



Environmental
Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

December 1, 2011

Fayette and Madison Counties
4IK00027*AD

CERTIFIED MAIL

Tony Gill and Frank van Genugten
Gill Dairy LLC
14997 Charleston-Chillicothe Road
South Solon, Ohio 43153

Re: Gill Dairy, LLC: Notice of Violation, October 6, 2011, Manure Discharge

Gentlemen,

The purpose of this letter is to apprise you of violations of the Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) permit for Gill Dairy LLC as a result of an October 6, 2011 manure discharge.

On October 6, 2011, manure from Gill Dairy was land-applied to a field north of the dairy which is located between Charleston-Chillicothe Road and Prairie Road. Approximately 28 acres (fields 2 and 6 of the draft Manure Management Plan on file with Ohio EPA) were applied to by drag line at an estimated rate of 10,000 gallons per acre. The field which was applied to was tilled several days in advance of the manure application. Tony Gill indicated that he was applying manure from approximately 8:00 a.m. until 12:00 p.m., at which time manure applicator Jack Lansing began applying manure.

Upon his return, Mr. Gill observed manure flowing off of a portion of the application field which had not been tilled. One tile was checked to see if it was discharging manure. Mr. Gill indicated that this tile was not discharging manure but that another nearby tile was not checked. Christine Pence, Ohio Department of Agriculture- Livestock Environmental Permitting Program (ODA-LEPP) arrived on the scene in the afternoon of October 6. At that time, sand and soil were placed in the pathway of the manure in order to divert and absorb the manure.

Jim Young (ODA-LEPP) arrived in the area on the morning of October 7. At that time, several dead fish were found in Vallery Ditch and the Ohio Department of Natural Resources, Division of Wildlife (ODNR-DOW) was called. An interview was conducted with Tony Gill and a fish kill count was conducted by ODNR-DOW.

Due to the unpermitted dry weather discharge of manure to waters of the State, Gill Dairy has violated the following conditions of its NPDES permit:

Part I,A,1,a. Beginning on the effective date of this permit, there shall be no discharge of manure pollutants from the production area to waters of the State. The production area shall be properly designed, constructed, operated, and maintained to contain manure, direct precipitation, and the runoff from a 100-year, 24-hour storm event and the production area shall be operated in compliance with the additional measures and records required in Part II and Part VII.

Part I,A,1,b. Dry weather discharges of manure are prohibited from production and land application areas.

Part I,A,1,d. If a spill, discharge, or overflow of manure occurs at any time from the production area to waters of the State (a violation of Part I,A,1,a), the permittee shall collect and analyze grab samples from each spill, discharge or overflow for the following list of parameters:

00310 - Biochemical Oxygen Demand, 5 Day (BOD5) - mg/l

00610 - Nitrogen, Ammonia (NH₃) - mg/L

00665 - Phosphorus, Total (P) - mg/l

(Note: units of mg/l)

The permittee shall: (a) collect the sample within 30 minutes of the first knowledge of the spill, discharge, or overflow; or (b) if sampling in that period is inappropriate due to dangerous weather conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for delay.

The permittee shall notify Ohio EPA by calling 1-800-282-9378 as soon as possible but no later than 24 hours following the first knowledge of the spill, discharge, or overflow. Immediate notification allows Ohio EPA to assist in clean up and remediation efforts and may reduce magnitude of environmental impact and extent of permit violations.

Part I,A,2,b. There shall be no discharge to waters of the State during the process of applying manure to land.

Part I,A,2,c. There shall be no discharge of pollutants to waters of the State from land applied manure except for discharges that are composed of storm water runoff and/or snow melt runoff originating from a land area where manure from a CAFO has been applied in compliance with the manure management plan and this permit.

Part II,B. The discharge of manure or other wastes to waters of the State as defined in ORC 6111.01 and which include surface waters, wetlands (not

included constructed treatment wetlands), and ditches is prohibited except in compliance with this permit.

Part II,G. The permittee shall be responsible for proper operation and maintenance of the manure storage, treatment, or disposal system.

Part II,L. The manure handling equipment shall be effectively maintained and operated at all times so that there is no discharge to waters of the State, except in compliance with Part I, A. In the event that the equipment fails to perform satisfactorily, including the creation of nuisance conditions or failure of an application area to adequately assimilate the manure, the permittee shall take immediate corrective actions including those actions that may be required by Ohio EPA, such as the acquisition of equipment capable of properly applying manure in the proper approved amounts in accordance with this permit.

Part VII.

Production Area Requirements. Inspect land application fields. In accordance with MMP. Date and signs of discharge or runoff into surface waters and/or conduits to surface waters of the State.

Part VII,A,4,c,iv. The application rate shall not exceed the available water capacity in the upper eight inches of the soil for both subsurface and nonsubsurface drained sites

Part VII,A,4,c,v. The application rate shall be adjusted to preclude surface ponding and/or runoff from a land application site. See Part VII, B, 2.

Part VII,B,2,d. Land application of manure shall not cause ponding or runoff. For liquid manure applications, the land application shall not exceed the available water capacity in the upper eight inches of the soil in the application field.

Part VII,B,3. For land application sites with subsurface tile drainage, the permittee shall visually monitor all field tile outlets before, during and after application of manure to the site and record the results of that monitoring. The permittee shall have access to or methods/devices to stop or capture subsurface drain flow. If manure reaches the subsurface drain outlet to waters of the State, the application of manure shall cease and the flow stopped or captured. If land application has caused manure laden water to be discharged from a field tile, Ohio EPA shall be notified by calling 1-800-282-9378 as soon as possible, but in no case later than 24 hours following first knowledge of the occurrence. See Part I, A, 2, d.

Part VII,B,6. The permittee is responsible for complying with this permit for land application activities conducted on each site where the permittee, or anyone employed by the permittee, owns, operates, or land applies manure generated from the CAFO or determines timing and amount of manure to be applied on fields not otherwise owned, rented, or leased by the CAFO.

Other violations:

Ohio Revised Code (ORC) 6111.04

(A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) 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.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Ohio Administrative Code (OAC) 3745-1-04 Criteria applicable to all waters

The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:

(A) 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;

(B) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation;

(C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance;

(D) Free from substances entering the waters 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;

CAFO NPDES permit 4IK00027*AD expired on May 31, 2011. An application for renewal of the CAFO NPDES permit for Gill Dairy, LLC was received by Ohio EPA on January 14, 2011. The application included a Manure Management Plan (MMP). Comments on the MMP were submitted to Gill Dairy and North Point Engineering on February 7, 2011. No response was received. The application is considered incomplete as the MMP does not fully address the CAFO NPDES requirements and an unreasonable amount of time has passed in which you should have responded to Agency comments.

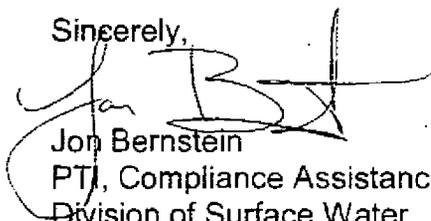
In order to prevent further delays and to minimize possible penalties and/or enforcement action, please respond to comments which were submitted to you regarding your MMP in order to complete your CAFO NPDES permit application. Please provide a response to the February 7, 2011 comment letter within 15 days of receipt of this letter. The February 7, 2011 letter has been included with this letter.

Please remember that you are responsible for complying with your NPDES permit, ODA permit, and Ohio's water pollution control laws. You should be making every effort to complete the work already requested of you, and to develop strategies to ensure that incidents such as this do not happen again.

This Notice of Violation does not preclude Ohio EPA or any other state or federal agency from seeking civil penalties or criminal charges against Gill Dairy. If there is any statement in this letter which you believe is in error, please advise us in writing within 14 days.

Should you have any questions or concerns, please contact me at 614-728-2397 or at jon.bernstein@epa.state.oh.us.

Sincerely,



Jon Bernstein
PTI, Compliance Assistance, & CAFO Unit
Division of Surface Water

cc: Kevin Elder, ODA-LEPP
Craig Kleinhenz, Ohio EPA-OSI
Kandy Klosterman, ODNR-DOW
Kirk Hines, ODNR-DSWR