



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

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www.epa.state.oh.us

MAILING ADDRESS:

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

December 4, 2009

CERTIFIED MAIL

Mr. John Wilson
16646 Nashville Road
Danville, Ohio 43014

Re: Notice of Violation – Milk Waste and Silage Leachate Discharges to East Branch Little Jelloway Creek

Dear Mr. Wilson,

On September 28, 2009 the Ohio EPA, Division of Surface Water, Central District Office received an anonymous complaint alleging impacts to the East Branch Little Jelloway Creek near Danville. The complainant alleged that the creek was highly impacted by manure and thought that the pollution was attributed to your dairy farm.

BACKGROUND

The complaint was referred to the Knox County Soil and Water Conservation District (SWCD) for investigation. Robert Clendening, Administrator for the Knox County SWCD, investigated the complaint on September 29, 2009. Upon investigation, Mr. Clendening discovered that a discharge of silage leachate from a sub-surface outlet at your dairy had occurred. You were instructed to inspect the area where the sub-surface drain is located, to repair any holes that would allow a direct surface discharge to the tile from the silo drainage area, and to contact the Knox SWCD when the work was completed.

On October 23, 2009 the Knox SWCD received a complaint alleging further impacts to the East Branch Little Jelloway Creek. The Knox SWCD investigated the complaint on October 26, 2009. Upon investigation, it was determined that a discharge from two tile outlets from your farm was occurring. The SWCD found that one of the tiles was discharging silage leachate while the second tile showed signs of a previous discharge of organic material. The SWCD staff discussed with you the need for a treatment or storage system to alleviate any discharges of silage leachate.

On October 29, 2009 the Knox SWCD returned to your farm to perform dye testing in order to determine the flow paths of any silage leachate or milkhouse waste from your farm. The results of the dye testing indicated that there is a direct connection from the area around the bunker silo and also from the milking center staging area to waters of

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



the State. These connections are allowing pollutants to discharge to waters of the State.

Due to the unpermitted discharge of milkhouse waste and silage leachate to waters of the State, you are in violation of the following:

Ohio Revised Code 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.

OAC 3745-33-02 Ohio National Pollutant Discharge Elimination System (NPDES) permit required

(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. Any person who holds a federal NPDES permit issued under Section 402 (a) of the act is not required to obtain an Ohio NPDES permit until its expiration date. The director shall administer and enforce permits issued under Section 402 (a) of the act within this state, and may modify the terms and conditions thereof, in accordance with paragraph (J) of section 6111.03 of the Revised Code.

As a result of the discharges discovered to be coming from your dairy, you now meet the definition of a medium Concentrated Animal Feeding Operation (CAFO). Accordingly, your dairy now has a duty to apply for an NPDES permit. Federal rules currently require that CAFOs which discharge or propose to discharge must seek coverage under an NPDES permit.

At this time, we formally request that the John Wilson Dairy submit an application to Ohio EPA for a CAFO NPDES permit. Please submit the following items to Ohio EPA:

- Form 1
- Form 2B
- Antidegradation Addendum
- \$200 check made payable to "Treasurer, State of Ohio"
- Manure Management Plan (MMP)

The forms listed above have been included with this letter.

These items should be submitted to the following address:

Ohio EPA, Division of Surface Water
Attn: Cathy Alexander
P.O. Box 1049
Columbus, OH 43216-1049

Furthermore, we ask that you take the actions listed below:

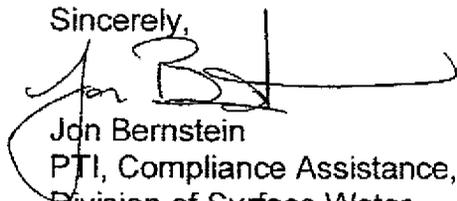
1. Provide a proposal to temporarily eliminate any discharges of milkhouse waste or silage leachate from your dairy to waters of the State. Any further discharge of pollutants from your dairy is an illegal discharge unless you have obtained NPDES permit coverage.
2. Provide a proposal to permanently eliminate further illicit discharges from your dairy to waters of the State. It is our understanding that Knox SWCD is willing to work with you to develop practices to eliminate reoccurrences of similar discharges in the future.

Please provide the NPDES application package and a written proposal addressing temporary solutions for eliminating discharges from your dairy to Ohio EPA by **January 15, 2010**. It is expected that permanent solutions for eliminating discharges will be included as conditions of your NPDES permit, unless solutions are proactively sought by you and implemented.

Understand that you could be held liable for further impacts to waters of the State, which may include further degradation of habitat, fish kills, and possibly public health and nuisance complaints. Failure to mitigate potential releases could lead to enforcement action from this Agency.

If there is any statement in this letter which you believe is in error, please advise me in writing within 14 days. Should you have any questions, comments, 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: Robert Clendening, Knox SWCD
Rob Hamilton, ODNR-DSWC
Tom Holmes, ODNR-DSWC
Kevin Elder, ODA-LEPP
Harry Kallipolitis, OEPA-CDO