



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

May 22, 2008

4IK00027*AD
Fayette and Madison Counties

CERTIFIED MAIL

Mr. Frank van Genugten
Stardust Dairy
14997 Charleston-Chillicothe Road
South Solon, OH 43153

Re: NPDES Permit Violations and Request for Action

Dear Mr. van Genugten:

This is a follow-up to the letter dated April 14, 2008 that you received from Ohio EPA in response to a fish kill in East Fork Paint Creek. It has been determined through investigations by the Ohio EPA and Ohio Department of Natural Resources - Division of Wildlife (ODNR-DOW) that the fish kill was caused by land application of manure from your facility.

You claimed in a letter to Ohio EPA (received on April 28, 2008) that dead fish were found in East Fork of Paint Creek, 1 to 1.5 miles upstream of your facility. Please note that this is not the case; *live* fish were found in locations upstream of your dairy. Wildlife officers eliminated other possible sources in the area by examining the locations of dead fish and observing live fish in other branches of clean streams. The intent of this letter is to apprise you of any violations of your CAFO NPDES permit and to request you to implement corrective actions at your facility.

Photographs were taken during the investigation of the fish kill. Figure 1 shows the Stardust Dairy facility. Figure 2 shows the grassed waterway where manure was found and where a sample was collected. This grassed waterway leads to an unnamed tributary of East Fork Paint Creek. Figure 3 shows manure which was found in the grassed waterway leading to the unnamed tributary of East Fork Paint Creek. Figure 4 shows the water sample collected from the grassed waterway next to clean water samples taken below the fish kill zone.

The results of the water sample collected from the grassed waterway leading to an unnamed tributary of East Fork Paint Creek are shown in Table 1.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

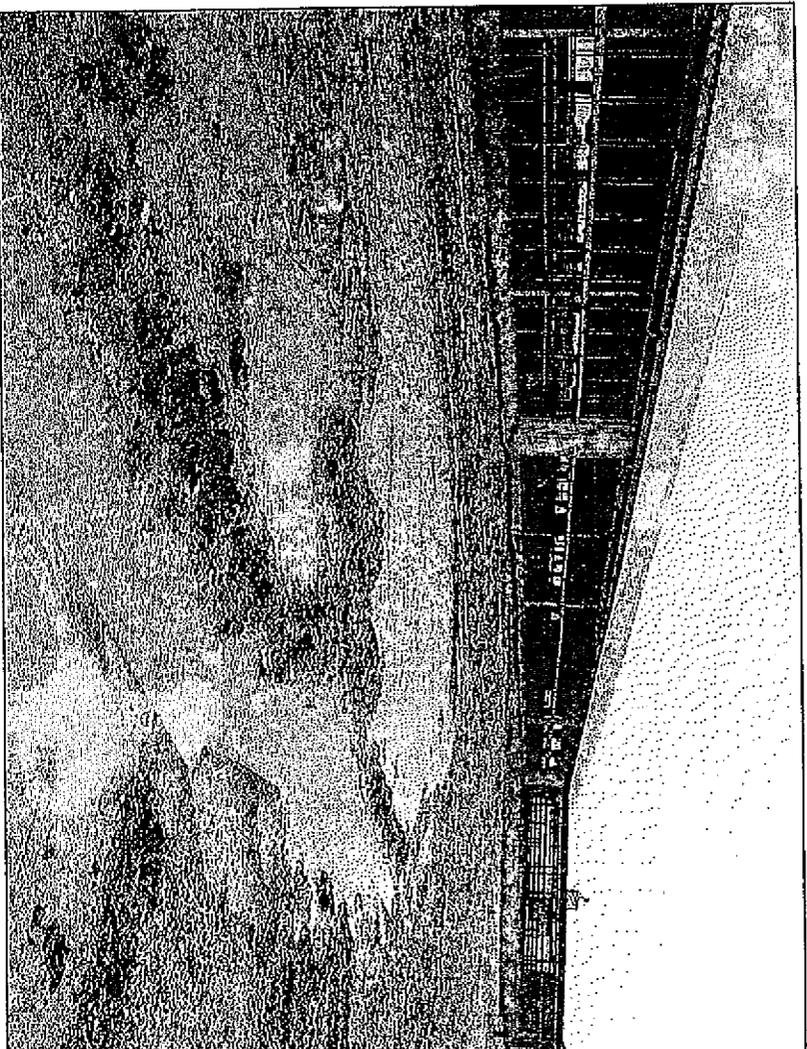


Figure 1. Stardust Dairy production area

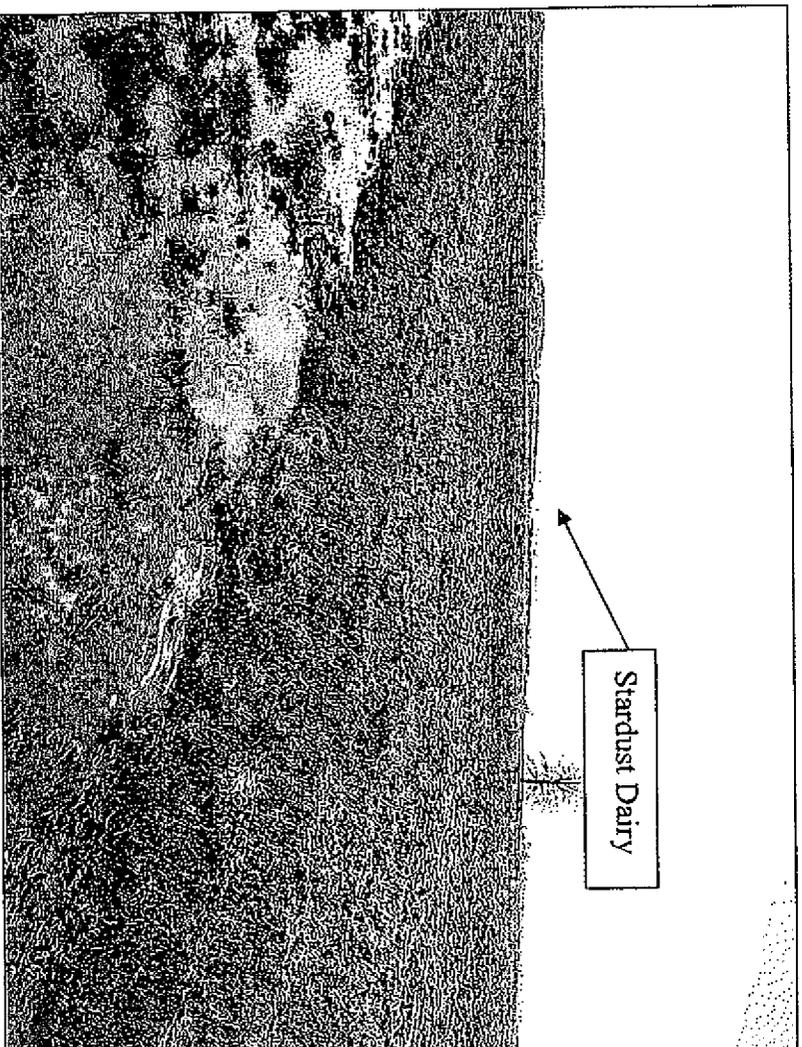


Figure 2. Manure in grassed waterway with Stardust Dairy visible in the background

Part VII, B, 2, d – land application of manure causing ponding or runoff

“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, 2, e – land applied manure on saturated soils and when a greater than 50% chance of precipitation was forecasted within 24 hours

“Land application shall not occur on saturated soils or during rain or runoff events, and shall not occur if the forecast contains a greater than 50% chance of precipitation for any individual hour, for a period extending 24 hours after the commencement of land application.”

Part VII, B, 3 – not visually monitoring field tile outlets after application of manure

“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.”

Part VII, B, 6 – failure to comply with NPDES permit for land application under the control of the CAFO

“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.”

As a result of the fish kill, Ohio EPA believes that Stardust Dairy is in violation of the following State regulations:

- 1) Ohio Revised Code 6111.04(A)(1)
No person shall caused pollution 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) Ohio Administrative Code 3745-1-04(A), (B), and (C)
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.

- 3) Ohio Administrative Code Chapter 3745-33-02(A)
No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this Chapter, 3745-33.

We appreciate the actions you have taken to correct the issues at your facility, and we request that you take the following additional actions:

- Provide a report on the manure spill which presents a summary of corrective actions taken and which details actions to be taken in the future to prevent a recurrence of the incident.
- Weather forecasts need to be viewed and printed **before** land application. The weather records you provided to Ohio EPA appeared to be inadequate. Websites such as www.weather.com or www.noaa.gov should be used to view the weather forecast ahead of time. These websites both provide the user with the chance of precipitation for any given hour. Remember, land application of manure should not occur if there is a 50% or greater chance of rain for a period extending 24 hours prior to and 24 hours after land application commences. Also, manure should not be applied to ground that is saturated with water.
- Good housekeeping practices must be employed at the facility. There were many areas of standing water and exposed soil around the facility. Upon completion of construction activities, grass seeding should be considered for the facility grounds to prevent erosion and to reduce the likelihood of a discharge from the production area of your facility.
- If custom manure applicators are used in the future, please make sure that they are aware of the land application restrictions and requirements listed in your NPDES permit. Timing restrictions and setbacks are especially important requirements of the permit which must be followed.

May 22, 2008

Page 3



Figure 3. Manure in grassed waterway which leads to unnamed tributary of East Fork Paint Creek.

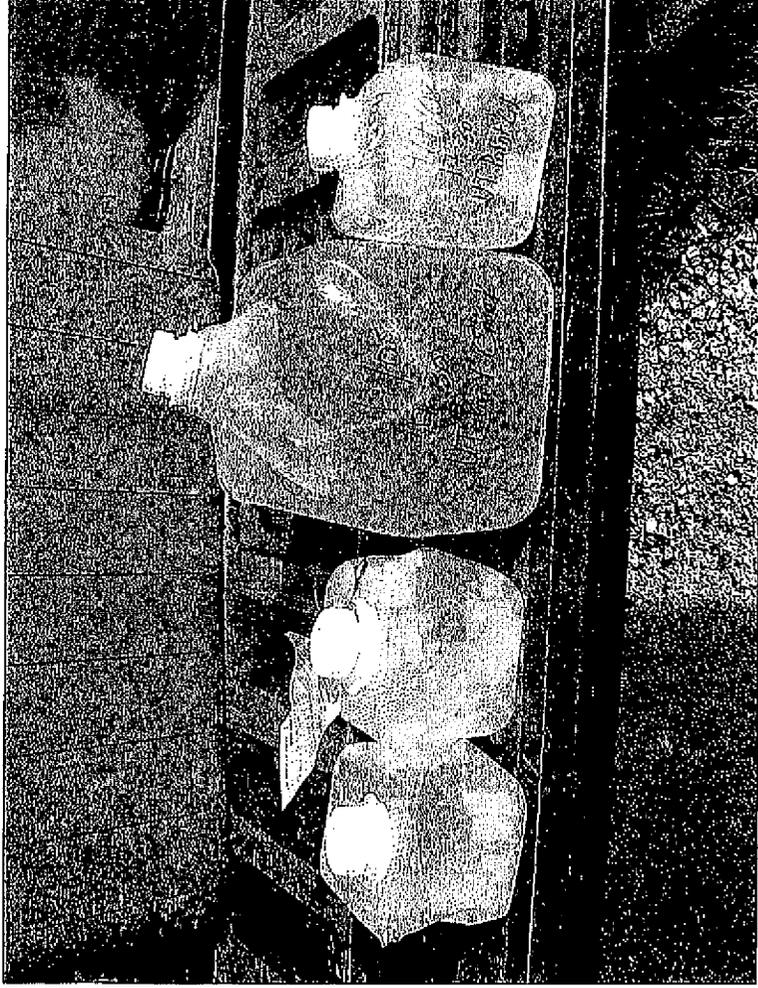


Figure 4. Sample taken in unnamed tributary of East Fork Paint Creek next to samples taken south of fish kill zone.

Table 1. Sample results from grassed waterway leading to unnamed tributary of East Fork Paint Creek

Parameter	Result	Units
BOD ₅	30	mg/L
Ammonia	9.7	mg/L
Nitrate + Nitrite	0.9	mg/L
Total Phosphorus	3.24	mg/L

The following is a list of NPDES permit conditions that were violated due to the discharge of manure to the grassed waterway leading to the unnamed tributary of East Fork Paint Creek. This discharge was attributed to the land application of manure from your facility.

Part I, A, 2, b – discharge of manure during the process of applying manure to land

“There shall be no discharge to waters of the State during the process of applying manure to land.”

Part I, A, 2, c – discharge of pollutants to waters of the State from land applied manure that has not been applied in accordance with the manure management plan and the NPDES permit

“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 I, A, 2, d – failure to notify Ohio EPA of a discharge of pollutants from land applied manure

“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 a spill or discharge of pollutants from land applied manure that is not composed of storm water runoff (e.g., tile discharge during dry weather), except as required by Part VII, B for land application on frozen and/or snow covered ground. Immediate notification allows Ohio EPA to assist in clean-up and remediation and may reduce magnitude of environmental impact and extent of permit violations.”

Part II, B – discharge of manure to waters of the state not in compliance with the NPDES permit

“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 VII, A, 5, c – not keeping records of weather conditions at time of application

“Record Keeping Requirements: At a minimum, the following records must be kept by the permittee: Weather conditions at the time of application and for 24 hours prior to and following application.”

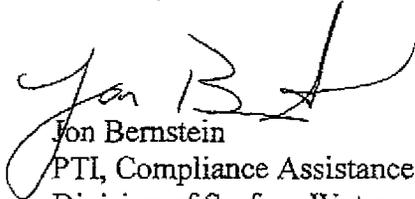
May 22, 2008

Page 7

Please note that further violations of your NPDES permit may lead to enforcement action from this Agency. You should make every effort to ensure that you remain in compliance with the requirements of your permit.

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

Sincerely,



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

cc: Kevin Elder, ODA-LEPP
Kirk Kiefer, ODNR, Division of Wildlife
Harry Kallipolitis, Ohio EPA, Central District Office