity is the danger of antibiotic resistant bacteria.

A second story about the Pew group will appear in Saturday's Sentinel-Tribune on the farm page

"The danger signals are right in our face," said Bill Niman, a cattle rancher from California who served on the Pew Commission on Industrial Farm Animal Production.

The commission released its report in April following two years of research. There were 24 consensus recommendations including the ban of the use of antibiotics in food production except for therapeutic purposes.

Antibiotics are frequently used routinely at CAFOs to minimize disease and as a growth-enhancer, or to increase milk production in dairy cows.

Ellen Mee, director of environmental health policy with the OEC, said, "The vast majority of antibiotics used in the United States are actually used in animal agriculture, rather than human medicine."

She noted warnings from disease control and health agencies which stress the need to conserve the use of

(See FARMS on 5)

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Farms

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antibiotics.

"We have to be aware of the risks. ... It's the constant low doses of antibiotics that creates that perfect atmosphere of antibiotic resistance," Mee said. "

She added the environment which develops in and around large livestock operations, especially around manure storage lagoons, creates the "perfect reservoir" for antibiotic-resistant bacteria. That bacteria then can develop human diseases which can be picked up and spread by workers to their families and beyond.

The more antibiotics used, the greater risk of the development of resistant strains of bacteria including methicillin-resistant staphylococcus aureus, or MRSA.

Mee stressed what the Pew Commission indicated was not a ban on the use of antibiotics in the livestock industry.

"We need to be clear on this. We are not suggesting that antibiotic use should be prohibited," she said, adding, "The non-therapeutic use simply cannot be continued. It cannot be justified."

According to the group, the people and governments of Europe are ahead of America on this matter as such use of antibiotics is not permitted in most countries of Europe.

Niman noted, "The Europeans looked at the same data and came to a diametrically opposed conclusion."

Smaller farms do not use the antibiotics as frequently due to the nature and size of the operations.

"It's really sometimes hard to get your head around," said Bob Martin, executive director of the Pew Commission. "It's really a much more explosive situation than anyone is aware of."

Similarly, members of the commission cited dangers in the application of the liquid manure to fields and the potential for pathogens and hazards posed in that aspect of CAFOs.

The recommendation is to use the manure in a solid form, which can better be used by the crops without a larger potential disaster posed by liquid runoff, tiles and other routes to the water supply.

The group shared many other concerns including the recent change which will allow the Ohio Department of Agriculture to take over the environmental inspection aspect from the Environmental Protection Agency.

Tom Bullock, a councilman with the City of Lakewood and member of PEG, said the oversight is needed in order for "the regulators to save the industry from itself."

Matthew Gluckman
U.S. E.P.A.

Dear Sir:

Please, Please, NO Change in the oversight regulations of the E.P.A. in our State, Ohio. We need their expert experience to protect our water supply, our air and the very health of our citizens.

the Dept. of Agriculture

has no interest in these important issues.

Keep the E.P.A. in charge!

Thank you,

[redacted]

P.S. I speak for the League of Women Voters of Perrysburg and the Country Garden Club, member of Garden Club of America



[redacted]
Perrysburg, OH 43551-2127

December 15, 2008

Matt Gluckman
EPA Region 5 Water Division
NPDES Programs Branch (WN-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I would like to go on the public record stating that I oppose transferring the authority to administer the Clean Water Act National Pollutant Discharge System (NPDES) Program for concentrated animal feeding operations (CAFOs).to the Ohio Department of Agriculture (ODA. I also oppose your decision to deny an extension of the commenting period. While 6,000+ comments may already be received by EPA, many more would be sent if the comment period were to be extended. I hope this action was not to limit the responsiveness summary so that this decision will be made during the last days of the Bush Administration which has a deplorable environmental record.

It is my belief that ODA does not have the expertise or the integrity to protect public health and our environment. ODA has consistently acted in the best interests of the AG industry and the AG lobbyists. ODA has worked with Farm Bureau and their lobbyists to first take over the regulatory control of cafo's, then moved on to strip all local control from the communities that are forced to host these cafo's, and now they are asking for authority to administer the Federal Clean Water Act National Pollutant Discharge System (NPDES) Program. Just the very thought of this sends shivers down my spine. It makes one wonder how this thought could not only be entertained but be taken seriously! The Federal Clean Water Act NPDES program protects our water quality. ODA does not have the staff, the experience, the knowledge or the integrity to carry out such a significant duty. On that basis they should be denied this transfer request.

A state department of agriculture should NEVER be granted environmental regulatory oversight of CAFOs. The Ohio Department of Agriculture is charged with promoting the industry and therefore should not and cannot effectively be trusted to regulate the very industry that it is promoting. It is a clear conflict of interest. This is a door that should never have been opened. I can promise you that granting this authority will set a dangerous precedent in the United States. Many states are watching this and should this transfer be granted, many states will follow. This door should not only remain closed but the door should be locked forever with the keys thrown away!

Since ODA was granted authority over cafo's, their self proclaimed "stringent" rules have been consistently weakened to the point that they no longer resemble the rules that OEPA had previously enforced. Time and time again, as complaints are registered against facilities in Ohio, ODA chooses to not enforce the rules, but to change the rules to bring the offending facility into compliance. A series of "warning letters" may be sent, but ultimately, there is no violation, no fines, and no deterrent for future violations. Not only is this not acceptable, this is gross negligence.

I attended all the public meetings for the Reyskens Dairy, Naomi Dairy, and Green Dairy. Each time ODA officials spoke for the dairy and for the family that would operate the dairies. Never did these folks speak for themselves. Kevin Elder and other ODA staff spoke about the facilities and described what they were allowed to do and what they were not allowed to do. We took notes and we video tapped these meetings. We have copies of the permits, the maps and the rules. We studied them diligently. What is happening is NOT what they said would happen.

I will now speak on my personal experience with the Reyskens Dairy located 2 miles from my home.

I appealed the permits for the Reyskens Dairy, along with several of my neighbors. Our appeal originally had 18 errors of assignment. We spent $36,000 for legal fees, expert witnesses, etc. By the time we appeared before the Environmental Review Appeals Commission (ERAC) we were down to a handful of errors of assignment mostly because the attorney for the dairy was trying to bankrupt us. We had our week in court which was a mockery of our judicial system. The ODA did not defend themselves. They allowed the attorney for the dairy, hired by Vreba Hoff to defend them. There was a room full of attorneys (a tag team) against 5 citizens. It was then that we learned that all the rules had recently been changed, mostly to negate our allegations. These rule changes did not benefit the citizens who would be affected, they benefited the facility and ODA. Ultimately, ERAC agreed with Vreba Hoff's attorney and ODA that there was no fraud, no errors of assignment even though there were clear admissions of fraud in the testimony of the witnesses. Our hydro geologist expert dug a test hole next the where the lagoon would be and found vertical fractures and macro pores and testified that these would allow manure to leach into the aquifer. Their expert hydro geologist who was from Canada, never even visited the site. The engineer for Vreba Hoff and the dairy admitted that soil samples were not conducted by his staff but were conducted by Mark Drewes, the cooperating farmer and that there was not a sample conducted every 25 acres as the rules state. Numbers were just randomly inserted. Also during testimony, agronomic rates came into question and it was proven that there would be over application of nutrients. The buffer between the bottom of the lagoon and the top of the aquifer was discussed at great length during testimony. The rules relating to this buffer has consistently been reduced to fit the site. There is no such thing as a bad site. The engineers can make a square peg fit a round hole and since the director now has discretion, all is well. They also admitted that there are no contracts for the land that will accept the manure. This means that land can come and go and that there is no proof that the facility actually has enough acreage to apply the manure to agronomic rates as required by the rules. Basically, this is just waste disposal disguised as agriculture. Anyhow, with all those admissions and evidence that was submitted as testimony, ERAC still found in favor of the industry. There was much pressure from Farm Bureau and Governor Taft's people for ERAC to rule in favor of the ODA. The good ole boy network came through again.

From all of this came a new battle. On day three of testimony, Chris Carey of Hull and Associates, hired by Vreba Hoff testified about the available acreage for land application of manure. He went home and sent an email to ODA and Vreba Hoff stating that the land application maps should no longer be part of the permit requirements. Vreba Hoff and Hull & Associates pressured ODA until they changed the rules. Access to the land application maps for the Naomi and Green dairies were denied because of "trade secrecy". Another lawsuit came about to obtain those maps as a public right to know. This is just **ONE** example of the AG industry flexing their muscles to influence ODA and their rules. We are not vigilantes as Mr. Carey suggests, we are community members who have a right to know. **See attached copy of the email.*

The facility was built and began operation in mid-August 2006. October 2006, I called in a complaint and followed up with an email with photos and the weather report. See attached copies from ODA obtained by a Freedom of Information Act (FOIA) request. I find it amazing that ODA was the first agency emailed and they claim to have not received it. Second, I sent photos and the weather forecast which is not mentioned. The weather forecast was for 90% chance of rain during the time the land application was occurring. The photos clearly showed that it was in fact raining at the time the land application was taking place. Severe thunderstorms were forecast. I felt they did not take this seriously. Does it really matter that the manure was gifted to OSU? Does that still make it ok to land apply during a rain event? Does working of the ground prior to land application make it ok to not incorporate it after the application of manure? Their findings were that no violation occurred. This is all contrary to what we were told they could and could not do during the public meetings.

January 2007 I emailed ODA with questions. A neighbor had taken photos of hand dug trenches at the Reyskens Dairy allowing flood water to leave the site into the ditch. Again, there was no violation found.

**There was another such event reported during the spring/summer of 2007 in which land application had been ongoing for at least 4 weeks to one field. Heavy rains came before any incorporation took place. Hand dug trenches allowed the water to leave the site. ODA was called, they did not fill out a complaint form but said clear water was leaving the field and it was ok. The water leaving the field was brown and foamy and had a bad smell. Water samples were taken and contained E-coli. ODA has no record of this because they did not record the complaint. I also obtained the records from the dairy via a FOIA request for this period. The records showed they land applied about two weeks and incorporated several times. Much different than what the neighbors and myself observed. *I would be more than happy to locate the documentation for you.*

February 2007 I called in another complaint from a neighbor who reported seeing land application on frozen snow covered ground. Also manure spilled onto the road and the neighbor collected manure in a jar for sampling. ODA made no attempt to obtain the manure sample from the neighbor. Again, there was no violation because ODA claims to have given the dairy permission for land application on frozen snow covered ground. **See attached copies.*

May 2007 Larry Heilman and Sue Torrey both made a complaint about the dairy spreading manure about 20-25 feet from 2 water wells on their property. A warning letter was sent even though they acknowledged that there was a violation of 901:10-2-14, Appendix A Table 2. It is worth noting that Mr. Rodabaugh who investigated this incident made remarks to Mr. Heilman such as "why do you care, it is not your well". Mr. Heilman stated that it may not be his well but it is his aquifer. It is clear that the dairy isn't familiar with the rules that they are to be following.

This is just my story. There are thousands more like this around our state. Some are much more severe. We watched the Buckeye Egg scandal for years. We've watched what has happened in other states such as Michigan with over 150+ violations. This is not just an Ohio decision. What you decide here will extend across the United States. During the many public meetings, citizens testified to the thousands of abandoned and un-capped oil wells in Wood County in fields that will be receiving manure. A lagoon being built over and active earthquake fault line, in a flood plain on top of bedrock are a few other engineering marvels ODA staff has approved. The citizens are referred to as chronic complainers or city slickers who should move back to the city. But in fact we are farmers and rural citizens who grew up in the area with many of our families dating back to the early 1800's. We are assets to our environment as

we live there and can recall these features such as abandoned uncapped oil and water wells. It is a shame that ODA has dismissed this valuable information.

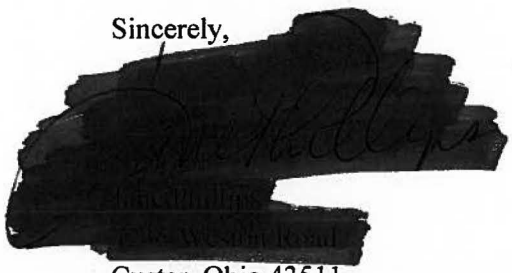
I am attaching a copy of the report "Giving Away the Farm" by the Environmental Integrity Project in Washington. It clearly outlines the lack of enforcement of violations reported to ODA. I would like to provide you with copies of the depositions from our appeal, the transcripts of our appeal along with other documentation of the fraudulent actions of the ODA. I do not have the time to get all of this documentation to you prior to the deadline. I do feel it is very important for you to see as it should have some bearing on your decision.

You may feel that my comments are irrelevant to the transfer of authority to ODA. My comments are my personal experiences and clearly show fraud, the lack of accountability and integrity with the entire Livestock Environmental Permitting Program and ODA staff. If I, as a citizen can show even a small amount of fraudulent behavior at ODA, just imagine what would be found if there was a full investigation! It has been shown that ODA is reluctant to issue notices of violation. They like to brag about their stringent rules that every cafo is supposedly following because there are no violations in Ohio. Just ask them.

I hope and pray that you will take all this information to heart and have the fortitude and integrity to reject the pressure from the AG industry. Our environment, our water, our wildlife, our rural communities, our health, and our children's futures are all in your hands. I hope you take seriously your oath to protect the environment as you make this critical decision that will impact every United States citizen for the rest of our lives. I sincerely hope you will not be an accomplice to ODA's "one stop shopping" madness for cafo's and the further weakening of the last rules that protect our precious waters and wildlife.

*I swear that all information contained in this letter is true and accurate to the best of my knowledge.

Sincerely,



Custar, Ohio 43511

[redacted]

Enclosures:
Copy of email from Chris Carey
ODA Complaint October 6, 2006
ODA Complaint January 11, 2007
ODA Complaint February 23, 2007
ODA Complaint May 10, 2007
EIP Report: Giving Away the Farm

[redacted]

From: [redacted]
Sent: Thursday, February 09, 2006 10:47 PM
To: [redacted]
Cc: [redacted]
Subject: Green Dairy CNMP

[redacted]

We are currently revising the Green Dairy CNMP to incorportate the 1 sample per 25 acres. Due to the pressure or public perception in Wood County, [redacted] (cooperating crop grower for Green Dairy) has lost some ground that was in the original submission of the CNMP. However, [redacted] was able to rent additional ground that more than made up for the loss.

I'm sure that you've heard from the Reyskens appeal and testimony all the grief and headache that has been caused by the WCCAFF group and associated members to Mark Drewes. It's this type of vigilantiasm that needs to be stopped and we need to make sure we can cut their supply off as much as possible. With that being said, I would ask that we not have to submit the maps as part of the MMP. We will do whatever means necessary to assist you in viewing the land and reviewing the maps, but we need to be able to eliminate or at least minimize public viewing of the document so that more lies are not created.

Please let me know what suggestions or thoughts you may have on this matter. As always we want to work with the ODA to have a positive outcome.

Talk with you soon,

[redacted]

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Congress of the United States

Washington, DC 20510

December 11, 2008

Matt Gluckman
EPA Region 5
NPDES Programs Branch
WN-16J
77 West Jackson Boulevard
Chicago, Illinois 60604

RE: FRL-8728-5

Dear Mr. Gluckman:

This letter is in response to the October 15, 2008 Federal Register notice regarding Ohio's application to transfer the National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (EPA) to the Ohio Department of Agriculture (ODA).

We support Ohio's efforts to transfer permitting authority. As you may know, this is a significant issue for all stakeholders involved, from our livestock and environmental interests to Ohio's state legislature and government agencies. Interested parties in the state have worked collectively for many years, in a transparent and bipartisan manner to prepare a thorough application that meets the federal government's requirements for transfer of permit authority from one state agency to another. As noted in the Federal Register announcement, U.S. EPA considers Ohio's application to be approvable, contingent upon enactment and adoption of statutory and rule changes. As we understand, Ohio is currently taking the necessary steps to accomplish these final requirements.

While the review process has taken longer than originally estimated, given that Ohio submitted the application to U.S. EPA in January 2007, we recognize the time and efforts put forth by the agency and thank U.S. EPA for working closely with ODA and the State of Ohio to reach this critical stage in the application process.

Following the conclusion of the public comment period, we would respectfully urge U.S. EPA to give the application an unexpurgaled review that diligently addresses the concerns of all parties, and complete this process as soon as it is feasibly possible.

Thank you for your work on this effort.

Sincerely.

GEORGE V. VOINOVICH
United States Senator

JOHN A. BOEHNER
Member of Congress

JIM JORDAN
Member of Congress

ZACK SPACE
Member of Congress

PATRICK J. TIBERI
Member of Congress

BOB LATTA
Member of Congress

MICHAEL TURNER
Member of Congress

Cc: Governor Ted Strickland. Ohio
Robert Boggs. Ohio Department of Agriculture
Administrator Steve Johnson, U.S. Environmental Protection Agency Director

City of Columbus
Mayor Michael B. Coleman

Department of Public Utilities
Tatyana Arsh, P.E. Director

December, 12, 2008

Matt Gluckman
USEPA Region 5
Water Division (WN-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

RE: Comments on Proposed CAFO Program Transfer from OEPA to ODA

Dear Mr. Gluckman:

Thank you for affording us the opportunity to comment on the proposed transfer of NPDES permitting authority from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA). The City of Columbus (City) oversees a number of important watersheds that serve approximately 775,000 people in Columbus and approximately 2,000,000 in central Ohio.

The City has a number of concerns that should be addressed before approval of the transfer of permitting authority, especially given the recent September 2008 GAO Report on Concentrated Animal Feeding Operations which notes: "Although EPA is aware of the potential impacts of air and water pollutants from animal feeding operations, it lacks data on the number of animal feeding operations and the amount of discharges actually occurring." (Concentrated Animal Feeding Operations, GAO-08-944, September 2008, p. 23).

1. LAND APPLICATION RECORD-KEEPING

The first concern of the City is knowing where the land application of manure is occurring. Requiring CAFOs to retain records of land application onsite is not sufficiently protective. These records should be part of the government's public records that are available to the water supply authorities and the public upon request.

a. The City presently has an ongoing program to reduce the amount of phosphorous and nitrogen from farming operations through encouragement of best management practices and creation of buffer zones. Knowing where the land application of manure is occurring will assist the City in monitoring the oversight of these operations and in identifying any problematic nutrient sources in its source water protection areas.

b. OAC 901:10-1-06 (A)(4) requires that a livestock manure broker (buying, selling, or land

Utilities Complex — 910 Dublin Road — Columbus, Ohio 43215
Director's Office — 614/645-6141 — FAX: 614/645-8019 — TDD: 614/645-6454
Power and Water Division — 614/645-7020 — FAX: 614/645-8177 — TDD: 614/645-7188

Fairwood Complex — 1250 Fairwood Avenue — Columbus, Ohio 43206
Sewerage and Drainage Division — 614/645-7175 — FAX: 614/645-3801 — TDD: 614/645-6338

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applying annually more than 4500 dry tons of manure or more than 25,000,000 gallons of liquid manure) or a livestock manure applicator (land applying more than 4500 dry tons of manure or more than 25,000,000 gallons of liquid manure) shall maintain an operating record which, in part, requires that certain information be kept for each "land application area" as per OAC 901:10-1-06.

While at least for certain levels of application, the record-keeping requirements contain needed information, they are limited in that they only apply to "land application areas". This term is defined in OAC 901:10-1-01(UU) to mean "...land under the control of a concentrated animal feeding operation owner or operator, whether it is owned, rented, leased, or subject to access agreement with the landowner, or otherwise under the control of the owner or operator, to which manure, or process wastewater from the production area is or may be applied." In effect, land applications of manure through brokers who sell or distribute the material to others who then apply on lands not under the "control" of the CAFO are completely removed from the recordkeeping requirement. Simply by creating a middle man for its manure, CAFOs can avoid important record-keeping requirements.

CAFOs should be required to identify all areas on which its manure is land applied. Records to ensure compliance with such requirements as proper setbacks and proper methods and rates of application should be kept for all land-applied manure locations. Absent such information, land applicators and ODA will be hard pressed to ensure that phosphate applications, as an example, do not exceed the limits set forth in proposed OAC 901:10-2-14(E)(3).

To remedy this gap in the regulation, ODA could require site specific authorizations prior to land application, similar to the requirements that apply for land applying biosolids in Ohio pursuant to OAC 3745-40-03 (J). This approach would provide ODA the opportunity to ensure that nutrient loadings are not exceeded for a given tract and the local utilities and the public a means to track where land application is occurring.

2. ENFORCEMENT

The level of enforcement is an additional concern. In its submittal to USEPA, ODA indicates that it has 4 Livestock Environmental Permitting Program inspectors. This number appears low given the new direct responsibilities that ODA is taking on in overseeing the NPDES CAFO permitting program and the additional monitoring and reporting requirements that it will be enforcing. Also, with the upcoming responsibility of reviewing Ohio's version of the nutrient management plans, and overseeing CAFOs that have left the regulatory regime, additional staffing will be needed.

3. SETBACK DISTANCES

Minimum setback/minimum distance requirements for land application of solid or liquid manure offer critical protections to watersheds. These restrictions are contained in proposed OAC rule 901:10-2-14. Of concern to the City are the restrictions protecting the surface waters of the state.

Table 2 imposes land application restrictions of 35 feet vegetative cover or a total setback of 100 feet from surface waters of the state. Footnote two of the table states that while either a 35 foot buffer strip must be present or a total setback of 100 feet must be maintained for surface application or surface incorporation within 24 hours or direct injection, as a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100 foot setback or 35 foot vegetative cover.

Unlike footnote 9 pertaining to land application restrictions for field surface furrows which requires prior approval of the Director in instances where one seeks alternatives to minimum setback provisions, footnote 2 is silent on whether prior agency approval is needed. Minimum distance restriction alternatives should not be implemented without such approval in all instances. Footnote 2 should incorporate the prior approval language of footnote 9.

An additional concern about the proposed minimum distance requirements is that they lack any requirement that land application not occur within a ground water source water assessment and protection area or wellhead protection area that has been delineated as such by Ohio EPA. This is a requirement that applies to the land application of biosolids pursuant to OAC 3745-40-04 (O).

In addition, if no delineated or endorsed ground water source water assessment and protection area or wellhead protection area exists, the isolation distance from a community public water system well should be 1000 feet, akin to what is required for land application of biosolids set forth in OAC 3745-40-04 (O).

4. NUTRIENT MANAGEMENT PLANS

a. New federal regulations promulgated in November 2008 require that nutrient management plans (NMPs) be made part of the CAFO NPDES permit and that as such, are to be public noticed prior to finalization. Ohio's version of the NMP is the manure management plan (MMP) whose terms are outlined in OAC 901:10-2-08.

The definition of the NMP should be clearer relative to Ohio's program. In the comment to the definition of "manure management plan" – proposed OAC 901:10-1-01 (YY) states the following:

> A person preparing a manure management plan is advised to refer to guidance on comprehensive nutrient management plans that have similar components for manure management plans. Comprehensive nutrient management plan standards are prepared and published by the Natural Resource Conservation Service, an agency of the United States department of agriculture. However, the scope of comprehensive nutrient management plans exceeds the requirements of Chapter 903. of the Revised Code and rules of the chapter.

Given the new federal regulations relative to NMP being part of the terms of the permit, there should not be any confusion as to what is obligated. There is confusion as to whether a manure management plan is different from a nutrient management plan which is different from a comprehensive nutrient management plan. If a NMP is required for parts of the regulated community it should be clear that that the scope of a MMP should be identical to a NMP.

b. While Ohio's program submittal to USEPA occurred prior to the above rule changes, Ohio's program should reflect these changes while it is still in the process of finalizing its program. The federal revisions offer important additional safeguards to the state program that should be incorporated simultaneous to, if not prior to, the approval of the permitting authority transfer.

Please contact me at 614-645-3753 should you have any questions regarding the above comments.

Sincerely,

Dominic J. Hanket

Dominic J. Hanket
Assistant Director, Regulatory Compliance

cc. Tatyana Arsh, Director, P.E.
Dax Blake, Administrator, Division of Sewerage and Drainage.
Richard C. Westerfield, Administrator, Division of Power and Water

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www.farmsanctuary.org

December 16, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590 VIA FACSIMILE: 312-886-0168

Dear Mr. Gluckman:

Please accept the follow comments regarding the proposal to transfer control of Ohio's National Pollutant Discharge Elimination System (NPDES) program for Concentrated Animal Feeding Operations (CAFOs) from the Ohio Environmental Protection Agency (EPA) to the Ohio Department of Agriculture (ODA). On behalf of our 200,000 members and supporters, including nearly 6,000 in Ohio, Farm Sanctuary strongly opposes this transfer based on the inherent conflict of interest it would generate.

Because the ODA's primary role is to promote the interests of agribusiness, granting the Department regulatory powers over the same farm development it actively seeks to promote would be counterproductive. It would in essence create a situation of the proverbial fox guarding the henhouse, thereby undermining existing environmental regulations concerning these facilities and potentially expanding the already considerable environmental problems of Ohio CAFOs.

Such a power shift would be disastrous for Ohio. It is our contention that Ohio must develop stricter – not more lenient – regulations and enforcement for CAFO discharge for a number of reasons:

- Animal waste from CAFOs contain antibiotic residues, heavy metals, nitrites, and other pollutants, as well as viruses, parasites and bacteria (including E. coli, which can live in the soil for six to ten months and becomes waterborne after a rainfall or snow melting).

- According to the EPA, CAFO waste has polluted more than 35,000 miles of rivers in 22 states and polluted groundwater in 17 states,[1] and scientists have become increasingly concerned about the return of a massive "dead zone" in Lake Erie, where CAFO pollution has depleted oxygen levels so severely that no fish can survive. This in turn threatens the lake's tourism value for surrounding communities.[2]

[1] http://www.grist.org/news/muck/2006/06/30/cafo-waste/

[2] http://www.dnr.state.oh.us/Home/FishingSubhomePage/fisheriesmanagementplaceholder/fishingfairportdeadzone/tabid/6159/Default.aspx

- History has shown that even when CAFOs are sanctioned for discharge violations, corrective actions can take years to implement. For example, it took four years after the State of Ohio's 27-count lawsuit was filed against Buckeye Egg Farm for environmental violations for the CAFO to be ordered shut down.[3]

- According to a 2007 U.N. Food and Agriculture Organization report, the livestock industry is one of the most significant contributors to land degradation, air pollution, water shortage and water pollution, loss of biodiversity, and climate change, greenhouse gas emissions and the resultant global warming.

- CAFOs tend to create dangerous, low-paying jobs, a disproportionate percentage of which historically go to illegal immigrants who lack labor law protections.

- The rise of CAFOs, along with the decline of small independent farms, often signals the degradation of rural communities. While CAFOs may be family owned, they rarely if ever fit the public's concept of a "family farm."

- Neighbors of industrial operations experience health problems ranging from chronic asthma to neurological damage. Combined with the omnipresent odors from CAFOs, these health ailments precipitate a diminished quality of life and property values for local residents.

As one of the Great Lake states – and one of the nation's largest egg-producing states – Ohio should seek to restrict the harmful effects of CAFO pollution. Manure, chemicals, gases and other waste products from animal agriculture endanger the health and well-being of humans, wildlife, and the larger communities in which they operate.

For these reasons, we strongly oppose the transference of regulatory control of Ohio's NPDES program for CAFOs from the Ohio EPA to the Ohio Department of Agriculture. Implementing such a change would be disastrous in both the short term and long term.

Thank you for taking the time to review the comments of Farm Sanctuary with regard to the NPDES program for CAFOs.

Sincerely,



Gene Baur, President and Co-founder
Farm Sanctuary

[3] http://www.allbusiness.com/north-america/united-states-ohio-metro-areas-toledo/995183-1.html



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December 16, 2008

VIA CERTIFIED MAIL

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

RE: The proposed transfer of Ohio's NPDES program from Ohio EPA to Ohio Department of Agriculture.

Dear Mr. Gluckman:

The undersigned organizations and individuals appreciate this opportunity to comment on the proposed transfer of Ohio's Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) program from Ohio EPA (OEPA) to the Ohio Department of Agriculture (ODA).

The October 15, 2008 Federal Register notice for transfer of NPDES permitting to the ODA presents a multitude of environmental risks; significantly, the risk that ODA will not issue NPDES permits to CAFOs as required by the Clean Water Act (CWA), that if ODA does issue permits, it will do so in a faulty manner by failing to follow the requirements of the (CWA), and that ODA's enforcement of the permits issued will be inadequate.[1] Effective enforcement and permitting under the CWA depends heavily upon the nature of the agency that is given authority to implement the law.

In October 2006, the Environmental Integrity Project (EIP) released a report entitled, "*Giving Away the Farm: Why US EPA Should Reject the Ohio Department of Agriculture's Bid to Administer the Clean Water Act,*" (http://www.environmentalintegrity.org/pub397.cfm). The

[1] State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio, 73 Fed. Reg. 61123 (proposed October 15, 2008).

100% PCW

report, which is attached to this letter, explains why the transfer of NPDES permitting to ODA would be detrimental to the enforcement of the CWA and to the protection of the environment surrounding animal feeding operations. The proposed Ohio program transfer does not adequately address the concerns raised in EIP's report. The report's findings and recommendations are summarized below.

I. There is a conflict of interest between the mission statement of ODA and the goal of the CWA in protecting the environment from water pollution.

The explicit mission of the ODA "is to provide regulatory protection to producers, agribusinesses, and the consuming public; to promote Ohio agricultural products in domestic and international markets; and to educate the citizens of Ohio about our agricultural industry." (Giving Away the Farm, p. 19, endnote, 131).

The general mission of the OEPA is to "protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship." (Giving Away the Farm, p. 19, endnote 132). The more specific mission for the division currently in charge of issuing NPDES permits (OEPA's Division of Surface Water) is to "protect, enhance and restore all waters of the state for the health, safety and welfare of present and future generations." (Giving Away the Farm, p. 19, endnote 133).

The contrast between these two missions is apparent: ODA is charged with promoting Ohio's agricultural industry, while OEPA must protect state waters from pollution. These missions may overlap, but they are not identical. Where ODA perceives that implementing the CWA conflicts with the needs of the agricultural community that it serves, it may feel bound by its statutory mission to protect the interests of its clientele.

EPA should not approve the transfer of such an important task - protecting Ohio's state water for the benefit of Ohio citizens - without resolving this conflict of interest.

II. ODA lacks "follow-through" on the enforcement of environmental programs it has in place.

EIP's report identifies numerous examples of ODA's failure to enforce environmental programs. One example is the Certified Livestock Manager (CLM) program. Under the CLM program, any person responsible for handling manure at a major CAFO or anyone who transports or applies at least 4.5 tons (dry) or 25 million gallons (liquid) of manure annually must be a CLM or "under supervision" of a CLM who is "reasonably available, but not necessarily physically present." (Giving Away the Farm, p. 19, endnote 138).

The CLM program was meant to ensure expert manure handling. However, EIP's 2006 review found that ODA had not implemented the program successfully:

1) ODA issued only two (2) warning letters to manure applicators in violation of the CLM. Neither applicator was required to pay a penalty or to obtain a CLM certificate. (Giving Away the Farm, p. 20, endnote 140).

2) ODA promised to issue a warning letter against a CLM-certified manure applicator for violation of setback requirements near a private well in May 2006, but ODA never issued the letter. (Giving Away the Farm, p. 20, endnote 141).

3) ODA's background check requirement for new CLM applicants has not been enforced effectively. This is evidenced by the discovery, two (2) years late, of Buckeye Egg Farm's operation under a habitual violator from the state of Iowa. (Giving Away the Farm, p. 20, endnote 143).

EIP's report also provides a half-dozen case studies (Buckeye Egg Farm and five (5) others) where lax enforcement in Ohio has allowed dirty CAFOs to evade compliance. (Giving Away the Farm, pp. 15-17). These examples indicate that ODA lacks the resources and motivation to adequately enforce the CWA.

III. ODA's numerous program deficiencies are proof that transfer of the NPDES program is unwarranted.

EIP's 2006 review found that ODA's program was full of deficiencies that make transfer of the NPDES program to ODA inappropriate:

1) ODA does not deter noncompliance through effective enforcement.
   a. EIP's report provided many detailed examples of ODA's weak or non-existent penalties for violations of ODA rules, e.g.: ODA issued three (3) penalties in four (4) years. OEPA issued double the number of penalties in amounts more than seven (7) times that of ODA's average penalty. (Giving Away the Farm, p. 20, endnote 144).

2) ODA fails to effectively regulate manure transfer from permitted farms.
   a. EIP's report highlighted ODA's failure to allow adequate public review of manure transfer. (Giving Away the Farm, p. 20).

3) ODA places inadequate restrictions on winter manure applications.
   a. EIP's report highlighted the absence of ODA's restrictions on wintertime transfer of manure and ODA's willingness to ignore Ohio Department of Natural Resources' (ODNR's) newsletter statement that, "Protecting water quality would be a lot easier if farmers never needed to apply manure when fields are frozen or covered with snow." (Giving Away the Farm, p. 23, endnote 167).

4) ODA has significantly reduced permit coverage and reporting requirements.
   a. EIP's report revealed the significant disparity in the number of reported state permits under OEPA and ODA's records, suggesting that many permitted facilities may fall off of ODA's radar. This will result in fewer permitted CAFOs. EIP's report also revealed ODA's lax recordkeeping and enforcement of its reporting requirement. (Giving Away the Farm, p. 23).

US EPA must be aware of these four (4) deficiencies in ODA's program, and determine whether they have been corrected before approving the transfer of Ohio's CAFO NPDES program to ODA.

IV. ODA is not ready to effectively oversee NPDES permitting because it does not have the required infrastructure in place.

In the history of events leading up to the October 15th Federal Register notice, the EPA and ODA exchanged a series of letters, which detailed EPA's required statutory and rule changes in Ohio law.[2] Two letters, dated April 4, 2007 and November 8, 2007, required changes in five (5) provisions of ODA's water standards for land application of manure, litter, and process wastewater.[3] In addition, the letters required ODA to clarify or revise twenty six (26) provisions of legal authority/NPDES permitting requirements.[4]

On September 4, 2008, ODA responded to EPA's letters by "commit[ting] to pursue specified statutory and rule changes to address the issues identified by EPA."[5]

The undersigned take issue with the fact that EPA released its public notice in the Federal Register prior to ODA's enactment and adoption of the statutory and rule changes. These changes will provide the basic infrastructure that ODA will use to run the NPDES program. The Federal Register notice states that the transfer "is contingent on Ohio's enactment and adoption of the changes to Ohio law and administrative rules needed to resolve EPA's issues."[6]

Until the proposed statutory changes are enacted and adopted, there is no assurance to the public that the changes will be finalized as promised by ODA. In addition, there is no assurance as to what the final changes will look like. ODA's proposed language may be altered in the process of finalizing the statutory and rule changes such that the language does not meet EPA's standards for approval. Therefore, the public notice was premature. Unless the changes are enacted and adopted, the NPDES program is not ripe for transfer.

The undersigned therefore request that EPA grant an extension of the comment period for review of ODA's proposed statutory and rule changes as required by EPA. The proposed rules, included in ODA's September 4th letter, are extensive. The public has the right to assess whether ODA's revisions meet the standards set by EPA and to track any alterations in language that may arise. Thus, the public should have additional time to comment on the rules prior to the final adoption by ODA.

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[2] http://www.epa.gov/R5water/npdestek/odacafo.htm.
[3] Id. at 61124.
[4] Id.
[5] Id.
[6] Id.

V. ODA does not have the practice, experience, and familiarity with the CWA to sufficiently enforce the requirements of 33 U.S.C. § 1342(b).

The CWA is a highly technical statute. Without an appropriate program structure, ODA will be unable to comply with 33 U.S.C. § 1342(b)(1)(A), (b)(2)(B), and (b)(2)(7), which list requirements for state permit programs.

- Subsection (b)(1)(A) requires all permits to "insure compliance" with §1311, §1312, §1316, §1317, and §1343 of the CWA. Thus, permits issued by ODA must be in compliance with effluent limitations, water quality related effluent limitations, national standards of performance, toxic and pretreatement effluent standards, and ocean discharge criteria, respectively.

- Subsection (b)(2)(B) covers recordkeeping and reporting. The subsection requires ODA to "inspect, monitor, enter, and require reports" that comply with §1318 of the CWA.

- Subsection (b)(2)(7) requires ODA to "abate violations of the permit or the permit program, including civil and criminal penalties."

As an agency, ODA does not have the appropriate mission statement directives or experience to issue permits that ensure compliance with the CWA. Given ODA's ineffective enforcement and oversight, referred to in sections II and III of these comments, ODA is not ready to implement extensive reporting requirements for NPDES permits or to abate violations of the permits by filing civil or criminal penalties.

V.1. ODA must meet additional requirements before transfer take place.

ODA must also meet the requirements of a related CWA section, §33 U.S.C. §1314(i). This section governs guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower of state programs under §1342. Specifically, ODA must follow the requirements of §1314(i)(d), ensuring that it has adequate funding, personnel, and manpower to implement the NPDES program and that the permit approval board is financially independent and unbiased[7].

There is no indication from the October 15th Federal Register notice that ODA has considered the funding, personnel, and manpower requirements of administering this state program. EPA should not approve transfer of the program if ODA is not prepared to comply with both §1342 and §1314(i)(d).

[7] §1314(i)(d) requires that "no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit."

VI. EPA should address the findings and recommendations in EIP's 2006 report and the concerns recited above before approving transfer of the NPDES program.

EPA should examine EIP's attached report. The October 15th Federal Register notice does not indicate whether EPA has reviewed the deficiencies identified in our report, and, if so, whether ODA has done anything to improve implementation of the Ohio program for CAFOs.[8]

The findings in EIP's report and in the comments above show that EPA should disapprove the NPDES program transfer to ODA because such a transfer would be premature and improper.

ODA is not the correct agency to administer the program because:

- ODA's mission is incompatible with the goals of the CWA;
- ODA lacks the "follow-through" necessary to enforce environmental programs;
- ODA's program deficiencies make transfer unwarranted;
- ODA lacks the infrastructure it needs to run the NPDES program; and
- ODA does not have the adequate experience and expertise needed to run the CWA program in accordance with the law.

Again, the undersigned appreciate this opportunity to comment on the transfer of the Ohio NPDES program to the ODA and request that EPA grant an extension of the comment period for review of ODA's proposed statutory and rule changes.

Sincerely,

Jessica M. Werber

Jessica M. Werber
Attorney
Environmental Integrity Project
1920 L Street NW, Ste. 800
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[8] *See* citation 1.

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December 16, 2008

Matthew Gluckman
NPDES Programs Branch (WN-16J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590 VIA FACSIMILE: 312-886-0168

Dear Mr. Gluckman:

Please accept the follow comments regarding the proposal to transfer control of Ohio's National Pollutant Discharge Elimination System (NPDES) program for Concentrated Animal Feeding Operations (CAFOs) from the Ohio Environmental Protection Agency (EPA) to the Ohio Department of Agriculture (ODA). On behalf of our 200,000 members and supporters, including nearly 6,000 in Ohio, Farm Sanctuary strongly opposes this transfer based on the inherent conflict of interest it would generate.

Because the ODA's primary role is to promote the interests of agribusiness, granting the Department regulatory powers over the same farm development it actively seeks to promote would be counterproductive. It would in essence create a situation of the proverbial fox guarding the henhouse, thereby undermining existing environmental regulations concerning these facilities and potentially expanding the already considerable environmental problems of Ohio CAFOs.

Such a power shift would be disastrous for Ohio. It is our contention that Ohio must develop stricter – not more lenient – regulations and enforcement for CAFO discharge for a number of reasons:

- Animal waste from CAFOs contain antibiotic residues, heavy metals, nitrites, and other pollutants, as well as viruses, parasites and bacteria (including E. coli, which can live in the soil for six to ten months and becomes waterborne after a rainfall or snow melting).

- According to the EPA, CAFO waste has polluted more than 35,000 miles of rivers in 22 states and polluted groundwater in 17 states,[1] and scientists have become increasingly concerned about the return of a massive "dead zone" in Lake Erie, where CAFO pollution has depleted oxygen levels so severely that no fish can survive. This in turn threatens the lake's tourism value for surrounding communities.[2]

[1] http://www.grist.org/news/muck/2006/06/30/cafo-waste/

[2] http://www.dnr.state.oh.us/Home/FishingSubhomePage/fishericsmanagementplaceholder/fishingfairportdeadzone/tabid/6159/Default.aspx

- History has shown that even when CAFOs are sanctioned for discharge violations, corrective actions can take years to implement. For example, it took four years after the State of Ohio's 27-count lawsuit was filed against Buckeye Egg Farm for environmental violations for the CAFO to be ordered shut down.[3]

- According to a 2007 U.N. Food and Agriculture Organization report, the livestock industry is one of the most significant contributors to land degradation, air pollution, water shortage and water pollution, loss of biodiversity, and climate change, greenhouse gas emissions and the resultant global warming.

- CAFOs tend to create dangerous, low-paying jobs, a disproportionate percentage of which historically go to illegal immigrants who lack labor law protections.

- The rise of CAFOs, along with the decline of small independent farms, often signals the degradation of rural communities. While CAFOs may be family owned, they rarely if ever fit the public's concept of a "family farm."

- Neighbors of industrial operations experience health problems ranging from chronic asthma to neurological damage. Combined with the omnipresent odors from CAFOs, these health ailments precipitate a diminished quality of life and property values for local residents.

As one of the Great Lake states – and one of the nation's largest egg-producing states – Ohio should seek to restrict the harmful effects of CAFO pollution. Manure, chemicals, gases and other waste products from animal agriculture endanger the health and well-being of humans, wildlife, and the larger communities in which they operate.

For these reasons, we strongly oppose the transference of regulatory control of Ohio's NPDES program for CAFOs from the Ohio EPA to the Ohio Department of Agriculture. Implementing such a change would be disastrous in both the short term and long term.

Thank you for taking the time to review the comments of Farm Sanctuary with regard to the NPDES program for CAFOs.

Sincerely,



Gene Baur, President and Co-founder
Farm Sanctuary

[3] http://www.allbusiness.com/north-america/united-states-ohio-metro-areas-toledo/995183-1.html

Sandusky County- Citizens Protecting our Resources, LLC

SC-CPR

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Gibsonburg, OH 43431-9538 419-849-3491

December 15, 2008 VIA FAX to 312-886-0168

Matthew Gluckman
US EPA Region 5
77 West Jackson Blvd
Chicago, IL 60604-3590

RE: Transfer of NPDES Permitting Authority to ODA

To Whom It May Concern:

With the change in Ohio laws in 2000 the mighty agribusiness lobby persuaded the then governor and the Ohio general assembly to change the control of large-scale animal farms or CAFO's from the OHIO EPA to the Ohio Department of Agriculture. (DOA-dead on arrival) This also permits the ODA seek approval to control the federal NPDES permits.

Many of the Livestock Environmental Permitting Programs that were scientifically based regulations have either been often revised and changed and now include that the Director of the ODA can, and has overturned many of these rules and regulations at his, the DIRECTORS DESCRETION. At the permit for the Dairy in Woodville, the OEPA recommended that this dairy not be allowed since it was less than 2 miles of the Town of Woodville and its water supply on karts ground. Additionally it was in close proximity to the Portage River and there was not the coded distance from the bottom of the manure pit to the aquifer. Seems every year the ODA reduces this requirement and the land area requirements for manure disposal. Additionally, the OEPA advised the ODA that they were going to expand the WSPA around Woodville and the proposed Dairy would be within the new WSPA. No matter, the Director, Mr. Boggs overruled the stated requirements and EPA recommendations with a stroke of a pen; at his sole discretion and in spite of the Ohio EPA recommendation and approved the permit. In talks with the OEPA, they said that no matter what objection they observe and prove to the ODA, the ODA does what it wants to! That is a sad situation.

The ODA is reducing their current regulations that protect our aquifers, floodplains and WSPA. They are hell bent on approving any permits for CAFO's and they have never found a CAFO's that they did not like. Kevin Elder even said they can engineer around any problem(s) to get a CAFO's approved and with the help of the Directors

VIA FAX TO THE US EPA. December 15, 2008

DISCRETIONARY Privilege, they sure have not. Check their record. Data is also manipulated to give the appearance of meeting the criteria. Often documentation supplied with the permits is accepted without question or Proof.

When the ODA constantly changes, rescinds the current regulations to meet the situation at hand so it can approve a CAFO's, why would the Federal, US EPA grant them any additional authority. The joke is what would happen if they lost their rubber approval stamp. They don't have a rejected stamp.

One has to wonder why the ODA doesn't deny permits if they don't comply with their regulations instead of changing their regulations to comply with the regulations. One has to wonder why the ODA continues to rescind their current regulations. Are they a captive of the lobbying groups that donate significant funding and see themselves as the agency to protect and promote the corporate agriculture industry to the detriment of the OHIO citizens and our water quality? Mega farms are not farms; they are just like any large corporate entity and should be managed under the same rules for pollution

In my humble opinion, they need to clean their house and go back to their original charter and enforce the original rules and regulation. Seems like they are sleeping with the folks they are suppose to be regulating.

They should not to be allowed to enforce the any additional rules and regulations for mega farms/factory farms that the EPA now controls. This transition of power is like having the foxes watch the chickens. Where would be our Checks and Balances control? . A one stop and shop is not what is needed.

The ODA cannot be trusted and should be redirected back to its original purpose only and made to put their house back in order. The Director should not have discretionary power, to approve anything. Why overrule the Rules?

We request that you deny this change in control.

Sincerely,

Carl Schuh, Trustee

SC-CPR

Carl & Diane Schuh

2630 County Road 24, Gibsonburg, OH 43431-9538 419-849-3491

December 15, 2008 VIA FAX to 312-886-0168

Matthew Gluckman
US EPA Region 5
77 West Jackson Blvd
Chicago, IL 60604-3590

RE: Transfer of NPDES Permitting Authority to ODA

Dear Mr. Gluckman:

The Ohio Department of Agriculture is an organization that is currently a defacto agency of the farm bureau and does their bidding. Their regulations to permit CAFOs are constantly in a state of flux. Yesterday's rules, regulations and specs are changed to suite the current situation. If the manure is too much to spread on 200 acres they change the rules or make an exception. If the separation between the bottom of the manure pit and the aquifer is not sufficient they "reengineer" it to and change the specifications. They accept data from CAFO without question or proof.

When the Ohio EPA says they do not recommend issuing a permit because it is on karst soil, in a WSPA, the CAFO is in a flood plains or there are too numerous to count old abandoned oil well on the site or where the manure will be spread, or sink holes they just ignore the OEPA and proceed to issue the permits. And if all else fails, the director or the ODA, can at his discretion, override everything and issue the permit. They know manure ponds leak, maybe not initially, but sooner or later, to the detriment of the community water supply. Your agency is charged with protecting our clean water; do you think this will advance your objectives?

Nothing is ever said about the air quality in the facility or the neighborhood because they say there are no rules for air quality since these CAFOs are farms and are exempt. When something cost $20 million plus they are not farms, but factories and should be required to do, as any other polluting facility has to do before they harm the population. Sewerage facilities have stringent requirements, so should CAFO manure factories.

Giving any additional control of environmental regulation to the ODA is a mistake. They cannot even manage what they are doing now unless you want another agency that just rubber stamps things so that the State of Ohio can be covered in Manure and our water supply and lakes all polluted. The ODA chicken coop is unprotected now, and giving them more control is like an invitation to let the fox in to make sure things are ok.

We want clean water and clean air, and this change is not acceptable to the people of Ohio and should not be acceptable to the US EPA.

Please reject this change.

Sincerely,

Carl Schuh Diane Schuh

City of Columbus
Mayor Michael B. Coleman

Department of Public Utilities
Tatyana Arsh, P.E. Director

December, 12, 2008

Matt Gluckman
USEPA Region 5
Water Division (WN-16J)
77 W. Jackson Blvd.
Chicago, IL 60604

RE: Comments on Proposed CAFO Program Transfer from OEPA to ODA

Dear Mr. Gluckman:

Thank you for affording us the opportunity to comment on the proposed transfer of NPDES permitting authority from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA). The City of Columbus (City) oversees a number of important watersheds that serve approximately 775,000 people in Columbus and approximately 2,000,000 in central Ohio.

The City has a number of concerns that should be addressed before approval of the transfer of permitting authority, especially given the recent September 2008 GAO Report on Concentrated Animal Feeding Operations which notes: "Although EPA is aware of the potential impacts of air and water pollutants from animal feeding operations, it lacks data on the number of animal feeding operations and the amount of discharges actually occurring." (Concentrated Animal Feeding Operations, GAO-08-944, September 2008, p. 23).

1. LAND APPLICATION RECORD-KEEPING

The first concern of the City is knowing where the land application of manure is occurring. Requiring CAFOs to retain records of land application onsite is not sufficiently protective. These records should be part of the government's public records that are available to the water supply authorities and the public upon request.

a. The City presently has an ongoing program to reduce the amount of phosphorous and nitrogen from farming operations through encouragement of best management practices and creation of buffer zones. Knowing where the land application of manure is occurring will assist the City in monitoring the oversight of these operations and in identifying any problematic nutrient sources in its source water protection areas.

b. OAC 901:10-1-06 (A)(4) requires that a livestock manure broker (buying, selling, or land

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Power and Water Division 614/645-7020 FAX: 614/645-8177 TDD: 614/645-7188

Fairwood Complex 1250 Fairwood Avenue Columbus, Ohio 43206
Sewerage and Drainage Division 614/645-7175 FAX: 614/645-3801 TDD: 614/645-6338

applying annually more than 4500 dry tons of manure or more than 25,000,000 gallons of liquid manure) or a livestock manure applicator (land applying more than 4500 dry tons of manure or more than 25,000,000 gallons of liquid manure) shall maintain an operating record which, in part, requires that certain information be kept for each "land application area" as per OAC 901:10-1-06.

While at least for certain levels of application, the record-keeping requirements contain needed information, they are limited in that they only apply to "land application areas". This term is defined in OAC 901:10-1-01(UU) to mean "...land under the control of a concentrated animal feeding operation owner or operator, whether it is owned, rented, leased, or subject to access agreement with the landowner, or otherwise under the control of the owner or operator, to which manure, or process wastewater from the production area is or may be applied." In effect, land applications of manure through brokers who sell or distribute the material to others who then apply on lands not under the "control" of the CAFO are completely removed from the recordkeeping requirement. Simply by creating a middle man for its manure, CAFOs can avoid important record-keeping requirements.

CAFOs should be required to identify all areas on which its manure is land applied. Records to ensure compliance with such requirements as proper setbacks and proper methods and rates of application should be kept for all land-applied manure locations. Absent such information, land applicators and ODA will be hard pressed to ensure that phosphate applications, as an example, do not exceed the limits set forth in proposed OAC 901:10-2-14(E)(3).

To remedy this gap in the regulation, ODA could require site specific authorizations prior to land application, similar to the requirements that apply for land applying biosolids in Ohio pursuant to OAC 3745-40-03 (J). This approach would provide ODA the opportunity to ensure that nutrient loadings are not exceeded for a given tract and the local utilities and the public a means to track where land application is occurring.

2. ENFORCEMENT

The level of enforcement is an additional concern. In its submittal to USEPA, ODA indicates that it has 4 Livestock Environmental Permitting Program inspectors. This number appears low given the new direct responsibilities that ODA is taking on in overseeing the NPDES CAFO permitting program and the additional monitoring and reporting requirements that it will be enforcing. Also, with the upcoming responsibility of reviewing Ohio's version of the nutrient management plans, and overseeing CAFOs that have left the regulatory regime, additional staffing will be needed.

3. SETBACK DISTANCES

Minimum setback/minimum distance requirements for land application of solid or liquid manure offer critical protections to watersheds. These restrictions are contained in proposed OAC rule 901:10-2-14. Of concern to the City are the restrictions protecting the surface waters of the state.

Table 2 imposes land application restrictions of 35 feet vegetative cover or a total setback of 100 feet from surface waters of the state. Footnote two of the table states that while either a 35 foot buffer strip must be present or a total setback of 100 feet must be maintained for surface application or surface incorporation within 24 hours or direct injection, as a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100 foot setback or 35 foot vegetative cover.

Unlike footnote 9 pertaining to land application restrictions for field surface furrows which requires prior approval of the Director in instances where one seeks alternatives to minimum setback provisions, footnote 2 is silent on whether prior agency approval is needed. Minimum distance restriction alternatives should not be implemented without such approval in all instances. Footnote 2 should incorporate the prior approval language of footnote 9.

An additional concern about the proposed minimum distance requirements is that they lack any requirement that land application not occur within a ground water source water assessment and protection area or wellhead protection area that has been delineated as such by Ohio EPA. This is a requirement that applies to the land application of biosolids pursuant to OAC 3745-40-04 (O).

In addition, if no delineated or endorsed ground water source water assessment and protection area or wellhead protection area exists, the isolation distance from a community public water system well should be 1000 feet, akin to what is required for land application of biosolids set forth in OAC 3745-40-04 (O).

4. NUTRIENT MANAGEMENT PLANS

a. New federal regulations promulgated in November 2008 require that nutrient management plans (NMPs) be made part of the CAFO NPDES permit and that as such, are to be public noticed prior to finalization. Ohio's version of the NMP is the manure management plan (MMP) whose terms are outlined in OAC 901:10-2-08.

The definition of the NMP should be clearer relative to Ohio's program. In the comment to the definition of "manure management plan" – proposed OAC 901:10-1-01 (YY) states the following:

> A person preparing a manure management plan is advised to refer to guidance on comprehensive nutrient management plans that have similar components for manure management plans. Comprehensive nutrient management plan standards are prepared and published by the Natural Resource Conservation Service, an agency of the United States department of agriculture. However, the scope of comprehensive nutrient management plans exceeds the requirements of Chapter 903. of the Revised Code and rules of the chapter.

Given the new federal regulations relative to NMP being part of the terms of the permit, there should not be any confusion as to what is obligated. There is confusion as to whether a manure management plan is different from a nutrient management plan which is different from a comprehensive nutrient management plan. If a NMP is required for parts of the regulated community it should be clear that that the scope of a MMP should be identical to a NMP.

b. While Ohio's program submittal to USEPA occurred prior to the above rule changes, Ohio's program should reflect these changes while it is still in the process of finalizing its program. The federal revisions offer important additional safeguards to the state program that should be incorporated simultaneous to, if not prior to, the approval of the permitting authority transfer.

Please contact me at 614-645-3753 should you have any questions regarding the above comments.

Sincerely,

Dominic J. Hanket

Dominic J. Hanket
Assistant Director, Regulatory Compliance

cc. Tatyana Arsh, Director, P.E.
Dax Blake, Administrator, Division of Sewerage and Drainage.
Richard C. Westerfield, Administrator, Division of Power and Water

OHIO FARM BUREAU

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

December 15, 2008

Mr. Matthew Gluckman
US EPA Region 5
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WN-16J
77 West Jackson Blvd.
Chicago, Illinois 60604

Dear Mr. Gluckman,

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

The Ohio Farm Bureau Federation (OFBF) is the largest general farm organization in the state of Ohio with more than 234,000 members and with members in all of Ohio's 88 counties. Our members produce virtually every kind of agricultural commodity and as a result, OFBF is strongly interested in environmental policies and their potential impact to sustaining a viable agbioresource industry here in Ohio.

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

We appreciate US EPA completing its review of Ohio's application to revise the State's NPDES program, requesting public comment about the proposal, and allowing us to provide comments to the Agency. For a variety reasons we support transferring authority for specific portions of Ohio's NPDES program as detailed in the proposal from the Ohio EPA to the Ohio Department of Agriculture.

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

Efforts to initiate this change first began with the issuance of the Livestock Task Force Report's recommendations more than ten years ago. Nearly eight years ago, Senate Bill 141, which authorized that

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Ohio's state permitting program for large livestock farms be transferred from the Ohio EPA to the Ohio Department of Agriculture, was signed into law. This piece of legislation also called for Ohio's NPDES permitting program pertaining to CAFOs and construction activity at animal feeding operations to be transferred. Because of the Ohio Department of Agriculture's pervasive knowledge of agriculture, members of Ohio's General Assembly and the Administration felt it made sense to shift responsibility for environmental oversight of CAFOs and AFOs to the Department of Agriculture from Ohio EPA, an agency that had shown, despite its best efforts, that it was simply not suited to the task. Protecting the environment has much more to do with the proper management and recycling of manure, about which the Department of Agriculture knows a great deal.

Just like Ohio EPA, the Ohio Department of Agriculture is a regulatory agency. Unlike other state departments of agriculture, its primary function is not to promote agriculture, but to regulate it. Only seven percent of the Department's budget is allocated towards promoting agriculture, while 93 percent of its budget goes towards enforcing regulations. The Department of Agriculture is dedicated to protecting producers, agribusinesses and the consuming public by enforcing clearly written, scientific-based regulations as stipulated in Ohio's laws. These regulations apply to dairy production and processing, amusement rides, pesticides, animal health auctioneers, feeds, fertilizers, food safety, grain warehouses, meat and poultry slaughtering and processing, weights and measures, and more. By doing so, Ohioans get soundly regulated businesses that add value to neighborhoods and communities, and both farmers and consumers are protected.

The Ohio Department of Agriculture began administering the state permitting program through its Livestock Environmental Permitting Program (LEPP) more than six years ago. The state permitting program exceeds federal standards in many areas and has become a model for the nation. It has been deemed by Ohio's Environmental Review Appeals Commission (ERAC) to be a comprehensive, proactive and effective approach to ensuring that livestock farms large enough to require permits attain and comply with stringent standards. The Department of Agriculture's focus in its LEPP has been on compliance and inspection. Its emphasis on stringent monitoring and enforcement is protective of the environment.

During the past six years, Ohio's General Assembly has twice passed legislation (signed into law) to update Ohio's statutes to enable NPDES delegation authority being transferred from Ohio EPA to the Department of Agriculture. House Bill 152 contained several changes that were needed to be made to Ohio law to further enable the Department of Agriculture to obtain NPDES delegation authority per new rules US EPA announced in December 2002 that became effective in February 2003. House Bill 696 clarified several important issues identified by US EPA Region 5 and included amendments necessitated in the federal program since the passage of Senate Bill 141 and House Bill 152. Most recently, House Bill 635 and Senate Bill 383 were introduced in the 127th Session of the Ohio General Assembly to address statutory issues identified by US EPA Region 5 that needed to be changed to facilitate the transfer of the specific NPDES program aspects from Ohio EPA to the Department of Agriculture.

Additionally, the Department has amended its rules numerous times to reflect changes made in state statutes, in federal rules, and to address issues identified by US EPA Region 5 that needed to be clarified to be consistent with the Code of Federal Regulations. Most recently, the Department of Agriculture held a public hearing on November 10, 2008, to receive public comment related to rules that US EPA Region 5 had requested to help facilitate the transfer of specific portions of the NPDES program from Ohio EPA to

the Department of Agriculture. Consequently, these same rules were scheduled for a review by the Joint Committee on Agency Rule Review (JCARR) on December 8, 2008. In conducting its review, JCARR may only recommend to invalidate a rule if the rule exceeds the scope of the agency's statutory authority to make rules; the rule conflicts with the intent of the legislature in enacting the statute under which the rule is proposed; the rules conflict with another rule of that agency or a different rule-making agency; and the agency has not proposed a complete and accurate rule summary and fiscal analysis of the proposed rule, and if the agency has incorporated a text or other material by reference, the agency has not met the standards stated in the Ohio Revised Code. We are not aware of any reason for which JCARR would consider invalidating the rules the Department of Agriculture has submitted to it pertaining to the NPDES transfer process.

Under the rules as finalized, we are pleased that the Department of Agriculture, working with US EPA Region 5 has determined that stockpiling, a valuable manure management tool, will not be considered part of the production area; it will be considered part of the land application area. As part of the land application area, the owner/operator/manager is charged with the responsibility of ensuring that there is no run-off or discharge from the stockpile site.

Prior to the Ohio Department of Agriculture taking over the regulatory responsibility for the state permitting program, the Ohio EPA issued only permits to install for concentrated animal feeding operations, had no permit to operate and had no routine inspection program. Now, under the Department of Agriculture, the state requires both a permit to install and a permit to operate, and conducts two on-site inspections each year. Additional inspections are conducted if warranted. As a matter of fact, the Department of Agriculture's Livestock Environmental Permitting Program staff has conducted more than 1,700 inspections since the department began regulating large livestock farms in August 2002. The Department's Livestock Environmental Permitting Program officials conduct a full inspection of each permitted farm every six months, which is 10 times the federal requirement. Additionally, the state permitting program is an overall environmental permitting program designed to protect both ground and surface waters, which makes it twice as stringent as the federal NPDES program as it is designed only to protect surface water.

Few states have permitting programs for large livestock farms that include a permit to install and a permit to operate, and none are as comprehensive and stringent as Ohio's permitting program. Ohio is the only state that requires an environmental background check of the farm's owners and operators. Furthermore, Ohio law does not allow any operation to discharge into surface or ground waters, regardless of the size. Ohio's permitting program for large livestock farms prohibits any discharge into waterways throughout the state and requires all manure and potentially contaminated runoff to be contained and applied to crop land.

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

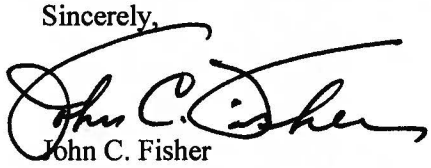
An example of the responsible manner in which the Department of Agriculture operates is how it responds to complaints. State and federal law requires that permitting program staff respond to all written

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

With certain aspects of Ohio's NPDES program being transferred to the Department of Agriculture, livestock farmers that need to obtain both a state permit and a federal permit will now only need to file paperwork with one agency; if they need to apply for both permits at the same time, this will be done under one permit application. This will be more efficient for livestock producers, will be more business friendly and will result in more efficient utilization of taxpayers' dollars as one agency instead of two will be responsible for inspecting and enforcing regulatory compliance.

Once again, we wish to thank US EPA for completing its review of Ohio's NPDES application in which the State proposes to transfer portions of the program related to CAFOs and AFOs from the Ohio EPA to the Ohio Department of Agriculture. We hope that you will positively consider our comments, as well of those who spoke favorably of the proposal at the public hearing conducted by the Agency in Columbus, Ohio, the evening of November 18, 2008. Providing that the rules proposed by the Department of Agriculture related to the NPDES program are not invalidated by JCARR and that the Ohio General Assembly passes House Bill 635 or Senate Bill 383 prior to the adjournment of its 127th Session, we urge the Director of the United States Environmental Protection Agency to approve the transfer.

Sincerely,



John C. Fisher
Executive Vice-President

JCF/dw

cpy: The Hon. Sherrod Brown
The Hon. George Voinovich
The Hon. John A. Boehner
The Hon. Steve Chabot
The Hon. Robert E. Latta
The Hon. David L. Hobson
The Hon. Jim Jordan
The Hon. Marcy Kaptur
The Hon. Dennis J. Kucinich
The Hon. Steven C. LaTourette
The Hon. Deborah Pryce
The Hon. Ralph Regula
The Hon. Timothy Ryan
The Hon. Jean Schmidt
The Hon. Zachary T. Space
The Hon. Betty Sutton
The Hon. Patrick J. Tiberi
The Hon. Marcia L. Fudge
The Hon. Michael Turner
The Hon. Charles A. Wilson

#2

OHIO COASTAL RESOURCE MANAGEMENT PROJECT

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

November 18, 2008

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

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

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

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

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

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

recycled paper

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

SPECIFIC COMMENTS

The Environmental Integrity Project's October 2006 report, Giving Away the Farm, describes four crucial problem areas of ODA's current program. These must be addressed by ODA, with monitoring and enforcement by Ohio EPA, to protect public health and the environment.

1. ODA does not deter noncompliance through effective enforcement. ODA's enforcement relies on warning letters and notices of deficiencies, with limited escalation, even with repeat violators. The Environmental Integrity Project (EIP) reports that ODA had only assessed three penalties in four years—two in the negligible amounts of $200 and $700—while over a similar time period, Ohio EPA had assessed double the number of penalties and in amounts averaging $16,786. For example, Ohio Fresh Eggs bought Buckeye Egg Farm in 2003 and it has since amassed 36 ODA notices of deficiencies without a single fine. USEPA must consider ODA's track record and the number of trained and experienced staff. ODA does not have an effective and credible enforcement structure in place. Therefore, facility operators have an incentive to delay or ignore compliance.

2. ODA fails to effectively regulate manure transfer from permitted farms. If a state permitted facility applies manure to fields under its control, it is liable for any resulting environmental harm. Increasingly, Ohio facilities circumvent this liability by transferring manure for land application elsewhere, with little accountability. ODA must adopt a policy presumption that holds manure producers liable, including spills of manure land applied by a third party.

3. ODA places inadequate restrictions on winter manure applications. Because of the manure transfer loophole, ODA's attempt to restrict winter land application onto frozen ground is essentially nullified. ODA must restrict the quantity of untreated manure that CAFOs can transfer during the winter months.

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

State agencies should develop a common database to log complaints, compile environmental violations, and track compliance at CAFOs. For every manure-related entry in the common database, agencies should identify the original source facility producing the manure—whether or not the agency has determined that the source facility is responsible. This should speed up investigation of repeat violators.

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

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

We recommend expanding ODA's program to cover medium-sized CAFOs, which are already defined in Ohio Revised Code Sec. 903.01. EIP suggests that existing permitting thresholds could continue in place, while imposing a new requirement for medium CAFOs to obtain state operating permits if they violate Best Management Practices as established under Ohio's agricultural pollution abatement rules. This requirement would parallel federal rules that place NPDES permit requirements on medium CAFOs that discharge to state waters. A violation-based permit requirement would be an incentive to comply with Best Management Practices. If more facilities comply, that should free up more ODA staff time to focus on those that don't.

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

References

Environmental Integrity Project, Giving Away the Farm: Why USEPA should reject the Ohio Department of Agriculture's bid to administer the Clean Water Act (October 2006).
Union of Concerned Scientists, CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations (April 2008).
Pew Commission on Industrial Farm Animal Production (April 2008).

Edith Claus
President

#3

OHIO FARM BUREAU

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

PROPONENT TESTIMONY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

#4 BRIAN WELCH

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

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

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

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

Use This Space to Write Your Comments

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

#6

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

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

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

to ~~[illegible]~~ educate farmers.

Name [redacted]

Affiliation OHIO Cattlemen's Ass

Address

City State ZIP

#7

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

Submitted by:

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

November 18, 2008

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

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

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

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

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

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

#8

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

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

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

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

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

#8

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

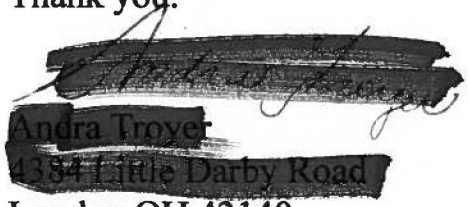
Concentrated animal feeding operations in Ohio are designed as "no discharge" facilities, unlike factories and cities that are allowed to partially treat and then release tons of pollutants directly into waterways. The Department of Agriculture's focus in the Livestock Environmental Permitting Program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

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

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

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

Thank you.



Andra Troyer
4384 Little Darby Road
London OH 43140

#9

LEAGUE OF WOMEN VOTERS OF THE PERRYSBURG AREA
P.O. BOX 712 • PERRYSBURG, OHIO 43552

November 18, 2008

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

Dear Mr. Gluckman:

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

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

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

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

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

1. The **Ohio EPA already has the expertise and trained staff!** According to the Environmental Integrity Project *Giving Away the Farm,* October 2006, the ODA does not deter noncompliance through effective enforcement. In order to maintain healthy checks and balances between governmental agencies, the Ohio Department of Agriculture should be subject to the Ohio EPA's oversight and enforcement.

2. To **avoid setting a significant precedent** in administering the federal *Clean Water Act,* USEPA Region 5 should not allow Ohio to transfer NPDES permitting and enforcement authority from the Ohio EPA to the Ohio Department of Agriculture.

3. To **protect** the waters of the State, and Ohio's Great Lake, Lake Erie, from agricultural pollution caused by animal wastes from Concentrated Animal Feeding Operations, [**November 15, 2008** Toledo Blade, by Tom Henry, *Mediator supports $223,500 dairy fine* 2 Michigan megafarms cited for problems (attached}] MaumeeR./Lake Erie watershed in S.Central MI!

4. Economic Cost: 'A U.S. analysis of **nutrient pollution in freshwater** reveals **annual losses** of at least **$4 billion**, mostly from dips in lakefront property values and loss of recreational use' [American Chemical Society, **November 12, 2008**], plus $2,894,012,238. in livestock farm subsidies, U.S. total 1995-2005. [EWG II].

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

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

Sincerely,

Gloria Green

Gloria Green, Clean Water, LWVPA Repr. to LEBC

Lois Bigelow

Lois Bigelow, Co-President, LWVPA

Mary J. Clark

Mary Clark Co-President, LWVPA

Attachments: 2

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Web Release Date: November 12, 2008

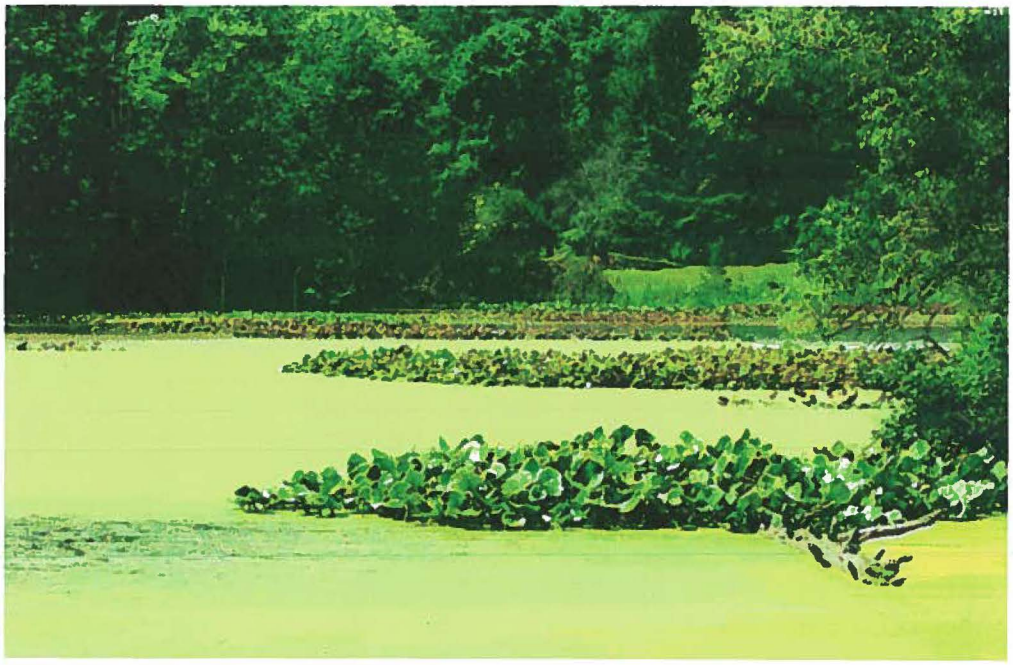
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Economic damages from nutrient pollution create a "toxic debt"

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

Rhitu Chatterjee

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



ISTOCKPHOTO

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

To understand the true extent of nutrient pollution in freshwater bodies, ecologist Walter Dodds and his

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

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

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

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

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

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

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

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

Mediator supports $223,500 dairy fine

2 Mich. megafarms cited for problems

By TOM HENRY
BLADE STAFF WRITER

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

> '... The court is agreeing with our concern that this facility isn't operating properly and is posing a threat to our environment.'
> Bob McCann, Michigan DEQ

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

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

Both sides have the right to appeal. Vreba-Hoff said it was satisfied with the recommendation, while the Michigan DEQ said it is mulling it.

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

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

See DAIRY, Page 2

Dairy

Continued from Page 1

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

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

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

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

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

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

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

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

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

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

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

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

#11

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

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

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

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

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

Thank you for your time.

#12

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

November 18, 2008

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

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

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

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

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

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

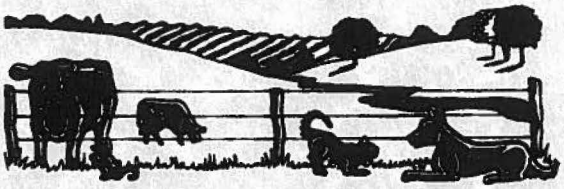
very familiar with, after 30 years working as a food animal veterinarian in private practice, is ODA enforcement of the pasteurized milk regulations from the farm to consumer. They have done due diligence in assuring that the consuming public has a safe and wholesome dairy product supply.

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

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

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

Jerry Lahmers DVM
5942 Harmony Val Rd
Newcomerstown
Ohio 43832



#13

FEEDER CREEK VETERINARY SERVICES
12575 Millersport Road • Millersport, Ohio 43046
(740)467-2949 1-800-451-2746

November 18, 2008

To Whom It May Concern:

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

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

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

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

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

Sincerely,

Dr. Steven DeBruin

#15

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

[redacted]
Cygnet, Ohio 43413

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

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

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

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

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

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

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

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

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

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

#16

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

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

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

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

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

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

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

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

[redacted]
Raymond Ohio 43067
[redacted]

#17

Good Evening Ladies and Gentlemen,

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

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

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

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

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

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

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

Thank You

Joseph A. Steiner
4284 Hanover Dr.
Mason, Ohio 45040

#18

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

Public Hearing
The Fawcett Center

Proponent Testimony Presented by
[redacted], Chair
Ohio Dairy Producers Association
[redacted]

Tuesday, November 18, 2008

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

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

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

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

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

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

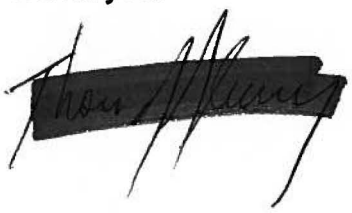
In fact, Ohio law does not allow any size operation to discharge into surface or ground waters. Ohio's permitting program for large livestock farms prohibits any

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

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

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

Thank you.



Richard C. Sahli, Attorney At Law
981 Pinewood Lane, Columbus, Ohio 43230-3662
614 - 428 - 6068
Fax: 614 - 428 - 6068

#21

PUBLIC COMMENT OPPOSING TRANSFERRING NPDES-CAFO AUTHORITY TO THE OHIO DEPARTMENT OF AGRICULTURE

November 18, 2008
Columbus, Ohio

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

Our main fear in that legislation[1] was that it uses the fox to guard the henhouse as ODA is utterly dominated by Ohio's agri-business associations and has an irreparable conflict of interest that prevents it from being an honest regulator due to its historic mission to promote the economic growth of agriculture. The resulting program for permitting CAFOs has fully realized these fears as it's every facet has been dictated by agri-business lobbies and provides very little substantive protection to the citizens of Ohio affected by these facilities.

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

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

[1] Senate Bill 141, effective March 15, 2001

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

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

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

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

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

of hydrogeology. ODA's regulations[2] require a 15 foot separation between manure storage and an aquifer, but as documented in the Ohio Court of Appeals decision in Citizens Against Megafarm Dairy Development v. ODA,[3] ODA's interpretation renders this rule a nullity by simply claiming that shallow aquifers can simply be ignored because they cannot be used as a drinking water source due merely to the 25 well-casing requirement for water wells under Ohio law. Accordingly, the ODA now permits manure pits to be built directly into aquifers without any restriction whatsoever. The Department's interpretation ignores the obvious reality that shallow aquifers act as conduits for contaminants to rapidly move into deeper aquifers and to surface waters which any regulator with the slightest environmental awareness would be deeply concerned about but which ODA ignores as a matter of its official policy. Unfortunately, due to the rule of Ohio law requiring deference by courts to an administrative agency's interpretation of its own rules, the court felt obliged to allow this ridiculous position to become Ohio law. U.S. EPA cannot approve NPDES authority to ODA without requiring a system to protect surface waters from contamination from manure stored in or close to shallow aquifers as ODA now allows.

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

[2] Ohio Administrative Code 901:10-2-02(F)
[3] Citizens Against Megafarm Dairy v. Dailey, 2007-Ohio-2649; Case No. 06AP-836, Franklin County, decided March 31, 2007.

WUEBKER FARMS LLC
[redacted]
Versailles, OH 45380
[redacted]

#22

NPDES PUBLIC HEARING
November 18, 2008

Good evening! My name is [redacted] representing our farming operation, Wuebker Farms LLC, the Ohio Soybean Association and the Darke County Farm Bureau ~~Federation~~. I might also add that my Brother & I live on our FAMILY Farm with our 6 children ranging from 2-9 Our family farming operation consists of my brother, [redacted] and myself, we have 1000+ crop acres and an 1800 sow contract farrowing operation, meaning we produce about 40,000 - 12 pound baby pigs per year. This hearing, when you get right down to it tonight, is about poop. Well, we have used this poop on all of our cropping acres since the early 1990's, saving our operation thousands of dollars. Over the years I have run our skid loader under hi-rise poultry barns to clean this nutrient dense poop from the barns and turn it into one of the best natural fertilizers in the world. We continue to use poultry manure on an as needed basis, this fall we spread about 240 tons of turkey manure from our neighbors operation on one of our rented farms. We also have about 3.5 million gallons of swine manure each year from our own swine operation that is dragline injected on our nearby farms and neighbors farms. So I guess what I am saying to the regulators in the room tonight, unless you have sat in the skid loader under the chicken house, carefully applied manure on fields like a valuable fertilizer, or run your Polaris Ranger up and down your creek making sure the liquid swine manure you are applying is not leaking into your underground drainage system, you really don't know poop like I do and the many farmers here tonight.

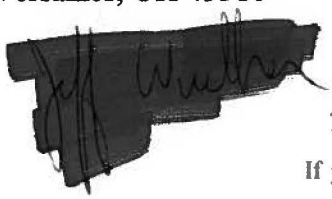
we also drink the water and Thousands of pounds of Comm FERTILIZ

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

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

Respectfully submitted,

[redacted]
Jeff Wuebker
[redacted]
10607 Versailles-Yorkshire Road
Versailles, OH 45380



I would also like to remind you ...

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

[redacted] #25

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

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

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

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

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

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

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

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

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

#26

[redacted]

Nov. 18 2008

Ada, Ohio 45810

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

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

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

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

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

the ODA. At the most recent CLM training, Kevin Elder coached the attendees by saying. "He with the most records wins—in court." What chance of having a complaint addressed do citizens have when the manure applicator and the ODA write and control all the records?
I urge you not to give even more authority to an organization that has a direct conflict of interest.

Respectfully submitted,

[redacted]

#28

[redacted]
Grover Hill, OH 45849

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

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

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

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

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

[redacted]
Hillside Acres

#29

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

Public Hearing
The Fawcett Center

Proponent Testimony Presented by

[redacted]
Chris Weaver
Telephone: (419) 485-8157; Email: ccweaver@williams-net.com

Tuesday, November 18, 2008

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

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

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

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

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

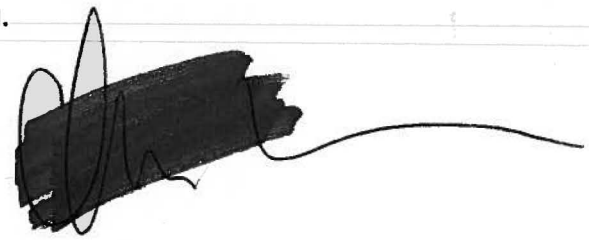
Few states have permitting programs for large livestock farms that include a permit to install and a permit to operate, and none are as comprehensive as Ohio's permitting program. Ohio is the only state that requires an environmental background check of the farm's owners and operators, and the only state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

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

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

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

Thank you.



#30

11-18-2008

RE: [FRL–8728–5]

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

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

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

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

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

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

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

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

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

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

Thank you.



[redacted]
Haviland, Ohio 45851

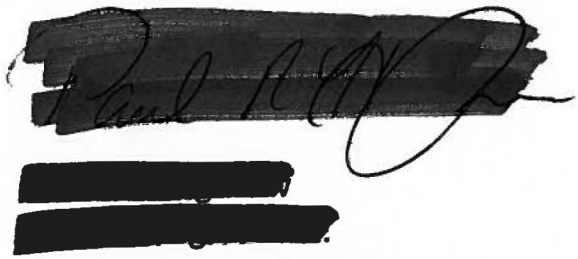
#32 November 18, 2008

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

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

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

Respectfully Submitted,



[redacted]
Bowling Green, OH 43402

RE: [FRL–8728–5]

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

#33

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

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

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

Ohio has a program that livestock producers know what is expected of them. CAFOs are inspected twice a year. Due to the inspections there are constant improvements on the farmers' part that go above regulations.

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

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

#34

Proponent testimony concerning the NPDES application from ODA to the US EPA.
[redacted] Eldorado, Ohio 45321

November 18,2008

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

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

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

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

PE: **[FRL–8728–5]**

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

[redacted]
Lane E. Osswald

#36

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

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

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

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

[redacted]
NEW WASHINGTON OH 44854

Nov 15, 2008

Mr. Matt Gluckman
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Mr. Gluckman,

I am very concerned about the potential transfer of oversight for factory farm water pollution permits from the Ohio Environmental Protection Agency (OEPA) to the Ohio Department of Agriculture (ODA).

The proposal effectively transfers control of factory farm water pollution to an administrative body that is biased in favor of the agricultural industry. Furthermore, it is an abdication of responsibility from OEPA, which is legally mandated to protect public health and the environment.
In Ohio, The Dept of Agriculture appears to continue to struggle with it's role as both the lobbiest for the factory farm industry, and at the same time try to present it self as the regulator of the industry that they are committed to promoting.One needs to look no further than Vreba-Hoff. An organization under almost countless "alias names, that currently has ammased over $230,000 in fines for countless violations at a single Hudson, Ohio facility. This is the very same Vreba-Hoff/William VanBakel that the ODA was perfectly comfortable with in grantinga permitt to install the largest milk CAFO in the state. Only because several legislators and our attorney made their decision so visible that they acquiesed to tabling the application.
Factory farms generate over 10.5 million tons of animal waste per, with some individual facilities creating more waste than medium-sized cities. Rich in phosphorus and nitrogen, animal waste is a major source of water pollution in Ohio. These chemicals enter waterways, killing fish and other aquatic life and contaminating our drinking water.
The environmental and public health impacts of factory farms are tremendous. The EPA must consider the Ohio Department of Agriculture's dismal track record before handing over authority to regulate water pollution. For example, ODA's enforcement is lax and does little to promote compliance with the law. Ohio Fresh Eggs, formerly Buckeye Egg, has amassed 36 notices without a single fine levied against it since 2003.
I urge you to deny the transfer water pollution permit authority to the Ohio Department of Agriculture. In addition, Ohioans should have at least 30 more days to review and comment on this important decision. At least one additional hearing should also be held in Northwest Ohio where the majority of these facilities exist.

In light of Ohio Department of Agriculture's weak track record, Ohioans deserve a better equipped agency to protect our drinking water, our quality of life and the state's natural resources.

Sincerely,

[redacted]
London, OH 43140

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

11/22/2008

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

Re: Transferring NPDES authority to the ODA

Dear Mr. Gluckman
Thank you for taking the time to read this letter.
I am going to give you factual information that should convince you that the Ohio Dept of Agriculture has demonstrated significantly, and repeatedly, a lack of regard for their other job, which is, the enforcement of the regulations that are designed to protect the environment.
Let me begin with giving you a very brief statement of my position in this matter.
I have not traveled the state to gather this information. All of this has occurred in a very small area around London Ohio. I do know, that similar events are occurring across the state.
I do not have a financial interest in this matter.
I do have an interest in the environment.
I have witnessed people's lives, and homes being severely compromised because of the lack of enforcement.
I have observed a river full of dead fish, because the ODA has not enforced the regulations .
I do not believe any company or person should be allowed to harm, hurt, or infect another innocent victim. I think that is an American principle.
Like may others, I have incurred added costs to my business because of EPA regulations....because the EPA was doing it's job.
You do not have a conflict. You can stand strong in your conviction to protect the environment, and the human beings that live in it.
THE ODA CANNOT MAKE THAT STATEMENT
You will notice I have included a number of copies and documents. I will do my best to substantiate that every word I am telling you is correct, and easily verified.

About 6 years ago a CAFO with less than 700 milking cows was established south of London. The ASSEN Farm.
I know you are concerned with farms over 700, but the ODA's performance, and honesty, should apply to Cafo's of any size.
There were multiple spills into the rivers. The county engineer was called because the ODA isn't open on weekends. The Engineer's office found that the "mains" on the drain tiles were packed with silage instead of being capped properly.
The ODA never really acknowledged that it even happened.
More recently the Assen Dairy, a Vreba –Hoff project has continued to have issues
The neighbors state they have called the ODA with no response, and the local sheriff no longer responds to the calls because they do not have any authority.

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

What is more important to the mission of the EPA, protecting the environment, or the business' bottom line?
Let's move on to the next issue, which is under the parameters of the new proposed transfer of authority.
The Vreba-Hoff application to install a 5400 head factory dairy.
Under the rules of HR141, the bill that tranfered the authority from the EPA to the ODA, the very first hurdle was a background check. If any person or entity applying for the permit has a history of any violations of any substance the director is to deny the application. It the applicant files false information, or lies on the application, the director must deny the application.
(Keep in mind, you are contemplating giving them the total and complete authority for the NPDES permits, the only regulation that is not under their control. Is there any reason to believe they will honor your guidelines any better than they have adhered to the first set of regulations.
As part of the application, logically the applicant needs to list his, or the company's name. It also asks if they have in the past 5 years operated a CAFO, If so did you have any violations.
In part A1 of the application (A copy of the application is enclosed)
The applicant enters the name Orleton Farms, WHM van Bakel, Managing partner.
Later he signs and prints his name.
In part A5 It asks if the applicant has operated a CAFF in the past five years immediately proceeding the date of the application
Note his response...None (this is a fraudulent statement)
You will also note that for some reason he has changed the name perhaps to diguise the fact he is lying on question 5., and question 4 as well.
At this point this application should have been rejected.
One of the authors of HB141 Chris Widener is intimately familiar with the law that was given to the ODA to administer .In his opinion, the application should have been rejected because of the fraudulent statement. The ODA obviously no longer feels that they need to adhere to those guidelines that were carefully thought out to protect Ohioans and the waters of this State. Instead they are committed to satifying the Farm Bureau, and

protecting industries that are exclusively committed to making money with no regard for people or the environment.
These pages of the application are included for you to review.
What happens now is very interesting, and I hope for you very concerning.
William H van Bakel, and his company Vreba-Hoff has quite a reputation.
In Michigan, Indiana, and Ohio they have set up countless Cafo's many under the 700 head guideline to escape regulations, on occasion multiple farms next to each other but separately owned, using common equipment. They have amassed hundreds if not thousands of violations. Everything from dumping on frozen ground, countless spills into lakes and rivers, radical over application, indeed saturation of soil, moving the depth indicator in the manure lagoon because they were above the allowed levels, just to name a few. He and his partners have many names. I have included a list of their many aka's. Just that should tell you something.
When they, the ODA, came to Madison County to garner the support of the community, they did a very impressive power point presentation, you may have seen it yourselves. In that presentation, they don't want to you to associate the project with the Vreba-hoff name. In fact in the presentation, their Manure Management guru, Tom Menke, (you heard his testimony on Nov 18th in Columbus), specifically states verbally, and in writing on the screen"This is not Vreba-Hoff" It is a farmer gentleman WHM van Bakel.
This is a presentation with Kevin Elder by his side, stating that this is not Vreba-Hoff.
A bigger lie could not have been told. And they did the presentation 3 times, and told every one three times including several legislators, that it was not Vreba-Hoff!!!
This is Tom Menke, the ODA primary consultant on manure management and the owner of the "Earth Mentor" manure management system that is, as of right now, not proven, and has failed it's initial tests in Michigan. (While I realize you are only concerned with Ohio right now, I know the Farm Bureau will be pushing for the same transfer in Michigan, Indiana and ultimately across the country.
As a side note, it is my understanding that the ODA's independent advisory council includes Tom Menke, a representative from the Farm Bureau, and a Vreba-hoff attorney. Now there's an unbiased lot.
Finally,
I am including a set of letters.
As a result of Sen. Austria expressing some concern about the Orleton Dairy (they will spread manure less than a mile from an elementary school, just barely a mile from a community of over 2000 people, and on the headwaters of the Darby, a protected sanctuary of wildlife.
A representative of the ODA, Adam Ward, (he also testified in Columbus on the 18th) sent Sen. Austria a letter to ease his concerns.
Please read his response, then compare it to our analysis of his statements compared to historical fact.
What you will find is that the ODA will say whatever they think you want to hear, to gain absolute control of permitting these CAFO's and to allow any individual or company to operate one.
If they misrepresented the truth to a legislator, why would thay not do the same to you?
To date their track record when dealing with good farmers like many that you heard the other night, is probably okay. The problem is, the new breed has only one issue."show me the money" most are not Americans, most could care less about the soil. They are not spreading the liquid sewage to fertilize, they are spreading it to get rid of it. If they thought they could get away with dumping in a river, or in the case of Michigan into lake Huron, they will do it in a minute. The EPA will bust them, the ODA will not. Check the records, the ODA has not issued any amount of fines.

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

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

I know the Farm Bureau is a very intimidating organization, and most elected officials won't even think of crossing their path, but you can stand up and do what is right.

If additional documentation from other parts of the state would be helpful, we will be glad to provide that for you.

Thank You for your careful thought in this matter.

Very Sincerely,

[redacted]

Gary Feliks @ O'Connor's Office Products

From: [redacted]s @ O'Connor's Office Products" <[redacted]@oconnorsoffice.com>
To: <rmargo@senate.state.oh.us>
Sent: Saturday, November 15, 2008 12:11 PM
Subject: Fw: [ohiocafos] Government Report Links Factory Farms to Harmful Air Emissions, Water Pollution

This is the summary of the congressional committee's sentiments on the wisdom of give the authority to the ODA
It is rather interesting.
Thanks,
[redacted]
----- Original Message -----
From: "[redacted]@ O'Connor's Office Products"
<[redacted]@oconnorsoffice.com>
To: <Arielle.williams@mail.house.gov>
Sent: Thursday, September 25, 2008 9:37 AM
Subject: Fw: [ohiocafos] Government Report Links Factory Farms to Harmful Air Emissions, Water Pollution

> Arielle,
> This goes into greater depth as to what transpired at the hearing.
> The USEPA has been trying to push this through for several years. There
> have been numerous studies that all come back with the same findings.
> The Ohio Dept of Agriculture (ODA) is not prepared, nor inclined to
> enforce any regulations despite their statements to the contrary.
> While the massive amount of manure, in a liquid form is a major problem,
> air and ground water pollution are just as big a problem.
> The ODA cannot effectively promote factory farming and regulate it any
> more than The electric company should be authorized to regulate it self.
> There are no controls for monitoring or controlling dangerous gasses
> coming from these CAFO's (Concentrated Animal feeding Operations) also
> referred to as CAFF's
> The push to transfer this authority is coming from the farm bureau, and
> agribusiness sector, as well as the ODA. Anyone that does not have a
> financial stake in this matter is apposed to giving the ODA any additional
> Authority.
>
> Thank you for passing this info on to Rep. Pryce. As you know, Madison
> County would elect her 10 more times. We will miss her, and thank her for
> all she has done for us. While the county is largely agricultural,
> practically every farmer in the county knows that this entire CAFO/ODA
> situation is in dire need of being restructured.
> Thanks Again,
> [redacted]
> [redacted]
> London, Ohio 43140
>
> Please continue to read the text below

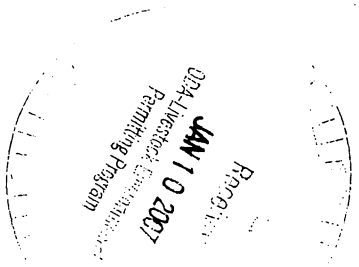
>
> ----- Original Message -----
> From: "Laurel Hopwood" <lhopwood@roadrunner.com>
> To: <ohiocafos@yahoogroups.com>
> Sent: Wednesday, September 24, 2008 1:20 PM
> Subject: [ohiocafos] Government Report Links Factory Farms to Harmful Air
> Emissions, Water Pollution
>
>
> News from Congress
> For Immediate Release: September 24, 2008
> Contact: Jodi Seth or Alex Haurek(Energy and Commerce), 202-225-5735
> Mary Kerr (Transportation and Infrastructure), (202) 225-6260
>
> Government Report Links Factory Farms to Harmful Air Emissions, Water
> Pollution
>
> Lawmakers Question EPA Plan to Loosen Air And Water Reporting Requirements
>
> Washington, D.C.–A Government Accountability Office (GAO) study released
> today says that large factory farms, known as Concentrated Animal Feeding
> Operations (CAFOs), can emit dangerous levels of airborne and waterborne
> pollutants. The report concludes that these operations can potentially
> degrade air quality because large amounts of manure may emit unsafe
> quantities of ammonia, hydrogen sulfide, and particulate matter, and they
> can potentially degrade water quality because pollutants in manure such as
> nitrogen, phosphorus, bacteria, and organic matter could enter nearby
> water
> bodies.
>
> Both the Environmental Protection Agency (EPA) and the Agency for Toxic
> Substances and Disease Registry have determined that exposure to ammonia
> and hydrogen sulfide can have harmful health effects, even resulting in
> death at high concentrations.
>
> The results of the 18-month GAO study come as key Members of Congress are
> challenging a controversial proposal by EPA that would lift release
> reporting requirements of airborne pollutants from CAFOs, despite the fact
> that EPA's own scientists have found hydrogen sulfide and ammonia to be
> powerful pollutants with potentially serious health effects. Further,
> despite clear evidence of the link between animal feeding operations and
> impaired water quality, EPA is on the verge of approving a new Agency
> rulemaking that restricts Federal authority under the Clean Water Act to
> only the most egregious polluters to the nation's waters – those
> facilities
> with chronic ongoing discharges of animal waste runoff into rivers,
> streams, and lakes.
>
> Today's GAO report was requested by Reps. John D. Dingell (D-MI), the
> Chairman of the Committee on Energy and Commerce, James L. Oberstar
> (D-MN),

> the Chairman of the Committee on Transportation and Infrastructure, Gene
> Green (D-TX), the Chairman of the Environment and Hazardous Materials
> Subcommittee, Eddie Bernice Johnson (D-TX), the Chairwoman of the Water
> Resources and Environment Subcommittee, and Hilda Solis (D-CA), the Vice
> Chair of the Environment and Hazardous Subcommittee. In March, Dingell
> and
> other Energy and Commerce Committee members wrote EPA questioning the
> agency's proposal to eliminate reporting requirements for significant air
> emissions from animal waste.
>
> "This GAO study confirms that the Bush Administration's plan to exempt
> industrial sized animal feeding operations from emissions reporting
> requirements is nothing more than a favor to Big Agribusiness at the
> expense of the public health and communities living near these
> facilities,"
> said Rep. Dingell.
>
> "It is clear that the clustering of agricultural operations increases the
> probability of pollutants from animal waste degrading water quality and
> leading to serious health concerns for area residents. If not managed
> properly by the CAFOs, E coli and other pathogens found in animal manure
> can contaminate fresh drinking water supplies," said Rep. Oberstar.
> "Despite 35 years of Clean Water Act authority to address pollution from
> CAFOs, I am troubled that EPA simply does not have a sufficient
> understanding of the scope of the problems, let alone a comprehensive
> solution to protect the nation's waters from potential contaminants. This
> is a recipe for serious impairment of the nation's water supplies from
> known and controllable sources."
>
> "The EPA's own science demonstrates that animal waste can cause health
> problems, and this report found that the EPA lacks accurate data on large
> animal feeding operations," Rep. Green said. "As a result, we are highly
> skeptical of the Administration's proposal to exempt them from reporting
> hazardous releases."
>
> "We realize that the livestock and poultry industry is vital to our
> nation's economy, and that animal manure can be used beneficially on farms
> to fertilize crops and restore nutrients to soil, but we also know that if
> improperly managed manure and wastewater from animal feeding operations
> can
> adversely impact water quality through surface runoff and erosion, direct
> discharges to surface water, spills and other dry-weather discharges and
> leaching into the soil and groundwater." said Rep. Johnson. "We must
> guard
> against this."
>
> "This report makes it clear that the EPA has failed to assess the extent
> to
> which pollutants linked to animal waste may be impairing human health and
> the environment," said Rep. Solis. "The EPA's proposal to exempt
> industrial

> sized animal feeding operations from emissions reporting requirements is
> not only irresponsible but also careless and neglectful."
>
> The GAO report made the following findings:
>
> Some operations generate more raw waste than U.S.cities produce
> annually. For example, a beef cattle farm with 140,000 head of cattle
> could produce over 1.6 million tons of manure annually, more than the
> almost 1.4 million tons of waste generated by more than two million
> residents of Houston, Texas.
>
> The number of CAFOs increased by about 230 percent over the past 20
> yearsfrom about 3,600 in 1982 to almost 12,000 in 2002. The number of
> animals raised on large farms also increased from more than 257 million
> in 1982 to over 890 million in 2002, an increase of 246 percent.
>
> EPA has not yet assessed the extent to which air and water pollution
> from CAFOs may be impairing human healthand the environment because it
> lacks key data on the amount of pollutants that CAFOs are discharging.
> ~~At least 15 studies have directly linked air and water pollutants from~~
> animal waste to specific health or environmental impacts and 12 other
> studies have made indirect linkages between pollutants from animal waste
> and health and environmental impacts.
>
> EPA has neither the information it needs to assess the extent to which
> CAFOs may be contributing to water pollution, nor the information it
> needs to ensure compliance with the Clean Water Act. The EPA lacks
> reliable, comprehensive data on the number, location and size of CAFO
> operations that have been issued permits and the amount of discharges
> they release.
>
> EPA does not have the information it needs to effectively regulate
> CAFOs.
>
> EPA may be less likely to seek enforcement against a CAFO that it
> believes is discharging pollutants into a water body because it is now
> more difficult to prove that the water body is federally regulated. The
> GAO found that a 2006 Supreme Court decision regarding the jurisdiction
> of the Clean Water Act has also complicated EPA's enforcement of CAFO
> regulations. Further, GAO noted that EPA's Assistant Administrator for
> Enforcement and Compliance Assurance stated in a memorandum that the "
> Rapanos decision and EPA's guidance has resulted in significant adverse
> impacts to the clean water enforcement program."
>
> GAO questioned EPA's proposed rule to exempt animal feeding operations
> from reporting emissions of ammonia and hydrogen sulfide above 100
> pounds per day because EPA "has not yet completed its data collection
> effort and does not yet know the extent to which animal feeding
> operations are emitting these pollutants." The Comprehensive
> Environmental Response, Compensation, and Liability Act (CERCLA) and the
> Emergency Planning and Community Right-to-Know Act (EPCRA) reporting

> requirements provide government authorities, emergency management
> agencies, and citizens with information about the source and magnitude
> of hazardous releases into the environment.
>
> On September 24th, the Committee on Energy and Commerce's Environment and
> Hazardous Materials Subcommittee will hold a hearing on CAFOs and the
> EPA's
> proposal to eliminate air emission reporting requirements under CERCLA and
> EPCRA for animal feeding operations. Representatives from the GAO and the
> EPA are among those scheduled to testify.
>
> The GAO report is available at:
> http://energycommerce.house.gov/Press_110/110_EHM_CAFOGAO.pdf
>
> The March letter to EPA is available athttp://energycommerce.house.gov/
>
> ---
>
> Yahoo! Groups Links
>
> <*> To visit your group on the web, go to:
> http://groups.yahoo.com/group/ohiocafos/
>
> <*> Your email settings:
> Individual Email | Traditional
>
> <*> To change settings online go to:
> http://groups.yahoo.com/group/ohiocafos/join
> (Yahoo! ID required)
>
> <*> To change settings via email:
> mailto:ohiocafos-digest@yahoogroups.com
> mailto:ohiocafos-fullfeatured@yahoogroups.com
>
> <*> To unsubscribe from this group, send an email to:
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PACKETT "A"



Part A GENERAL INFORMATION

The following general information is required for all permits.

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

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

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

Application Received 1/9/07
Application In Review Process

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

Signature

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

← HIS SIGNATURE

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

W.H.M. van Bakel ← WHM VAN BAKEL

Date 01-09-2007.

PART A OF
APPLICATION FOR PERMIT INSTALL

 NOTE HOW NAME CHANGES ON THIS PAGE TO SOME HOW DISGUISH THEMSELVES WHEN THEY ANSWER THE QUESTION 5

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

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

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

THIS IS A SOLICITED RESPONSE

   * None

   *

Application Received 1/9/07
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5. Please list the name(s) of AFFs or CAFFs that the applicant has operated (during the five-year period immediately preceding the submission of the current permit application) or is operating elsewhere **in the United States** and that are regulated under the Federal Water Pollution Control Act. **Please include the location and/or address(es) and the name of the county. Please provide any and all permit identification numbers.**

ASK IF THEY HAVE OPERATED A CAFF IN PAST 5 YEARS

   * None

   *

   *

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

   * None

   *

   *

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

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

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

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

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

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

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

"Right to control or in fact controls management of the applicant or of the owner" includes any individual who has an agreement that grants authority to operate the CAFF as set forth in a contract with the applicant or permittee or the prospective owner.
(1) Is there a contract?
(2) Are there employees of the contractor who are employed in a supervisory capacity for the subject facility; or
(3) Are employees of the contractor empowered to exercise independent judgment for the subject facility.

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

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

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

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

THIS IS A NON-SOLICITED RESPONSE

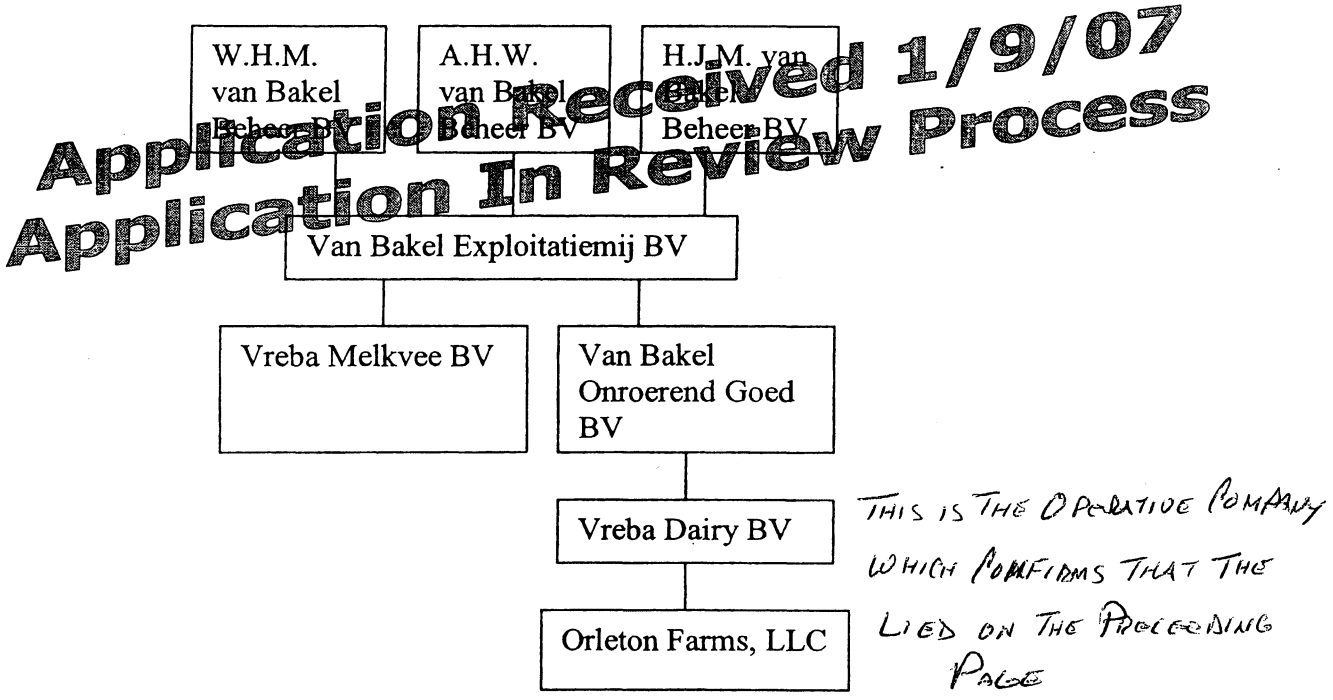
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SUPPLEMENTAL COMPLIANCE INFORMATION FOR ORLETON FARMS, LLC

Orleton Farms, LLC will be the owner and operator of Orleton Dairy. Vreba Dairy BV[1] is the sole member of Orleton Farms, LLC. Vreba Dairy BV in turn is owned by Van Bakel Onroerend Goed BV, which is owned by Van Bakel Exploitatiemij BV. Van Bakel Exploitatiemij BV is owned by W.H.M. van Bakel Beheer BV, A.H.W. van Bakel Beheer BV, and H.J.M. van Bakel Beheer BV, which are owned respectively by Wilhelmus van Bakel, Alexander van Bakel, and Henricus van Bakel (hereinafter referred to as the "Van Bakels").

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

The following organizational chart depicts the relationships among these companies:



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

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

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

Senator Steve Austria
Statehouse, Room 132
Columbus, OH 43215

Dear Senator Austria,

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

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

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

Sincerely,

The residents of Lake Choctaw and rural Madison County

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

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

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

- The Minnesota Pollution Control Agency has established an ambient air quality standard for hydrogen sulfide at the property line of operations larger than 1000 animal units, and also requires these facilities to include an Air Emission Plan in their water quality permit. Furthermore, the Nebraska Department of Environmental Quality has implemented an ambient air quality standard for total reduced sulfur, which includes hydrogen sulfide from CAFOs.

- In addition to air emissions several states have also recognized the need to regulate odor from CAFOs. Colorado has established a dilution standard of 7:1, meaning that an air sample collected at the CAFO's property line is diluted with seven parts air. If odor can still be detected after dilution by an olfactometer it is deemed a violation. Missouri also uses an olfactometer to enforce odor regulations.

- The North Carolina Division of Air Quality uses a complaint response system that requires formal investigation of odor complaints. If a determination of an "Objectionable Odor" is made, then additional management practices have to be approved and installed. If management practices fail, then the facility must install add-on control technology.

- By statute Indiana allows Counties the liberty to enact ordinances for CAFO setbacks. Ordinances creating minimum setbacks based on the number of animal units from *"...churches, daycares, schools, and medical facilities because the people that frequent these facilities (children, elderly, and ill) have an increased need for protection from air emissions because of their heightened susceptibility."* Similar common sense ordinances or statues would obviously preclude the Orleton CAFO from being sited only 1/3 or mile up wind of our community's Elementary School, or on a property that drains into a National Scenic waterway containing 37 rare and endangered species.

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

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

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

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

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

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

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

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

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

- *"With current animal production practices, stored manure must be removed and land-applied. During these times hydrogen sulfide, ammonia and odor levels at or near production facilities may be significantly higher than during normal conditions."*
- *"Hydrogen sulfide and ammonia are recognized degradation products of animal manure and urine (See Chapter 3.4 in the full report). Both of these gases have been measured in the general vicinity of livestock operations at concentrations of potential health concern for rural residents, under prolonged exposure (See Chapter 8.0)."*
- *"The World Health Organization lists hydrogen sulfide as a toxic hazard in many environments, and recommends specific exposure limits. The ATSDR lists hydrogen sulfide and ammonia on its registry of toxic substances1 under its federal mandate to protect the public health according to the Comprehensive Environmental Response, Compensation, and Liability Act..." "Furthermore, the ATSDR has published Minimum Risk Levels (MRL's) for these substances to protect the public's health.1"*
- *"While emissions from CAFOs fluctuate over time, they produce chronic rather than acute exposures. Rather than representing single doses, these exposures are recurring and may persist for days with each episode.*

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

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

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

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

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

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

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

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

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

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

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

VII. In reference to concerns about reductions in real estate values Mr. Ward writes:

"...a leading agricultural realtor in central Ohio...did keep records on property values sold near the Buckeye Egg Farm...sold for more money than the value on the tax cards. ...when a large livestock farm starts up in the area, land prices actually increase in value."

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

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

- ***University of Minnesota Study***

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

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

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

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

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

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

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

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

a) A study by MacCannell (1988) of comparable types of communities found that the concentration and industrialization of agriculture were associated with economic and community decline locally and regionally..

b) Studies in Illinois (Gomez and Zhang 2000), Iowa (Durrenberger and Thu 1996), Michigan (Abeles-Allison and Conner 1990), and Wisconsin (Foltz et al. 2002) demonstrated decreased tax receipts and declining local purchases with larger operations.

c) A Minnesota study (Chism and Levins 1994) found that the local spending decline was related to enlargement in scale of individual livestock operations rather than crop production. These findings consistently show that the social and economic well-being of local rural communities' benefits from increasing the number of farmers, not simply increasing the volume of commodity produced (Osterberg and Wallinga 2004).

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

- The Ohio Department of Agriculture is a deeply conflicted body due to the statutory constructs that make it both advocate and regulator of the same industry; incapable or unwilling to protect the public and the environment.

- Over 300 Elementary School children situated 1/3 of a mile down wind will essentially be guinea pigs for the over 416,000 lbs. of Ammonia gas and 20,000 lbs. of deadly Hydrogen Sulfide gas emitted by this facility each year.

- The foregoing data unequivocally shows the homes of Lake Choctaw, and properties down wind will be de-valued as a result of the proposed facility.

- Allowing the installation of a CAFO generating 280,000,000 pounds of manure annually within the pristine Darby Watershed is a reckless regulatory action of the highest order.

- The economy and the health of Madison County residents will be harmed by this CAFO.

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

August 4, 2008

Senator Steve Austria
Statehouse, Room 132
Columbus, OH 43215

Dear Senator Austria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Adam Ward
Legislative Liaison
Ohio Department of Agriculture

Steve Austria
Majority Whip

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

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

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

August 4, 2008

Brian Welch
2025 Palouse Drive
London, OH 43140

Dear Mr. & Mrs. Welch:

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

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

Sincerely,

Steve Austria
Majority Whip
Ohio Senate

SA/smk

sd10@mailr.sen.state.oh.us
Serving Clark, Greene and Madison Counties

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

11/22/2008

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

Re: Transferring NPDES authority to the ODA

Dear Mr. Gluckman
Thank you for taking the time to read this letter.
I am going to give you factual information that should convince you that the Ohio Dept of Agriculture has demonstrated significantly, and repeatedly, a lack of regard for their other job, which is, the enforcement of the regulations that are designed to protect the environment.
Let me begin with giving you a very brief statement of my position in this matter.
I have not traveled the state to gather this information. All of this has occurred in a very small area around London Ohio. I do know, that similar events are occurring across the state.
I do not have a financial interest in this matter.
I do have an interest in the environment.
I have witnessed people's lives, and homes being severely compromised because of the lack of enforcement.
I have observed a river full of dead fish, because the ODA has not enforced the regulations .
I do not believe any company or person should be allowed to harm, hurt, or infect another innocent victim. I think that is an American principle.
Like may others, I have incurred added costs to my business because of EPA regulations....because the EPA was doing it's job.
You do not have a conflict. You can stand strong in your conviction to protect the environment, and the human beings that live in it.
THE ODA CANNOT MAKE THAT STATEMENT
You will notice I have included a number of copies and documents. I will do my best to substantiate that every word I am telling you is correct, and easily verified.

About 6 years ago a CAFO with less than 700 milking cows was established south of London. The ASSEN Farm.
I know you are concerned with farms over 700, but the ODA's performance, and honesty, should apply to Cafo's of any size.
There were multiple spills into the rivers. The county engineer was called because the ODA isn't open on weekends. The Engineer's office found that the "mains" on the drain tiles were packed with silage instead of being capped properly.
The ODA never really acknowledged that it even happened.
More recently the Assen Dairy, a Vreba –Hoff project has continued to have issues
The neighbors state they have called the ODA with no response, and the local sheriff no longer responds to the calls because they do not have any authority.

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

What is more important to the mission of the EPA, protecting the environment, or the business' bottom line?
Let's move on to the next issue, which is under the parameters of the new proposed transfer of authority.
The Vreba-Hoff application to install a 5400 head factory dairy.
Under the rules of HR141, the bill that tranfered the authority from the EPA to the ODA, the very first hurdle was a background check. If any person or entity applying for the permit has a history of any violations of any substance the director is to deny the application. It the applicant files false information, or lies on the application, the director must deny the application.
(Keep in mind, you are contemplating giving them the total and complete authority for the NPDES permits, the only regulation that is not under their control. Is there any reason to believe they will honor your guidelines any better than they have adhered to the first set of regulations.
As part of the application, logically the applicant needs to list his, or the company's name. It also asks if they have in the past 5 years operated a CAFO, If so did you have any violations.
In part A1 of the application (A copy of the application is enclosed)
The applicant enters the name Orleton Farms, WHM van Bakel, Managing partner.
Later he signs and prints his name.
In part A5 It asks if the applicant has operated a CAFF in the past five years immediately proceeding the date of the application
Note his response...None (this is a fraudulent statement)
You will also note that for some reason he has changed the name perhaps to diguise the fact he is lying on question 5., and question 4 as well.
At this point this application should have been rejected.
One of the authors of HB141 Chris Widener is intimately familiar with the law that was given to the ODA to administer .In his opinion, the application should have been rejected because of the fraudulent statement. The ODA obviously no longer feels that they need to adhere to those guidelines that were carefully thought out to protect Ohioans and the waters of this State. Instead they are committed to satifying the Farm Bureau, and

protecting industries that are exclusively committed to making money with no regard for people or the environment.
These pages of the application are included for you to review.
What happens now is very interesting, and I hope for you very concerning.
William H van Bakel, and his company Vreba-Hoff has quite a reputation.
In Michigan, Indiana, and Ohio they have set up countless Cafo's many under the 700 head guideline to escape regulations, on occasion multiple farms next to each other but separately owned, using common equipment. They have amassed hundreds if not thousands of violations. Everything from dumping on frozen ground, countless spills into lakes and rivers, radical over application, indeed saturation of soil, moving the depth indicator in the manure lagoon because they were above the allowed levels, just to name a few. He and his partners have many names. I have included a list of their many aka's. Just that should tell you something.
When they, the ODA, came to Madison County to garner the support of the community, they did a very impressive power point presentation, you may have seen it yourselves. In that presentation, they don't want to you to associate the project with the Vreba-hoff name. In fact in the presentation, their Manure Management guru, Tom Menke, (you heard his testimony on Nov 18th in Columbus), specifically states verbally, and in writing on the screen"This is not Vreba-Hoff" It is a farmer gentleman WHM van Bakel.
This is a presentation with Kevin Elder by his side, stating that this is not Vreba-Hoff.
A bigger lie could not have been told. And they did the presentation 3 times, and told every one three times including several legislators, that it was not Vreba-Hoff!!!
This is Tom Menke, the ODA primary consultant on manure management and the owner of the "Earth Mentor" manure management system that is, as of right now, not proven, and has failed it's initial tests in Michigan. (While I realize you are only concerned with Ohio right now, I know the Farm Bureau will be pushing for the same transfer in Michigan, Indiana and ultimately across the country.
As a side note, it is my understanding that the ODA's independent advisory council includes Tom Menke, a representative from the Farm Bureau, and a Vreba-hoff attorney. Now there's an unbiased lot.
Finally,
I am including a set of letters.
As a result of Sen. Austria expressing some concern about the Orleton Dairy (they will spread manure less than a mile from an elementary school, just barely a mile from a community of over 2000 people, and on the headwaters of the Darby, a protected sanctuary of wildlife.
A representative of the ODA, Adam Ward, (he also testified in Columbus on the 18th) sent Sen. Austria a letter to ease his concerns.
Please read his response, then compare it to our analysis of his statements compared to historical fact.
What you will find is that the ODA will say whatever they think you want to hear, to gain absolute control of permitting these CAFO's and to allow any individual or company to operate one.
If they misrepresented the truth to a legislator, why would thay not do the same to you?
To date their track record when dealing with good farmers like many that you heard the other night, is probably okay. The problem is, the new breed has only one issue."show me the money" most are not Americans, most could care less about the soil. They are not spreading the liquid sewage to fertilize, they are spreading it to get rid of it. If they thought they could get away with dumping in a river, or in the case of Michigan into lake Huron, they will do it in a minute. The EPA will bust them, the ODA will not. Check the records, the ODA has not issued any amount of fines.

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

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

I know the Farm Bureau is a very intimidating organization, and most elected officials won't even think of crossing their path, but you can stand up and do what is right.

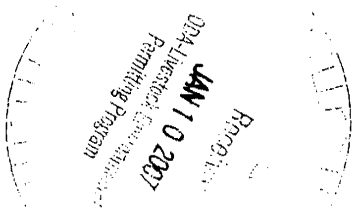
If additional documentation from other parts of the state would be helpful, we will be glad to provide that for you.

Thank You for your careful thought in this matter.

Very Sincerely,

[redacted]

PACKETT "A"



Part A GENERAL INFORMATION

The following general information is required for all permits.

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

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

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

Application Received 1/9/07
Application In Review Process

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

Signature

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

← His Signature

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

W.H.M. van Bakel ← WHM Van Bakel

Date 01-09-2007.

PART A OF
APPLICATION FOR PERMIT INSTALL

 NOTE HOW NAME CHANGES ON THIS PAGE TO SOME HOW DISGUISH THEMSELVES WHEN THEY ANSWER THE QUESTION 5

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

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

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

THIS IS A SOLICITED RESPONSE

   * None

   *

Application Received 1/9/07
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5. Please list the name(s) of AFFs or CAFFs that the applicant has operated (during the five-year period immediately preceding the submission of the current permit application) or is operating elsewhere **in the United States** and that are regulated under the Federal Water Pollution Control Act. **Please include the location and/or address(es) and the name of the county. Please provide any and all permit identification numbers.**

ASK IF THEY HAVE ORDINATED A CAFF IN PAST 5 YRS

   * None

   *

   *

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

   * None

   *

   *

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

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

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

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

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

Application Received 1/9/07
Application In Review Process

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

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

"Right to control or in fact controls management of the applicant or of the owner" includes any individual who has an agreement that grants authority to operate the CAFF as set forth in a contract with the applicant or permittee or the prospective owner.
(1) Is there a contract?
(2) Are there employees of the contractor who are employed in a supervisory capacity for the subject facility; or
(3) Are employees of the contractor empowered to exercise independent judgment for the subject facility.

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

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

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

Application Received 1/19/07
Application In Review Process

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

THIS IS A NON-SOLICITED RESPONSE

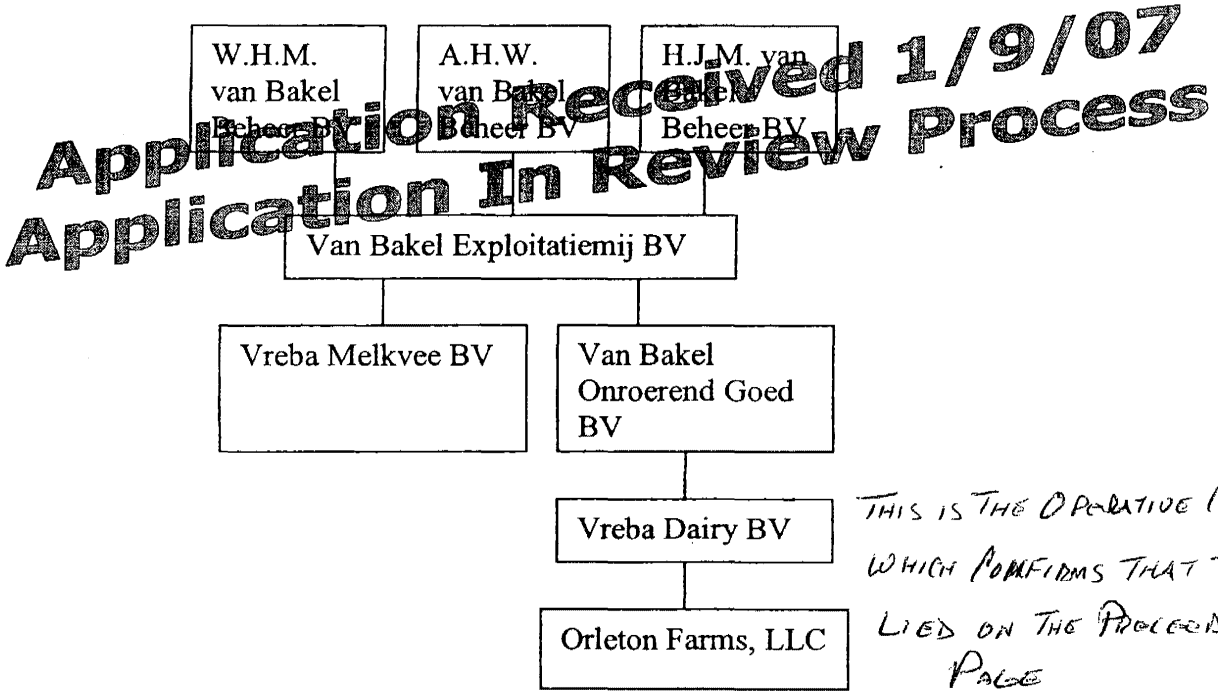
← THIS LINE IS NOT AN HONEST RESPONSE IN CAYMANTE IT A LIE

SUPPLEMENTAL COMPLIANCE INFORMATION FOR ORLETON FARMS, LLC

Orleton Farms, LLC will be the owner and operator of Orleton Dairy. Vreba Dairy BV[1] is the sole member of Orleton Farms, LLC. Vreba Dairy BV in turn is owned by Van Bakel Onroerend Goed BV, which is owned by Van Bakel Exploitatiemij BV. Van Bakel Exploitatiemij BV is owned by W.H.M. van Bakel Beheer BV, A.H.W. van Bakel Beheer BV, and H.J.M. van Bakel Beheer BV, which are owned respectively by Wilhelmus van Bakel, Alexander van Bakel, and Henricus van Bakel (hereinafter referred to as the "Van Bakels").

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

The following organizational chart depicts the relationships among these companies:



Application Received 1/9/07
Application In Review Process

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

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

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

What do regulators have to say?

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

From the Dayton Daily News: 12.06.2002
"Lucrative megafarm market lures Europeans"
http://www.daytondailynews.com/project/content/project/farm/1206future.html

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

Toledo Blade
Article published Saturday, September 29, 2007
http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20070929/NEWS06/709290365

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

Toledo Blade
Article published Saturday, March 24, 2007
http://toledoblade.com/apps/pbcs.dll/article?AID=/20070324/NEWS06/703240399

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

From the Michigan Environmental Council
Michigan Environmental Report
Volume 21 . Number 5
October 2003

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

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

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

> *The applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with:*
>
> 1. *the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code*
> 2. *any other applicable state laws pertaining to environmental protection*
> 3. *environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise and competence.*

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

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

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

Pending

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

Resolved

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

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

(ii) Cessation or suspension of operations.

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

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

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

Dayton Daily News, Greene Co., OH (7/11/04):
"In the past three years, the Ohio Division of Wildlife has linked 15 manure spills statewide to dairies developed by **Vreba-Hoff Dairy**, seven of them in the past six months. Two spills killed fish."..."In the wake of mishaps at dairies across the Midwest, Vreba-Hoff has come under increased scrutiny from state and federal regulators..."

Cleveland Plain Dealer, Cleveland, OH (8/1/04):
"In southern Michigan, a citizens group has documented illegal manure discharges at all 10 dairies built by **Vreba-Hoff.** In the last four years, the Michigan Department of Environmental Quality confirmed more than 100 violations and discharges, including fish kills, and filed lawsuits against two of the dairies. Both have been asked to install sewage treatment plants, a plan that Vreba-Hoff rejects."

Toledo Blade, Toledo, OH (10/27/04):
"Four more northwest Ohio dairy farms, all built by **Vreba-Hoff Dairy Development Corp.**, have received U.S. EPA findings of violations and administrative orders to make changes to prevent contamination of creeks and ditches. That brings the number of Vreba-Hoff-designed dairies receiving EPA orders this fall to 16. It is thought to be the last of the orders resulting from an EPA tour of Vreba-Hoff-designed dairies in Ohio, Michigan, and Indiana that began about a year ago, an EPA spokesman said."AND (expanding upon the above described EPA orders)

Muncie Star-Press, Muncie, IN (10/27/04):
"Sixteen Indiana, Ohio and Michigan dairy CAFOs (concentrated animal feeding operations) built by **Vreba-Hoff Dairy Development** have been ordered by the U.S. EPA to correct numerous alleged violations of the Clean Water Act. The runoff or discharge of silage leachate or juice which can be a stronger water pollutant than raw human sewage was a common problem at the farms. Other alleged violations included damaged, weedy or eroded manure lagoons, and failure to address the potential for storm water to cause manure and silage leachate pollution."

The New York Times, New York, New York (3/26/2005): By James DAO
"Last year the federal Environmental Protection Agency issued citations against 16 of the Dutch farms ***(Vreba-Hoff)*** in Ohio, Indiana and Michigan, asserting that they had violated clean-water regulations intended to prevent liquid manure and other wastes from leaching into waterways."

Daily Telegram, (1/20/2007): By James Rufus Koren
On Dec. 1, the Michigan Department of Environmental Quality's Water Bureau sent a notice of noncompliance to **Vreba-Hoff**, stating that the dairy had improperly disposed of manure. The notice states that on Nov. 25, manure waste went through a field tile and into a tributary to Bean Creek. The Nov. 25 incident was not the first time **Vreba-Hoff** had been cited for letting manure get into local waterways. In 2004, the DEQ filed a lawsuit against **Vreba-Hoff,** alleging more than 25 improper waste discharges, said DEQ spokesman Bob McCann. That lawsuit was settled with a 2004 consent agreement, and McCann said the dairy has violated that agreement 16 or 20 times with illegal discharges and other issues.*(in reference to **Vreba-Hoff**)*..... But McCann also said the vast majority of CAFOs in Michigan cooperate more fully with DEQ regulations.

Toledo Blade (7/21/2007); By Tom Henry
Megafarm is cited on water issues at 20 Ohio dairy sites
The complaint was filed because the Ohio EPA "couldn't work out a resolution" with **Vreba-Hoff**, said Dina Pierce, another Ohio EPA spokesman.

News Release from the Michigan Department of Environmental Quality
entitled, "DEQ Takes Action against **Vreba-Hoff**
Contact: Robert McCann (517) 241-7397 **Agency:** Environmental Quality (1/19/2007)
In the materials filed by the Department of Attorney General today, the DEQ alleges that the following violations of the 2004 Consent Judgment have occurred and will continue to occur without action from the Court:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

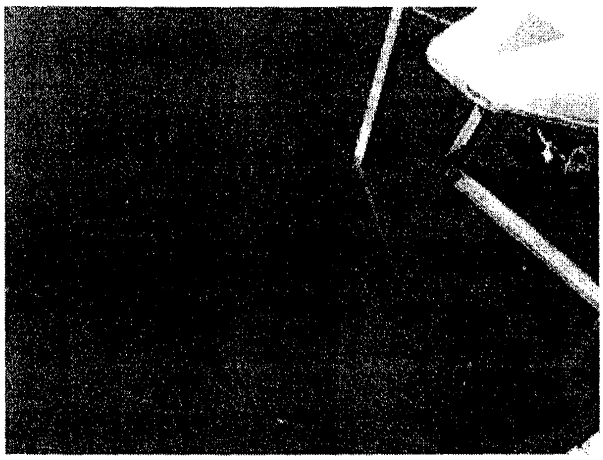
--- non-ODA commentary--- Missing methodology? Don't the applicants portray themselves as experts in their field? How detailed and complete is this plan really when such major mistakes are still being made in there SECOND filling?

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

https://mi.gov/deq
Contact: Robert McCann (517) 241-7397
Agency: Environmental Quality

December 28, 2004

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



←Jet Ski on Lift over GREEN water!

Photo courtesy of www.nocafos.org
May 5, 2004 - the lake turned completely green, from excess nutrients and algal bloom.
Hillsdale County, Michigan. The water goes blackish until the algae can start to digest the nitrate and phosphorus pollution, then turns pea green!

The Hillsdale Daily News
Neighbors sniff: Mega dairy plays foul
Jan Bellamy, Staff Writer
517.437.6014
Tuesday, April 3, 2007

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

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

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

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http://www.michigan.gov/deq/0,1607,7-135-3308_3323-107093--,00.html
Contact: Robert McCann (517) 241-7397
Agency: Environmental Quality

December 28, 2004

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

From www.nocafos.org

August 13-21, 2003
-In Hillsdale County, during the same episode of high heat and humidity, another dairy CAFO applied liquid manure on area fields. This prompted residents of Lime Lake to call in odor complaints to MDEQ and close doors and windows. MDEQ investigated but no action was taken and there was no relief from fumes for several days. One resident reported that he smelled the liquid manure "50% of the time" throughout the year. Four long-time residents of this small lake community reported feelings of sadness, depression, anger at the recurring stench which is worse in mornings, evenings and at night when MDEQ is not present. They report their lives have altered since the construction of this large dairy CAFO ¼ mile uphill from their homes on Lime Lake in 2001.

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

Waste runoff a worry with mega-farms
By Chris Christoff
Detroit Free Press (7/22/03)

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

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

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

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

Damage Mega-Dairies cause on local roads!

--- Article excerpts ---

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

Livestock farms can mean rough roads to some officials

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

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

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

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

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

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

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

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

Mega dairy's use of roads understated -

Officials say local taxes unable to cover damages

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

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

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

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

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

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

Consider Manders Dairy near Weston in Wood County.

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

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

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

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

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

The Great American Dream ?

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

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

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

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

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

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

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

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

Little Regulation, Plentiful Profit, Growing Confusion

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

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

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

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

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

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

An Offer They Can't Refuse

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

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

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

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

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

Learning Curve

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But residents are not exactly rolling out the welcome mat.

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

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

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

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

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

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

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

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

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

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

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

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

****

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

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

State Reform

Sitting Criteria and Operational Standards

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

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

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

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

- Require Zero run-off to be enforced – ie complete sewer treatment not partial for all farms over 700 head.

- Ban on spreading of manure/waste products during winter four months for all factory farms over 700 head.

- Adding local "host community" road repair/improvement requirements of all factory farms over 700 head. This should be in the form of an annual payment to local counties as long as the dairy is operating.

Federal Reform

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

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

OMB No. 1615-0026; Exp. 09/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

Instructions for I-526, Immigrant Petition by Alien Entrepreneur

Instructions

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

What Is The Purpose of This Form I-526?

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

Who May File Form I-526?

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

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

The establishment of a new commercial enterprise may include:

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

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

General Instructions

Fill Out the Form I-526

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

Initial Evidence Requirements.

The following evidence must be filed with your petition:

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

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

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

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

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

4. Evidence that capital is obtained through lawful means. The petition must be accompanied, as applicable, by: foreign business registration records, tax returns of any kind filed within the last five years in or outside the United States, evidence of other sources of capital, or certified copies of any judgment, pending governmental civil or criminal actions, or private civil actions against the petitioner from any court in or outside the United States within the past 15 years.

5. Evidence that the enterprise will create at least ten full-time positions for U.S. citizens, permanent residents, or aliens lawfully authorized to be employed (except yourself, your spouse, sons, or daughters, and any nonimmigrant aliens). Such evidence may consist of copies of relevant tax records, Forms I-9, or other similar documents, if the employees have already been hired, or a business plan showing when such employees will be hired within the next two years.

6. Evidence that you are or will be engaged in the management of the enterprise, either through the exercise of day-to-day managerial control or through policy formulation. Such evidence may include a statement of your position title and a complete description of your duties, evidence that you are a corporate officer or hold a seat on the board of directors, or, if the new enterprise is a partnership, evidence that you are engaged in either direct management or policy-making activities.

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

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

Where To File?

If the new commercial enterprise is located, or will principally be doing business in: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Carolina, South Carolina, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, or Texas, Vermont, the U.S. Virgin Islands, Virginia or West Virginia, mail the petition to:

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

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

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

What Is the Filing Fee?

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

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

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and

2. Make the check or money order payable to **U.S. Department of Homeland Security**, unless:

   A. If you live in Guam and are filing your petition there, make it payable to **Treasurer, Guam.**

   B. If you live in the U.S. Virgin Islands and are filing your petition there, make it payable to **Commissioner of Finance of the Virgin Islands.**

   C. If you live outside the United States, Guam, or the U.S. Virgin Islands, contact the nearest U.S. consulate or embassy for instructions on the method of payment.

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

How to Check If the Fees Are Correct.

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

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

2. Review the Fee Schedule included in your form package, if you called us to request the form; or

3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Address Changes.

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

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

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

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

Processing Information.

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

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

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

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

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

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

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

USCIS Forms and Information.

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

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

Penalties.

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

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

Senator Steve Austria
Statehouse, Room 132
Columbus, OH 43215

Dear Senator Austria,

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

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

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

Sincerely,

The residents of Lake Choctaw and rural Madison County

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

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

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

- The Minnesota Pollution Control Agency has established an ambient air quality standard for hydrogen sulfide at the property line of operations larger than 1000 animal units, and also requires these facilities to include an Air Emission Plan in their water quality permit. Furthermore, the Nebraska Department of Environmental Quality has implemented an ambient air quality standard for total reduced sulfur, which includes hydrogen sulfide from CAFOs.

- In addition to air emissions several states have also recognized the need to regulate odor from CAFOs. Colorado has established a dilution standard of 7:1, meaning that an air sample collected at the CAFO's property line is diluted with seven parts air. If odor can still be detected after dilution by an olfactometer it is deemed a violation. Missouri also uses an olfactometer to enforce odor regulations.

- The North Carolina Division of Air Quality uses a complaint response system that requires formal investigation of odor complaints. If a determination of an "Objectionable Odor" is made, then additional management practices have to be approved and installed. If management practices fail, then the facility must install add-on control technology.

- By statute Indiana allows Counties the liberty to enact ordinances for CAFO setbacks. Ordinances creating minimum setbacks based on the number of animal units from *"...churches, daycares, schools, and medical facilities because the people that frequent these facilities (children, elderly, and ill) have an increased need for protection from air emissions because of their heightened susceptibility."* Similar common sense ordinances or statues would obviously preclude the Orleton CAFO from being sited only 1/3 or mile up wind of our community's Elementary School, or on a property that drains into a National Scenic waterway containing 37 rare and endangered species.

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

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

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

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

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

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

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

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

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

- *"With current animal production practices, stored manure must be removed and land-applied. During these times hydrogen sulfide, ammonia and odor levels at or near production facilities may be significantly higher than during normal conditions."*
- *"Hydrogen sulfide and ammonia are recognized degradation products of animal manure and urine (See Chapter 3.4 in the full report). Both of these gases have been measured in the general vicinity of livestock operations at concentrations of potential health concern for rural residents, under prolonged exposure (See Chapter 8.0)."*
- *"The World Health Organization lists hydrogen sulfide as a toxic hazard in many environments, and recommends specific exposure limits. The ATSDR lists hydrogen sulfide and ammonia on its registry of toxic substances1 under its federal mandate to protect the public health according to the Comprehensive Environmental Response, Compensation, and Liability Act..." "Furthermore, the ATSDR has published Minimum Risk Levels (MRL's) for these substances to protect the public's health.1"*
- *"While emissions from CAFOs fluctuate over time, they produce chronic rather than acute exposures. Rather than representing single doses, these exposures are recurring and may persist for days with each episode.*

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

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

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

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

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

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

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

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

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

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

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

VII. In reference to concerns about reductions in real estate values Mr. Ward writes:

"...a leading agricultural realtor in central Ohio...did keep records on property values sold near the Buckeye Egg Farm...sold for more money than the value on the tax cards. ...when a large livestock farm starts up in the area, land prices actually increase in value."

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

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

- ***University of Minnesota Study***

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

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

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

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

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

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

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

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

a) A study by MacCannell (1988) of comparable types of communities found that the concentration and industrialization of agriculture were associated with economic and community decline locally and regionally..

b) Studies in Illinois (Gomez and Zhang 2000), Iowa (Durrenberger and Thu 1996), Michigan (Abeles-Allison and Conner 1990), and Wisconsin (Foltz et al. 2002) demonstrated decreased tax receipts and declining local purchases with larger operations.

c) A Minnesota study (Chism and Levins 1994) found that the local spending decline was related to enlargement in scale of individual livestock operations rather than crop production. These findings consistently show that the social and economic well-being of local rural communities' benefits from increasing the number of farmers, not simply increasing the volume of commodity produced (Osterberg and Wallinga 2004).

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

- The Ohio Department of Agriculture is a deeply conflicted body due to the statutory constructs that make it both advocate and regulator of the same industry; incapable or unwilling to protect the public and the environment.

- Over 300 Elementary School children situated 1/3 of a mile down wind will essentially be guinea pigs for the over 416,000 lbs. of Ammonia gas and 20,000 lbs. of deadly Hydrogen Sulfide gas emitted by this facility each year.

- The foregoing data unequivocally shows the homes of Lake Choctaw, and properties down wind will be de-valued as a result of the proposed facility.

- Allowing the installation of a CAFO generating 280,000,000 pounds of manure annually within the pristine Darby Watershed is a reckless regulatory action of the highest order.

- The economy and the health of Madison County residents will be harmed by this CAFO.

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

August 4, 2008

Senator Steve Austria
Statehouse, Room 132
Columbus, OH 43215

Dear Senator Austria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Adam Ward
Legislative Liaison
Ohio Department of Agriculture

Steve Austria
Majority Whip

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

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

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

August 4, 2008

Brian Welch
2025 Palouse Drive
London, OH 43140

Dear Mr. & Mrs. Welch:

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

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

Sincerely,

Steve Austria
Majority Whip
Ohio Senate

SA/smk

sd10@mailr.sen.state.oh.us
Serving Clark, Greene and Madison Counties

Who has the real ownership of Orleton Farms, LLC?

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

Suite 140
1290 North Shoop Avenue
Wauseon, OH 43567

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

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

VREBA-HOFF DEVELOPMENT AUTHORITY, A MICHIGAN ENTITY

VREBA-HOFF DAIRY LEASING LLC.

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

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

INDIANA

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

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

MICHIGAN

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

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

OHIO

This list is yet to be totally confirmed, some listed are suspected but believed, in good faith, to be accurate.
FAR HILLS DAIRY LEASING LLC 1517901Cecilia C.M. Conway1290 N. Shoop Avenue Suite 140WauseonOhio43567Jan 28 2005Active
VREBA-HOFF DAIRY DEVELOPMENT, L.L.C.1262953Cecilia C.M. Conway7018 Cloister Road ToledoOhio43617Jan 21 2003Active
ASSEN HEIFER RAISING L.L.C. 1390198Cecilia C.M. Conway7018 Cloister Road ToledoOhio43617May 22 2003Active
THE ASSEN HEIFER RAISING AND CUSTOM TMR LLC 1389756Cecilia C.M. Conway7018 Cloister Road ToledoOhio43617May 22 2003Active
ZIJLSTRA HEIFER RAISING L.L.C 1388925Cecilia C.M. Conway7018 Cloister Road ToledoOhio43617May 19 2003Active.
VAN DE KOLK DAIRY LLC 1388930Cecilia C.M. Conway7018 Cloister Road ToledoOhio43617May 19 2003Active
REYSKENS HEIFER RAISING AND CUSTOM TMR LLC 1435546Cecilia C.M. Conway1290 N Shoop Avenue Suite 140 WauseonOhio43567Jan 15 2004Active
GREAT LAKES DAIRY L.L.C. 1410238Cecilia Conway1290 N. Shoop Ave. Suite 140WauseonOhio43567Sep 08 2003Active
FRISIAN HIJMA DAIRY L.L.C 1384212.1290 N. Shoop Ave., Suite 140 WauseonOhio43567Apr 25 2003Active.
FRISIAN HIJMA HEIFER RAISING L.L.C. 1384211 1290 N. Shoop Ave. Suite 140 WauseonOhio43567Apr 25 2003Active
MANDERS EQUIPMENT, LLC. 1384901 1290 N. Shoop Ave., Suite 140 WauseonOhio43567Apr 29 2003Active
NAOMI DAIRY L.L.C.1425345Domestic Limited Liability CompanyNov 24 2003Active
MEERLAND DAIRY LEASING LLC1543759Domestic Limited Liability CompanyMay 17 2005Dead
MEERLAND DAIRY LLC1421043Domestic Limited Liability CompanyOct 31 2003Active

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

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

- It is of unprecedented size. It is twice the size of other operations (source: darbycreeks.org) Up to 46 million gallons of manure and waste water would be generated annually. This is the equivalent of a city of more than 140,000 people. (source: Public Trust Alliance; Ohio.sierraclub.org)

- Current plans call for manure to be placed in an open pit located about 2 miles north east of Lake Choctaw. (source: applicant proposal) This will create an open air lagoon providing a breeding ground for flies and other pests as well as rancid odors including dangerous gasses, such as ammonia and hydrogen sulfide. (source: ccofd.org and Dayton Daily News 1/31/2006)

- The proposed waste treatment plan, called Earth Mentor, is untested. (source: OSU ATI facility, recommended by Dean Moser). Current manure disposal technology has only some benefits....and is not a cure-all" (source: J. Shaner, Ohio Environmental council.)

- The plan calls for spreading manure on surrounding land. (source: PTI application) Shifting winds and runoff after rains or during winter month when the ground is frozen could place Choctaw Lake at risk of contamination.

- The water required to run such an operation is estimated at 300,000 gallons per day. (source: data noted by CAFO's CNMP's 2007) Studies of the impact on the aquifer providing water to Lake Choctaw and the surrounding community have not been done. (source: discussion with manager of State of Ohio's permitting process)

- The records reflect Verbra-Hoff has a long history of clean water violations. Lawsuits accumulating as of March 30, 2007 number at more than 75 citations in Michigan. (source: Sierra club action.org) Vebra-Hoff has been issued more than $140,000 in fines, none of which has been paid. (source: Toledo Blade 4/2/07, State of Michigan Attorney General's Office, letter dated 9/26/2007)

- How will the land purchased recently by Verba-Hoff interests near the Madison County airport be used? If used to spread fertilizer / manure, could it pose yet another threat from run off into area watersheds and increase air pollution?

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



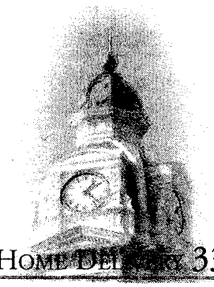
SATURDAY, MAY 10, 2008

The Madison Press

18 PAGES — SERVING GREATER MADISON COUNTY, OHIO, SINCE 1842 — NEWSTAND 50¢ - HOME DELIVERY 33¢

Year 166, Volume No. 112

WWW.MADISON-PRESS.COM



SPORTS



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

SEE PAGE B1

Draw Your Mom Contest Results

see page 10A

BRIEFLY

GOLF OUTING SET

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

Authorities report fish killed

State agencies investigating 2nd manure spill

BY DEAN SHIPLEY
Press Staff Writer

Madden Higgins' ditch was running black.

That's not all.

As the ditch was "running black," it was also so full of ammonia — from manure runoff — that about 500 aquatic animals died as a result of an apparent improper manure application on an adjacent field Wednesday afternoon.

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

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

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

An attempt to reach Assen by phone Friday was not successful.

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

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

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

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

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

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

She notified the Ohio EPA and Ohio Department of Agriculture.

Klosterman said the Division of Wildlife counts all of the dead animals.

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

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

See **Fish** page A2

'It's a magical moment'

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

BY STEPHANIE SCARBROUGH

FISH from page A1

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

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

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

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

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

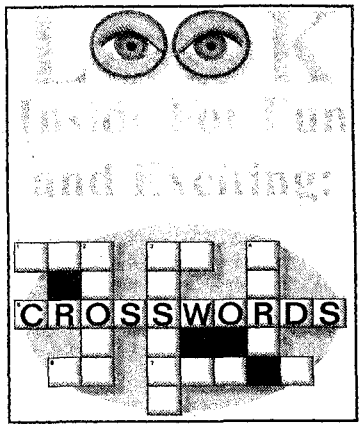
Kevin Elder, executive director of livestock permitting program of the Ohio Department of Agriculture, said Assen was spraying the manure on a crop of triticale — a high-protein cattle food — which was acting as a buffer.

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

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

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

The public is invited to attend this service.



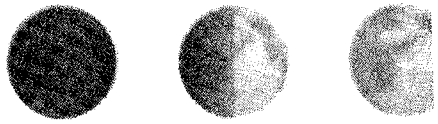
AT THE CLOSE OF THE DAY ON WALL STREET

Stock	Today's Trading	Change
ABBOTT LABS	51.78	+0.50
AT&T	38.59	-0.27
BP PLC ADR	72.10	-0.60
CAMCO FINAN CP	11.05	-0.30
CHURCH DWIGHT	53.74	-0.30
CVS CAREMARK CRP	41.34	-0.18
DEERE & CO	86.31	-0.51
FIRSTENERGY	75.99	+0.08
FIRSTMERIT CORP	20.50	-0.09
GENERAL MOTORS	20.29	-0.86
HONDA MOTOR CO	31.11	-0.64
HUNTGTN BKSHR	9,17	-0.22
JPMORGAN CHASE	46.57	+0.52
KROGER CO	26.30	-0.19
LIMITED BRANDS	17.95	+0.02
MCDONALDS CORP	59.24	-0.53
NATIONAL CITY	6.00	+0.23
NATWIDE FINL	49.87	-0.13
PEPSICO INC	67.51	-0.03
STAPLES INC	21.50	+0.06
TARGET CORP	52.24	-0.10
WAL-MART STORES	57.18	+0.02
WENDY'S INTL	26.45	-0.31
WORTHINGTON INDS	18.38	-0.29

IS YOUR CHECKBOOK MORE

City	Hi	Lo	Cond.	City
Atlanta	85	62	rain	Minneapol
Boston	55	44	rain	New York
Chicago	64	48	pt sunny	Phoenix
Dallas	91	62	cloudy	San Franc
Denver	55	34	windy	Seattle
Houston	91	73	pt sunny	St. Louis
Los Angeles	72	57	pt sunny	Washingtc
Miami	88	75	mst sunny	

Moon Phases



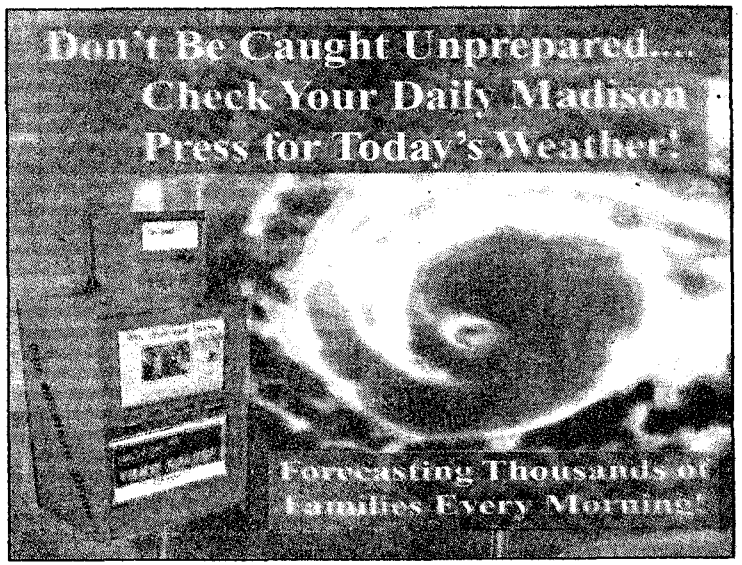
New	First	Full
May 5	May 12	May 2(

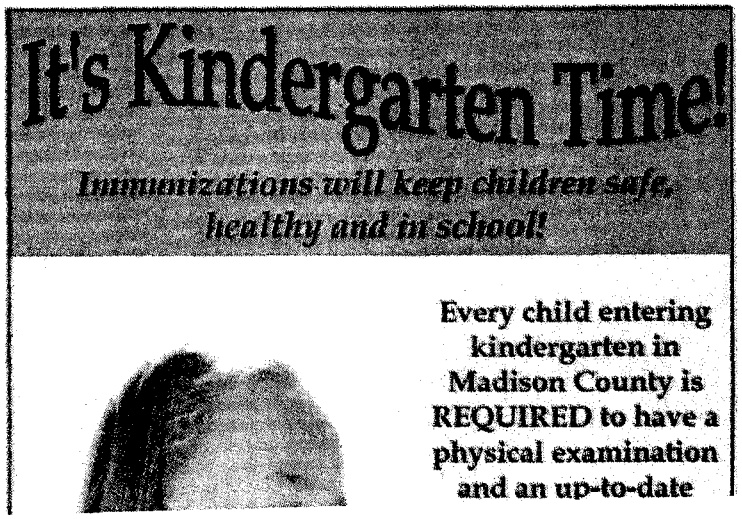
UV Index

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

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

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TUESDAY, MAY 13, 2008

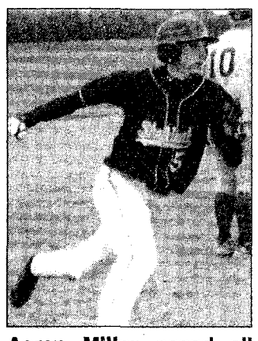
The Madison Press

12 PAGES SERVING GREATER MADISON COUNTY, OHIO, SINCE 1842 NEWSTAND 50¢ - HOME DELIVERY 33¢

Year 166, Volume No. 114

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SPORTS



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

BRIEFLY

AFTERNOON OF MUSIC PLANNED

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

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

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

Admission is free for this event.

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

Officials lambaste dairy

Commissioners to state: "This was no accident"

BY DEAN SHIPLEY
Press Staff Writer

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

"We're not happy."

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

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

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

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

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

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

• The applicator, Jonny Davison, flagrantly violated every regulation in the handbook about spreading manure appropriately. They dumped the manure out of semi trucks in a manner that cannot possibly be calibrated to apply at the allowed rate…In addition, he applied the liquid manure on the ditch at a heavy enough rate that the manure was ponding on the berm. This was no "accident." The applicator should be fined, and his license, revoked.

• Although it was the applicator who failed to follow the regulations, Assen Dairy hired him. They should be held accountable for not making sure that he fulfilled his contract correctly. They could have tilled the ground beforehand…monitored the ditch to make sure that tile was not leaking manure and be prepared with tile plugs or equipment to crush the leaking tile. Claiming ignorance about tile location is yet another way to avoid responsibility. Tile is everywhere, and Assen knows this.

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

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

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

See **Dairy** page 2



Judge sets bond at $50,000 for accused shooter

Faces second-degree felony assault; hearing scheduled

BY STEPHANIE SCAPARROTTI

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

Baker was transported to the intensive care unit at the Ohio

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

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

Picken set bond at $50,000

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

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

Among the auction highlights

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

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

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

[illegible] was enough to clear $500

- $450 for the Mancini/OSU buckeye quilt
- $350 for the John Deere-themed quilt by Marjorie Hopkins
- Two tickets to the OSU/Minnesota football game brought $250

Pass also praised the results of the silent auction, which was held in the morning. A number of items were entered therein and were bid on without the cajoling

working on gaining the permi sion from Norfolk-Southe Railway to run the path alon side its railroad right-of-way.

"That would be excellent, Lynch said.

"It would be good for every one, especially that part o downtown."

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

Community Briefs

Benefit dinner slated

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

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

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

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

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

Barbecue slated

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

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

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

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

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

Dairy from page 1

can the inspector/ODA do?"

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

Among the changes they would like to see are:

- The permitted operation notify ODA prior to spreading
- The rules and regulations are in place because it's not practical with the current manpower to over see every application
- If ODA does not have the manpower to oversee every application, then the inspection could be handled through an agreement with the local soil and water conservation district
- Inspection fees should be charged to the operation spreading the manure.

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

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

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

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

AT THE CLOSE OF THE DAY ON WALL STREET

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

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16 PAGES • Year 166, Volume No. 162

Local dairy cited in manure spills

BY DEAN SHIPLEY
Press Staff Writer

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

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

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

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

At the time of the first violation, Kevin Elder, executive director of livestock permitting for the Ohio Department of Agriculture (ODA), said, "It was not classified as serious."

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

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

• Of Ohio Revised Code: No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

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

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

— "Free form floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation.

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

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

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

See **Cited** page 5

AT THE 119TH MADISON COUNTY FAIR

ed from page 1

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

r the heading of "daily maximum discharge limitations, 1.b. states: "Dry weather discharges of manure are pro- rom production and land application areas."

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

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

ure was applied "up to the road ditch (which is included efinition of waters of the state." The permit specifies manure not be applied closer than 100 feet, unless a 35-foot vegetated buffer has been established where manure application is prohibited.

> **ds to update his manage- plan per the schedule of pliance. We need him to te it to the specific fields the problems occurred."**
>
> **— Rick Wilson, Ohio Environmental Protection Agency**

• Manure was applied when there was a greater than 50 percent chance of rain beginning at 10 p.m. May 7, 2008. The permit states ication shall not occur on saturated soils or during rain or ents and shall not occur if the forecast contains a greater ercent chance of precipitation.

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

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

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

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

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

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

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

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

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

Ohio's 6 species of blad make it a fascinating pl

BY SALLY ENGLE
Brown News Service

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

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

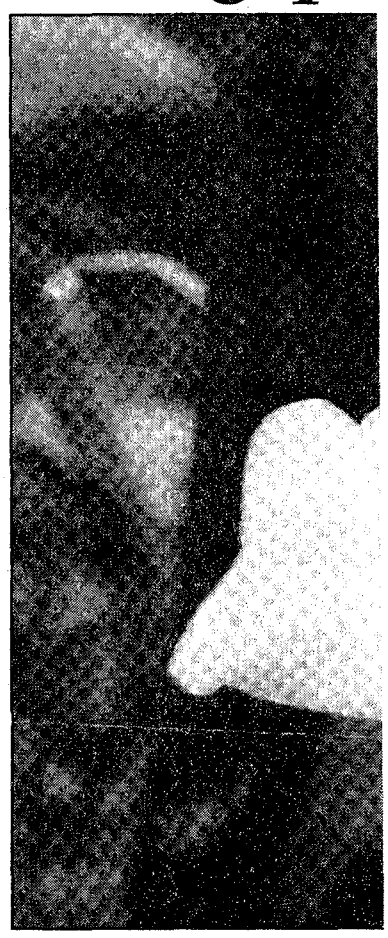
Most think the name Bladderwort comes from the Latin word for small bladder or bag, utriculus. The miniature bladders are attached to the stem of the plant, usually the leaf-bearing stem, and act as a trap for small insects such as water fleas (only 0.2 to 0.5 mm long), microscopic insects and miniscule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

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

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

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

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



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

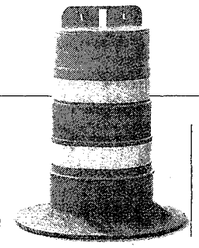
the (Colopogan) Grass Pinks orchids, ramps, Showy Lady's Slippers and sedges, these mighty meat-eaters look deceptively dainty. Each spring, usually in May, the flowers begin to bloom and the hunt is on. The flowering season continues through August when the Bladderwort dies down and goes to seed.

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

Clicking with retirees

Many find second careers, make money online | D3

Coming Monday
CONSTRUCTION ZONE
South Campus renaissance



Online
FLYING COACH
http://blog.dispatch.com/flying

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Planned megadairy farm opposed

Residents cite environmental record of family proposing 5,428-cow site

By Monique Curet
THE COLUMBUS DISPATCH

A grass-roots group has mobilized against the proposed construction of a megadairy near members' Madison County homes.

Active Citizens for Responsible Environmentalism opposes a 5,428-cow farm planned for 5,290 acres along a tributary of ecologically fragile Big Darby Creek.

More than half of the members of ACRE live in Choctaw Lake, a private development of about 850 homes a few miles from the farm site.

ACRE is concerned about the environmental track record of the family proposing the farm. The group recently held an informational meeting that drew about 300 people, organizers said.

Orleton Farms, the company that wants to build the farm, is seeking the approval of the Ohio Department of Agriculture. The company filed its application a year ago, and there's no time frame for the approval process, said Bill Schwaderer, public information officer for the agency's Livestock Environmental Permitting Program.

"It's a big farm, so it's going to take a lot of review," Schwaderer said.

If approved, it would be the state's largest dairy farm.

The van Bakel family owns Orleton Farms and also is a partial owner of Vreba-Hoff Dairy Development, said Cecilia Conway, a Vreba-Hoff spokeswoman. Vreba-Hoff is a Wauseon-based company that has helped dozens of farmers from the Netherlands establish large-scale farms in the Midwest.

One of its subsidiaries, Vreba-Hoff Dairy, has wrangled with Michigan regulators for several years, beginning with a lawsuit filed by the Michigan Department of Environmental Quality over the company's handling of manure and storm water at its farms in that state.

Ohio Attorney General Marc Dann also has filed a complaint against Vreba-Hoff Dairy Development and Vreba-Hoff Dairy Leasing over storm-water discharge at

See **MEGADAIRY** Page **D2**



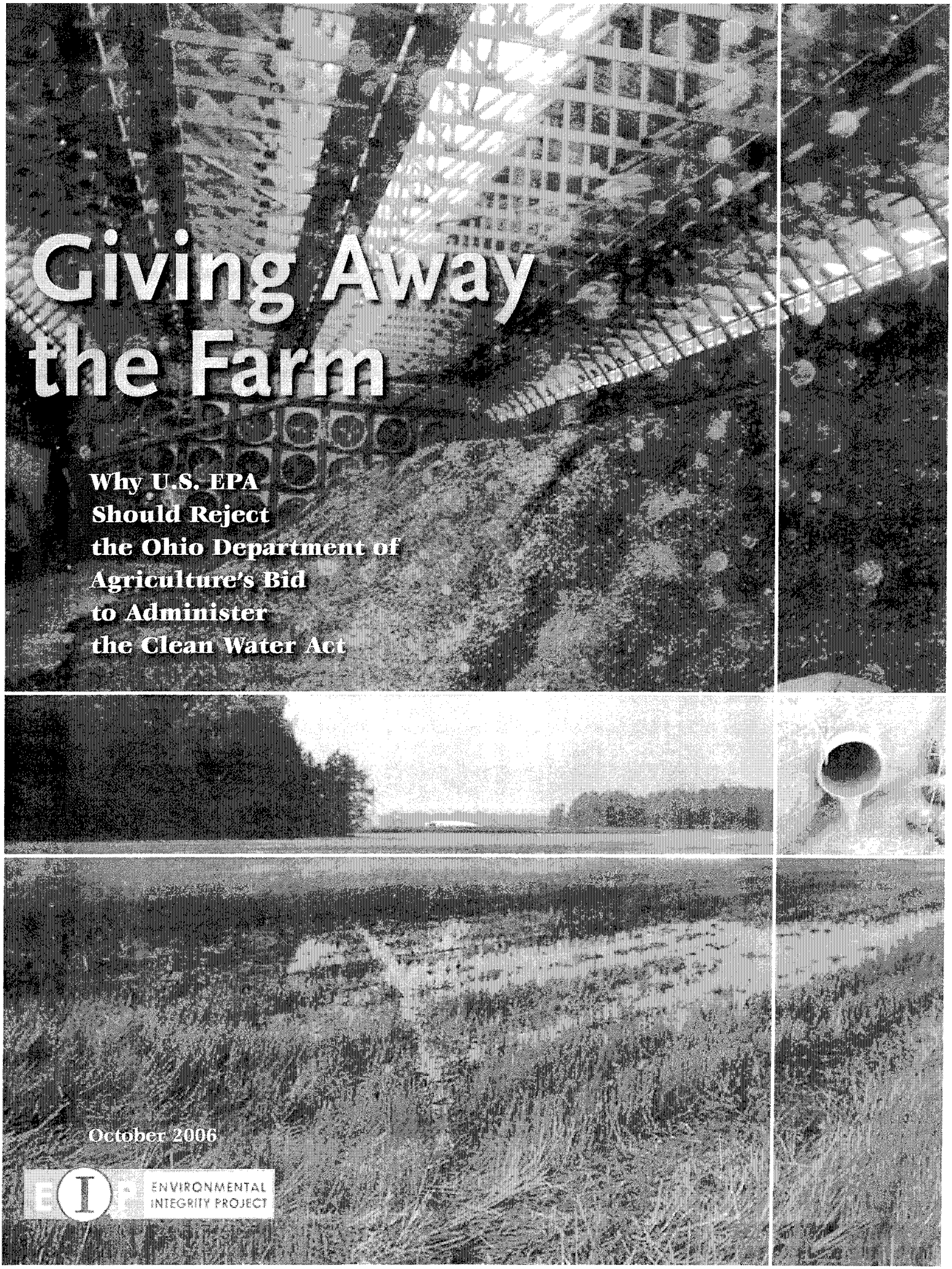
THE COLUMBUS DISPATCH

HERE CECELIA CONWAY CONFIRMS THAT THIS IS A VREBA-HOFF PROJECT. SHE IS RELATED TO VAN BAKEL BY MARRIAGE



Investors may need to brace for jolts

Bumpy ride expected to continue as stock market seeks bottom



Giving Away the Farm

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

October 2006

ENVIRONMENTAL INTEGRITY PROJECT

Giving Away the Farm

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

Environmental Integrity Project

OCTOBER 2006

THE ENVIRONMENTAL INTEGRITY PROJECT (EIP)

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

ACKNOWLEDGEMENTS

The Environmental Integrity Project (EIP) developed "Giving Away the Farm" with the assistance of a number of people.

EIP wishes to acknowledge the managers and staff at the Ohio Department of Agriculture, the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources, and the U.S. Environmental Protection Agency, Region 5 for their courteous assistance.

We also thank Sue Torrey, Jane Phillips, and Trent Dougherty, who reviewed and commented on the draft report.

Finally, EIP gratefully acknowledges the generosity of the Joyce Foundation. Without its philanthropic support, EIP could not have produced this report.

Questions and comments can be directed to Karla Raettig at kraettig@environmentalintegrity.org or Christopher Cole at ccole@environmentalintegrity.org

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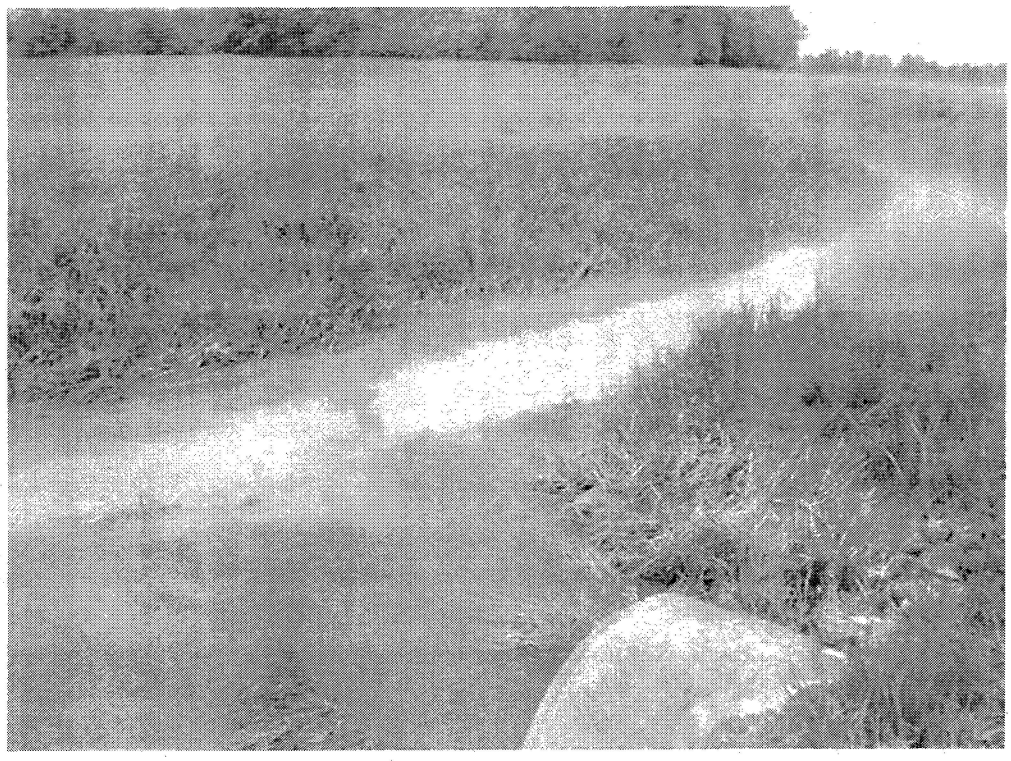
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Manure runoff from drainage way into unnamed tributary of Little Tymochtee Creek.
SOURCE: OEPA NOTICE OF VIOLATION TO COREY DAIRY (JUNE 28, 2004)

Executive Summary

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

Because of the environmental and public health impacts of these facilities, effective regulatory oversight is critical. In Ohio, CAFOs generate approximately 10,545,271 tons of manure per year, with some individual facilities creating more waste than medium-sized cities. For instance, the manure production at Van Deurzen Dairy, a 4,500-head facility in Hardin County, Ohio approved by the Ohio Department of Agriculture (ODA) in 2005 will be approximately equivalent to human waste production from 95,000 people, exceeding the population of the state's seventh largest city of Youngstown. Unfortunately, right-to-farm legislation restricts local governments from exercising control over CAFO siting and impacts. And the federal regulatory structure under the Clean Water Act has been in constant flux because of changing U.S. EPA rules and litigation over the Clean Water Act's reach with respect to CAFOs. Thus, it is even more imperative that Ohio state government step up its efforts to regulate the livestock industry to protect public health and the environment.

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

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

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

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

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

Program Deficiencies

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

1. *ODA does not deter noncompliance through effective enforcement.* ODA's enforcement relies on warning letters and notices of deficiencies with limited escalation, even with repeat violators. In fact, ODA has only assessed three penalties in four years – two in the negligible amounts of $200 and $700 – while over a similar time period, OEPA assessed double the number of penalties and in amounts averaging $16,786. One particularly egregious example of ODA's lax enforcement policy is Buckeye Egg Farm, which has had numerous pollution incidents. In 2003, ODA allowed Ohio Fresh Eggs to purchase Buckeye Egg Farm and it has since amassed 36 ODA notices of deficiencies without a single fine being levied against it.

2. *ODA fails to effectively regulate manure transfer from permitted farms.* If a state permitted facility applies manure to fields under its control, it is liable for resulting environmental harm. Increasingly, Ohio facilities circumvent this liability by transferring manure for land application elsewhere, with little sunshine on what happens after the permitted facility makes the hand off.

3. *ODA places inadequate restrictions on winter manure applications.* Because of the manure transfer loophole, ODA's attempt to restrict winter land application onto frozen ground is essentially nullified.

4. *ODA has reduced permit coverage and reporting requirements.* When ODA assumed the state operating permit program, up to 35 facilities – or a quarter (24.3 percent) of original OEPA-permitted factory farms – fell off the regulatory radar with the transfer of state permitting authority.

Recommendations

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

- *Accelerate, streamline, and toughen up enforcement.* The record of enforcement against recalcitrant polluters shows an unacceptable lag of time between violations and compliance. ODA should eliminate warning letters and off-the-record notices as steps in the enforcement process. Further, there are so few instances of actual penalties being levied – only 3 final orders with penalties in four years – that facilities are far likelier to opt for the economic benefits of either long-delayed compliance or outright noncompliance. Without the "stick," or the credible threat of escalation and penalty, compliance is left to the honor system.

- *Close manure transfer loophole by establishing producer-based liability.* For transferred manure, ODA should adopt a policy presumption that clearly assigns liability for discharges and spills to manure producers. For example, Wisconsin holds producers liable for all manure discharges and spills, including spills of manure land applied by a third party. In order for a producer to transfer liability, it must obtain written approval from the state, and only may do so in enumerated circumstances.

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

- *Require annual reports for ALL facilities.* The annual reporting requirement under the NPDES program should extend to all permitted facilities and all certified manure brokers. When a state agency receives a location-based report of a manure discharge, an investigator should have immediate access to a map that identifies any nearby fields that receive manure, the brokers who apply it, and the facilities that produce it. At the very least, OEPA's three-year reporting requirement for new facilities should be re-implemented. More reports will also create more information on appropriate design standards and changes to future rules.

- *Restrict wintertime manure transfers.* Restrictions on wintertime application of manure must by definition extend to wintertime distribution and

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

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

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

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

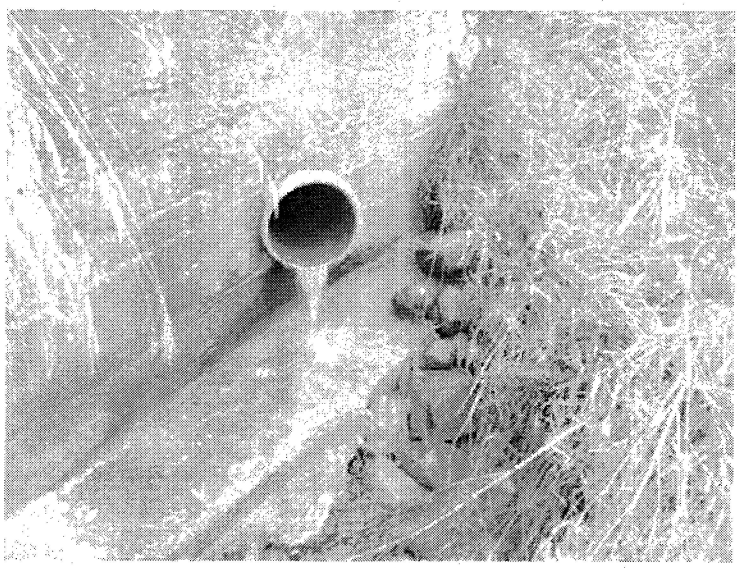
  Finally, providing information on the internet will free up more resources for core permitting and enforcement activities. ODA should post key enforcement information on its website, and all state agencies should post their CAFO databases related to discharges and fish kills on their websites.

Introduction

Concentrated animal feeding operations (CAFOs) are transforming America's agricultural landscape.[1] CAFOs are animal factories, where huge numbers of poultry or livestock are confined and fed inside manmade structures. In recent decades, this industrialized model of livestock production has supplanted sustainable forms of agriculture such as traditional family farming and ranching practices in many areas of the country. While industrialized operations achieve efficiency and scale in food production, with the largest 2 percent of U.S. livestock farms now producing 40 percent of all the nation's animals,[2] factory farms also have an unprecedented impact on the environment, health, and society of neighboring rural communities and downstream cities.[3] Moreover, the factory farm industry, and its political allies, leverage vast wealth[4] and influence to undermine efforts at the federal, state, and local level to regulate factory farms effectively.[5]

The rising predominance of the CAFO model has thus created a disturbing dynamic of increasingly grave environmental risk combined with increasingly well-funded opposition to environmental regulation and enforcement.

Ohio is at the forefront of these developments as demonstrated by several factors. First, the state has undergone a tremendous shift toward industrialized livestock production. The number of CAFOs in the state more than tripled during the 1990s.[6] For example, Vreba-Hoff Dairy Development, responsible for luring approximately 60 large dairies to the Midwest from Europe since 1998, "helped relocate more Dutch farmers to Ohio than any other state."[7] The U.S. Department of Agriculture's (USDA) farm census also shows a startling concentration of livestock production in Ohio. For instance, while the number of hog farms in Ohio fell from 20,062 to 4,976 from 1974 to 2002 (75.2 percent decrease), the number of hogs sold rose from 3,165,535 to 4,609,153 (45.6 percent increase).[8] In less than 30 years, annual production shot from 158 hogs per farm to 926 hogs per farm. Overall, the concentration of confined animals at Ohio farms almost doubled between 1982 and 1997,[9] and the trend appears to be accelerating.[10]



Manure-laden discharge from 12-inch tile under land application field.
SOURCE: OEPA NOTICE OF VIOLATION TO CLUNE TURKEY FARM (APRIL 28, 2004)

Second, parallel with the shift to concentrated production, the livestock industry has lobbied hard and successfully to consolidate regulatory oversight within the Ohio Department of Agriculture (ODA).[11] In 2000, the state legislature took the extraordinary step of transferring regulatory authority over livestock operations from Ohio Environmental Protection Agency (OEPA) to ODA.[12] This regulatory authority consists of power to issue and enforce two types of permits: (1) state permits for construction, modification, and operation of CAFOs with 1,000 or more animal units,[13] and (2) National Pollutant Discharge Elimination System (NPDES) permits, which are federal Clean Water Act permits issued by authorized states.[14] While ODA has administered state permits since finalizing the Livestock Environmental Permitting Program in August 2002,[15] NPDES permitting authority remains in the hands of OEPA — pending U.S. EPA approval of ODA's implementation plan for the program.[16] If U.S. EPA grants approval, it would mark the first time in the nation's history that a state agriculture agency gained authority over NPDES permits.[17]

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

Outline of Environmental Impacts

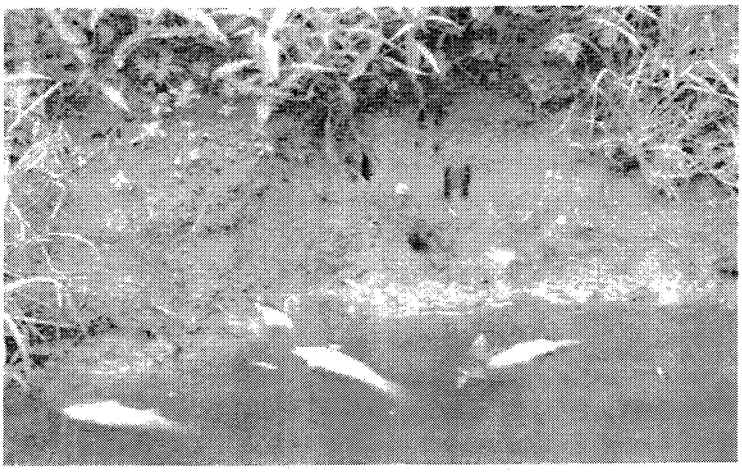
The environmental stakes of regulating factory farms match the scale of factory farming operations themselves. According to U.S. EPA, "[i]mproperly managed manure and wastewater from [feeding operations] have been associated with significant environmental and public health concerns, including nutrient over-enrichment of surface water and groundwater, contamination of drinking water supplies and fish kills."[18] In a joint report, U.S. EPA and USDA found that the waste generated by hogs, chicken, and cattle has polluted over 35,000 miles of rivers and has contaminated groundwater in 17 states (out of the 22 states reporting animal waste figures).[19] According to U.S. EPA, "over-enrichment of waters by nutrients (nitrogen and phosphorous) is the biggest overall source of impairment of the nation's rivers and streams, lakes and reservoirs, and estuaries."[20]

In Ohio, CAFOs generate approximately 10,545,271 tons of manure per year, with some individual facilities creating more waste than medium-sized cities.[21] For instance, the manure production at Van Deurzen Dairy, a 4,500-head facility in Hardin County, Ohio approved by ODA in 2005 will be approximately equivalent to human waste production from 95,000 people,[22] exceeding the population of the state's seventh largest city of Youngstown.[23] Unlike human sewage, however, animal waste is not treated before it is released to the environment. Instead, producers store liquid manure in large lagoons or holding tanks,[24] until it is pumped, sprayed, injected, or otherwise applied to the land[25] – often on fields without crops or at times of the year when there is no chance of crop uptake.[26] But as very few facilities control enough land to use up their own manure,[27] the industry favors minimal restrictions on storage and land application in order to expedite disposal of as much waste as possible, whenever and wherever possible.[28] While manure has served an agronomically beneficial purpose for thousands of years, transporting manure even short distances is not practical.[29] Concentrated livestock production therefore leads to concentrated manure production, with few places for the manure to go. The result is that manure may be over-applied or simply dumped on the land where it can easily run off into local rivers and streams, discharge through subsurface drainage tiles, or leach into groundwater.

In excess quantities, phosphorus and nitrogen, nutrients found in manure and fertilizer, stimulate nuisance algae growth and deplete oxygen in water, which can be toxic to fish and aquatic life.[30] Fish kills have been caused by a number of different factory farm related pollution events such as discharge or runoff after land application, spills from lagoons, equipment failures, and purposeful dumping.[31] Fish kills are an obvious indicator of more severe water pollution. In







This three-photo sequence shows the consequences of manure over-application, from ponding in fields, to discharge, to fish kill. Top: Land application field (note manure ponding). Middle: Unnamed tributary of Blues Creek downstream of manure discharge (note stream color). Bottom: Dead fish in Blues Creek.

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

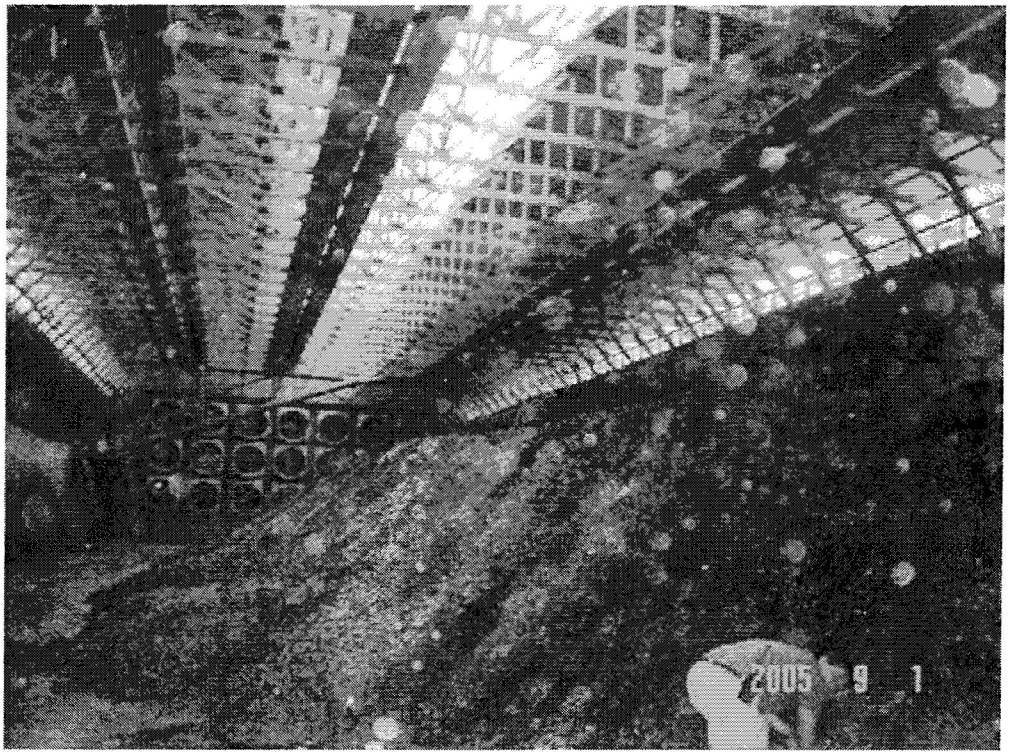
many cases, manure spills and pollution from factory farms may not be potent enough to cause a fish kill, but they still result in water quality degradation and harm other aquatic insects and wildlife.

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

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

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

are associated with risks to humans, including the six human pathogens that account for more than 90 percent of food and waterborne diseases in humans.[40] Manure-related microbes in water can cause severe gastrointestinal disease, complications and even death.[41] In May 2000 in Walkerton, Ontario, an estimated 2,321 people became ill and seven died after drinking water from a municipal well contaminated with *E.coli* and *Camplyobacter* from runoff resulting from manure spread onto fields by a nearby livestock operation.[42] Manure can also carry arsenic and other toxic metal compounds, as well as antibiotics, into water contributing to antibiotic resistance.[43] Finally, pollution from animal confinements can cause nitrate contamination of drinking water supplies, which can result in significant human health problems including methemoglobinemia in infants ("blue baby syndrome"), spontaneous abortions and increased incidence of stomach and esophageal cancers.[44]



Manure stack inside poultry operation.
SOURCE: ODA, HORST BROTHERS POULTRY COMPLAINT INVESTIGATION REPORT (SEPT. 1, 2005)

Federal and State Regulatory Landscape

Federal Clean Water Act Permitting Program: NPDES

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

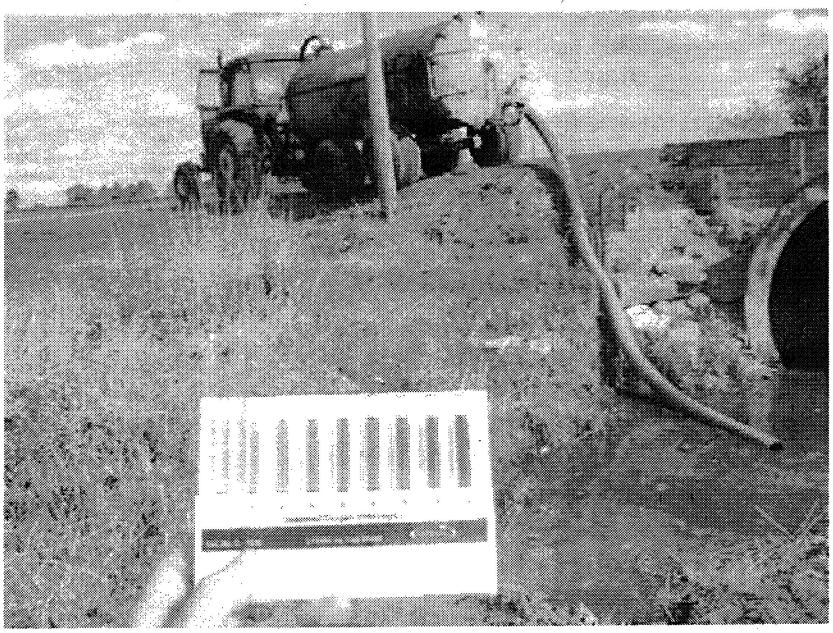
Previous U.S. EPA regulations, dating back to the mid-1970s, defined AFOs as CAFOs if they confined more than 1,000 animal units.[50] Smaller AFOs that confined 300 to 1,000 animal units were also considered CAFOs if they discharged pollutants through a man-made device or if pollutants were discharged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

U.S. EPA adopted new CWA regulations for CAFOs in February 2003.[54] The new rules contain many of the basic features and structure as the old rule with some important exceptions. First, under these new regulations, Large AFOs, or operations that confine *the equivalent of more than 1,000 animal units* (e.g., 1,000 beef cattle, 2,500 swine over 55 lbs; 700 dairy cattle; 30,000 laying hens, etc.) require permits regardless of whether they only discharge in a large storm event.[55] Second, large poultry operations are covered by the new rules, regardless of what type of waste disposal system they use (dry litter operations were previously exempt).[56] Third, all CAFOs must develop and implement a nutrient management plan to ensure the appropriate agricultural utilization of the nutrients when applying waste to cropland.[57] U.S. EPA determined that these new rule changes, as well as the other requirements, are economically achievable for CAFOs. U.S. EPA's economic analysis shows that this new rule will cause very few CAFOs to experience financial stress.[58]

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

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

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



Efforts to pump manure-laden water from tributary, while OEPA inspector conducts field test for dissolved oxygen.
SOURCE: OEPA NOTICE OF VIOLATION TO LIBERTY LEAN (JANUARY 14, 2003)

State Operating Permit Program: PTI, PTO, and RCC

Ohio CAFOs may also be subject to state permitting requirements, now implemented by ODA. All feeding operations that confine poultry or livestock equaling 1,000 or more animal units[63] for at least 45 days in a year must apply for a permit to install (PTI) and permit to operate (PTO) prior to constructing or expanding livestock facilities, even if they do not plan to discharge pollutants.[64] Existing facilities of these sizes or larger that have not been permitted must also apply for a permit to operate.[65] Under the terms of the transfer of permit authority, existing facilities with OEPA-issued operating permits — permits issued prior to August 2002 — were required to obtain a Review Compliance Certificate (RCC) from ODA. PTI/PTOs, PTOs, and RCCs are *all* state operating permits administered by ODA. While the primary concern of the NPDES program is protection of water quality, the state operating permit program focuses on facility construction and management.

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

Ohio's Permitting and Enforcement Structure

At the state-government level, three agencies share regulatory authority over livestock operations in Ohio: (1) ODA administers state permits through the Livestock Environmental Permitting Program, which confers authority over construction, modification, and operation of large CAFOs; (2) OEPA administers federal permits through delegation under the Clean Water Act, which confers authority over large and medium CAFOs that discharge to state waters; and (3) Ohio Department of Natural Resources (ODNR) has pollution abatement authority over unpermitted facilities such as small and medium CAFOs, as well as power to seek restitution for fish kills and stream litter. Essentially, no local regulation of CAFOs has existed since Ohio Farm Bureau succeeded in stripping local control over factory farms in 2003.[66] However, Soil and Water Conservation Districts (SWCDs), operating as 88 independent subdivisions of ODNR, investigate pollution incidents on a county level. ODA, OEPA, and ODNR have entered into inter-agency agreements with procedures to notify one another of manure spills and to coordinate with each other and local SWCDs to investigate spills.[67]

ODA

ODA has issued state operating permits to 156 CAFOs.[68] All feeding operations that confine poultry or livestock equaling 1,000 or more animal units[69] for at least 45 days in a year must apply for a permit to install (PTI) and permit to operate (PTO) prior to constructing or expanding livestock facilities, even if they do not plan to discharge pollutants.[70] Existing facilities of these sizes or larger that have not been permitted must also apply for a permit to operate.[71] Under the terms of the transfer of permit authority, existing facilities with OEPA-issued operating permits – permits issued prior to August 2002 – were required to obtain a Review Compliance Certificate (RCC) from ODA.

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

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

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

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

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

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

ODA employs a number of steps in "escalated enforcement" in order to secure compliance.[74] Although not codified in statute or regulations ODA's practice is to issue a warning letter to a facility.[75] If the facility does not return to compliance, then the ODA implements the formal enforcement procedures set out in the Ohio statutes and administrative code. The Director issues a notice of deficiencies resulting in noncompliance (NOD), which would include: (1) requirement for compliance; (2) a schedule to return to compliance; and (3) a proposed penalty in the event items (1) and (2) are not followed.[76] Upon re-inspection, if the facility is still not complying, the Director issues a notice of hearing, which is a legal proceeding, with attorneys present, including the Ohio Attorney General's Office representing ODA.[77] At the conclusion of a hearing a final order is issued by the Director, including corrective actions for compliance and payment of a penalty.[78]

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

As of July 31, 2006, ODA had engaged in 155 enforcement actions, consisting of 64 warning letters, 75 notices of deficiency, 10 notices of hearing, 1 emergency order, and 5 final orders.[80] On three occasions, ODA assessed monetary penalties, which were in the amounts of $200, $700, and $5,760.[81]

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

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

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

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

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

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

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

OEPA

Within OEPA's Division of Surface Water, the PTI, Compliance Assistance, and CAFO Unit has two inspectors who use permits, inspections, technical assistance, and enforcement to regulate the compliance of livestock facilities with the Clean Water Act.[82] OEPA administers federal NPDES permits for CAFOs pending transfer of authority to ODA. As part of its NPDES program, OEPA investigates water quality degradation and incidents at livestock facilities involving discharges to "waters of the State." The agency often works with ODNR and local SWCDs

to resolve complaints at unpermitted facilities.

Between October 30, 2001 and June 30, 2005, OEPA engaged in at least 107 enforcement actions, consisting of 96 notices of violation and 11 final orders. Six of these final orders resulted in penalties or settlements, in the amounts of $60,000, $15,000, $10,000, $5,000, $5,715, and $5,000 — or an average penalty of $16,785.[83] OEPA has issued notices of violation for discharges from at least 63 CAFOs,[84] which corresponds fairly closely with the total of 60 facilities that have either applied or been issued NPDES permits.[85] However, the number and timing of final NPDES permits issued — only 1 permit issued prior to 2005 — show that OEPA has failed to keep pace with violators.

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

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

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

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

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

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

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

TABLE 7. OEPA-ISSUED NPDES PERMITS

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

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

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

ODNR

Within ODNR, the Division of Soil and Water Conservation takes the lead in regulating pollution from unpermitted livestock operations. ODNR has power to issue chief's orders for abatement of agriculture pollution at such facilities, but these orders are rare, with only three operations targeted since 2002.[86] The main purpose of these orders is to require compliance with standards developed by the U.S. Department of Agriculture in the "Field Office Technical Guide"[87] and, as applicable, the "Ohio Livestock Manure and Wastewater Management Guide," which are available to all county Soil and Water Conservation Districts (see next section). Chief's orders are backed by imposition of misdemeanor criminal penalties for continued noncompliance. Also within ODNR, the Division of Wildlife may investigate and issue fines for fish kills and degradation of wildlife habitat that result from manure spills.

During the July 31, 2003 to August 1, 2005 period, ODNR received notification of 163 complaints related to livestock operations or cropland applying manure, with reports of at least 10 fish kills.[88] Reflecting Ohio's interagency approach, 9 complaints were referred internally by the Ohio Division of Wildlife, 60 came from SWCDs, 87 from OEPA, and 3 by ODA.[89] ODNR determined in 81 of 147 of those complaints that a violation of ODNR agriculture pollution abatement rules had occurred.[90] Among confirmed violations, at least 37 resulted from land application of manure, with 19 incidents tied to overflow/discharge, 4 to seepage, 15 to rainwater runoff, and 6 to other or unknown wastewater.[91] At least 10 large CAFOs and 36 medium CAFOs committed violations. Nine of these medium dairy CAFOs had 699 cows – exactly one cow below the large CAFO threshold, yet still equivalent to the human waste production of a city of 15,000[92] – and 7 CAFOs had 2,000 or more 55-pound-plus hogs.[93]

SWCDs

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

Enforcement by SWCDs is, at best, indirect. By written agreement with the ODNR chief, individual districts may receive and investigate complaints,[96] and district personnel often work closely with ODNR and OEPA inspectors in preparing Pollution Investigation Reports. Where polluters are interested in a voluntary solution, districts offer free technical assistance and cost-sharing grants to polluting landowners of up to $15,000 through the Environmental Quality Incentive Program.[97] The goal is to develop manure management plans at unpermitted operations. Unfortunately, the limitations of this carrot-based approach to environmental protection have been further exacerbated by deep cuts in the state budget for pollution abatement funding, which dropped from $1,500,000 in 2000 to $100,000 in 2006.[98]

Where a polluter is unwilling to cooperate in correcting the problem, SWCDs must send a request to ODNR for a chief's order,[99] a type of enforcement that has occurred on only three circumstances in the last four years.[100]

U.S. EPA

Although the day-to-day NPDES program operation is Ohio's responsibility, the Clean Water Act mandates an oversight function for U.S. EPA to ensure that Ohio's programs are in conformity with federal requirements. Ohio's state NPDES program must be at least as stringent as the requirements imposed by the federal NPDES regulations. U.S. EPA retains the ability to take enforcement actions in authorized states like Ohio when a state fails to act.

In a 2000 petition to U.S. EPA, Neighbors Against Pollution and Citizens for Putnam County for Clean Air and Water alleged OEPA was improperly administering CAFOs. U.S. EPA Region 5 reviewed these allegations in the course of responding to another petition concerning an array of federal environmental programs administered by Ohio filed in 1997 by the Ohio Chapter of the Sierra Club, Ohio Citizen Action, and the Ohio Environmental Council. This petition was denied in 2003. The Region has been working closely with the State to ensure that it fulfills the commitments it made to bring the CAFO permitting program up to speed and which formed the basis for U.S. EPA's denial of the 1997 Sierra Club petition. As described above, OEPA has inspected all large CAFOs, compelled more than 50 CAFO dischargers to apply for permits, and has issued 34 permits.[101]

However, despite improvements by OEPA, in the last three years, U.S. EPA entered enforcement orders against more facilities in Ohio than in any other state, with 17 major facilities in Ohio out of a total of 62 nationwide.[102] Fifteen administrative orders targeted CAFOs sponsored by Vreba-Hoff Dairy Development, which resulted in $1,314,000 in total compliance costs for the facilities.[103] In addition, a judicial order against three facilities controlled by Buckeye Egg Farm/Ohio Fresh Eggs brought an $880,598 penalty and $1.6 million in compliance costs.[104]

Case Studies: The Dirty Half-Dozen

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

1. Ohio Fresh Eggs (Buckeye Egg Farm)

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

OEPA revoked BEF's operating permits with a May 2002 final order, but ODA had to restart the revocation process after the handover of permitting authority in August 2002. ODA issued a notice of hearing to Buckeye Egg on August 19, 2002 and pulled its permits with a final order on October 15, 2003.[109] Two months later, however, Ohio Fresh Eggs purchased Buckeye Egg Farm facilities, and ODA re-permitted the 12.4-million-chicken operation under a new name in December 2003. Ohio Fresh Eggs has subsequently accounted for over half of ODA's complaint investigations, comprising 109 out of a total 210 reports, and over a quarter of ODA's enforcement actions, nearly all of which relate to high manure moisture levels and failure to follow the Insect and Rodent Control Plan — strikingly similar to violations committed when the facility was owned by Pohlmann.

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

2. Ohio Valley Farms

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

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

Ohio Valley Farms still has no permit and faced no penalty from any agency, yet problems at this factory farm continue. In August 2006, the Ohio Division of Wildlife notified OEPA of discharge/runoff of manure from Ohio Valley Farms into a stream,[115] an environmental violation which should result in immediate imposition of an NPDES permit requirement.

3. Vreba-Hoff Dairy Development

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

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

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

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

4. Stoll Farms

Four years after the transfer of state operating permit authority, ODA is apparently still putting the finishing touches on an RCC for Stoll Farms,[124] despite its status as one of the largest dairies in the state with 3,840 cows (over five times the state permitting threshold) and a repeat violator of ODA rules. OEPA issued a notice of violation to Stoll in July 2004 for failure to submit an annual report as required by its original operating permit,[125] but ODA removed this annual reporting requirement after it took over the state program – instead requiring Stoll to enter the information into its operating record.[126] Stoll has inched up and down the ladder of ODA enforcement options, ever since, going from (1) a warning letter for manure runoff after land application to corn stubble fields in February 2004; to (2) a notice of deficiency in September 2004 for failure to obtain an RCC; to (3) a notice of hearing in November 2004 after ODA proposed to deny Stoll's application for an RCC; back to (4) a warning letter in January 2005 for insufficient setbacks during a manure application; to (5) a notice of deficiency in March 2005 for over-application of manure; and finally to (6) another warning letter in May 2005 for not following setbacks during a land application.[127]

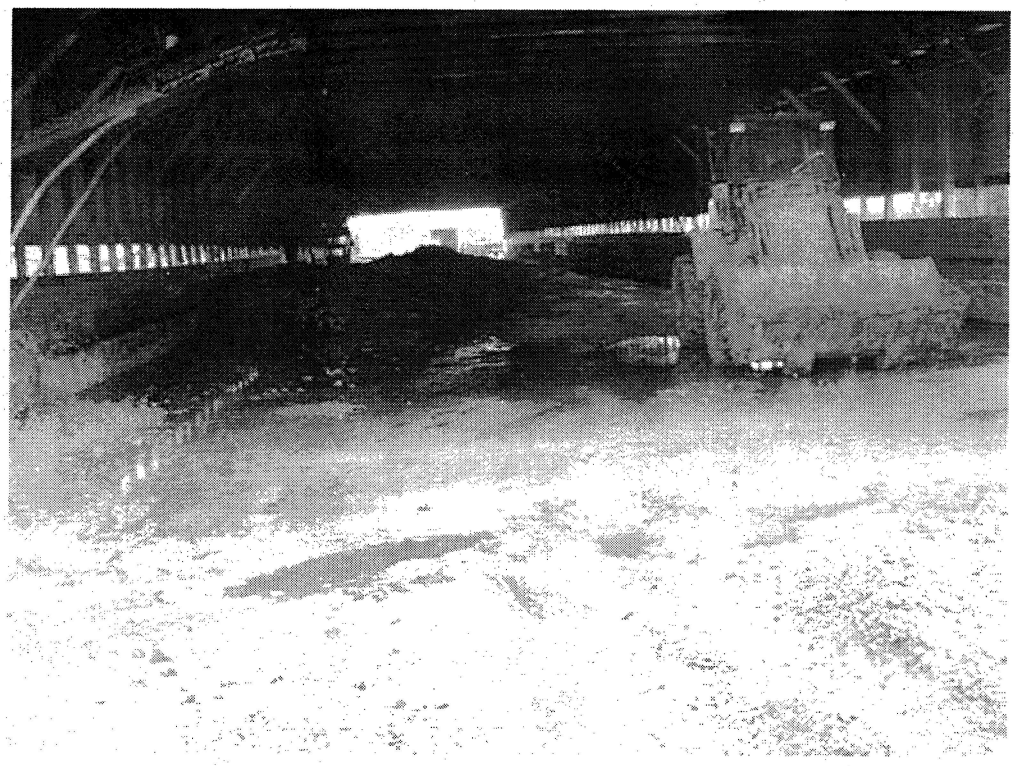
5. Newberry Hog Farm

SWCDs in Miami and Shelby counties failed to abate chronic overflow and runoff problems from manure pits at this unpermitted, medium CAFO designed for 1,900 hogs, with continuing violations recorded in 2003, 2005, and 2006.[128] A water sample taken five days after a complaint revealed ammonia levels nearly four times greater than the fish kill threshold.[129] Taking the lead at the written request of the SWCDs in May 2005, ODNR issued a chief's order to Newberry Farms in June 2006 demanding either closure or a plan to implement best management practices. On a separate track, OEPA issued a notice of violation in May 2005 with a requirement to apply for an NPDES permit, but reported in April 2006 that the operator had completed no corrective action to any adequate degree.[130] No agency has yet assessed a penalty.

6. The UNKNOWN Polluter

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





Top: Overflow from egg wash water lagoons.

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

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

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

Analysis of Ohio Program

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

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

ODA has had authority to regulate the livestock industry under its Livestock Environmental Permitting Program and a review of the program's history reveals that ODA has taken a number of positive steps toward more effective regulation of CAFOs, but that the program still has fundamental flaws.

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

In addition, ODA's development of the Certified Livestock Manager (CLM) program offers promise. Under the rules, anyone responsible for handling manure at a major Confined Animal Feeding Facility[137] or who transports or applies at least 4.5 tons (dry) or 25 million gallons (liquid) of manure annually must be a CLM or "under supervision" of a CLM who is "reasonably available, but not necessarily physically present."[138] ODA has so far certified 86 persons, who have completed required training and passed an examination.[139] Once certified, these individuals are obligated to attend continuing education classes in order to maintain certification.

But enforcement of the CLM rules is also an example of how ODA's new rules have not lived up to expectations. The agency has issued only two warning letters to manure applicators for operating without a certificate, and neither person paid any penalty or obtained a certificate as a result.[140] And while an ODA inspector promised a CLM-certified manure applicator "would receive a warning letter" for not following setback requirements around a private well in May 2006, the agency has failed to issue any such enforcement against the applicator.[141] Lax enforcement of a laudatory rule effectively nullifies a rule. Another example of this problem is ODA's implementation of the background check requirement, which reviews an applicant's past compliance with federal and state environmental laws. *"[T]he crafters of SB 141 felt a background check would keep 'bad actors' out of Ohio."*[142] However, the discovery, after over two years of operation, that a habitual violator from Iowa had taken over control of Buckeye Egg Farm is a poor, if incomplete, reflection on ODA's competence in background investigations.[143]

EIP has identified the following specific areas in ODA's livestock permitting program that need improvement to protect Ohio's environment and public health. Given a mission that appears at odds with effective environmental enforcement and permitting and the following deficiencies, a transfer of still further environmental protection authority is not warranted.

Program Deficiencies

1. ODA does not deter noncompliance through effective enforcement.

With only three penalties assessed in four years — two in the negligible amounts of $200 and $700 — multi-million dollar operations have little incentive to address problems proactively. Over a similar time period, OEPA assessed double the number of penalties and in amounts averaging $16,786, or more than seven times ODA's average penalty.[144] Even where facilities, such as Ohio Valley Farms, have operated for years in violation of basic legal requirements such as obtaining a permit, ODA has done little to back up the threats it issues near the end of warning letters and notices of deficiency. In 2004, for example, ODA's permit director sent a warning letter to Zylstra Dairy, noting it was the third enforcement action within a year for failure to maintain adequate freeboard, or overfilling its manure storage pond.[145] "I perceive a pattern of noncompliance that concerns me," wrote the director. "Continued inattention to requirements may well result in more enforcement."[146] Yet later in 2004, ODA staff discovered Zylstra was using a manure pond that was not authorized for use, and the facility again received only a warning letter. "I trust that you share my concern that these actions contribute to a pattern of noncompliance documented in our records," stated the permit director.[147]

Although difficult to measure, ODA does not seem to take formal, on-the-record enforcement actions, *even in cases where inspectors document CAFOs with repeat violations have broken ODA rules.* For instance, while an ODA inspector found in March 2006 that DeVries Dairy had violated land application requirements by spreading unincorporated manure within 125 feet of a residence, instead of the required 300-foot setback, he concluded only that the facility "should be more conscious of the setback requirements, [b]ut after discussing the situations with both parties involved, I feel the situation is resolved without sending any warnings."[148] This recommendation simply does not comport with DeVries history as a repeat offender, having garnered 5 previous ODA enforcement actions — including a final order (with penalty) in 2004 for operating without a permit.[149]

The problem of lax enforcement may only be exacerbated in the future. Due to

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

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

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

If an ODA permitted facility employs distribution and utilization, the CAFO simply provides the recipient with an analysis of the nutrient content of the manure and copies of technical requirements on how to apply manure in accordance with ODA rules and obtains a signed acknowledgment from the recipient that it has received this information and will use best management practices.[151] If the permitted facility retains control over the land application of the manure, it may be liable for subsequent spills and discharges.[152] Commonly, however, the permitted facility simply sells the manure to a manure broker, thus washing its hands of the often dirty business of land application and responsibility for environmental impacts. Although this practice is allowed by federal Clean Water Act regulations, ODA could have closed this loophole through state regulations. Instead, the practice is increasingly common. Worse still, as the number of manure transfers increases, ODA has diminished its own oversight capability, evidenced by its decision to eliminate manure bills of sale from CAFOs' operating record.[153]

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



Another example of ponded liquid manure after over-application. "The substrate of this entire tributary had grey growth (sewage fungus) that is indicative of chronic impairment."
SOURCE: OEPA NOTICE OF VIOLATION TO RINGLER HOG FARM (JANUARY 27, 2004)

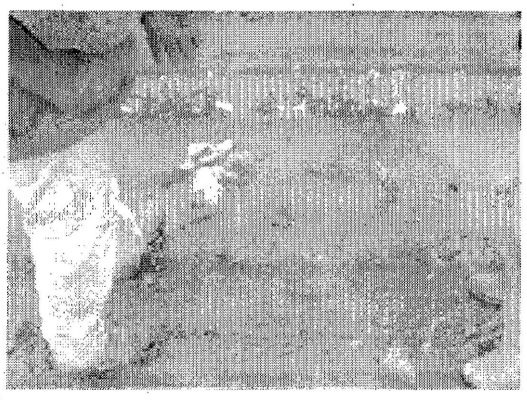
after concerned neighbors intervened in the lawsuit, and ODA now must make the land application maps available to the public.[157] However, ODA refused to extend the public comment periods until the public could review the maps, which eviscerates effective public participation. ODA has also decided not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

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

Finally, "[i]f a recipient landowner takes and land applies the manure and is not large enough for ODA jurisdiction, then the local [SWCD] is responsible for investigation and enforcement of pollution attributable to land application of manure."[160] Under this division of labor, SWCDs are supposed to monitor disposal[161] of what appears to be upwards of 90 percent of manure produced ODA-permitted CAFOs but distributed to non-permitted facilities for land application.[162] This task is all the more impossible for SWCDs given ODA's new policy of not requesting land application maps as part of manure management plans.[163] "If a recipient landowner takes and land applies the manure and is not large enough for ODA jurisdiction, then the local [SWCD] is responsible for investigation and enforcement of pollution attributable to land application of manure."[164] Even under ideal conditions, SWCDs are ill-suited to implement effective, uniform environmental regulation because they have no penalty authority and depend solely on the voluntary cooperation of polluters, which is tantamount to non-regulation.



Manure applied during winter within 50 feet of a stream, although rules require a minimum 200-foot setback.
SOURCE: ODA, 5C'S FARM COMPLAINT INVESTIGATION REPORT (FEBRUARY 4, 2005)



ODA inspector notes approximately a quarter-inch of manure applied on top of snow cover.
SOURCE: ODA, 5C'S FARM COMPLAINT INVESTIGATION REPORT (FEBRUARY 4, 2005)

3. ODA places inadequate restrictions on winter manure applications

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

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

4. ODA has reduced permit coverage and reporting requirements.

One danger in transferring NPDES authority to ODA is that the universe of permitted facilities may contract in size, just as occurred during the transfer of state permitting authority.[168] ODA and OEPA records reveal a significant disparity in the number of state permits handed over in 2002. At the time of transfer, OEPA reported passing oversight of 144 permitted facilities to ODA,[169] while ODA reported that OEPA had 125 permitted livestock operations.[170] A further disparity is that of 156 ODA-issued permits, only 109 appear to be RCCs (84), PTOs (15), or PTI/PTOs (10) for formerly permitted facilities.[171] Therefore, up to 35 facilities — or a quarter (24.3 percent) of original OEPA-permitted factory farms — fell off the regulatory radar with the transfer of state permitting authority. ODA declined to account fully for these "missing" facilities, so there is no definitive explanation for how or why such a drop-off in regulated population occurred. Records show some of these facilities continue to operate in violation of permitting requirements.[172]

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

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

Recommendations

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

Accelerate, streamline, and toughen up enforcement.

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

Close manure transfer loophole by establishing producer-based liability.

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

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

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

Bring medium CAFOs under state operating permits.

To supplement ODNR regulation of unpermitted CAFOs, ODA should work to bring more existing facilities under state operating permits. A pragmatic policy could leave existing permitting thresholds in place as a baseline requirement, while imposing a new requirement on medium CAFOs to obtain state operating permits if they violate best management practices as established under Ohio's agricultural pollution abatement rules.[181] This requirement would parallel federal rules that place NPDES permit requirements on medium CAFOs that discharge to state waters. Since few unpermitted facilities wish to face the permit review and application process, a violation-based permit requirement would motivate more facilities to comply with best management practices. ODA could then focus on the medium-sized operations most deserving of its attention and bring an end to the cat-and-mouse game of manipulating facility sizes as a means of avoiding inspection and enforcement.

Require annual reports for ALL facilities.

The annual reporting requirement under NPDES should extend to all permitted facilities and all certified manure brokers. When an SWCD or any other state agency receives a location-based report of a manure discharge, an investigator should have immediate access to a master map that identifies any nearby fields that receive manure, the brokers who apply it, and the facilities that produce it. At the very least, OEPA's three-year reporting requirement for new facilities should be re-implemented. More reports will also create more information on appropriate design standards and changes to future rules. As an initial step, ODA must begin enforcing its own manure spill reporting requirement and follow the lead of OEPA and ODNR in tracking known pollution incidents in an ODA-specific database. The current absence of such a list at ODA is unacceptable. The agency should have ready access not only to information about where manure is produced, but to where it is going and where it has most often caused environmental problems.

Restrict wintertime manure transfers.

Restrictions on wintertime application of manure must by definition extend to wintertime distribution and utilization of manure. Distribution and utilization is a code phrase for land application at fields not under a permitted facility's control. It is a self-defeating exercise for ODA to place restrictions on manure application to frozen or snow-covered ground while placing no restrictions on the amount of manure that facilities can transfer during winter months. Indeed, ODA's relatively aggressive enforcement of freeboard violations in the winter may often have the unintended consequence of increasing winter applications by third-party brokers or applicators. Oversight of manure brokers is minimal. They sign an agreement with the manure-producing facility promising to use best management practices, without facing any enforceable permit terms.

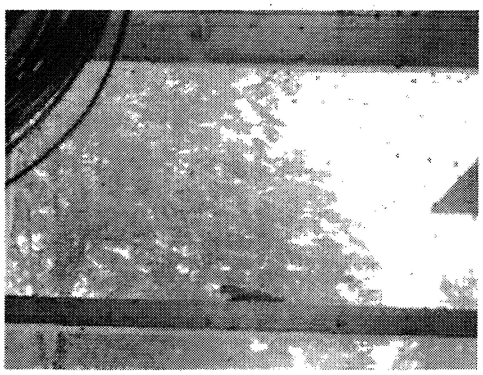
Hone inter-agency tools.

State agencies should develop a common database to log complaints, compile environmental violations, and track compliance at CAFOs. In addition, for every manure-related entry in the common

database, agencies should identify the original source facility producing the manure — whether or not the agency has determined that the source facility is "at fault." Tracking manure-related incidents on a source-facility basis will enable speedy, targeted investigations of repeat violators. A more definitive inventory of existing AFOs needs to be taken in Ohio. State officials estimate the total number of AFOs at 25,000 to 30,000,[182] but these "ballpark" figures do not shed light on how many existing facilities may be operating above permitting thresholds. The absence of accurate information on the universe of unpermitted livestock operations deprives both regulatory agencies and the public of a key measuring stick to assess the effectiveness and true scope of coverage of the state and federal permitting programs.

Learn from past missteps.

Prior to any final transfer of NPDES permitting authority, ODA and OEPA should prepare comprehensive reports to identify problems that occurred during the state-permit handover in 2002. While EIP has found certain areas of weakness and raised questions about this transfer, the affected state officials and state agencies are in a better position to apply these lessons to any further transfer of authority.



Fly infestation inside a home located near livestock operation.
SOURCE: ODA, LONGVIEW CATTLE COMPLAINT INVESTIGATION REPORT (MAY 31, 2006)

Report to citizens.

The unavailability of this basic enforcement and compliance information has broad implications. Public access is critical because it allows citizens to make informed decisions regarding environmental issues that affect their communities. Citizens also need compliance data in order to assist U.S. EPA and the states in ensuring that environmental violations are resolved. Moreover, the public's direct access to compliance information provides incentives for regulated entities to comply with the law.

Finally, providing information on the internet will free up more resources for core permitting and enforcement activities. ODA should post key enforcement information on its website, and all agencies should post their CAFO databases related to discharges on their website.

NOTES

[1] According to the U.S. Department of Agriculture (USDA) report, "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States" (December 2000) p. ii, available at http://www.nrcs.usda.gov/technical/land/pubs/manntr.html: "[T]he structure of animal agriculture has changed dramatically over the last two decades. Small and medium-sized livestock operations have been replaced by large operations at a steady rate. The total number of livestock has remained relatively unchanged, but more livestock are kept in confinement. The number of confined animals per operation has increased for all major livestock types."

[2] USDA Agriculture Research Service, "National Program 206: Manure and Byproduct Utilization Action Plan" (2005), p.1, available at http://www.ars.usda.gov/SP2UserFiles/Program/206/206ActionPlan2004/NP206ActionPlanOctober2004Revisedwosynames.pdf.

[3] See "Outline of Environmental Impacts" in Part I, below.

[4] The Animal Feeding Operation (AFO) industry is big business. The poultry industry alone generated over $21 billion in on-farm revenue in 1997, with much of the production coming from corporate producers operating large AFOs. EPA, Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations, EPA-821-R-03-001 at 4-35 (2002) ("Development Document"), available at http://cfpub2.epa.gov/npdes/afo/cafodocs.cfm. Similarly, the swine industry generates roughly $10 billion per year at the production level; revenue from consumer sales often exceeds $20 billion. Development Document at 4-2. Large agribusinesses realize the lion's share of the profits. For instance, Tyson Foods, the world's largest meat producer, enjoyed $26.4 billion in sales and realized $1.9 billion in gross profits in 2004. Tyson, Annual Report 2004, available at http://media.corporate-ir.net/media_files/irol/65/65476/reports/ar04.pdf. Smithfield Foods, the nation's largest hog producer, generated $9.3 billion in sales and $227 million in net income in the same year. Revenues and profits continue to grow each year. Smithfield, Annual Report 2004, available at http://www.rkconline.net/AR/SmithfieldAR2004/.

[5] See, e.g., Congress Daily, "Republicans Aim to Block EPA Regulations on Manure" (July 10, 2006) (mentioning that the American Farm Bureau, Tyson Foods and other livestock, poultry and dairy companies have hired the Livingston Group to lobby Congress in support of legislation that would exempt CAFOs from hazardous waste laws); Letter from Saxby Chambliss, Chairman of the Senate Committee on Agriculture, Nutrition and Forestry and James Inhofe, Chairman of the Senate Committee on Environment and Public Works to Stephen Johnson, Administrator of U.S.EPA (March 3, 2006) (implying that five of the six states in Region 5 have Clean Water Act requirements for CAFOs that are more stringent than the Act allows, and requesting that EPA Headquarters "clarify" the law for the Regions and states); Des Moines Register, "What about property rights for hog lots' neighbors?" (July 26, 2006) ("[L]egislators voted for laws that prevent Iowans from having a say in decisions made hundreds of times a year by neighbors and corporations to build large-scale confined animal feeding operations (CAFOs) near their properties."); see also Dayton Daily News, "Ohio Farm Bureau Keeps Agribusiness at Forefront, (December, 2, 2002), available at http://www.daytondailynews.com/project/content/project/farm/1202farmbureau.html (quoting Columbus-based attorney Rick Sahli's view that "Farm Bureau uses its clout to keep farm regulations to a minimum.").

[6] Dayton Daily News, "Lucrative Megafarm Market Lures Europeans" (December 6, 2002), available at http://www.daytondailynews.com/project/content/project/farm/1206future.html.

[7] Id.

[8] USDA, 2002 Census of Agriculture, available at http://www.nass.usda.gov/census/census02/volume1/oh/st39_1_001_001.pdf.

[9] USDA, "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States" (December 2000), available at http://www.nrcs.usda.gov/technical/land/pubs/manntr.html.

[10] Nationally, a Cornell University study projects that the number of dairy farms will decline from over 105,000 in 2000 to about 15,000 in 2020, with 84.6 percent of farms containing 500 or more cows, as cited in the dairy trade newsletter New World News (January/February 2004), available at http://www.vrebahoff.com/HTML/Newsletter_0401.pdf.

[11] See Dayton Daily News, "The Supersizing of America's Livestock Farms" (December 1, 2002), available at http://www.daytondailynews.com/project/content/project/farm/1201overview.html. ("The Ohio Farm Bureau, the lobbying voice of agriculture and a generous contributor to state candidates, pushed hard for the bill [that transferred permitting authority to ODA]. 'It was something that was extremely important to us and perhaps was one of the most important bills that we've worked on,' Farm Bureau lobbyist Larry Gearhardt said. 'We spent a tremendous amount of time trying to massage the bill and have it drafted the way it should be to run a good program.'").

[12] Ohio Governor Bob Taft signed permitting authority transfer into law ("SB 141") on December 14, 2000. S.B. 141, 123rd Gen. Assem., (Ohio 2000). In addition to transferring state and federal permitting authority from

OEPA to ODA, the bill created extensive, new regulations for CAFOs and appropriated $1.7 million to fund the Livestock Environmental Permitting Program.

[13] Although the 1,000 animal unit measure is used in this report as shorthand, U.S. EPA and Ohio adopted animal-specific thresholds with the release of new rules form the Clean Water Act in 2002. The term "animal unit" is no longer officially used for permitting thresholds. 2003 CAFO Rule, 68 Fed. Reg. 7176 (February 12, 2003). One thousand animal units is equivalent to 700 mature dairy cows; 1,000 beef cattle or heifers; 2,500 swine weighing more than 55 lbs.; 10,000 swine weighing less than 55 lbs.; 30,000 ducks (other than liquid manure systems); 5,000 ducks (liquid manure handling systems); 30,000 chickens (liquid manure handling systems); 125,000 chickens except layers (other than a liquid manure system); 82,000 laying hens (other than liquid manure systems); 1,000 veal calves; 500 horses; 10,000 sheep or lambs; or 55,000 turkeys. See large CAFO definition under U.S. EPA's NPDES glossary at http://cfpub.epa.gov/npdes/glossary.cfm#L.

[14] The Clean Water Act prohibits the "discharge of any pollutant" except in compliance with specific provisions of the Act. Federal Water Pollution Control Act, 33 U.S.C. § 1311(a). In particular, the discharge of any pollutant into navigable waters is illegal unless authorized by a permit issued pursuant to section 402 of the Act. Id. § 1342. Section 402 established the NPDES permit program, and requires dischargers to obtain a permit from EPA or an authorized State. Id. § 1342(a)(1), (b). NPDES permits prohibit or limit the amount of pollutants that may be discharged to waters and contain monitoring and reporting requirements, as well as other provisions necessary to ensure that discharges do not harm water quality or human health.

[15] On August 19, 2002, ODA finalized the Livestock Environmental Permitting Program, as required under ORC § 903.02(A)(1) and ORC § 903.03(A)(1), and assumed enforcement authority over 161 permits to install formerly issued by Ohio EPA.

[16] Submission of ODA's implementation plan to U.S. EPA appears imminent, as Kevin Elder, Livestock Environmental Permitting Program Executive Director, recently reported that "[t]he delegation document is almost complete and has been sent to the [Ohio Attorney General]'s office for review." Approved minutes from Concentrated Animal Feeding Facility Advisory Committee (June 8, 2006), available at http://www.ohioagriculture.gov/pubs/divs/lepp/curr/mtgs/documents/Minutes-approved.6-08-06.pdf.

[17] In 2001, a second state, Oregon, also passed legislation to transfer the authority to administer the CAFO portion of its NPDES program to the Oregon Department of Agriculture. See "Oregon Department of Environmental Quality NPDES Program Review (January 12, 2005), p.14, available at http://yosemite.epa.gov/r10/homepage.nsf/d7b03c22cbc0843588256464006a2ff4/b0e3582d387d4b1f882564c800026f1c/$FILE/OR%20NPDES%20Report%20Final%202005.pdf. According to U.S. EPA Region 10, however, Oregon has not formally applied for, nor has EPA granted, an NPDES program revision (per 40 CFR § 123.62) reflecting a transfer of NPDES authority to the Oregon Dept. of Agriculture. (Email correspondence to EIP from U.S. EPA Region 10 (October 10, 2006)).

[18] Statement from U.S. EPA National Agriculture Compliance Assistance Center on best management practices, available at http://www.epa.gov/oecaagct/anafobmp.html.

[19] U.S. EPA and USDA, section 2.2 of "Draft Unified National Strategy for Animal Feeding Operation" (September 11, 1998), available at http://water.usgs.gov/owq/cleanwater/afo/.

[20] U.S. EPA and USDA, "Clean Water Action Plan: Restoring and Protecting America's Waters", at 56 (February 1998), available at http://water.usgs.gov/owq/cleanwater/action/cwap.pdf.

[21] Ohio Environmental Council, "CAFO Factsheet," available at http://www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafofsheet.pdf or http://72.14.209.104/search?q=cache:tv6hFmzOK94J:www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafofsheet.pdf+ohio+environmental+council+cafo+fact+sheet&hl=en&gl=us&ct=clnk&cd=1.

[22] One dairy cow produces 21 times more waste than an average human. "The Meatrix," produced by GRACE Factory Farm Project, available at http://www.themeatrix.com/learnmore/waste.html ("This figure was calculated using dairy and human waste characteristics reported in the USDA's Agricultural Waste Management Field Handbook (1992) ... assuming an average lactating dairy cow weight of 1,400 lbs., and an average human weight of 175.8 lbs.... Weight of waste excreted by lactating dairy cow: 80.00 lbs./day/1,000 lbs. of live weight.a (Weight of waste excreted by a 1,400 lb. lactating dairy cow: 112.0 lbs./day.) Weight of waste excreted by human: 30.00 lbs./day/1,000 lbs. of live weight.a (Weight of waste excreted by a 175.8 lb. human: 5.274 lbs./day.) Thus a 1,400 lb. lactating cow excretes 21.24 times as much waste per day as a 175.8 lb. human.)").

[23] Ohio — City Population, available at http://www.citypopulation.de/USA-Ohio.html.

[24] E.g., Van Deurzen Dairy will have two 22.5 million gallon earthen manure lagoons to contain an estimated 47 million gallons of annual liquid manure production. ODA factsheet available at http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-vandeurzenfactsh-111204.stm.

[25] Land application is the primary method of waste disposal with roughly 90 percent of all CAFO-generated waste being applied onto fields. U.S. EPA, State Compendium; Programs and Regulatory Activities Related to Animal Feeding Operations at 13 (May 2002), available at http://www.ars.usda.gov/sp2UserFiles/Place/19020500/PhosphorousImages/compendium.pdf.

[26] Winter applications of manure, for example, serve no agronomic benefit to soils, but are routinely used as a waste disposal method by livestock operations to mitigate overflows in lagoons or storage pits. See, e.g., ODNR, "Winter Weather Complicates Manure Application," link available at http://www.dnr.ohio.gov/soilandwater/swcds/swcdresources.htm ("Protecting water quality would be a lot easier if farmers never needed to apply manure when fields are frozen or covered with snow. But the fact is, some farmers don't have enough storage capacity to get through the winter. Sometimes, even farmers with storage facilities need to apply manure in the winter because wet fall weather or other problems delayed application. Unfortunately, uncooperative winter weather can lead to pollution, even for farmers who follow winter manure application guidelines. Last winter, for example, a quick thaw led to a rash of pollution complaints in early March. Manure applied earlier in the winter had remained frozen on fields for weeks or even months, but after the thaw surface flow carried it into streams.... Although some other states have prohibited manure application to frozen or snow-covered ground, it's still permitted under very careful management in Ohio.").

[27] Of the 12 facilities most recently issued final permits by ODA, only one indicated in its draft or final permit notice that it would apply waste manure exclusively to its own land. ODA, Livestock Environmental Permitting Program, "Recent Final Permits", available at http://www.ohioagriculture.gov/lepp/lepp-recent.stm.

[28] Bill Weida, formerly an economics professor at Colorado College, has noted: "[P]ollution shopping companies [such as CAFOs] ... look for counties or regions where the permitting of potentially polluting activities is easiest and where environmental laws are seldom or loosely enforced." "Pollution Shopping in Rural America: The myth of economic development in isolated regions" (November 16, 2001), available at http://factoryfarm.org/docs/Pollution_Shopping_Update.pdf.

[29] USDA Agriculture Research Service, "National Program 206: Manure and Byproduct Utilization Action Plan" (2005), p. 1 ("Transportation costs inhibit distribution of manure at sites distant from where it is generated. Most manure, therefore, is usually land-applied within about 10 miles of beef cattle feedlots, dairy barns, poultry houses, or swine facilities."), available at http://www.ars.usda.gov/SP2UserFiles/Program/206/206ActionPlan2004/NP206ActionPlanOctober2004Revisedwosynames.pdf; USDA, "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States", p. 1 (December 2000) ("With fewer, but larger operations, the amount of animal manure has become more concentrated in local areas. Because the distance that manure can be hauled for land application has practical limits, manure loadings per acre must either increase or alternative methods of utilization be adopted."), available at http://www.nrcs.usda.gov/technical/land/pubs/manntr.html.

[30] U.S. EPA has identified the pollutants in CAFO waste as: "nutrients (particularly nitrogen and phosphorus), organic matter, solids, pathogens, and odorous/volatile compounds. Animal waste is also a source of salts and trace elements and, to a lesser extent, antibiotics, pesticides, and hormones....." 2003 CAFO Rule, 68 Fed. Reg. 7176, 7235 (Feb. 12, 2003).

[31] 2003 CAFO Rule, 68 Fed. Reg. at 7236-37 ("Runoff of animal wastes is more likely when rainfall occurs soon after application (particularly if the manure was not injected or incorporated) and when manure is overapplied or misapplied. ... Dry weather discharges to surface waters associated with CAFOs have been reported to occur through spills or other accidental discharges from lagoons and irrigation systems, or through intentional releases.").

[32] See figures 1 and 2 in Ohio Environmental Council, "Dead in the Water: A Comprehensive Analysis of Fish Kills in Ohio" (December 2003), p. 7 ("Livestock agricultural related incidents, including manure lagoon overflow, the misapplication of manure on land, cattle wading in streams and other manure incidents account for 72% of all agricultural sources of fish kills.").

[33] Id.

[34] Dayton Daily News, "The Supersizing of America's Livestock Farms" (December 1, 2002), available at http://www.daytondailynews.com/project/content/project/farm/1201overview.html.

[35] Ohio EPA tested for fish quality, bacteria and other contaminants during 18 months in 1999 and 2000. Information available at http://www.epa.state.oh.us/dsw/documents/wabash2001_infographic.pdf.

[36] Dayton Daily News, "The Supersizing of America's Livestock Farms" (December 1, 2002), available at http://www.daytondailynews.com/project/content/project/farm/1201overview.html.

[37] 2003 CAFO Rule, 68 Fed. Reg. at 7237 ("[Groundwater contamination] occurs as a result of water traveling through the soil to the ground water and taking with it pollutants such as nitrate from livestock and poultry wastes on the surface. Leaking lagoons are also a potential source of manure pollutants in ground water, based on findings reported in the scientific and technical literature.").

[38] Ohio Environmental Council, "CAFO Factsheet," available at http://www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafofsheet.pdf or http://72.14.209.104/search?q=cache:tv6hFmzOK94J:www.theoec.org/pdfs/ffarms/ffarms_tools_fsheets_cafofsheet.pdf+ohio+environmental+council+cafo+fact+sheet&hl=en&gl=us&ct=clnk&cd=1.

[39] Id.

[40] 2003 CAFO Rule, 68 Fed. Reg. at 7236 ("These organisms are: *Campylobacter spp., Salmonella spp.* (non-typhoid), *Listeria monocytogenes, Escherichia coli* O157:H7, *Cryptosporidium parvum, and Giardia lamblia.* All of these organisms may be rapidly transmitted from one animal to another in CAFO settings. An important feature relating to the potential for disease transmission for each of these organisms is the relatively low infectious dose in humans. The protozoan species *Cryptosporidium parvum* and *Giardia lamblia* are frequently found in animal manure. Bacteria such as *Escherichia coli* O157:H7 and Salmonella spp. are also often found in livestock manure and have been associated with waterborne disease. The bacteria *Listeria monocytogenes* is ubiquitous in nature and is commonly found in the intestines of wild and domestic animals.").

[41] David Wallinga, M.D., Institute for Agriculture and Trade Policy, "Concentrated Animal Feeding Operations: Health Risks from Water Pollution", (November 2004), available at http://www.iatp.org/iatp/publications.cfm?accountID=421&refID=37390.

[42] Id.

[43] Id.; see e.g., Chapin, et al., "Airborne Multidrug-Resistant Bacteria Isolated from a Concentrated Swine Feeding Operation", 113 Environmental Health Perspectives 137 (February 2005), available at http://www.ehponline.org/members/2004/7473/7473.pdf.

[44] 2003 CAFO Rule, 68 Fed. Reg. at 7238. See also U.S. EPA, Office of Children's Health Protection, "Drinking Water Contaminants – America's Children and the Environment: A First View of Available Measures", available at http://yosemite.epa.gov/ochp/ochpweb.nsf/content/drinking_water_contam.htm; Centers for Disease Control and Prevention, "Spontaneous Abortions Possibly Related to Ingestion of Nitrate-Contaminated Well Water—La Grange County, Indiana 1991–1994", Morbidity and Mortality Weekly, Report 45 (26) (1996), at 569-571 (linking high nitrate levels in Indiana well water near confinement operations to spontaneous abortions in humans), available at http://www.cdc.gov/mmwr/PDF/wk/mm4526.pdf.

[45] 33 U.S.C. § 502(14).

[46] Id. § 402(a).

[47] 40 C.F.R. § 122.23(b)(2).

[48] Id. § 122.23(b)(1)(i).

[49] Id. § 122.23(b)(1)(ii).

[50] Id. § 122.23(b)(3).

[51] Id. § 122.23(c)(2).

[52] Id. § 122.23(b)(3).

[53] Id. § 122.23(b)(3).

[54] 2003 CAFO Rule, 68 Fed. Reg. at 7176.

[55] 40 C.F.R. § 122.23(b)(4).

[56] Id.

[57] Id. § 122.42(e).

[58] 2003 CAFO Rule, 68 Fed. Reg. at 7246-47. EPA estimates that approximately 3 percent of all Large CAFOs and about 4 percent of all affected small business CAFOs nationwide may be vulnerable to closure.

[59] 399 F.3d 486 (2d Cir. 2005).

[60] Id. at 505–06

[61] U.S. EPA, Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations in Response to Waterkeeper Decision; Proposed Rule, 71 Fed. Reg. 37744, 37774 (2006).

[62] 40 C.F.R. § 122.21(a).

[63] See explanation of animal unit in note 13, above.

[64] Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.

[65] Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.

[66] HB 152 began as a bill to change Ohio law to conform to federal rules about large livestock operations. By the time the law went into effect November 5, 2005, however, it included a "preclusion against local regulation of animal feeding facilities" amendment circulated by the Ohio Farm Bureau: "An owner or operator of an animal feeding facility who holds a permit to install, a permit to operate, a review compliance certificate, or an NPDES permit or who is operating under an operation and management plan ... approved by the chief of the division of soil and water conservation in the department of natural resources ... or by the supervisors of the appropriate soil and water conservation district ... shall not be required by any political subdivision of the state or any officer, employee, agency, board, commission, department, or other instrumentality of a political subdivision to obtain a license, permit, or other approval pertaining to manure, insects or rodents, odor, or siting requirements for installation of an animal feeding facility." Ohio Rev. Code Ann. § 903.25.

[67] ODA Response to Oral Comments of Jenny Smith, Public Hearing (May 25, 2005), cmt. 8. Pollution investigation reports and complaint logs from OEPA and ODNR also evidence extensive cross-reporting among ODA, ODNR, OEPA, and SWCDs and joint responses to spills that include ODNR, OEPA, and SWCD staff.

[68] ODA list of permitted farms, available at http://www.ohioagriculture.gov/lepp/curr/othr/lepp-ot-permittedfarms.stm (last updated August 3, 2006). These facilities are known as "Concentrated Animal Feeding Facilities" in Ohio but for ease of reference are referred to in this report as CAFOs.

[69] See explanation of animal unit in note 13, above.

[70] Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.

[71] Ohio Rev. Code Ann. § 903.02(A)(2); 903(A)(3); see also "Guidelines for Livestock Operations," available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf.

[72] Minutes from CAFF Advisory Committee Meeting (June 8, 2006), available at http://www.ohioagriculture.gov/pubs/divs/lepp/curr/mtgs/documents/Minutes-approved.6-08-06.pdf.

[73] Ohio Admin. Code § 901:10-5-04(k).

[74] Enforcement procedures are described in Section 903.16 to 903.18 of the Ohio Revised Code. In addition, rules in OAC Chapter 901:10-5 address enforcement, including procedures for enforcement in Rule 901:10-5-03 and penalties in Rule 901:10-5-04.

[75] ODA, Responsiveness Summary to Reyskens Dairy permit, pp. 9–10 (July 30, 2004), available at http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-reyskensrespsum-080604.pdf.

[76] Ohio Rev. Code Ann. § 903.16(A)(1); Ohio Admin. Code § 901:10-5-03(D)(2).

[77] Ohio Rev. Code Ann. § 903.16(A)(2); Ohio Admin. Code § 901:10-5-03(D)(3).

[78] Ohio Rev. Code Ann. § 903.16(A)(3); Ohio Admin. Code § 901:10-5-03(D)(5).

[79] Ohio Rev. Code Ann. § 903.18; Ohio Admin. Code 901:10-5-05.

[80] Compilation of records provided by ODA.

[81] Id.

[82] OEPA, FY2005 Annual Summary Report.

[83] Data compiled from final orders provided by OEPA to EIP in response to July 28, 2005 public records request.

[84] Data compiled from materials on Disks 1, 2, and 3 (NOV file folders) provided by OEPA to EIP in response to July 28, 2005 public records request.

[85] See Table 7.

[86] Copies of chief's orders provided by ODNR to EIP in response to September 5, 2006 public records request (Order # 2003-1 issued to J. Scott Thomas (April 23, 2003); Order #2005-1 issued to Monte Tuck (June 23, 2005); and Order #2006-1 issued to Terry Miller (June 9, 2006)).

[87] See definitions under ODNR's pollution abatement rules, Ohio Admin. Code 1501:15-5-01(B)(21): "'Field Office Technical Guide' means the localized document used by the soil and water conservation district and developed (current edition) by the natural resources conservation service, United States department of agriculture, which is available to all Ohio County Soil and Water Conservation Districts, and which provides: (a) Soil descriptions; (b) Sound land use alternatives; (c) Adequate conservation treatment alternatives; (d) Standards and specifications of conservation practices; (e) Conservation cost-return information; (f) Practice maintenance requirements; (g) Erosion prediction procedures."

[88] Figures based on data in ODNR complaint entry log (Microsoft Excel files), provided to EIP in response to July 27, 2005 and August 21, 2006 public records requests.

[89] Id.

[90] Id.

[91] Id.

[92] See note 22, above, for explanation of dairy cow's human waste equivalence.

[93] Id.

[94] For historical background on SWCDs, see http://ofswcd.org/artman/publish/article_147.shtml (tracing SWCDs' broadening mission from assisting farmers with cropland erosion in the 1940s to coordinating with OEPA's Nonpoint Source Management Plan in the 1980s).

[95] ODA responsiveness summary for Reyskens Dairy, p. 9.

[96] Ohio Admin. Code § 1501:15-5-15(B).

[97] Ohio Admin. Code § 1501:15-5-15(D); see also Ohio State University Extension's EQIP factsheet, available at http://ohioline.osu.edu/ae-fact/0002.html.

[98] Information available at http://ofswcd.org/artman/publish/article_153.shtml.

[99] See, e.g., Letter from Dan Batdorf, Chairman of Miami SWCD, to David Hanselmann, Chief of ODNR-DSWC (May 13,2005) ("The Miami SWCD has received four separate complaints from various agencies since 1998 concerning this facility.... Since the summer of 2003, the neighboring community continues to complain about the overflow of manure and the lack of management that is needed for a facility of this age. However, the Miami [SWCD] does not have the authority to enforce upon the operator the type of management that is needed to comply with the Clean Water Act, nor can we convince the operator to discontinue his use of this old and outdated facility.... [We] would like [ODNR] to take corrective action and try to resolve this pollution problem.").

[100] See discussion of ODNR in subsection 3, above.

[101] U.S. EPA, "NPDES Profile: Ohio" (last updated May 3, 2005), available at http://www.epa.gov/npdes/pubs/ohio_final_profile.pdf.

[102] Data compiled from U.S. EPA's Enforcement & Compliance History Online (ECHO) database, available at http://www.epa.gov/echo/. The total is based on the number of facilities with an administrative or judicial order entered through ECHO's Integrated Compliance Information System.

[103] Id.

[104] Id. See also section on "Dirty Half-Dozen" below for more historical background on Ohio Fresh Eggs and its decades' long record of noncompliance.

[105] See, e.g., The Columbus Dispatch, "State Crackdown: Buckeye Egg Rotten To Its Corporate Core" (April 23, 2002) ("Buckeye Egg, which mismanages massive egg-producing farms in four Ohio counties, is a corporate outlaw that for years has polluted the state's air and water, employed illegal aliens and afflicted its neighbors with hellish plagues of flies and beetles.") available at http://libpub.dispatch.com/cgi-bin/documentv1?DBLIST=cd02&DOCNUM=17567&TERMV=302:3:305:4; Dayton Daily News, "Buckeye Egg Farm Violations Among Worst In Country" (December 4, 2002) available at http://www.daytondailynews.com/project/content/project/farm/1204buckeyeegg.html ("Following an April fly outbreak of 'Biblical proportions,' Attorney General Betty Montgomery called the company "the most recalcitrant corporate polluter" her office has seen.") .

[106] Ohio Environmental Council, "Dead in the Water," p. 13.

[107] The Columbus Disptach, "State Crackdown: Buckeye Egg Rotten To Its Corporate Core" (Apr. 23, 2002) available at http://libpub.dispatch.com/cgi-bin/documentv1?DBLIST=cd02&DOCNUM=17567&TERMV=302:3:305:4.

[108] Id.

[109] Documents provided by ODA in response to EIP records request.

[110] ODA Notice of Deficiency issued to Ohio Fresh Eggs (April 5, 2006).

[111] Letter from ODA Director Daily to Donald Hershey, et al. "Re: Proposed Action to Issue a Revocation Order" (Sept. 30, 2005).

[112] Letter from Kevin Elder to Ohio Valley Farms (April 6, 2005) ("ODA conservatively estimates that the seven hog barns at [OHV] have a total design capacity of 10,250 hogs qualifying [Ohio Valley Farms] as a concentrated animal feeding facility.").

[113] Id. (referencing Ohio Valley Farms' failure to operate as separate facilities as it promised to do in a June 15, 2004 letter to ODA).

[114] ODNR "Complaints" database (Microsoft Excel file) provided to EIP in response to August 22, 2006 public records request.

[115] Id.

[116] Comments from Cecelia Conway, Vreba-Hoff spokesperson, to Concentrated Animal Feeding Facility Advisory Committee (March 10, 2006); Ben Sutherly, "Dairy Dilemma: Debate may last until cows come home" (July 11, 2004), available at http://www.greenlink.org/public/hotissues/dairy.html.

[117] Dayton Daily News, "Lucrative Megafarm Market Lures Europeans" (December 6, 2002) ("Virtually all the Ohio dairies are built to house just under 700 cows.... Environmentalists also believe the Vreba-Hoff dairies intentionally kept their farms below 700 cows until [ODA] assumed [state permitting] authority.") available at http://www.daytondailynews.com/project/content/project/farm/1206future.html.

[118] Notes from telephone conversation between ODA staff and EIP (October 10, 2006).

[119] Data compiled from U.S. EPA Administrative Orders, provided to EIP in Sept. 28, 2006 response to FOIA request.

[120] Vreba-Hoff's staff "assisted [dairies] in obtaining from the [ODA} permits to install and operate the new dairy farms." Affidavit of Cecelia Conway in *Naomi Dairy v. ODA*, Civ. No. 06-6473 (Ohio Court of Common Pleas 2006). U.S. EPA administrative orders detail some of the permitting advice and support. For example, in response to the question of "[w]hat promises were made by Vreba-Hoff Dairy Development regarding environmental permitting," "[t]he owner said that Vreba-Hoff told him environmental permits were not necessary for a dairy of this size in Ohio." U.S. EPA Administrative Order, Schilderink Dairy, Attachment B, p. 4 (Sept. 10, 2004) (the dairy had 670 cows at the time, but ODA has since authorized it to expand to 2,990 cows). Other owners and operators have said: (1) Vreba-Hoff promised "environmental support;" U.S. EPA Administrative Order, Corey Dairy, Attachment p. 4 (Sept. 30, 2004); (2) "Prior to construction, the owner requested from Vreba-Hoff a larger lagoon than Vreba-Hoff planned" U.S. EPA Administrative Order, DeVries Dairy, Attachment, p. 4 (Dec. 20, 2004) (3) "Vreba-Hoff told the operator that the original lagoon and manure pit provided one year of storage. The operator found that the capacity was in fact closer to 4 months of storage." U.S. EPA Administrative Order, Olsthoorn Dairy, Attachment p. 3 (Sept. 24, 2004).

[121] Combined figures from ODA, OEPA, ODNR, and U.S. EPA data sources.

[122] Data compiled from U.S. EPA Administrative Orders, provided to EIP in Sept. 28, 2006 response to FOIA request

[123] U.S. EPA, data available from Enforcement & Compliance History Online (ECHO) database.

[124] Although Stoll Farms is included on ODA's published list of 156 permitted facilities, Stoll's entry is the only one on the list that does not include a permit type or a permit renewal date. Information available at http://www.ohioagriculture.gov/lepp/curr/othr/lepp-ot-permittedfarms.stm.

[125] Letter from OEPA to Stoll Farms (July 24, 2002).

[126] Email from ODA legal counsel to EIP (October 11, 2006) ("All of the information required by the original PTI is in the Stoll manure management plan of the facility's RCC. With the exception of information on manure sales records, the information is maintained in the operating records and is not submitted in an annual report. Ohio Rev. Code Ann. 903.04(I): "An existing facility that is issued a review compliance certificate shall comply with the previously issued installa-

tion permit, as amended by the certificate." With this in mind, ODA has not pursued an enforcement action against Stoll for failure to submit an annual report. The information required by the special condition of the OEPA PTI has been filed with ODA, but in the form of the Manure Management Plan (and the corresponding operating records) and not an annual report.").

[127] Documents provided by ODA to EIP in response to July 27, 2005 public records request.

[128] ODNR Chief's Order #2006-01 (June 9, 2006), pp. 4–8.

[129] Id., p. 5 ("The water analysis report indicated an ammonia concentration of 30.15 ppm.").

[130] Id., pp. 8–9.

[131] Available at http://www.ohioagriculture.gov/pubs/aboutus.stm.

[132] "Getting to know Ohio EPA", available at http://www.epa.state.oh.us/pic/facts/get2know.pdf.

[133] Available at http://www.epa.state.oh.us/pic/facts/AR/dsw.html.

[134] ODA, "Responsiveness summary to public comments on the Wezbra Dairy draft permit" (August 18, 2004), available at http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-wezbrarespsum-082004.stm.

[135] Minutes from CAFF Advisory Committee Meeting (June 8, 2006), available at http://www.ohioagriculture.gov/pubs/divs/lepp/curr/mtgs/documents/Minutes-approved.6-08-06.pdf.

[136] Comparison based on averaging 885 ODA inspections over 3.75 years (August 2002–May 2006) v. 163 OEPA compliance inspections over 4 years (FY2002–FY2005).

[137] "Major concentrated animal feeding facility" means a Concentrated Animal Feeding Facility with a total design capacity of more than ten times the number of animals specified as operating-permit thresholds. Ohio Rev. Code Ann. § 903.01(N).

[138] Ohio Rev. Code Ann. § 903.7(A)(1).

[139] "Certified CLMs" (Microsoft Excel file) provided by ODA to EIP in response to August 3, 2006 public records request.

[140] Warning letters issued February 9, 2005 to manure applicators Mike Grand and Joe Beam. As of August 3, 2006, 18 months later, neither person had obtained a certificate. ODA actually provided the names of non-certified manure applicators to Arts Dairy in 2004, in order to help the facility deal with insufficient storage capacity and anticipated land application problems. A trade newsletter for dairy CAFOs also gave readers contact information of a non-certified manure hauler, "[f]or help with cleaning your manure pit."

[141] ODA Complaint investigation report for Vissers Dairy (May 9, 2006). As of July 31, 2006, ODA had issued no warning letter against the ODA-certified applicator, Todd Hoffman.

[142] ODA Factsheet, "What is a Background Check?" (emphasis added), available at http://www.ohioagriculture.gov/lepp/curr/fact/lepp-fs-backgroundcheck-120103.pdf.

[143] See discussion of Ohio Fresh Eggs in Part IV above.

[144] See note 84, above.

[145] Letter from Kevin Elder to Willem Zylstra (June 17, 2004).

[146] Id.

[147] Letter from Kevin Elder to Willem Zylstra (February 4, 2005).

[148] ODA, Complaint investigation report for DeVries Dairy (March 27, 2006).

[149] ODA, Final Order against DeVries Dairy (April 19, 2004), provided to EIP in response to July 27, 2005 public records request.

[150] Ohio Admin. Code § 901:10-2-11.

[151] Id.

[152] Ohio Admin. Code § 901:10-1-01(UU).

[153] See ODA, Operating Record (Form 3900-013), p. 1, available at http://www.ohioagriculture.gov/pubs/divs/lepp/frms/lepp-Operating%20Records.pdf ("Manure Bills of Sale are no longer required to be kept in the Operating Record so you may wish to use a separate notebook.").

[154] E.g., Letter from William Hopper, ODA Chief Legal Counsel, to David Gerdeman granting trade secrecy request over land application maps (May 1, 2006) ("The information in the fields identification map shall be maintained by ODA in a separate file labeled 'Confidential'").

[155] Letter from William Hopper, ODA Chief Legal Counsel, to Jack Van Kley (June 21, 2006) (""After discussions with the Office of Attorney General and further review of Ohio law, ODA has revisited its determination..., wherein ODA determined that the fields identification map or land application site maps should be labeled as 'trade secret' [, and it now] intends to release the requested information.").

[156] *Naomi Dairy v. ODA*, Civ. No. 06-6473 (Ohio Court of Common Pleas 2006).

[157] Plaintiffs' Voluntary Dismissal, *Naomi Dairy v. ODA*, Civ. No. 06-6473 (Ohio Court of Common Pleas Oct. 11, 2006).

[158] Email from ODA legal counsel to EIP (June 26, 2006).

[159] U.S. EPA, Administrative Order to Olsthoorn Dairy (Sept. 24, 2004).

[160] ODA response to oral comments of Jenny Smith (May 25, 2005).

[161] See, e.g., Letter from ODA inspector to Logan SWCD (January 15, 2004) (responding to SWCD's inquiry to find out who in ODA's office was responsible for Weaver Brothers' Heartland Egg facility following land application complaints): "I am the inspector in charge of Heartland, but they sell all of their manure. Since they sell it (using what we

refer to as Distribution and Utilization), the responsibility for manure application falls back to the farmer land applying the manure [and] the county SWCDs. ... [U]nless a farmer that has a certified livestock manager certificate from us (or should have) applied the manure (or Weaver's themselves) there is not much we can do."

[162] Of the 12 facilities most recently issued final permits by ODA, only one indicated in its draft or final permit notice that it would apply waste manure exclusively to its own land. Information available at http://www.ohioagriculture.gov/lepp/lepp-recent.stm.

[163] Email from ODA legal counsel to EIP (June 26, 2006) ("Naomi Dairy and other proposed dairies in the general area plan to transfer manure, 40 CFR 122.42(e)(3). Land application site maps will no longer be submitted to ODA"). Without land application maps or other information identifying the location of fields slated for manure application, even OEPA had a difficult time determining whether an MMP complies with the law. See Letter from Melinda Harris, OEPA inspector, to Johannes Van Rooijen, Naomi Dairy (June 14, 2006) ("[A] few of the planned land application fields may not be acceptable due to the location in the Village of Cygnet's source water protection area. . . . . [P]lease notify this office if any land application fields are located in the protection area, identify those fields by field number, and provide an expected submittal date of a revised [MMP]."

[164] ODA response to oral comments of Jenny Smith (May 25, 2005).

[165] ODA, Responsiveness Summary to Reyskens Dairy permit, p. 11 (July 30, 2004), available at http://www.ohioagriculture.gov/lepp/curr/drft/lepp-dp-reyskensrespsum-080604.pdf. See Ohio Admin. Code § 901:10-2-14.

[166] Letter from ODA to Ohio Fresh Eggs (March 3, 2004).

[167] ODNR, "Winter Weather Complicates Manure Application," link available at http://www.dnr.ohio.gov/soilandwater/swcds/swcdresources.htm.

[168] ODA declined to offer an explanation or account after EIP provided it with a list of facilities permitted according to OEPA records, but not clearly permitted in ODA records. An unknown number of these farms may have changed names, stopped operating, or reduced herd size below the permitting threshold.

[169] OEPA, FY 2002 Annual Report ("The State of Ohio has approximately 144 permitted livestock facilities."). Also, OEPA had previously permitted as many as 161 facilities, but about 15 permits apparently corresponded to facilities that closed or were never built. "All AFOs" spreadsheet (Microsoft Access file) provided by Ohio EPA in response to July 28, 2005 records request

[170] ODA Factsheet, "Once ODA is in Charge, What Will Happen with Ohio EPA Permitted Facilities?" (July 2002) ("Ohio EPA has approximately 125 permitted livestock operations."), available at http://www.ohioagriculture.gov/lepp/curr/fact/lepp-fs-rcc-120103.pdf.

[171] Within two years, or by August 2004, all OEPA-permitted facilities were required to submit an application and supporting documentation to ODA to obtain a Review Compliance Certificate (RCC) or PTO. It is possible that more than 99 formerly-permitted facilities are included in ODA's current list, but ODA officials declined requests to account for this disparity. EIP initially identified 77 facilities on OEPA's 2002 permit list that were missing on ODA's August 5, 2006 permit list, available at http://www.ohioagriculture.gov/lepp/curr/othr/lepp-ot-permittedfarms.stm.

[172] For example, ODA issued a notice of deficiency in August 2004 to the Nave-Field farm, formerly permitted by OEPA, for failure to obtain an RCC prior to the 2-year deadline. Nave-Field had not obtained an RCC as of August 2006, with no escalation of enforcement by ODA. However, OEPA issued a Notice of Violation for a manure discharge to waters of the State in January 2005, showing that the facility's "demonstrated negligence and failed manure management" continue.

[173] Ohio Admin. Code § 901:10-2-17 ("The owner or operator shall also file a written report of [a discharge or manure spill] in letter form within five days following first knowledge of the occurrence.").

[174] Information based on conversation between ODA staff and EIP (October 13, 2006).

[175] Id.

[176] Data compiled from copies of complaint investigations provided by ODA to EIP in response to July 27, 2005 public records request.

[177] Ohio Admin. Code § 901:10-2-20 ("[T]he owner of a [CAFO] with an NPDES permit must submit an annual report.").

[178] Telephone conversation between OEPA permitting staff and EIP (October 10, 2006).

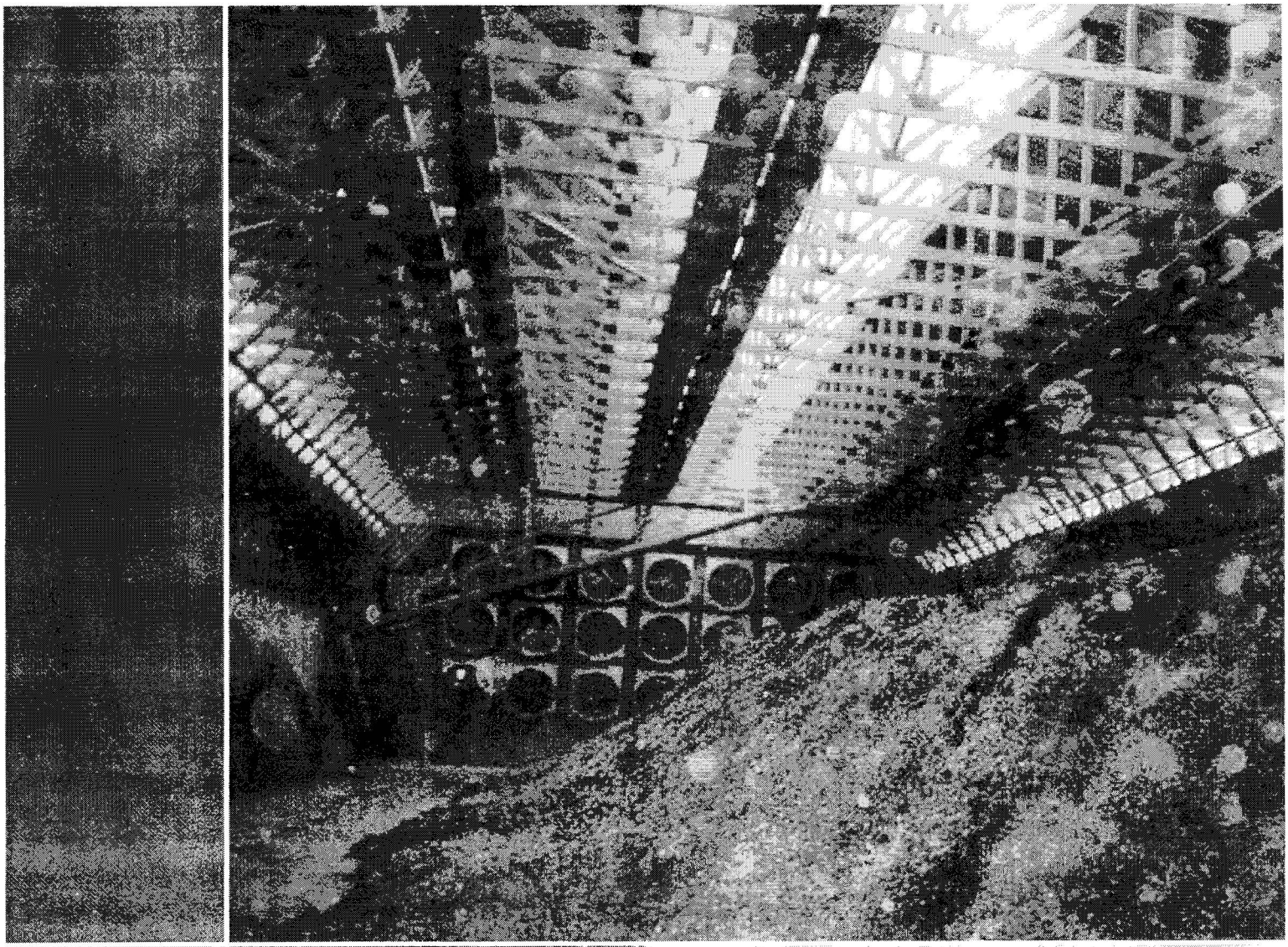
[179] OEPA, Response to Public Comments on Revised Draft General NPDES Permit for CAFOs (January 21, 2005), available at http://www.epa.state.oh.us/dsw/cafo/CAFO_Response%20to%20Comments%20on%20Revised%20GP2.pdf.

[180] Wis. Admin. Code § NR 243.14(4); *Maple Leaf Farmers, Inc. v. WDNR*, 633 N.W.2d 720 (Wisc. 2001)(holding WDNR's enforcement of permit provisions is valid even when the the manure was landspread offsite). WDNR is currently proposing amending these rules. The proposed rule maintains producer-based liability, but expands the circumstances in which liability can be transferred and specifies howto transfer liability. WDNR must still approve of the transferred liability, and can only do so if certain requirements are met. The proposed rules explicitly state that the producer maintains liability if WDNR approval is not obtained in writing. Proposed Rule § NR 243.142 "Responsibility for large CAFO manure and process wastewater," available at

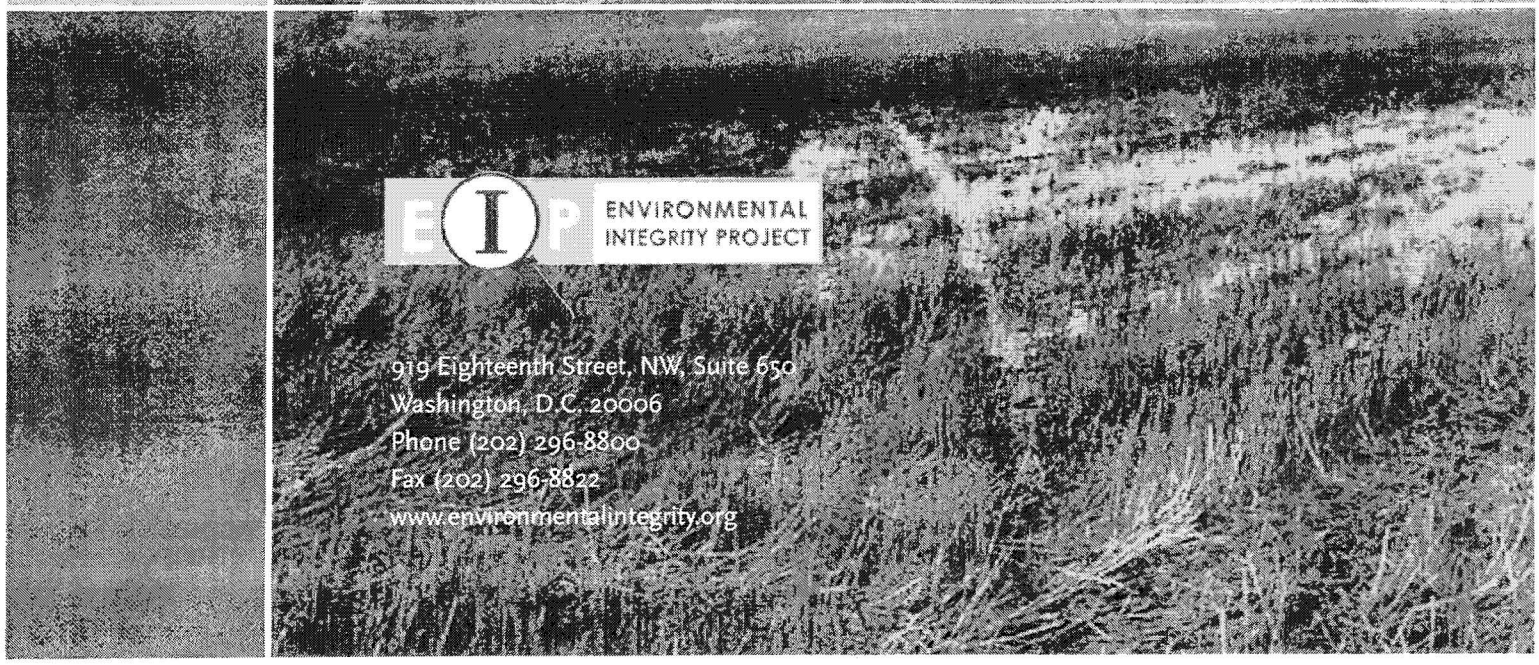
http://www.dnr.state.wi.us/org/water/wm/nps/rules/nr243/NR243.htm.

[181] Ohio Admin. Code § 1501:15-5-01.

[182] Estimates drawn from telephone conversations with ODA staff (July 2006) and OEPA staff (August 24, 2006). See also Ohio Livestock Coalition, "Guidelines for Livestock Operations," (November 2003) p. 4, available at http://www.ohiolivestock.org/images/1_livestock_guidelines03.pdf ("Slightly less than half of Ohio's 78,000 farms have some type of livestock operation.").







ENVIRONMENTAL INTEGRITY PROJECT

1919 Eighteenth Street, NW, Suite 650
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Phone (202) 296-8800
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www.environmentalintegrity.org

What will you do to protect Ohio's children, our future?



Dear Matt Gluckman,

As a citizen of the state of Ohio I implore you to please help protect our quality of life in this fair state. To protect it not only for the present citizens, but also for the future citizens of our state, our children!

Please do not let the control of the NPDES program for CAFOs be transferred from the Ohio EPA to the Ohio Department of Agriculture.

Please protect our children. Protect our rural communities. Protect Ohio's family farmers, their farmland, and the water and air quality of the state of Ohio.

Sincerely,

[redacted]

Bluffton, OH 45817

Matt Gluckman
EPA Region 5 Water Division
NPDES Program Branch (WN-16J)
77 Jackson Blvd.
Chicago, IL 60604

Allow the ODA to Federally Permit Livestock Farms in Ohio

Dear Stephen Johnson, Administrator, U.S. Environmental Protection Agency:

I am writing to request that you promptly act on an application filed with the U.S. Environmental Protection Agency that would grant authority to the Ohio Department of Agriculture (ODA) to issue National Pollution Discharge Elimination System (NPDES) permits for large livestock farms in Ohio.

In 2000, legislation was passed that authorized ODA to apply for this authority and discussions began more than four years ago between ODA and the U.S. EPA. The ODA submitted its application in January of 2007. Yet, U.S. EPA has not made a decision after promising to do so within six months – now more than a year past due. Therefore, I ask you, Administrator Johnson, to expeditiously conclude the review of the ODA application in an objective manner and approve this environmentally protective program.

Signature: [redacted]
Name: [redacted]
Address: [redacted]
City/State/Zip: Bethel, Ohio 45106
CC: To My U.S. Senators and Member of Congress, Rep. Jean Schmidt