



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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www.epa.state.oh.us

MAILING ADDRESS:

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

March 24, 2010

CERTIFIED MAIL

Mr. Donald Brewer
1438 New Weston-Fort Loramie Road
Fort Recovery, Ohio 45846

Re: Notice of Violation – Manure Discharges from Donald Brewer Farm

Dear Mr. Brewer,

Ohio EPA, Division of Surface Water has been advised of recent discharges of manure from your farm to waters of the State. On July 20, 2009, a discharge of manure to a tributary of the Wabash River was reported to the Ohio EPA Spill Hotline. Similarly, on March 11, 2010, a discharge of manure to a tributary of the Wabash River was reported to the Ohio EPA Spill Hotline.

Your swine operation has a history of documented discharges of manure to waters of the State. You may recall receiving letters from this Office in 1999 and 2001 which documented discharges of manure from your farm to waters of the State. Furthermore, on May 22, 2001, this Office had requested that you apply for coverage under a Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) permit prior to restocking your facility with animals. In a letter dated August 7, 2001, you indicated that your swine nursery barns were empty and that you had no plans to restock the barns.

BACKGROUND

On July 20, 2009, the Darke County Soil and Water Conservation District (SWCD) discovered that manure from your farm was entering a field tile prior to draining to the Wabash River. The Darke County SWCD notified the Ohio Department of Natural Resources who in turn informed the Ohio EPA Spill Hotline of the discharge.

Ohio EPA on-scene coordinator (OSC) Jim Crawford responded to the spill at approximately 11:50 am on July 20, 2009. OSC Crawford observed that manure appeared to have been pumped from the manure storage lagoon on your property to a weedy, overgrown area adjacent to and west of your manure storage lagoon. Various pools of discolored and odorous water were observed in the area. At that time it was estimated that you had over 3,000 young swine at the facility. You were advised that the

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

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discharge of manure that infiltrated a field tile and subsequently discharged to the Wabash River was a violation of Ohio Revised Code 6111.

OSC Crawford indicated to you that abatement actions would be necessary in order to eliminate the discharge. He indicated that you would need to plug the field tile that was receiving manure and that you would need to pump the manure liquids on your property back to the lagoon. You had begun to implement abatement actions prior to OSC Crawford leaving the scene.

On March 11, 2010, an inspector with the Ohio Department of Agriculture, Livestock Environmental Permitting Program observed manure in the field tile downstream from your swine facility. The inspector noted that your manure lagoon was at capacity at the time and that it was nearly overflowing. The discharge was reported to the Ohio EPA Spill Hotline.

OSC Crawford responded to the spill and arrived at your swine facility on March 11. OSC Crawford again observed a large amount of standing manure water on your property and also observed that surface water was flowing off of your property to the north. A nearby stand of woods also contained large amounts of impacted water which smelled of manure. Darke County SWCD administrator John Kaiser indicated to you that you should pump out the tile and dike the fields from which manure runoff was originating.

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.

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.

IMMEDIATE CORRECTIVE ACTIONS REQUIRED

You must immediately eliminate all illegal discharges from your swine facility. Manure should be pumped from any ponded areas on your property, and the manure lagoon needs to be pumped down to at least 12 inches below the lowest point on the berm. Land application of manure within the production area of your facility is not an acceptable form of disposal of manure. It is my understanding that the Darke County SWCD has requested that you find 200 acres of cropland available for manure application. However, in the meantime you must immediately pursue the lawful disposal of manure contained on your farm. The following options are available to you for disposing of manure:

1. Contact other farms to see if they have the capacity in their lagoons to accept manure from your facility.
2. Contact manure brokers to see if they would be willing to accept manure.
3. Contact wastewater treatment plants to see if they will accept manure.

Due to the unpermitted discharge of manure from the production area of your swine facility to waters of the State, you continue to meet the definition of a medium CAFO. As a result, you are required to obtain coverage under a CAFO NPDES permit.

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

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

The forms have been included with this letter. You must also submit a Manure Management Plan (MMP) for your operation.

The completed forms, management plan 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

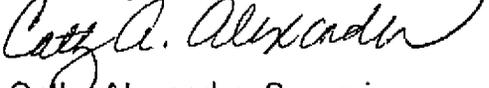
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Understand that you may be held liable for further impacts to waters of the State, which may include further degradation of habitat, fish kills, and possibly public health and nuisance complaints. Failure to mitigate potential releases could lead to enforcement action from this Agency.

Within **7 days** of receipt of this letter, please inform this office on your progress in disposing of manure from your facility. Within **45 days** of receipt of this letter, please submit an application for a CAFO NPDES permit or documentation that you will no longer discharge manure from your swine facility to waters of the State (including but not limited to demonstrating adequate acres are available for land application and that the manure lagoon has been at least partially emptied).

Should you have any questions, comments, or concerns regarding this letter feel free to contact me at 614-644-2021 or at cathy.alexander@epa.state.oh.us.

Sincerely,



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

cc: Jim Crawford, Ohio EPA –DERR
Kevin Elder, ODA-LEPP
Rob Hamilton, ODNR-DSWC
John Kaiser, Darke SWCD

Mr. John Fleck
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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 dairy 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 either obtain coverage under a CAFO National Pollutant Discharge Elimination System (NPDES) permit or demonstrate that you have eliminated the discharge so 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 completed forms, MMP, and check should be submitted to the following address:

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

It is my understanding that Fleck Brothers Farms is to install containment measures around the fuel storage area in order to prevent any future fuel spills from migrating into tiles or receiver structures. I encourage you to work with the Mercer County Soil and Water Conservation District if you should need assistance in correcting other issues at your facility.

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 ultimately lead to enforcement action from this Agency.