



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

November 19, 2009

Mercer County
2IK00009*BD

CERTIFIED MAIL

Wenning Poultry Farm
James Wenning
1500 Union City Road
Ft. Recovery, Ohio 45846

Re: Notice of Violation, Discharge to Fort Creek and Wabash River

Dear Mr. Wenning,

At approximately 6:00 p.m. on October 2, 2009, Mercer County Wildlife Officer Ryan Garrison reported a spill to the Ohio EPA Spill Hotline. Mr. Garrison reported that there was a large amount of chicken manure flowing into Fort Creek, a tributary of the Wabash River, in Fort Recovery, Ohio.

Division of Emergency and Remedial Response (DERR) On-Scene Coordinator (OSC) Mike Gerber contacted Officer Garrison at 6:20 p.m. Officer Garrison stated that he had received a report of the release from a local resident along the creek. The manure was tracked upstream to the Wenning Poultry Farm. Officer Garrison stated that the creek was flowing black in color, and that his ammonia field screening readings were above his 10 ppm test kit level. On the farm, black manure was observed in a drainage swale upstream of a drainage tile.

It is our understanding that the spill took place sometime during the night of October 1, 2009 and that the spill was discovered by Wenning Poultry Farm around 5:00 a.m. on October 2, 2009. The onsite drainage tile was plugged but no manure had been contained offsite.

During the evening of October 2, Wenning Poultry Farm installed an earthen dam in the unnamed tributary of Fort Creek. OSC Gerber also provided you with a list of emergency contractors; however, no contractors were contacted on October 2. Mr. Gerber proceeded downstream to the area where State Route (SR) 119 passes over Fort Creek, just upstream of the confluence of Fort Creek and the Wabash River. The water in the creek was black with a strong odor of manure. A water sample was collected here for further analysis. You were told to use this area as the furthest downstream collection point. You were issued a Notice of Violation which requested that you stop further migration of manure and collect

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

Ohio EPA is an Equal Opportunity Employer

all manure from the upstream side of SR 119 to the Wenning Poultry Farm. You were also provided with an Ohio EPA Letter of Responsible Party Acknowledgement. You stated that you would start liquid recovery from the creek on the upstream side of SR 119.

On October 3, Fort Creek was found to still be impacted by manure and was continuing to discharge manure to the Wabash River. You indicated to OSC Gerber that you were continuing to pump impacted surface water from each of the dam locations that had been set up. You also indicated that you had obtained an ammonia reading of 4 mg/L in the unnamed tributary of Fort Creek and that you had obtained an ammonia reading of 0.25 mg/L in the Wabash River and that the river was clear.

On the morning of October 4, black liquid was still observed to be flowing into the Wabash River from Fort Creek. A field test for ammonia performed by Officer Garrison in the Wabash River returned a result of 10 ppm. This information seems to contradict what you had told OSC Gerber the previous day. Dead fish were also observed in Fort Creek. You contacted Allied Environmental Services, Inc. and the contractors arrived in Fort Recovery that evening to assist in the clean-up.

On October 5, the manure slug from the spill was observed in the Wabash River at SR 29. The manure slug was also observed in the Wabash River at the Pine Road and Leininger Road overpasses. At the confluence of the Wabash River and Fort Creek, two dams had been set up and employees of Allied Environmental were onsite. A honey wagon and equipment for removing contaminated water were also onsite. While the water level in the creek was down, several pools of dark liquid with a manure odor were seen. The manure slug in the Wabash River appeared to have passed and this section of the Wabash River was clearing up.

On October 6, the stormwater tile discharge from Wenning Poultry Farm to the unnamed tributary of Fort Creek was observed. The area smelled heavily of manure. A slow trickle of clear liquid was seen discharging from the tile. A sample of the liquid was collected at 3:30 p.m. for further analysis. The unnamed tributary of Fort Creek on the west side of Union City Road was observed. The water in the unnamed tributary had a grayish appearance and smelled heavily of manure.

Please see Table 1 for the results of several water quality samples collected in response to the spill. Note that the water quality standard for ammonia, which depends on temperature and pH, is never higher than 13 mg/L. Any concentrations of ammonia above 13 mg/L are considered to be acutely toxic to aquatic wildlife.

VIOLATIONS

Due to the unpermitted discharge of manure to waters of the State, Wenning Poultry Farm has violated the following conditions of its National Pollutant Discharge Elimination System (NPDES) permit:

Part I,A,1,a. Beginning on the effective date of this permit, there shall be no discharge of manure from the production area to waters of the State, except that pollutants in an overflow may be discharged when a 25-year, 24-hour storm event (or greater) or a chronic rainfall event causes an overflow from the production area, which is properly designed, constructed, operated, and maintained to contain manure, direct precipitation, and the runoff from a 25-year, 24-hour rainfall event, and the production area is operated in compliance with the additional measures and records required in Part II and Part VII. If an overflow occurs in compliance with the previous sentence, Ohio Water Quality Standards shall not be exceeded in the receiving water of the State. Any overflow that occurs in accordance with the above shall be noted in the operating records for the facility. In order for the permittee to use this discharge exception, the permittee must provide documentation that establishes the conditions necessary to meet the exception.

Part I,A,1,c. Storm water associated with industrial activity can be discharged in accordance with this permit as long as good housekeeping practices are conducted to ensure that the storm water is not contaminated by manure. See Part I, B for monitoring requirements.

Part I,A,1,d. Any spill, discharge, or overflow of pollutants from the production area to waters of the State shall not cause an exceedance of Ohio Water Quality Standards in the receiving water of the State.

Part I,A,1,e. If a spill, discharge or overflow of manure occurs at any time from the production area to waters of the State, 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.

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

Part II,N. 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.

Other violations:

Ohio Administrative Code (OAC) 3745-1-07 Water use designations and statewide criteria.

(A) Water quality standards contain two distinct elements: designated uses; and numerical or narrative criteria designed to protect and measure attainment of the uses.

(2) Statewide chemical-specific criteria for the support of use designations are presented in this rule.

Table 7-2 of this rule displays the maximum total ammonia-nitrogen criteria for the protection of aquatic wildlife for warmwater habitat, modified warmwater habitat, and limited resource water outside mixing zone. The maximum total ammonia-nitrogen concentration for the protection of aquatic wildlife in this table is 13 mg/L.

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;



Figure 1. Wabash River at State Route 29 as seen on October 5, 2009

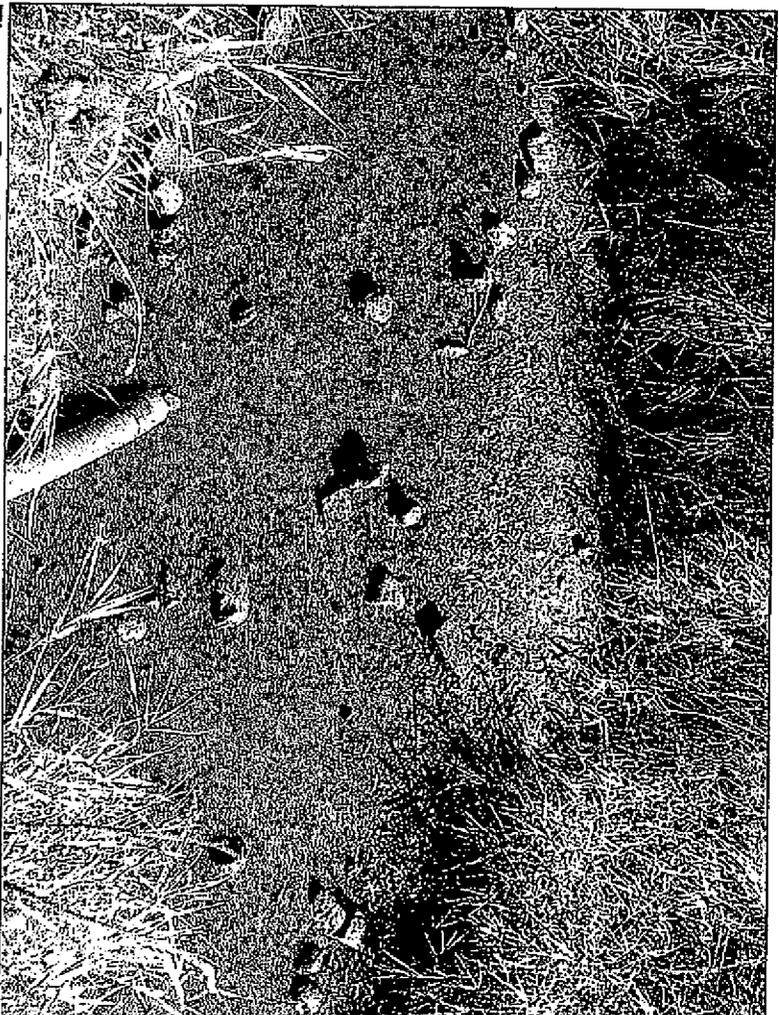


Figure 2. Fort Creek impacted by manure discharge as seen on October 5, 2009



Figure 3. Pooled manure at Wenning Poultry Farm

Table 1. Water quality samples collected from UT Fort Creek and Wabash River

	Parameters (at right)	Ammonia	Nitrate + Nitrite	Total Phosphorus
		<i>mg/L</i>	<i>mg/L</i>	<i>mg/L</i>
Date	Sampling Location			
10/2/09	Wenning tile outlet at unnamed tributary of Fort Creek	46.7	23.1	27.7
10/3/09	Tributary to Fort Creek downstream of Union City Road	40.5	24.5	-
10/6/09	Wenning tile outlet at unnamed tributary of Fort Creek	15.1	9.11	2.08
10/6/09	Tributary to Fort Creek downstream of Union City Road	17.3	8.94	2.18

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 develop strategies to ensure that incidents such as this do not happen again.

You have placed a gate valve into one of the tile clean-out ports near the digester. Should another accident occur, it appears that you now have some options to better control and mitigate any potential discharges from the digester system.

Please remember that vegetation will need to be reestablished in the swale which received manure from the digester spill. Fresh fill dirt has been placed into the swale, and this fill will need to be graded and seeded when weather conditions allow.

You must practice better housekeeping at your facility. Part I,A,1,c. of your NPDES permit allows discharges of storm water associated with industrial activity only if good housekeeping is practiced at the facility. During a follow-up inspection at Wenning Poultry Farm on November 16, 2009, it appeared that good housekeeping was not being practiced. Stormwater coming into contact with pollutants at many areas of the facility could carry the pollutants offsite.

Wenning Poultry Farm
Page 8

This Notice of Violation does not preclude Ohio EPA or any other state or federal agency from seeking civil penalties or criminal charges against Wenning Poultry Farm. 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 and/or comments, please contact me at 614-644-2021 or by email at cathy.alexander@epa.state.oh.us or Jon Bernstein at 614-728-2397 or by email jon.bernstein@epa.state.oh.us.

Sincerely,



Cathy Alexander, Supervisor
PTI, Compliance Assistance, & CAFO Unit
Division of Surface Water

cc: Kevin Elder, ODA-LEPP
Rob Hamilton, ODNR-DSWC
Bill Palmer, OEPA-SIU
Rick Hassinger, OEPA-DERR
Mike Gerber, OEPA-DERR