



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

August 19, 2009

CERTIFIED MAIL

Mr. Andrew Bruggeman
5207 Fort Recovery-Minster Road
St. Henry, Ohio 45883

Re: Notice of Violation – Milk Waste Discharge to Vanderbosch Ditch Tributary

Dear Mr. Bruggeman:

Ohio EPA, Division of Surface Water was informed that, while doing road work, the Mercer County Engineer's office discovered discolored, smelly water exiting a drainage tile near your dairy operation. The Engineer's office contacted the Mercer County Health Department on July 10, 2009. The Health Department then contacted the Mercer County Soil and Water Conservation District (SWCD).

BACKGROUND

At approximately 10:30 am on July 10, 2009, representatives from Mercer SWCD arrived to investigate the reported discharge near your operation. Discolored, smelly water, which was found to be milkhouse wastewater, was discovered to be exiting a tile near your operation. The wastewater came from a waste milk storage tank at your facility which discharges to a tile leading to a tributary of Vanderbosch Ditch.

Mercer SWCD indicated to you that the discharge was unacceptable and that you needed to stop the discharge and prevent further discharges. It is my understanding that you agreed to pump the milk waste storage tank as often as possible in order to prevent further discharges. Mercer SWCD has stated that a Comprehensive Nutrient Management Plan (CNMP) is being developed for your dairy and that funding is being provided in order to permanently address the discharge.

On July 30, 2009, Mike Gerber (On-scene Coordinator, Ohio EPA, Division of Emergency and Remedial Response) arrived near your dairy to confirm that there was no longer an ongoing discharge of milkhouse waste to the tributary of Vanderbosch Ditch. Mr. Gerber discovered a septic, milky gray substance in the creek on the south side of Fort Recovery-Minster Road and also in the drainage tile on the north side of the road. Mr. Gerber tested the ammonia level of the liquid within the tile, and he obtained a reading of 30 parts per million. Although the water quality standard for ammonia depends on temperature and pH, it is never higher than 13 mg/L (parts per million).

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

Mr. Gerber met with you at your dairy and observed the wastewater storage tank used for waste milk storage. He informed you that there was septic material in the creek and also at the tile discharge. He requested that you remove the waste liquid from the creek and from the tile and that you prevent any further migration of waste material off of your property. Mr. Gerber recommended that you keep the liquid level in the tank below the discharge pipe so that material would not exit from around the outside of the pipe and through the hole in the tank wall.

Due to the unpermitted discharge of milkhouse waste 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.

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

OAC 3745-33-02 Ohio 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.

Mr. Andrew Bruggeman

August 19, 2009

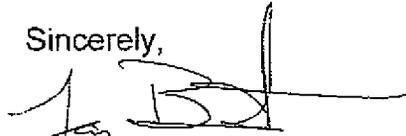
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While this office appreciates your cooperation in eliminating the discharge from your dairy, you must work to ensure that a similar discharge from your operation does not occur in the future. If a similar discharge from your operation does occur, you may be designated as a small Concentrated Animal Feeding Operation (CAFO) and you would be required to obtain coverage under a CAFO National Pollutant Discharge Elimination System (NPDES) permit.

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.

Should you have any questions, comments, or concerns regarding this letter 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: Mike Gerber, Ohio EPA -DERR
Theresa Dirksen, Mercer SWCD
Rob Hamilton, ODNR-DSWC