



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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MAILING ADDRESS:

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

August 26, 2009

CERTIFIED MAIL

Mr. David Ditmer
Ditmer Family Swine Farms
4226 Red River-West Grove Road
Arcanum, Ohio 45304

Re: Notice of Violation – Manure Discharge to Canyon Run and Stillwater River

Dear Mr. Ditmer,

Ohio EPA, Division of Surface Water was informed of a manure discharge from your swine operation which was discovered on July 26, 2009. The Pleasant Hill-Newton Township Fire Department received water quality-related complaints regarding the area where Canyon Run crosses Shiloh Road (west of Pleasant Hill, Ohio, Miami County). Upon investigation, the Fire Department discovered an area with dark water and dead fish.

BACKGROUND

At approximately 4:00 pm on July 26, 2009, Jim Crawford (On-scene Coordinator, Ohio EPA, Division of Emergency and Remedial Response) arrived in the area to investigate the discharge. Mr. Crawford met with representatives of Darke County, Miami County, and the Ohio Department of Natural Resources, Division of Wildlife (ODNR-DOW) at Furlong Road. Several drainage tile inlets and outlets were examined and more areas of dark water in Canyon Run were discovered.

ODNR-DOW personnel set off to make a determination on the number of dead fish in the area. Mr. Crawford and Chief Tal Mong (Darke County Hazmat) drove upstream of Furlong Road in an attempt to find the source of the discharge. They arrived at the Ditmer Family Swine Farm. An area of pooled manure near a cleanout riser was seen at the farm along with another area of pooled manure along a nearby crop field. No one was at the farm at the time of this visit.

Mr. Crawford went back downstream of your farm and met with the ODNR investigators. Several stream crossings were sampled to determine ammonia concentrations in the water. Samples collected at the Rangeline Road and Harshbarger Road bridge crossings displayed ammonia concentrations of 10 parts per million (ppm). A sample collected at Shiloh Road displayed an ammonia concentration of 30 ppm. Although the

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



water quality standard for ammonia depends on temperature and pH, it is never higher than 13 mg/L (ppm).

At approximately 10:45 am on July 27, Mr. Crawford and ODNR investigator Randy Tunnel met with you at your residence. You informed them that you had a manure spill on July 24, 2009. It is my understanding that a clog in the pipe leading from a swine barn to the manure storage lagoon caused an overflow of manure near the barn, and that the manure was able to infiltrate into the drainage tile system in the area. Additionally, you stated that you had a blowout in a pipe leading from the manure lagoon to a sprayer in the adjacent cropland. Manure from these locations subsequently entered waters of the State.

Mr. Crawford asked that you work with the Darke County Soil and Water Conservation District (SWCD) in order to determine how to best manage your manure conveyances so that if any other spills occur, the manure will not enter the tile system.

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.

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.

Due to the unpermitted discharge of manure from the production area of your swine facility to waters of the State, you now meet the definition of a medium Concentrated Animal Feeding Operation (CAFO). As a result, you are now required to obtain coverage under a CAFO National Pollutant Discharge Elimination System (NPDES) permit or you may attempt to demonstrate that a CAFO NPDES permit is not required for your operation.

In order to apply for a CAFO NPDES permit, please submit the following:

- Form 1
- Form 2B
- Antidegradation Addendum
- Copy of Manure Management Plan (MMP)
- \$200 check made payable to "Treasurer, State of Ohio"

The forms can be found at the following web address:

<http://www.epa.state.oh.us/dsw/cafo/application.html>

The completed forms, MMP, and check should be submitted to the following address:

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

Please inform this office in writing if you wish to demonstrate that you no longer propose to discharge pollutants from the production area of Ditmer Family Swine Farms to waters of the State. You would be required to demonstrate that your facility is constructed, designed, operated, and maintained in order to prevent discharges of manure pollutants to waters of the State. An inspection would likely be conducted to verify your claims.

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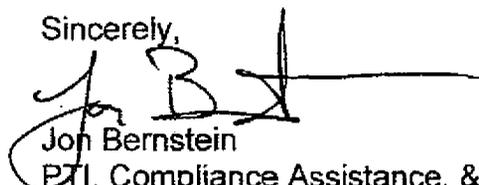
Should you have another spill of manure, please immediately call the Ohio EPA Spill Hotline at 1-800-282-9378. Alerting Ohio EPA of potential impacts to waters of the State allows this Agency to evaluate and respond to spills in a timely fashion. Environmental impacts can be lessened if agency personnel are aware of and can respond to such spills.

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.

Within **30 days** of receipt of this letter, please submit either an application for a CAFO NPDES permit or a letter expressing your intent in demonstrating that you no longer propose to discharge manure from your swine facility to waters of the State.

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: Jim Crawford, Ohio EPA -DERR
Kevin Elder, ODA-LEPP
Rob Hamilton, ODNR-DSWC
Tal Mong, Darke County Hazmat Coordinator
Tim Brunswick, Darke SWCD
Randy Tunnel, ODNR-DOW
Bill Knapke, Cooper Farms