



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

March 27, 2009

Mercer County

CERTIFIED MAIL

James and Janice Broering
3920 SR 119
St. Henry, OH 45883

Re: March 22, 2009 Manure Discharge, Notice of Violation

Dear Mr. and Mrs. Broering,

On March 22, 2009, Mike Gerber with the Ohio EPA, Division of Emergency and Remedial Response (DERR) responded to a manure spill which was reported to the Ohio EPA Spill Hotline by Officer Ryan Garrison of the Ohio Department of Natural Resources (ODNR) Division of Wildlife. Officer Garrison stated that the release had been discovered by a local downstream resident who had first detected the manure in the waterway approximately 4 to 5 days earlier. Officer Garrison initially responded to the spill and discovered a tile with a brown liquid running through it. Matt Heckler of Mercer County Soil and Water Conservation District (SWCD) also responded to the spill. This letter outlines violations of Ohio Revised Code 6111 and Ohio Administrative Code 3745-1 and lists required corrective actions as a result of this incident.

According to the investigations conducted by Mr. Gerber and Mr. Heckler, manure was discovered to be discharging from your manure storage lagoon through a previously undiscovered field tile. We understand that your manure storage pond was expanded last Fall and that the tile was not found at that time. The tile discharges to an unnamed tributary of Coldwater Creek.

According to Mr. Gerber's report, the tile leading from the manure storage lagoon was excavated and plugged in order to stop the discharge from the lagoon. An earthen dam was constructed to contain the spill. The stream and tile system was flushed with fresh water and approximately 18,000 gallons of manure-contaminated water was pumped from the stream.

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



Please be aware that the discharge described above is a violation of the following state regulations:

Ohio Revised Code 6111.04(A)(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.

Ohio Administrative Code 3745-1-04(C)

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: (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.

At this time, Ohio EPA will not require you to submit an application for a National Pollutant Discharge Elimination System (NPDES) permit as long as progress is made towards preventing a recurrence of any discharges from your manure storage lagoon. However, if your facility has another discharge from your production area or land application fields you could be defined or designated as a medium Concentrated Animal Feeding Operation (CAFO) and be required to obtain a NPDES permit.

Within **30 days** of receipt of this letter, please submit a written report describing corrective actions you have taken or will take in order to prevent another spill from your manure storage lagoon. As part of your submittal, please include documentation describing remediation activities undertaken in order to clean up the manure spill described in this letter.

Please submit the above items to my attention at:

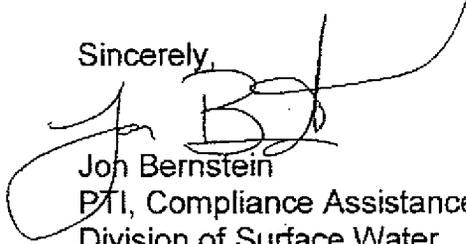
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

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 to minimize further impacts to waters of the State could lead to escalated enforcement action from this Agency.

James and Janice Broering
Page 3

Should you have any comments and/or questions, please contact me at 614-728-2397 or at jon.bernstein@epa.state.oh.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Bernstein', with a large, sweeping flourish extending from the end of the signature.

Jon Bernstein
PTI, Compliance Assistance, & CAFO Unit
Division of Surface Water
Ohio Environmental Protection Agency

cc: Mike Gerber, Ohio EPA-DERR
Kevin Elder, ODA-LEPP
Rob Hamilton, ODNR-DSWC
Matt Heckler, Mercer County SWCD
Ryan Garrison, ODNR-DOW