



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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Columbus, Ohio 43215

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MAILING ADDRESS:

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

January 26, 2010

CERTIFIED MAIL

Kelly Kaufman
Hallelujah Holsteins
3024 S. Jefferson Road
Wooster, Ohio 44691

Re: Notice of Violation, November 13, 2009 pollution complaint

Dear Mr. Kaufman,

Ohio EPA, Division of Surface Water is aware of a discharge of manure which came from your dairy farm. The spill was discovered on November 13, 2009. At approximately 1:27 p.m. on November 13, 2009, Wayne County Wildlife Officer Eric Ucker notified the Ohio EPA Spill Hotline of a discharge of manure from a field tile near your property.

BACKGROUND

The Ohio Department of Natural Resources (ODNR) had received a complaint from a citizen which stated that a creek was brown and smelled of manure. Mr. Ucker investigated the complaint and determined that your farm was the source of the manure which caused the discharge.

Manure was found to be entering an unnamed tributary to Killbuck Creek as the result of a discharge of land-applied manure from a field west of your facility.

Ohio EPA On-scene Coordinator (OSC) Kurt Kollar responded to the spill at approximately 3:42 pm on November 13. OSC Kollar received your permission to inspect the ditch and creek on your property and to collect water quality samples. OSC Kollar collected water quality samples in the tributary upstream of the discharge, within the drainage ditch on your property, and in the tributary downstream of the discharge. The results of the water quality samples collected on November 13 are displayed in Table 1.

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

Table 1. Water quality samples collected in response to discharge on November 13

Parameters (at right)	<i>Ammonia</i>	<i>Nitrate+Nitrite</i>	<i>TKN</i>	<i>Total Phosphorus</i>
	mg/L	mg/L	mg/L	mg/L
Sampling Location (below)				
<i>Upstream of discharge</i>	1.00	7.15	0.81	0.140
<i>Drainage ditch on Kaufman property</i>	435	5.91	822	49.8
<i>Downstream of discharge</i>	3.18	8.43	4.99	0.348

OSC Kollar met with you and recommended that you remove manure-laden water from the creek and that you prevent more impacted water from entering the tributary. OSC Kollar issued you a Notice of Violation for violations of Ohio Revised Code 6111.

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.

From a review of documentation produced by the Wayne County Soil and Water Conservation District (SWCD) and by OSC Kollar, it appears that you have not addressed many of the issues at your farm which have previously been raised by this office. For instance, there continues to be evidence of overflows from the sand settling basin on your property. This office sent you a Notice of Violation on May 24, 2006 in response to a discharge from your dairy. The letter listed several corrective actions that

were required in order to bring your facility into compliance with federal and state regulations. I am unaware of any documentation you have provided to demonstrate that you have completed the corrective actions.

Due to ongoing non-compliance with the federal Clean Water Act, this office believes that you continue to require coverage under a Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) permit.

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 mentioned above have been included with this letter. If you do not currently have a Manure Management Plan then you will need to develop one. I suggest that you contact the Wayne County SWCD for help in developing a MMP.

Additionally, please provide a report which details actions that have been taken or will be taken in order to prevent a reoccurrence of any spills from your dairy operation.

The completed forms, MMP, check, and report 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

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.

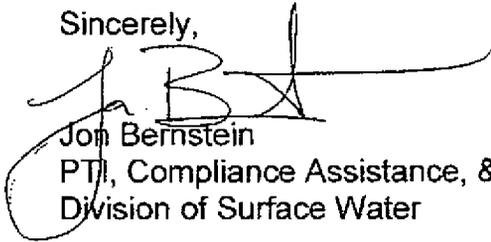
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Within 30 days of receipt of this letter, please submit an application for a CAFO NPDES permit and the report requested above.

Please be aware that this is the second time that this office has requested that you apply for a CAFO NPDES permit. Should you fail to apply for a CAFO NPDES permit, you will likely face escalated enforcement action from the State of Ohio.

If 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,

A handwritten signature in black ink, appearing to read 'Jon Bernstein', with a long horizontal flourish extending to the right.

Jon Bernstein
PTI, Compliance Assistance, & CAFO Unit
Division of Surface Water

cc: Kurt Kollar, OEPA-DERR
Duane Wood, Wayne SWCD
Eric Ucker, ODNR-DOW
Kevin Elder, ODA-LEPP
Tom Holmes, ODNR-DSWC