

**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

April 1, 2011

Washington Township
Mercer County

CERTIFIED MAIL

R.F. Schaefer & Sons, Inc.
Attn: Robert Schaefer
5629 State Route 49
Fort Recovery, Ohio 45846

Re: Notice of Violation – Manure Discharge to Hickory Branch and Scherman Ditch

Dear Mr. Schaefer:

On February 14, 2011, the Ohio EPA, Division of Surface Water (DSW) responded to a significant discharge of manure from land-applied manure which came from your dairy facility. Ohio Department of Natural Resources (ODNR) Wildlife Officer Ryan Garrison reported a manure discharge to the Wabash River to the Ohio EPA Spill Hotline at approximately 10:30 a.m. on February 14. The Ohio EPA, Division of Emergency and Remedial Response (DERR) also responded to the spill along with the Mercer County Soil and Water Conservation District.

Upon arriving at the intersection of State Routes 29 and 49, Jon Bernstein (Ohio EPA, DSW) observed a significant amount of manure flowing off a crop field located at the southwest corner of the intersection. A water quality sample was collected directly east of this field in an unnamed tributary of Hickory Branch. Schaefer and Sons, Inc. was in the process of attempting to place hay bales in preferential flow paths of manure. However, this had little impact in abating the manure runoff. Manure was also observed flowing off the west side of the field into Scherman Ditch. A water quality sample was collected from Scherman Ditch north of State Route 29. Both Scherman Ditch and Hickory Branch lead to the Wabash River.

A significant amount of manure was also observed in the Wabash River. While a water quality sample was collected from the Wabash River, icy conditions and high flow prevented the collection of the sample in the middle of the manure slug. Therefore, it is believed that this sample was diluted and that it is not an accurate representation of the true concentration of pollutants in the river. The results of the water quality samples collected during the spill response are displayed in Tables 1 through 3. Please note that while the water quality standard for ammonia depends on temperature and pH, the standard is never higher than 13 mg/L. Concentrations of ammonia above 13 mg/L are considered to be acutely toxic to aquatic wildlife.

Table 1. Water quality sample collected from unnamed tributary of Hickory Branch

Parameter	Result	Units
BOD ₅	370	mg/L
Ammonia	26.5	mg/L
Nitrate+Nitrite	1.05	mg/L
Total Kjeldahl Nitrogen	56.9	mg/L
Total Phosphorus	7.65	mg/L

Table 2. Water quality sample collected from Scherman Ditch

Parameter	Result	Units
BOD ₅	170	mg/L
Ammonia	10.7	mg/L
Nitrate+Nitrite	4.39	mg/L
Total Kjeldahl Nitrogen	27.0	mg/L
Total Phosphorus	5.16	mg/L

Table 2. Water quality sample collected from Wabash River

Parameter	Result	Units
Ammonia	1.48	mg/L
Nitrate+Nitrite	6.13	mg/L
Total Kjeldahl Nitrogen	3.40	mg/L
Total Phosphorus	0.572	mg/L

Due to the unpermitted discharge of manure 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.

During conversations with you (Robert) and Kevin Schaefer on February 15, 2011, it was communicated to the Division of Surface Water that solid cattle manure had been land-applied to the field at the intersection of SR 49 and SR 29 on February 12 and February 13. You indicated that no land application records were kept regarding this manure application incident. Land application of manure on frozen or snow-covered

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ground is considered a risky practice, and to apply manure just prior to an obvious thaw event with no records maintained clearly does not follow good management practices.

Your dairy has had spills in the past associated with land application of manure. An application for a Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) permit was received from you in January, 2004. However, the permit was not issued because questions remained concerning your status as an operation meeting the definition of a medium CAFO in federal rules.

While it was the desire of this Agency that you would demonstrate compliance with Ohio's water pollution control laws through implementation of best management practices and that you would not require coverage under an NPDES permit, it is now clear that coverage under an NPDES permit is appropriate as you have been determined to be a significant contributor of pollution to waters of the State. Therefore, you are now being designated as a medium CAFO and you are required to obtain coverage under a CAFO NPDES permit.

The 2004 CAFO NPDES permit application submitted to Ohio EPA has been included with this letter. Please submit a revised CAFO NPDES permit application if there have been any changes to your operation since the time that you submitted the application. The application forms have been included with this letter if revisions are required. Please note that a Manure Management Plan (MMP) must be submitted to Ohio EPA in order to complete the application.

Within 15 days of receipt of this letter, please submit a revised NPDES application (if necessary) and your MMP to the following address:

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

This Notice of Violation does not preclude Ohio EPA or any other state or federal agency from seeking civil penalties or criminal charges against R.F. Schaefer and Sons Dairy. If there is any statement in this letter which you believe is in error, please advise us in writing within 14 days.

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Should you have any questions or concerns, please contact Cathy Alexander of my staff at 614-644-2021 or at cathy.alexander@epa.state.oh.us.

Sincerely,



Scott J. Nally
Director
Ohio Environmental Protection Agency

cc: Kevin Elder, ODA-LEPP
Cheryl Burdett, US EPA – Region V
Bill Palmer, Ohio EPA – SIU
Rob Hamilton, ODNR-DSWR
Cathy Alexander, DSW-CO



Figure 1. Manure runoff entering receiver which leads to unnamed tributary of Hickory Branch. This field is at the southwest corner of State Route 49 and State Route 29.

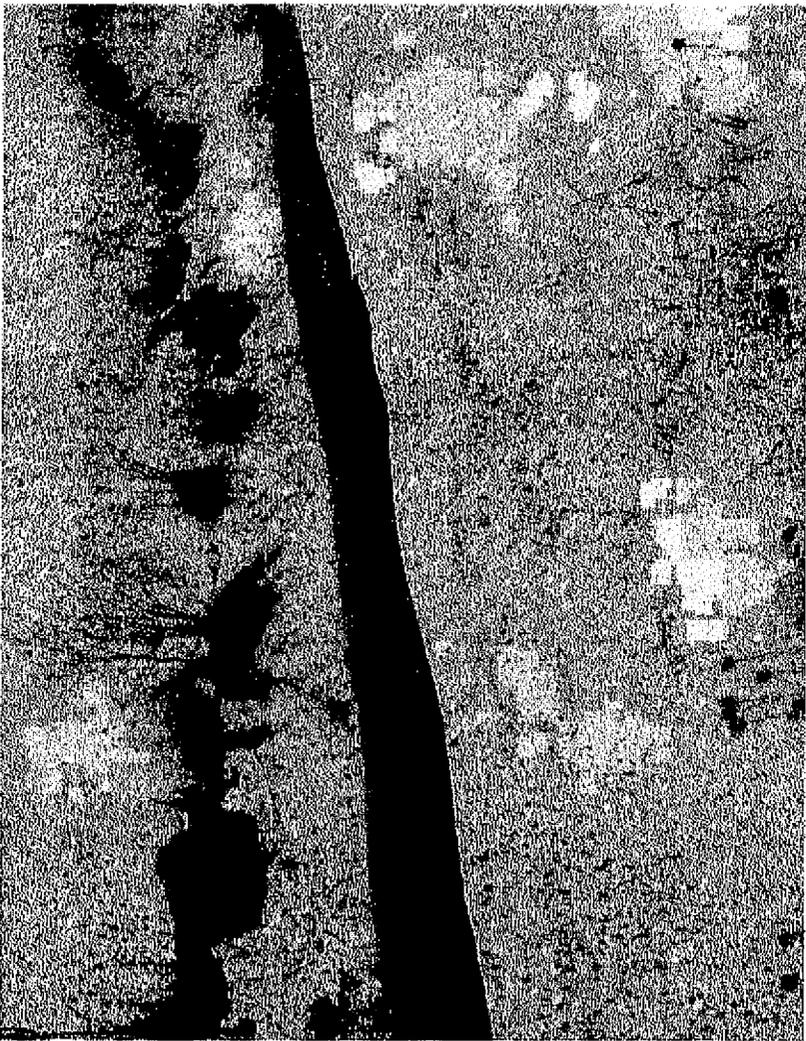


Figure 2. Manure in unnamed tributary of Hickory Branch



Figure 3. Manure in Scherman Ditch