



Environmental  
Protection Agency

John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

February 28, 2012

**CERTIFIED MAIL**

Mr. John Wilson  
Jo-Jan Holsteins  
16646 Nashville Road  
Danville, Ohio 43014

Re: Notice of Violation, January 23, 2012 manure discharge from Jo-Jan Holsteins

Dear Mr. Wilson,

A complaint of a large amount of manure being applied to snow-covered fields along Black Road near Danville, Ohio was received by Ohio EPA on January 23, 2012. I (Jon Bernstein, Ohio EPA Division of Surface Water) investigated the complaint at approximately 12:45 p.m. on January 23.

Upon arrival in Danville, a significant flow of discolored water was observed flowing on the north side of US 62 in an unnamed tributary of East Branch Jelloway Creek. The water smelled of cow manure. The water was traced back to a field utilized by you for manure application. The fields (BlkRd-1 and BlkRd-2) are included in your Comprehensive Nutrient Management Plan (CNMP). Upon observation, snow melt was causing large amounts of dairy manure to flow off the field through a vegetated waterway. There was fresh manure still visible in the field.

You were contacted and shown the site of the manure runoff. Ground conditions would not allow for the access of equipment that could be used to mitigate the runoff. You were able to acquire a submersible pump which was placed in the unnamed tributary in order to provide aeration. You need to include emergency plans in your manure application planning, especially when applying during time periods with unfavorable ground and weather conditions. Additionally, increased monitoring of manure application fields is necessary when there is a higher probability of runoff.

Manure had been applied by custom applicator Denny Kaufman on January 20, 2012. While records of the January 20 manure application were kept, no weather forecast records were maintained. Mr. Kauffman indicated the manure source as "lagoon (full)". Land application of manure just prior to a large snowfall with a predicted thaw event several days later is a risky practice. Additionally, not maintaining weather forecast records is a violation of your CAFO NPDES permit. Only one tile check was conducted during the January 20 application and it is not clear where or when the tile check was performed.

Water quality samples were collected from an unnamed tributary on the north side of US 62 downstream of the application field, a clean road ditch upstream of the mixing zone of the clean road ditch and the unnamed tributary on the south side of US 62, and an unnamed tributary downstream of the mixing zone of the unnamed tributary and the clean road ditch. The results of these samples are displayed in Tables 1-3. Please note that the ammonia concentrations in the manure-impacted samples exhibit a chronic toxicity to aquatic wildlife.

Table 1. Water quality sample collected in unnamed tributary on north side of US 62

<b>Parameter</b>	<b>Result</b>	<b>Units</b>
BOD <sub>5</sub>	270	mg/L
Total Suspended Solids	126	mg/L
Ammonia	10.9	mg/L
Nitrate+Nitrite	3.78	mg/L
Total Kjeldahl Nitrogen	18.3	mg/L
Total Phosphorus	1.80	mg/L

Table 2. Water quality sample collected downstream of mixing zone in unnamed tributary of East Branch Jelloway Creek on south side of US 62

<b>Parameter</b>	<b>Result</b>	<b>Units</b>
BOD <sub>5</sub>	180	mg/L
Total Suspended Solids	61	mg/L
Ammonia	6.97	mg/L
Nitrate+Nitrite	3.24	mg/L
Total Kjeldahl Nitrogen	13.2	mg/L
Total Phosphorus	1.38	mg/L

Table 3. Water quality sample collected upstream of mixing zone in clean road ditch on south side of US 62

<b>Parameter</b>	<b>Result</b>	<b>Units</b>
BOD <sub>5</sub>	<2.0	mg/L
Total Suspended Solids	14	mg/L
Ammonia	<0.050	mg/L
Nitrate+Nitrite	0.72	mg/L
Total Kjeldahl Nitrogen	0.40	mg/L
Total Phosphorus	0.024	mg/L

## **VIOLATIONS**

Due to the unpermitted discharge of manure to waters of the State, Jo-Jan Holsteins has violated the following conditions of its NPDES permit:

**Part I,A,2,c.** There shall be no discharge of pollutants to waters of the State from land applied manure except for discharges that are composed of storm water runoff and/or snow melt runoff originating from a land area where manure from a CAFO has been **applied in compliance with the manure management plan and this permit.**

**Part II,B.** The discharge of manure or other wastes to waters of the State as defined in ORC 6111.01 and which include surface waters, wetlands (not included constructed treatment wetlands), and ditches is prohibited except in compliance with this permit.

**Part II,G.** The permittee shall be responsible for proper operation and maintenance of the manure storage, treatment, or disposal system.

**Part II,L.** The manure handling equipment shall be effectively maintained and operated at all times so that there is no discharge to waters of the State, except in compliance with Part I, A. In the event that the equipment fails to perform satisfactorily, including the creation of nuisance conditions or failure of an application area to adequately assimilate the manure, the permittee shall take immediate corrective actions including those actions that may be required by Ohio EPA, such as the acquisition of equipment capable of properly applying manure in the proper approved amounts in accordance with this permit.

### **Part VII. Production Area Monitoring and Inspections and Land Application Requirements:**

Inspect land application fields. In accordance with MMP. Date and signs of discharge or runoff into surface waters and/or conduits to surface waters of the State.

#### **Part VII, A. 5. Record Keeping Requirements: At a minimum, the following records must be kept by the permittee:**

c. Weather conditions at the time of application and for 24 hours prior to and following application.

**Part VII,B,2,a.** Prior to land applying manure, the permittee shall inspect the land application area to determine the suitability of the site for land application (considerations shall include tile location and depth, soil type, evidence of soil cracking, available water capacity of the soil, crop maturity, prior precipitation, forecasted precipitation, etc.) and document field conditions at the time of the inspection. See Part VII, A, 5. Broken tiles or blow out holes shall be repaired prior to land application.

**Part VII,B,3.** For land application sites with subsurface tile drainage, the permittee shall visually monitor all field tile outlets before, during and after application of manure to the site and record the results of that monitoring. The permittee shall have access to or methods/devices to stop or capture subsurface drain flow. If manure reaches the subsurface drain outlet to waters of the State, the application of manure shall cease and the flow stopped or captured. If land application has caused manure laden water to be discharged from a field tile, Ohio EPA shall be notified by calling 1-800-282-9378 as soon as possible, but in no case later than 24 hours following first knowledge of the occurrence. See Part I, A, 2, d.

**Part VII,B,6.** The permittee is responsible for complying with this permit for land application activities conducted on each site where the permittee, or anyone employed by the permittee, owns, operates, or land applies manure generated from the CAFO or determines timing and amount of manure to be applied on fields not otherwise owned, rented, or leased by the CAFO.

Other violations:

**Ohio Revised Code (ORC) 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;

**Your CNMP does not include application of manure to the Black Road fields in the month of January. By applying manure to this field in January, you have violated your NPDES permit.**

**You failed to submit an annual report for calendar year 2011 as required by your CAFO NPDES permit. Additionally, please submit your fall manure capacity evaluation to Ohio EPA. Conditions from your CAFO NPDES permit describing these items are listed below:**

**Part II,P.**

Adequate manure storage volume shall be provided and maintained to prevent the necessity of land applying manure on frozen and/or snow covered ground. No later than September 15 of each year, the permittee shall evaluate the storage capacity in their manure storage or treatment facilities and determine what steps are needed to avoid the need to land apply manure on frozen or snow covered fields for the upcoming winter. For example, a CAFO should plan to have at least four months of storage capacity available by December 1. The operating record for the facility shall include documentation of the storage level as well as what is considered in this evaluation, and what actions were taken to avoid the need for land application of manure on frozen or snow covered ground. Failure to perform the evaluation or failure to take action if the evaluation indicated that action was necessary to avoid land application on frozen or snow covered ground shall be considered a violation of this permit. See Part VII, B, 5.

**Part II,K.**

**ANNUAL REPORT:** By January 31 of each year, the permittee shall submit an annual report to Ohio EPA, Central Office, Division of Surface Water. The annual report shall be submitted on forms prepared by the Director and shall include, but not necessarily be limited to, the following:

1. The number and type of animals confined in the previous year.
2. Estimated amount of manure generated in the previous year in gallons or tons.
3. Total amount of manure removed from the facility for land application and/or distribution or utilization in gallons or tons.
4. Total number of acres for land application covered by the MMP.
5. Total number of acres under the control of the permittee that were used for land application in the previous year.
6. Manure distribution or utilization records.
7. Summary of the number of discharges from the production area and the number of discharges from land application areas that were not composed of agricultural storm water runoff for the past year, including date, time and approximate volumes.
8. Information on any non-compliance not previously reported to Ohio EPA. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
9. A statement indicating if the MMP was developed by a certified manure management planner.

10. A copy of the training/seminar attendance documentation required by Part II, G of this permit.

11. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, the results of calculations conducted in accordance with Part II, J, 4, and the amount of manure applied to each field during the previous twelve months.

**Please submit the following within 14 days of receipt of this letter:**

- **Annual report for calendar year 2011**
- **Fall manure capacity evaluation**
- **Copy of weekly inspections of manure storage levels for November through January**

**Should you continue to have manure capacity problems at your facility, then you may have to construct additional manure storage structures.**

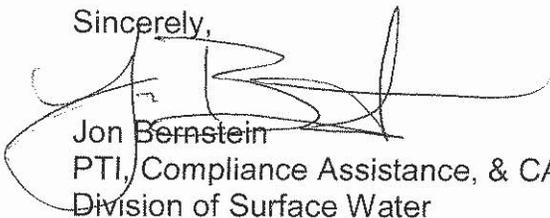
Understand that you could be held liable for further impacts to waters of the State, which may include further degradation of habitat, fish kills, and possibly public health and nuisance complaints. Please note that failure to mitigate potential releases and failure to take preventative measures to minimize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

Please remember that you are responsible for complying with your NPDES permit and Ohio's water pollution control laws. You should be making every effort to develop strategies to ensure that incidents such as this do not happen again.

This Notice of Violation does not preclude Ohio EPA or any other state or federal agency from seeking civil penalties or criminal charges against Jo-Jan Holsteins. If there is any statement in this letter which you believe is in error, please advise us in writing within 14 days.

Should you have any questions, comments, or concerns, please contact me at 614-728-2397 or at [jon.bernstein@epa.state.oh.us](mailto:jon.bernstein@epa.state.oh.us).

Sincerely,



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

cc: Kevin Elder, ODA-LEPP  
Kirk Hines, ODNR-DSWR  
Rob Clendening, Knox SWCD  
David Mitchem, Knox SWCD



Figure 1. Significant pooling of manure water in vegetated waterway.



Figure 2. Mixing zone of clean storm water flow and manure-contaminated flow.



Figure 3. Thick manure on top of application field. The manure had not assimilated into the soil.



Figure 4. Manure flowing off of field into vegetated waterway.