

Table 4. Sample collected 20 feet downstream of crushed main tile

Parameter	Result	Units
BOD ₅	14	mg/L
Ammonia	0.154	mg/L
Nitrate+Nitrite	8.04	mg/L
Total Kjeldahl Nitrogen	2.31	mg/L
Total Phosphorus	0.236	mg/L

At approximately 3:00 p.m. on April 5, Ohio EPA, Office of Special Investigations (OSI) employee Craig Kleinhenz arrived in the area. Ohio Attorney General's Office, Bureau of Criminal Investigations (BCI) inspector John Wellman arrived later in the afternoon. Sometime during the day, the dragline hose had been removed from the ditch where it was being used to convey liquids back to the manure lagoon at Rising Sun Dairy. The hose was removed so that manure could be applied on the "Dairy Side" field located across Yankeetown-Chenoweth Road. A second dam had been installed in Madden-Higgins Ditch so that clean water would not collect and mix with the contaminated water further downstream. It should be noted that the manure application on the Dairy Side field still appeared to be occurring when Wildlife Officer Arehart and Investigator Kleinhenz left at around 8:15 p.m. The investigators documented that thunder and lightning were in the vicinity.

On April 6, 2010, I arrived at the Madden-Higgins Ditch and met with Investigators Kleinhenz and Arehart. ODNR Wildlife Investigator Kandy Klosterman also arrived in the area to assist. Upon arrival, it was clear that the previous night's manure application had caused an impact to an area of the ditch (upstream of the second dam previously referenced) which was running clear on April 5, 2010. ODNR Wildlife Officers Klosterman and Arehart soon began a fish kill count to determine how many fish were killed as a result of the manure discharge. Investigator Kleinhenz and I toured the Miller field in order to determine whether or not manure application setback distances had been observed by the manure applicators. It was apparent in many areas of the field that required setbacks were not observed (see Figure 1), that application rates had not been adjusted to preclude surface ponding, and that large soil cracks were readily visible in many areas of the field.

VIOLATIONS

Due to the unpermitted dry weather discharge of manure to waters of the State, Rising Sun Dairy has violated the following conditions of its NPDES permit:

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

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 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 VII,A,4,c,iv. The application rate shall not exceed the available water capacity in the upper eight inches of the soil for both subsurface and nonsubsurface drained sites

Part VII,A,4,c,v. The application rate shall be adjusted to preclude surface ponding and/or runoff from a land application site. See Part VII, B, 2.

Part VII,B,2,a. Prior to land applying manure, the permittee shall inspect the land application area to determine the suitability of the site for land application (considerations shall include tile location and depth, soil type, evidence of soil cracking, available water capacity of the soil, crop maturity, prior precipitation, forecasted precipitation, etc.) and document field conditions at the time of the inspection. See Part VII, A, 5. Broken tiles or blow out holes shall be repaired prior to land application.

Part VII,B,2,d. 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,3. 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. See Part I, A, 2, d.

Part VII, B,4. For the land application of liquid manure to sites with subsurface tile drainage, the following criteria must be followed:

b. A tool shall be used that can disrupt and/or close the preferential flow paths in the soil using horizontal fracturing, or the surface of the soil shall be tilled three to five inches deep to a seedbed condition to soak up the liquid manure and keep it out of preferential flow channels;

Part VII, B,6. 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.

Other violations:

Ohio Revised Code (ORC) 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.

Ohio Administrative Code (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;

Pieter Assen

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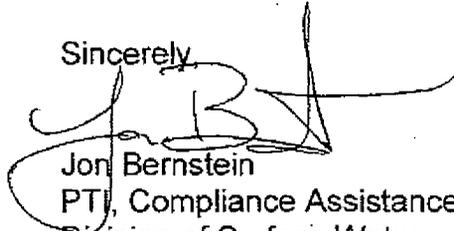
(D) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone;

Please remember that you are responsible for complying with your NPDES 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.

This Notice of Violation does not preclude Ohio EPA or any other state or federal agency from seeking civil penalties or criminal charges against Rising Sun Dairy. 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 or concerns, feel free to 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: Kevin Elder, ODA-LEPP
Bill Palmer, Ohio EPA -OSI
Kandy Klosterman, ODNR-DOW
Leighland Arehart, ODNR-DOW
Brent Kirkpatrick, BCI & I



Figure 1. Poned manure near roadside ditch on Madden-Higgins Road. This ponded manure was approximately ten to fifteen feet away from the road.



Figure 2. Tile discharging manure-contaminated water to Madden-Higgins Ditch. See Table 2 for the results of a water quality sample collected from this tile outlet.



Figure 3. Water quality samples collected from Madden-Higgins Ditch on April 5, 2010.



Figure 4. Pounded manure in Miller Field near Madden-Higgins Road. This photo was taken on April 6, 2010.



State of Ohio Environmental Protection Agency

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CERTIFIED MAIL

July 2, 2008

Steve Bliesner
New Day Farms, LLC
Ohio Office
27322 St. Rt. 739
Raymond, Ohio 43067

Re: Notice of Violation of Ohio EPA General Permit for Concentrated Animal Feeding Operation (4IK00005*CD, coverage beginning October 1, 2007), and violations of Ohio Administrative Code.

Dear Mr. Steve Bliesner:

This correspondence is sent to you as an official notice to describe violations of permit 4IK00005*CD resulting from the egg wash water (EWW) storage lagoon discharge at New Day Farms-Mad River to an unnamed tributary of Bokes Creek. The EWW lagoon is located at the northern side of the property along the property line.

Background:

You have provided this office with a detailed incident report that described your understanding of the discharge from the EWW lagoon on the northern edge of New Day Farms-Mad River property which occurred sometime before 11:00 am May 28, 2008. Based upon inspection and the report and records you provided, the May 28 discharge of EWW originated from a leak or cracked earth on the northeast corner of the lagoon pond, and migrated to a drainage tile on your northern neighbor's (Eastman) property. You reported that pinkish water, similar to your lagoon water, was seen flowing from a catch basin on the opposite side of the Eastman land near Storms Road.

Ohio EPA and ODA were notified of this discharge by your Storms Road neighbors. Upon notification, New Day Farms, LLC took abatement efforts to remediate and prevent the reoccurrence of the discharge to the tributary of Bokes Creek, including stopping the newly found tile flow. Measures were implemented that day (May 28), and inspection of the catch basin in question occurred on May 29 and June 2, citing that it was not flowing any more water and that the water in the basin at both times were clear. No other efforts to abate impacts to the affected tributary were described to occur.

Water samples were collected on May 28, 2008 at the following locations (Numbers 1-4 following each location reference photos and sample results on next page): New Day Farms-Mad River north pond also known as EWW lagoon(1), the storm catch basin on Storms Road(2), the unnamed tributary at State Route 47(3), and in the mixing zone downstream from the confluence of the unnamed tributary and Bokes Creek (4: about ¼ mile downstream from State Route 47,).

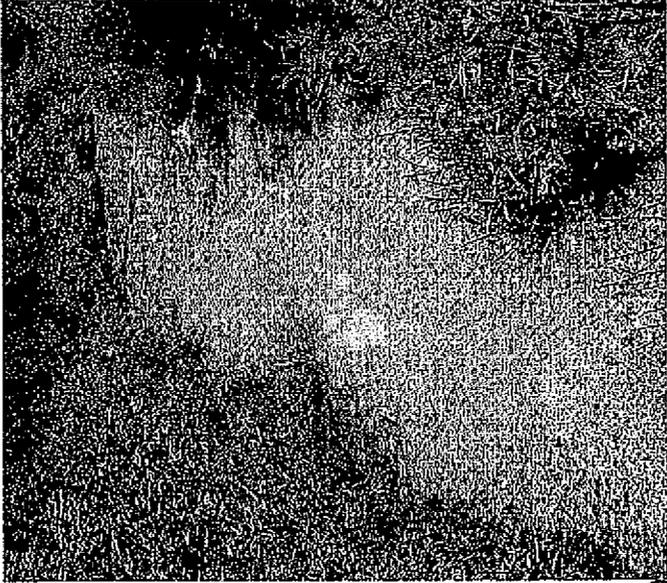
Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korteski, Director



(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)	EWL Lagoon (1)	Unnamed Tributary at State Route 47 (3)	UT/Bokes Creek Mix (4)
BOD5	-	2200	750	3
Total Suspended Solids	-	1880	198	-
Ammonia Nitrate + Nitrite	203	212	125	0.126
Total Phosphorus	0.41	0.46	0.29	0.48
	24.1	982	15.5	0.04