



State of Ohio Environmental Protection Agency

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October 2, 2008

Putnam County

CERTIFIED MAIL

Jan Van Ham
Van Ham Dairy LLC
7089 Road 22
Continental, Ohio 45831

Van Ham Dairy Leasing LLC
1290 N. Shoop Ave.
Suite 140
Wauseon, Ohio 43567

Re: Notice of Violation, June and July 2008 Dairy Manure Discharge Events

Dear Mr. Van Ham:

On July 2 and July 29, 2008, Ohio EPA received notice of manure spills from your dairy facility located in Putnam County. Chris Rodabaugh with Ohio Department of Agriculture, Livestock Environmental Permitting Program (ODA-LEPP) responded to both incidents and communicated findings to Ohio EPA. The following letter outlines the violations of your Ohio EPA permit, violations of state laws and rules, and required corrective actions as a result of the incidents.

July 2, 2008 Incident

On July 2, 2008, Chris Rodabaugh, ODA-LEPP observed manure from the contaminated storm water pond being pumped from the storage pond with a 60 foot hose to the field area to the north of the pond. The manure flooded the area and flowed to the Road G roadside drainageway. The manure traveled to the northside of Road G through a culvert to the small drainageway on the north side of G. It then flowed east approximately 0.5 miles to a larger roadside drainage tributary that flows south into the Blanchard River. The contaminated storm water pond had been lowered 22 inches resulting from approximately 4 to 5 pumping events as reported by Mr. Rodabaugh. Efforts were made to block the drainageway flowing south and manure was pumped out and into manure tankers.

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

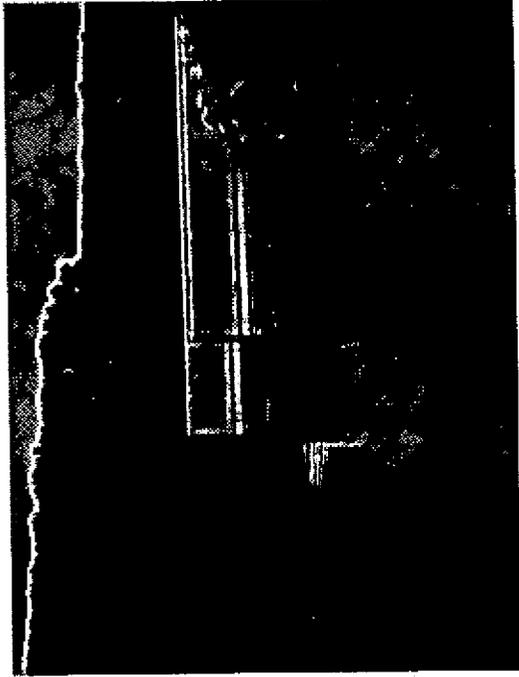


Photo of contaminated storm water storage pond taken by Chris Rodabaugh on July 2, 2008. Note the water level marks on the concrete ramp walls.



Photo of contaminated storm water being pumped from hose for disposal taken by Chris Rodabaugh on July 2, 2008.



Photo of contaminated storm water discharge into unnamed tributary of Blanchard River taken by Chris Rodabaugh on July 2, 2008.

Water Quality Sample Results for July 2, 2008 Discharge

Sample Location	Ammonia	Nitrate+ nitrite	Total Phosphorus
Van Ham Dairy Upstream N/S Ditch	0.109	0.19	0.176
Van Ham Dairy Mixing Point of Ditch Going South	<u>68.3</u>	0.70	9.34
Van Ham Dairy North of Road	<u>100</u>	0.16	13.0
Van Ham Dairy South of Road	<u>106</u>	0.16	14.4
Van Ham Dairy Discharge Hose	<u>181</u>	0.20	20.7

On July 3, 2008, I submitted a records request for the following information:

- All records of land application from; removal of liquid from; or overflows from production area runoff/leachate storage pond since 2005.
- All records of manure storage pond depth monitoring.
- Records of manure sampling (including the contaminated production area storm water and leachate).
- The name and contact information (i.e., address and telephone number) of the employee who operated the pump.
- The spill incident report which is required as a condition of your NPDES permit.

On July 10, 2008, Ohio EPA received your records submittal. See the attached outline of concerns regarding the records submission.

Violations

The above underlined sample results in the table indicate that the manure discharge caused exceedance of Ohio Water Quality Standards in Ohio Administrative Code 3745-1-07 for ammonia. The standards set a limit on the concentration of ammonia in surface waters to be protective of aquatic life. Concentrations above the standards level are considered toxic to fish and other aquatic life. The highest concentration level listed in the standards for warmwater habitats (Blanchard River is designated as a modified warmwater habitat in OAC 3745-1-11) is 13 mg/L. The underlined sample results have higher concentrations than the state water quality standards for ammonia and are each violations.

In addition to the above mentioned violation, you are in violation of the following state regulations for the manure discharge event to waters of the State:

Ohio Revised Code 6111.04(A)(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.

Ohio Administrative Code 3745-1-04(C) and (D) – 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: (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 and (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 rapidly lethal in the mixing zone.

The following conditions of your CAFO NPDES permit were violated during this incident:

- Part I, A, 1, b - Dry weather discharges of manure are prohibited from production and land application areas.
- 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 I, A, 2, d - 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 - 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 including constructed treatment wetlands), and ditches is prohibited except in compliance with this permit.
- Part II, M - 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, A, 4 – Land Application Methods – Manure Application Rates

No evidence was provided to demonstrate application rates were based on any of the required parameters (soil sample results, crop nutrient requirements, soil available water capacity, etc.).

- Part VII, B, 2, b - 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.

July 29, 2008 Incident

On July 29, 2008, a coupling on the manure application hose came apart during land application. This cause a manure spill in the land application field and subsequent discharge of manure to an unnamed tributary of Prairie Creek. Upon discovery of the discharge, Ohio EPA and ODA were not notified. According to ODA reports, clean up was not initiated until the following day. The source of the manure was the old manure storage pond, which was very concentrated.

The CAFO NPDES Incident Report was received on August 5, 2008.

**Water Quality Sample Results July 30, 2008
(Collected by Chris Rodabaugh, ODA-LEPP)**

Sample Location	Ammonia	Nitrate+ nitrite	Total Phosphorus
Van Ham Dairy East Ditch	<u>26.6</u>	<0.10	6.38
Van Ham Dairy West Ditch	<u>315</u>	3.37	0.063

**Water Quality Sample Results July 31, 2008
(Collected by Chris Rodabaugh, ODA-LEPP)**

Sample Location	Ammonia	Nitrate+ nitrite	Total Phosphorus
Van Ham Dairy East Ditch	4.99	1.23	0.697



Photo of ponded manure in application field taken by Chris Rodabaugh on July 30, 2008.



Photo of pooled manure and water on east side of Road 22 where dead fish were observed taken by Chris Rodabaugh on July 30, 2008.

Violations

The above underlined sample results in the table indicate that the manure discharge caused exceedance of Ohio Water Quality Standards in Ohio Administrative Code 3745-1-07 for ammonia. The standards set a limit on the concentration of ammonia in surface waters to be protective of aquatic life. Concentrations above the standards level are considered toxic to fish and other aquatic life. The highest concentration level listed in the standards for warmwater habitats (Blanchard River is designated as a modified warmwater habitat in OAC 3745-1-11) is 13 mg/L. The underlined sample results have higher concentrations than the state water quality standards for ammonia and are each violations.

In addition to the above mentioned violation, you are in violation of the following state regulations for the manure discharge event to waters of the State:

Ohio Revised Code 6111.04(A)(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.

Ohio Administrative Code 3745-1-04(C) and (D) – 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: (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 and (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 rapidly lethal in the mixing zone.

The following conditions of your CAFO NPDES permit were violated during this incident:

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

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above to minimize further impacts to waters of the State could lead to escalated enforcement action from this Agency.

Should you have any question, comments, or concerns, do not hesitate to contact me at (614) 644-2032 or via email at rick.wilson@epa.state.oh.us.

Sincerely,

Rick Wilson
PTI, Compliance Assistance & CAFO Unit
Division of Surface Water

Attachment

ec: Kevin Elder, ODA-LEPP
Chris Rodabaugh, ODA-LEPP
Rob Hamilton, ODNR-DSWC
Putnam County SWCD

Records Submittal List of Concerns

1. Request for: All records of land application from; removal of liquid from; or overflows from production area runoff/leachate storage pond since 2005.

These records are required to be maintained by the table in Part VII (page 28) and Part VII, A, 5 (page 33) of your CAFO NPDES permit.

- Concern that list of storm water applications since 2005 provided does not completely correlate with the contaminated storm water storage pond freeboard level records. The freeboard levels records indicate contaminated storm water was removed from the pond several more times per year than the list of application events indicates. Please explain this discrepancy and provide the land application records for each of the contaminated storm water land application events.
- Concern that manure application record for June 24, 2008, indicates that 500,000 gallons of contaminated storm water was "irrigated" for a ½ hour onto 10,000 acres of corn. Of the portions of the record completed, it appears the application information is not accurately recorded on the form. Please provide additional information in regards to the accuracy of the application record and the missing information (forecast, soil test values, etc.). Also, please provide the application records for June 25, June 28, June 29, and July 2, 2008.

2. Request for: All records of manure storage pond depth monitoring.

These records are required to be maintained by the table in Part VII (page 28).

- Concern that the freeboard in the contaminated storm water pond was reported as 1 foot from February 26, 2005 to July 30, 2005. Please provide an explanation.
- Concern that freeboard records are missing for the period from April 2 to September 3, 2007. Please provide a copy of these records or provide an explanation as to the reason they were not maintained.