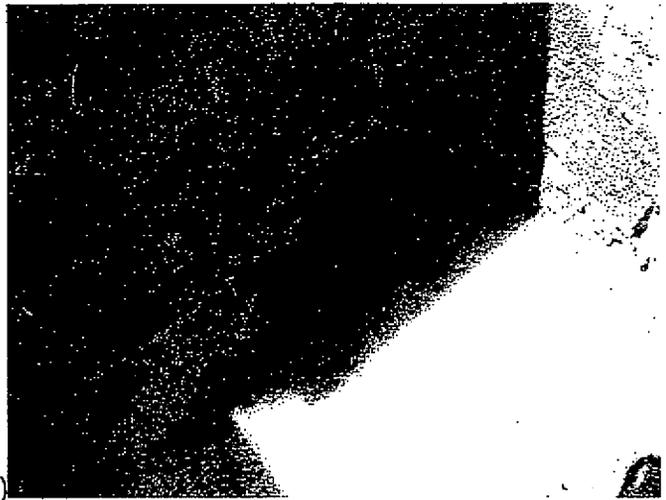
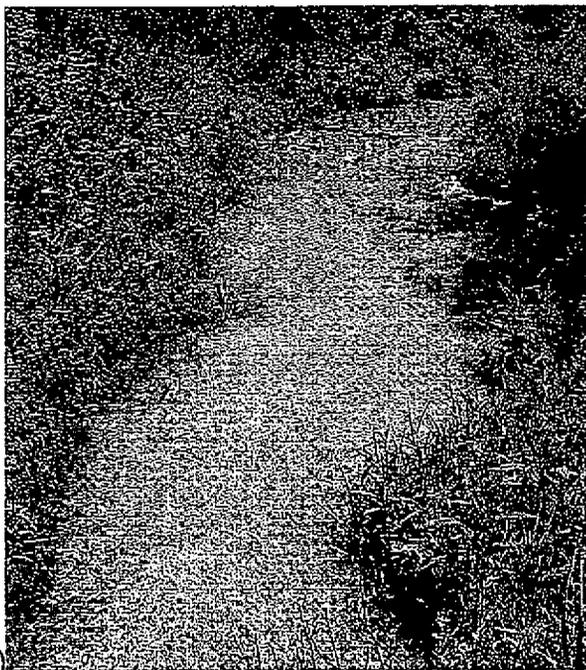




(1)



(2)



(3)



(4)

Water Quality Sample Results:

Parameter (mg/L)	Sample Location (same order as sample photos-left to right)			
	Storm Catch Basin (2)	EWV Lagoon (1)	Unnamed Tributary at State Route 47 (3)	UT/Bokes Creek Mix (4)
BOD5	-	2200	750	3
Total Suspended Solids	-	1880	198	-
Ammonia	203	212	125	0.126
Nitrate + Nitrite	0.41	0.46	0.29	0.48
Total Phosphorus	24.1	982	15.5	0.04

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Bokes Creek and its tributaries (including this mentioned tributary) are designated as Warmwater Habitats. Ohio Administrative Code (OAC) Chapter 3745-1 Water Quality Standards (WQS) contains standards for ammonia levels in Warmwater Habitats that are protective of aquatic wildlife. The ammonia standards are dependent on the pH and temperature of the water sample. Concentrations of ammonia that are higher than the standards are considered toxic to aquatic wildlife. For example, at a water temperature of 10 degrees Celsius and a pH of 7.5 S.U., the water quality standard for acute ammonia toxicity is 13.0 mg/L and the water quality standard for chronic ammonia toxicity is 2.3 mg/L for the months of March to November. The ammonia concentrations in the samples collected in the storm catch basin and unnamed tributary exceed the Water Quality Standard.

Pertinent Definitions as provided in permit:

**DISCHARGE:** means the addition of any pollutant or combination of pollutants to the waters of the State from a point source. This definition includes additions of pollutants into waters of the State from: surface water runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

**MANURE:** means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, litter, process wastewater, process generated wastewater, waste feed, silage drainage and leachate, and compost products resulting from mortality composting or the composting of animal excreta.

**MANURE STORAGE OR TREATMENT FACILITY:** means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure. This includes all collection ditches, conduits and swales for the collection of runoff from the production area and wastewater that is routed to the manure storage or treatment structure.

**WATER QUALITY STANDARDS:** defined in 40 CFR 130.2(d) as: "Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act." The State of Ohio's water quality standards are contained in Ohio Administrative Code (OAC) 3745-1.

**WATERS OF THE STATE:** defined in Rule ORC 6111.01(H) as: "means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, which are situated wholly or partly within, or border upon, this State, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters."

Violations of Permit 41K00005\*CD:

#### **Part I, A. - DAILY MAXIMUM DISCHARGE LIMITATIONS**

##### **1. CAFO PRODUCTION AREA**

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.

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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.

**Comment: This discharge occurred absent of rainfall and exceeded Ohio Water Quality Standards for acute ammonia toxicity.**

**Part I, A, 1**

b. Dry weather discharges of manure are prohibited from production areas and land application areas.

**Comment: This discharge occurred absent of rainfall.**

**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.

**Comment: The ammonia concentration detected in this discharge exceeded Ohio Water Quality Standards for acute ammonia toxicity.**

**Part II, OTHER REQUIREMENTS**

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.

**Comment: Dry weather discharges are prohibited.**

**Part II**

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

**Comment: Area around storage lagoon was not effectively maintained or mowed. Mowing began during inspection.**

**Part II**

O. A protective vegetative cover shall be established and maintained on all earthen basin embankments (outside toe of embankment to maximum operating elevation), berms, pipe runs, erosion control areas, and surface water diversions. Trees, shrubs, and other woody vegetation shall not be allowed to grow on the earthen basin, dikes, or embankments. Earthen basin embankment areas shall be kept mowed or otherwise controlled and accessible.

**Comment: Berms and embankment areas must be kept clear and mowed more frequently.**

Corrective Actions:

**Below are recommended actions that this office deems appropriate to eliminate the risk of further violations of Ohio Water Quality Standards and Non-compliance with provisions of your NPDES permit.**

1. This office is concerned that the source of the leak from the lagoon has not been located. There is concern that although the tile has been blocked or plugged, leakage could continue to occur from the pond and migrate to surface or groundwater through other pathways. In order to ensure this office that

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there is not continued leakage, you must either find and repair the source of the leak or provide documentation that shows the daily wastewater production volume, daily removal rates and compare that daily volume to expected increases in lagoon water depth. Other factors that need to be included in such an evaluation are daily rainfall amounts, and evaporation estimates. Your records only provide depths to the nearest ½ foot. In order to better cross check the depth may need to be more accurately documented. It is noted that this is the 2<sup>nd</sup> incident of such discharge from facilities now-owned by New Day Farms, LLC. On November 29, 2006, an EWW discharge occurred on New Day Farm 3 (when owned by Daylay Egg Farm) under very similar circumstances. Since the source of the discharge from that occurrence was never reported to this office as found, a similar cross check of daily production volume versus lagoon depth as recommended above is also recommended for that location.

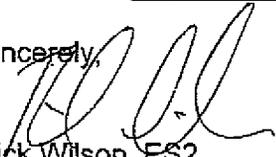
2. Once a week, monitor operating levels of all manure storage or treatment facilities, as stated in Part VII, Production Area Monitoring and Inspections and Land Applications Requirements, Production Area Requirements of your permit. Date and time of observation, manure level, influent flow should be recorded, as well as rainfall and evaporation levels to verify consistent accountings.
3. Once a week, inspect manure storage or treatment facilities, including devices channeling contaminated storm water to the manure storage or treatment facility for evidence of erosion, leakage, animal damage, overflow, or discharge, as stated in Part VII, Production Area Monitoring and Inspections and Land Applications Requirements, Production Area Requirements of your permit. Included should be date and time of inspection, structural integrity, vegetation condition, and any corrective actions needed and the dates those actions were taken. Included in the incident report sent to this office was a copy of recent lagoon pump station weekly inspections. Lagoon depth and structural integrity were both included in the recorded inspection sheets however, vegetation condition was not. Vegetation cover around lagoons should be inspected and recorded once a week.
4. Maintenance requirements in your permit include the frequent mowing and general clearing of vegetation surrounding the storage lagoons.

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. Please note that failure to mitigate potential releases and failure to take the preventative measures as listed above to minimize further impacts to waters of the State could lead to escalated enforcement action from this Agency. Please respond to this office in writing within 15 days from the receipt of this correspondence with indication of:

- a) The date of completion of specific items above;
- b) The date you expect to complete specific items above; or
- c) Discuss rationale for disagreement or suggestion of alternatives to specific action items above.

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

Sincerely,

  
Rick Wilson, ES2  
PTI, Compliance Assistance and CAFO Unit  
Division of Surface Water

cc: Mark Meyer, New Day Farms LLC  
Chris Rodabaugh, ODA-LEPP