



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

December 2, 2009

Wood County

CERTIFIED MAIL

Reyskens Dairy, LLC
Mark van de Heijning
19480 Cygnet Road
Custar, OH 43511

Re: Notice of Violation, Unpermitted Discharge Discovered October 26, 2009

Dear Mr. van de Heijning,

At approximately 11:30 am on October 26, 2009, Ohio EPA field personnel noticed a greater-than-expected flow entering Needles Creek from the roadside ditch on Cygnet Road. Upon examination, the water in the ditch displayed a notable manure-like odor. The Ohio EPA personnel proceeded to travel upstream the roadside ditch along Cygnet Road.

The field personnel stopped at Range Line Road and noted that the roadside ditch still had the same manure-like odor previously observed downstream. The water in the ditch at this point was slightly turbid with a brown color. While on the road across from the storm water pond at Reyskens Dairy, it was noted that there were two discharges entering the ditch from the north side of the ditch. Both discharges appeared to convey water from the storm water pond. The water in the ditch at this point was turbid black and the manure-like odor of the water was very strong. See Figure 1. The field personnel then drove further west to just west of a farm lane that services several sheds on the Reyskens Dairy property. This lane is east of the main drive that is used to access the animal housing barns of the CAFO. The water in the ditch just west of this lane was not turbid.

At this point, the discharge was called in to the Ohio EPA Spill Hotline. Division of Emergency and Remedial Response (DERR) on-scene coordinator Dave Schilt traveled to the Reyskens Dairy property to investigate and assist in clean-up. Mark Fritz of the Ohio Department of Agriculture (ODA), Livestock Environmental Permitting Program also responded to the spill. Mr. Schilt directed Reyskens Dairy to dam up the roadside ditch and to vacuum up any contaminated water.

Upon investigation, it was determined that silage leachate from the dairy had migrated into a pipe used for conveying clean storm water to the storm water

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



pond. The contaminated water then discharged from the storm water pond overflow pipe into the roadside ditch and subsequently to Needles Creek. The roadside ditch and Needles Creek are both designated as waters of the State. Results of water quality samples collected in response to the spill are displayed in Table 1.

From a photo taken by Mr. Schilt at the dairy, it appears that silage may have been stacked off of the silage pad. See Figure 2. This appears to be a violation of the ODA Permit-to-Operate you currently have coverage under. Your dairy has had issues with containment of silage leachate in the past and you should be making every effort to operate your dairy as it was designed to be operated.

Additionally, questions arise as to why this discharge was not called in to the Ohio Department of Agriculture or the Ohio EPA Spill Hotline. During the response to the spill at your dairy by Mr. Schilt and Mr. Fritz, you indicated that you were aware that discolored water was entering the roadside ditch from the clean storm water detention basin. However, it appears that you made no attempts to mitigate the discharge prior to state of Ohio personnel arriving on-scene.

National Pollutant Discharge Elimination System (NPDES) Permit Requirements

On August 12, 2008 Ohio EPA received a letter from Vreba-Hoff Dairy Development which requested that the application for Concentrated Animal Feeding Operation (CAFO) NPDES permit 2IK00019*AD for Reyskens Dairy be withdrawn.

On September 9, 2008 Ohio EPA responded to the letter. The September 9 letter referenced the fact that Reyskens Dairy was an existing dairy where contaminated storm water from the production area was observed entering a clean storm water detention basin. The letter requested Reyskens Dairy to demonstrate that certain actions had been taken to show that there would be no more discharges from the production area of the dairy. The letter clearly noted that if Reyskens Dairy did not have an NPDES permit, then any discharge from the production area would be a violation of state and federal laws and could lead Ohio EPA to initiate enforcement action against Reyskens Dairy.

On November 21, 2008 Ohio EPA received a response to its September 9 letter from North Point Engineering. The letter from North Point Engineering, sent on behalf of Reyskens Dairy, LLC, was intended to demonstrate that there would be no more discharges from the production area of the dairy. The letter described plans which were in place for the dairy to eliminate future discharges, but the letter indicated that much of this work was to take place in the future. To Ohio EPA's knowledge, much of this work was never completed.



Figure 1. Unnamed tributary of Needles Creek downstream of discharge



Figure 2. Silage stacked at Reyskens Dairy. It appears that silage has been stacked off of the silage pad

Table 1. Water quality samples collected in response to discharge on October 26

Parameters (at right)	<i>E. Coli</i>	<i>Ammonia</i>	<i>TKN</i>	<i>Total Phosphorus</i>	<i>CBOD₂₀</i>
	#/100 mL	mg/L	mg/L	mg/L	mg/L
Sampling Location (below)					
Roadside ditch upstream of storm water pond discharge	130	<0.050	0.67	0.053	5.9
Roadside ditch just downstream of storm water pond discharge	15,000	3.38	7.60	1.56	180
Roadside ditch east of eastern farm lane at Reyskens Dairy	11,000	2.64	5.70	1.23	190
Roadside ditch southwest of Needles Creek	3,600	0.593	3.42	0.579	67
DERR sample taken from roadside ditch at driveway just upstream of discharge	-	<0.050	-	0.064	4.4 ¹
DERR sample taken from roadside ditch just downstream of storm water pond discharge	-	2.20	-	0.918	110 ¹

¹The oxygen demand parameters for the samples collected by DERR are BOD₅

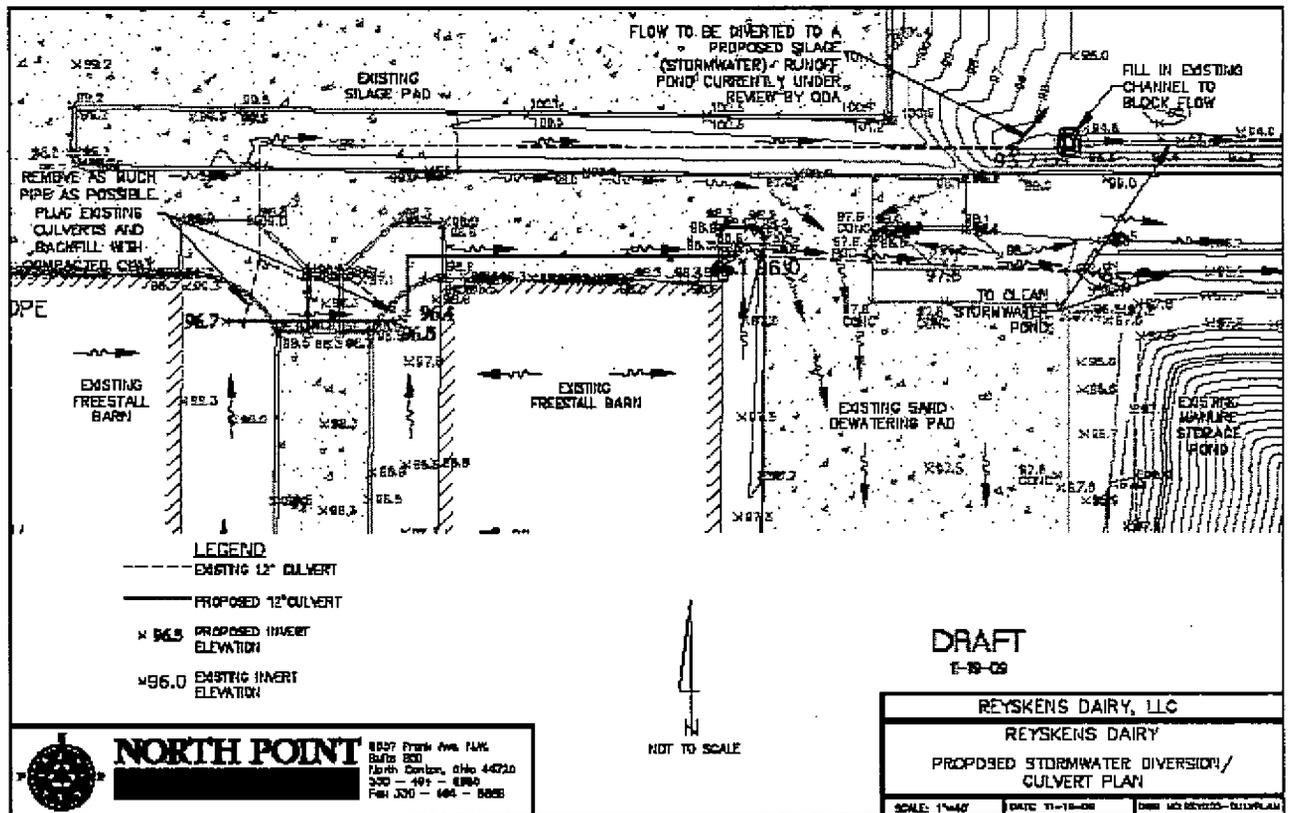


Figure 3. Draft proposed stormwater diversion/ culvert plan for Reyskens Dairy

Reyskens Dairy, LLC
Page 6

Please provide the NPDES application package and the written report requested in this letter to Ohio EPA by December 30, 2009.

Should you have any questions or comments, please contact me at (614) 644-2021 or at cathy.alexander@epa.state.oh.us or you may contact Jon Bernstein at (614) 728-2397 or at jon.bernstein@epa.state.oh.us.

Sincerely,



Cathy Alexander, Supervisor
Modeling and Assessment & CAFO Unit
Division of Surface Water

cc: Kevin Elder, ODA-LEPP
Dave Schilt, OEPA-DERR
Dave Gerdeman, North Point Engineering

As a result of the discharge discovered on October 26, Reyskens Dairy has demonstrated that it 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 Reyskens Dairy, LLC submit an updated application to Ohio EPA for a CAFO NPDES permit. Please submit the following items to Ohio EPA:

- Form 1
- Form 2B
- Antidegradation Addendum
- Manure Management Plan (MMP)
- MMP Update Packet

The forms listed above and the MMP Update Packet have been included with this letter. The 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. Cease all discharges from the storm water pond at Reyskens Dairy. Any discharge of pollutants from this pond is an illegal discharge unless you have obtained NPDES permit coverage.
2. Conduct an engineering investigation into the cause of the discharge observed on October 26, 2009.
3. Provide your proposal to prevent further illicit discharges such as the one observed on October 26, 2009. It is our understanding that construction work is currently planned which should help to separate clean stormwater at the dairy from any potential contamination (a proposed draft of the plan which was provided to Ohio EPA is displayed in Figure 3). Please provide this office with an update regarding this work, and explain what, if any, additional remedies are needed to ensure there will be no future discharges of manure contaminated stormwater (which includes silage runoff and leachate).

Please provide the NPDES application package and a written report addressing the items above to Ohio EPA by December 30, 2009.