



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

September 8, 2004

Robert Unrast and Perry Unrast  
8758 ST RT 119  
Maria Stein, Ohio 45860

### **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

As the owners and operators of the Unrast Farm, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, the actions 2) you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best

management practices of these rules, the director may issue an order denying a review compliance certificate.”

### **Facts in Support of Findings of Deficiencies**

1. Unrast Farm is an existing concentrated animal feeding facility at 8758 State Route 119, Maria Stein, Ohio 45860, Mercer County and is referred to as “Facility.”
2. Robert Unrast and Perry Unrast are the owners and operators of Unrast Farm.
3. The Facility has the design capacity to raise or maintain approximately 212,000 layers or 2,120 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-105-IW on September 9, 1994, by the Ohio Environmental Protection Agency.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Unrast Farm of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated March 4, 2004, July 16, 2004, August 4, 2004, and August 25, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Unrast Farm and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of a RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
  - b. Insect and Rodent Control Plan as required by rule 901:10-2-19 of the O.A.C.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.


10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine that the presence and negative effects of insects and rodents at the facility and in the surrounding areas will be minimized.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,

  
Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Michelle McKay, LEPP Inspector  
Mercer SWCD



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## Certified Mail Return Receipt Requested

September 8, 2004

Mr. Jetse Boersma  
Nine Mornings Dairies  
6787 Road 144  
Antwerp, Ohio 45813

### **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Boersma:

As the owner and operator of Nine Mornings Daires, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best

management practices of these rules, the director may issue an order denying a review compliance certificate.”

### **Facts in Support of Findings of Deficiencies**

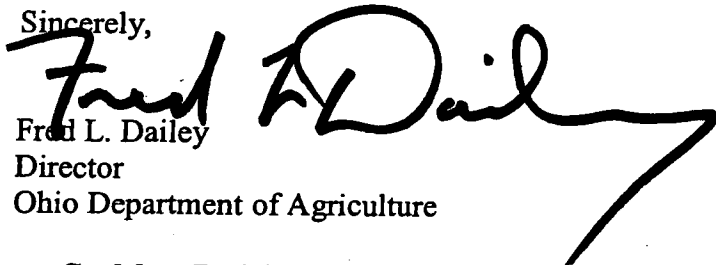
1. Nine Mornings Dairies is an existing concentrated animal feeding facility, at 6787 Road 144, Antwerp, Ohio, Paulding County and is referred to as “Facility.”
2. Jetse Boersma is the owner and operator of Nine Mornings Dairies.
3. The Facility has the design capacity to raise or maintain approximately 1,172 dairy cattle, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA PTI 08-076-NW, on August 13, 2002 by the Ohio EPA.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Jetse Boersma and Nine Mornings Dairies of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated September 5, 2003 and May 27, 2004
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Nine Mornings Dairies and found that the Facility failed to provide the following documents for the Director to make a determination in support of issuance of an RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the O.A.C.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Manure Management Plan conforms to the best management practices as required by the rules. You that you are required to install a liquid level indicator, depth marker, or other device to measure manure capacity and freeboard in your manure pond. Without this installation, you cannot comply with the requirements of your Manure Management Plan. You are further required to submit manure samples in compliance with rule 901:10-2-10 of the O.A.C.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,



Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Michelle McKay, LEPP Inspector  
Mercer SWCD





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## Certified Mail Return Receipt Requested

September 8, 2004

Roger Albers  
5967 Depweg Road  
Celina, Ohio 45822

### **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Albers:

As the owner and operator of the Roger Albers Farm, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best

management practices of these rules, the director may issue an order denying a review compliance certificate.”

### **Facts in Support of Findings of Deficiencies**

1. Roger Albers Farm is an existing concentrated animal feeding facility, 5967 Depweg Road, Celina, Ohio, Mercer County and is referred to as “Facility.”
2. Roger Albers is the owner and operator of Roger Albers Farm.
3. The Facility has the design capacity to raise or maintain approximately 125,600 layers or 1,256 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-10579 on July 3, 1997 by the Ohio EPA.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Roger Albers Farm of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated March 31, 2004, April 17, 2004, June 20, 2004, and August 23, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Roger Albers Farm. The Department found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the O.A.C for the Director to make a determination in support of issuance of an RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the O.A.C.
  - b. Insect and Rodent Control Plan as required by rule 901:10-2-19 of the O.A.C.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Manure Management Plan conforms to the best management practices as required by the rules.


10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine whether the presence and negative effects of insects and rodents at the facility and in the surrounding areas are minimized.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,

  
Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Michelle McKay, LEPP Inspector  
Mercer SWCD



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**Certified Mail Return Receipt Requested**

August 31, 2004

William Ringler  
Ringler Feedlots  
572 Waldo-Fulton Road  
Waldo, OH 43356

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Ringler:

As the owner and operator of Ringler Feedlots, the Ohio Department of Agriculture ("ODA") is issuing Director's Notice of Deficiencies Relating to Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice of Deficiencies is your written notice of deficiencies resulting in noncompliance, the actions you must take to correct the deficiencies, and the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a RCC application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal

feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the OAC and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

### Facts in Support of Findings of Deficiencies

1. Ringler Feedlots is an existing concentrated animal feeding facility located at 2135 Township Road 224, Ashley, Ohio 43003, Morrow County and is referred to as "Ringler Feedlots" or "Facility."
2. William Ringler is the owner and operator of Ringler Feedlots.
3. Ringler Feedlots has the design capacity to raise or maintain 7,000 swine, which constitutes 2,600 animal units or more than one thousand animal units.
4. Ringler Feedlots was issued Ohio EPA Permit to Install No. 01-5414 by the Ohio Environmental Protection Agency on November 21, 1994.
5. On August 19, 2002, the Ohio Department of Agriculture finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to obtain a RCC.
7. The Department notified William Ringler and Ringler Feedlots of the Facility's obligations to comply with ORC Section 903.04 and to obtain a RCC in correspondence dated August 22, 2002, November 17, 2003, December 16, 2003, and May 24, 2004.
8. As of May 24, 2004, the Department received and reviewed the application for a RCC submitted by Ringler Feedlots and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of a RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
  - b. Mortality Management Plan, as required by rule 901:10-2-15 of the OAC.
  - c. Insect and Rodent Control Plan, as required by rules 901:10-2-19 of the OAC.


9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state and that the Manure Management Plan does not conform to the best management practices of the rules.
10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine that the presence and negative effects of insects and rodents at the operation and in the surrounding areas are minimized.
11. Without a complete and accurate Mortality Plan, the Director cannot determine whether the Facility is being operated in a manner that conforms to the best management practices of the rules.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. Rule 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and the assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,

  
Fred L. Dailey

Director

Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Jim Young, LEPP Inspector  
Morrow SWCD





Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 430  
Phone: 614-387-0470 • Fax 614-728-63

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August 27, 2004

**Certified Mail Return Receipt Requested**

Ronald L. Flory  
Ohio Fresh Eggs Manager, LLC  
11212 Croton Road  
Croton, Ohio 43023-0173

**Re: Warning Letter**

Dear Mr. Flory:

My staff responded to complaints of manure discharges into waters of the State on August 4 from Croton Layer No. 1 and August 12, 2004 from Mt. Victory Layer No. 5. Based on investigations performed with Ohio EPA and based upon reports and conversations with OFE employees and agents, Ohio Fresh Eggs has violated Rules 901:10-1-10 and 901:10-2-14 of the Ohio Administrative Code (OAC). On August 18, 2004 at a meeting held with my staff of the Livestock Environmental Permitting Program (LEPP) you disagreed with some of the conclusions made by staff with respect to these investigations. For that reason, this letter explains our finding with respect to each incident with supporting calculations on manure application rates used by OFE. Finally, I note that irrespective of any disagreements, OFE staff has been responsive and cooperative to address manure discharges in both incidents including manure clean up.

The following rules are at issue:

Rule 901:10-1-10 (F) of the OAC provides:

“No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.”

Rule 901:10-2-14 of the OAC provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

“(i) The crop nitrogen requirements or removal as described in paragraph (C) of this rule and as expressed in thousands of gallons of manure per acre;

“(ii) The crop phosphorus requirements or removal as described in paragraph (D) of this rule and as expressed in thousands of gallons of manure per acre;

“(iii) The restrictions on the volume of liquid manure application, taken from paragraphs nine and/or fifteen in appendix A of this rule, with volume expressed as a measure of gallons per acre or inches per acre, with twenty seven thousand two hundred gallons equal to one acre/inch;

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; and

“(v) The application rate shall be adjusted to avoid surface ponding and/or runoff from a land application site. (Emphasis added)

“(b) For solid manure:

“(i) Either the crop nitrogen requirements or removal of nitrogen as described in paragraph (C) of this rule expressed in pounds per ton of dry manure per acre; (Emphasis added)

“(ii) The crop phosphorus requirements or removal as described in paragraph (D) of this rule expressed in pounds per ton of dry manure per acre; or

“(iii) The restrictions on the volume of solid manure applied, taken from paragraphs nine and/or fifteen in appendix A of this rule with volume expressed as a measure of tons/acre.”

Rule 901:10-2-14 (C) of the OAC provides, in pertinent part at (3):

“ Manure application rate nitrogen criteria:

“(3) In determining how to minimize nitrogen leaching that may impact waters of the state, the owner or operator shall do the following:

“(a) Assess each land application site with the Ohio nitrogen leaching risk assessment procedure contained in appendix C, table 5 of this rule;

“(b) If the nitrogen leaching risk assessment procedure completed in accordance with paragraph (C)(3)(a) of this rule demonstrates that the land application site has a high nitrogen leaching potential and no growing crop, then application of manure shall be limited to fifty pounds of nitrogen per acre calculated at the time of application prior to October first.” (Emphasis added)

August 4, 2004 Croton Layer No. 1

LEPP and Ohio EPA conducted an investigation as a result of a reported fishkill. After inspecting the site of the fishkill and discharge, examining operating records, and talking to OFE employees, the inspectors concluded that 156 wet tons of manure was applied from Layer No. 1 barns 5 and 7 with an average moisture content of 47.1%.

The application rate was reported at 6 tons/acre but there was confusion over whether the application rate was in wet or dry tons. Dick Rowley stated that he estimated the moisture in the manure and removed it and that the data on the forms was in dry tons.

In our investigation, Ron Flory had the D & D truck weighted with manure close to the moisture that was hauled to the field. This indicated the 12 and 15 wet tons per truck were hauled. Average manure nutrient data from houses 5 and 7 at Layer 1 on a dry basis was 0.73% ammonia nitrogen, 2.42% organic nitrogen, 6.23% phosphate, and 3.56% potassium.

$$82.5 \text{ dry tons} \times .73/100 \times 2000 \text{ lb/ton} = 1,205 \text{ lbs ammonia N}$$

$$82.5 \text{ dry tons} \times 2.42/100 \times 2000 \text{ lb/ton} = 3,993 \text{ lb organic N}$$

$$82.5 \text{ dry tons} \times 6.23/100 \times 2000 \text{ lb/ton} = 10,280 \text{ lb P}_2\text{O}_5$$

$$82.5 \text{ dry tons} \times 3.56/100 \times 2000 \text{ lb/ton} = 5,874 \text{ lb K}_2\text{O}$$

#### Nitrogen

Based on the ODA Rule, nitrogen applications are limited to 50 lb as applied N by adding ammonia N to 1/3 organic N during summer applications unless a cover crop is provided.

$$1205 + 1/3 (3993) = 2536 \text{ lb N as applied}$$

$$2536 \text{ lb N} / 26 \text{ ac} = 97.5 \text{ lb N/ac}$$

#### Phosphate

The maximum rate for phosphate applications is 500 lb/ac

$$10,280 \text{ lb P}_2\text{O}_5 / 26 \text{ ac} = 395 \text{ lb P}_2\text{O}_5/\text{ac}$$

#### Potash

$$5,874 \text{ lb K}_2\text{O} / 26 \text{ ac} = 226 \text{ lb K}_2\text{O}/\text{ac}$$

A nitrogen application rate of 50 lb/ac would be a rate of 1.63 dry ton/ac

P<sub>2</sub>O<sub>5</sub> rate at 500 lb/ac would be: 4 dry ton/ac

K<sub>2</sub>O rate at 500 lb/ac would be: 7.02 dry ton/ac

Therefore using the most limiting nutrient chart would limit the application to 1.63 dry tons/ac or 3.1 wet tons/ac at 47.1 % moisture based on nitrogen. The 3.17 dry ton/ac application rate or 6 wet ton application rate is a violation of OFE's permit and is about 2 times the amount allowed by your permit. OFE's staff should schedule time to review application guidelines with their manure applicator (Dick Rowley) and use the actual manure analysis for moisture content, which OFE is required to perform. The most limiting nutrient chart should be clearly explained along with manure nutrient data from the houses supplying manure.

Copies of documents relied upon for the above calculations are enclosed with this letter.

Finally, we note that your Permit to Operate has a Manure Management Plan for solid manure requires Distribution and Use in accordance with Rule 901:10-2-11 of the OAC. OFE may make an operational change to apply solid manure but this requires full compliance with the record keeping specified by Rule 901:10-2-16(A)(1)(c) of the OAC

Although not required now, we recommend that records of weather forecasts with predicted rainfall are kept and manure is stockpiled during periods or predicted periods of inclement weather. In the future, records of forecasts and weather conditions both during and after manure application will be required by ODA rules.

The attached map shows the application area, the ponds, and Otter Fork immediately west of the ponds.

August 12, 2004 Mt. Victory Layer No. 1

ODA received a complaint of a manure spill into an unnamed tributary of McDonald Creek on August 12, 2004 and notified Ohio EPA. Based on Ohio EPA's inspection of the 79 acre application site and communications with your staff, we have learned that egg wash water was irrigated for approximately eleven (11) hours on August 11, 2004 and irrigated for several more hours on August 12.

For liquid manure application, it is required that application rates are correct, that the soil's available water capacity is checked, that plugs are available, and that periodic observations are made of manure application. Unless these best management practices are performed, then manure runoff is discharge to waters of the state and a violation. Within thirty (30) please provide me with a report of the above incidents including your views on the land application of the solid manure, your plans to manage solid manure through Distribution and Utilization or by other means, and the use of best management practices for egg wash water irrigation.

Sincerely,



Kevin H. Elder  
Executive Director, Livestock Environmental Permitting Program

Enclosure

Cc: Andy Rogowski, LEPP Engineer  
Jim Young, LEPP Inspector  
Rick Wilson, Ohio EPA  
Hardin SWCD  
Licking SWCD

**Before the Ohio Department of Agriculture  
State of Ohio**

**In the matter of:**

State Line Agri, Inc.  
9159 State Route 118  
Ansonia, Ohio 45303

2004-286

**Order**

The parties have reached an agreement resolving the rule violations and proposed civil penalties contained in ODA's March 8, 2004 Notice of Opportunity for Hearing Letter. This agreement negates the need for an administrative hearing pursuant to Revised Code Chapter 119.

Based on the parties' Joint Stipulation and Settlement Agreement, by the authority vested in my office by law, it is hereby

**ORDERED:**

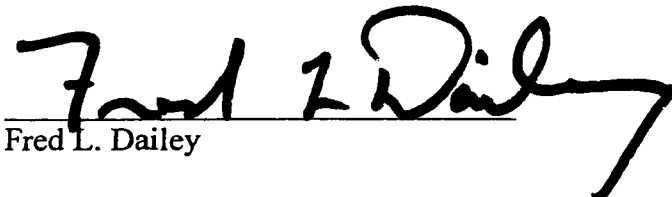
1. That, based on State Line's failures to maintain freeboard in its manure lagoons, State Line is ordered to pay the ODA proposed civil penalty in the amount of \$200.00 by check made payable to "Treasurer, State of Ohio, for the Livestock Management Fund 5L8," within ten days after this Order is journalized.

2. That State Line is ordered to install a freeboard depth marker, or staff gauge into its manure lagoons by September 1, 2004.
3. That, upon journalization, a certified copy of this Order be sent to State Line Farms.

Effective date of this Order: Upon Journalization.

Fred L. Dailey, Director  
Ohio Department of Agriculture



  
Fred L. Dailey

Entered, Ohio Department of Agriculture Journal this 10<sup>th</sup> day of  
August 2004, by Corrie Ellis.

#### Notice

In accordance with section 119.12 of the Revised Code, the Director's order may be appealed to the court of common pleas of the county in which your business is located or the county in which you reside. Notice of any appeal must set forth the order appealed from and the grounds for appeal and must be filed with the Director and the court within fifteen days of the date of mailing of this Order.

CERTIFICATION

STATE OF OHIO

COUNTY OF LICKING, SS

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of the ORDER which was entered upon the order journal of the Ohio Department of Agriculture on the 19<sup>th</sup> day of August, 2004.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Reynoldsburg, Ohio, this 19<sup>th</sup> day of August, 2004.

  
Fred L. Dailey, Director  
Ohio Department of Agriculture





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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Certified Mail return Receipt requested

August 6, 2004

Henk Arts  
5624 Elm Sugar Rd.  
Convoy, OH 45832  
419-749-0033

Re: Arts Dairy  
5624 Elm Sugar Rd.  
Convoy, OH 45832  
419-749-0033  
Tully Township  
Van Wert County

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Arts:

I have been informed that you received a warning letter from the Ohio Department of Agriculture's Livestock Environmental Permitting Program on January 27, 2004. In January inspectors found that you lacked freeboard in your manure storage pond. In February inspectors found that you applied manure on frozen or snow-covered ground, which staff attribute to problems in managing your manure storage capacity and Kevin Elder, Executive Director, wrote to you on March 19, 2004 with recommended steps to take to improve manure management. On July 28, 2004, staff from the Livestock Environmental Permitting Program visited your dairy to inspect the freeboard and found that you are once again not in compliance.

The following law is at issue:

Division (A) of Section 903.16 of the Ohio Revised Code provides, in pertinent part:

" The Director of Agriculture may propose to **require corrective actions and assess a civil penalty** against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is **not in compliance with** section 903.02, 903.03, or 903.04 of the Revised Code, **the terms and conditions of a permit to install, permit to operate,** or review compliance certificate issued for the concentrated animal feeding facility, .... **or rules adopted under division (A) of section 903.10 of the Revised Code.** (Emphasis added)



“However, the director may impose a civil penalty only if all of the following occur:

- (1) The owner or operator is **notified in writing of the deficiencies resulting in noncompliance**, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.”  
(Emphasis added)

The following is the rule at issue:

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- “(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides **adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard.**”  
(Emphasis added)

You have sixty (60) days from the date on this letter within which you must correct these deficiencies by removing the manure and applying it correctly. You must keep records of the manure amounts and the final application or use of the manure in your operating records. You must make these records available to the LEPP inspector. In addition to applying manure to obtain the required freeboard, I expect that you will apply enough manure yet this summer/fall to prevent having to apply on frozen or snow covered ground.

After the sixty (60) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, I will consider proceeding with other enforcement options, including an assessed civil penalty of \$5,760.00.

#### Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the Ohio Department of Agriculture shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred

Arts Dairy

to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level. The appropriate penalty in this matter will be \$5,760.00 unless the deficiencies are corrected.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Van Wert SWCD



Governor Bob Taft  
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## Certified Mail Return Receipt Requested

June 17, 2004

Zylstra Dairy  
Mr. Willem Zylstra  
11753 Road 21  
Antwerp, Ohio 45813

Re: Warning Letter

Dear Mr. Zylstra:

Twice in 2004 either the Director or myself have had to issue formal enforcement notice letters to you for violations occurring at your facility. A warning letter and a Notice of Deficiencies Resulting in Noncompliance were issued to you. In both cases, ODA inspectors found that, among other violations, you failed to maintain the required freeboard.

Rule 901:10-2-08 of the Administrative Code governs operations at a concentrated animal feeding facility and this rule provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard. (Emphasis added)

You asked Jim Young, ODA Inspector, if you could use the leachate pond to relieve the manure storage in the existing fabricated manure storage structure. As reported by Mr. Young, you were again unable to maintain the required amount of freeboard as required by the cited rule. The silage leachate pond was authorized to be built in accordance with Permit to Install ZLY-0001.PI001.PAUL issued on July 2, 2003. The silage leachate pond was constructed to the same specifications as the existing manure storage pond. Gary Zwolinski, ODA Engineer, inspected the new leachate pond on May 5, 2004 and found it to be completed except for the final seeding. However, you were notified in

writing that the pond could only be used when the following information was received in this office:

“\* A notarized statement from the owner certifying that the pond was constructed in accordance with the design plans.

\* A copy of the completed and approved as-built plans along with the QA [quality assurance] documentation certifying the proper construction of the pond.

“Once this information is received, a letter will be drafted and sent to the Zylstra Dairy informing them that the pond can be put into use. If there are any questions, feel free to call.”

The requirements listed in Mr. Zwolinski's May 5, 2004 communication to you were also listed in my Warning Letter issued to you on March 5, 2004:

Rule 901:10-2-02 of the Ohio Administrative Code provides, in pertinent part:

“Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals.”

After Mr. Young's inspection, you sent a letter to Mr. Zwolinski dated June 2, 2004, stating that, according to Mr. David Gerdeman, P.E., who is responsible for the construction for Zylstra Dairy, the silage leachate pond was completed, tested and inspected in the first week of May 2004. You stated that “[T]his means that the leachate pond that was constructed meets or exceeds design plans.” However, your letter did not include the information that Mr. Zwolinski requested nor did your letter satisfy the rule cited. ODA did not receive the notarized statement until June 4, 2004 and did not receive the as-built plans until June 8, 2004.

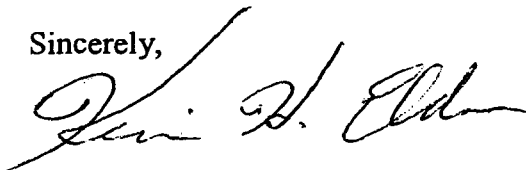
During an inspection on June 7, 2004, Mr. Zwolinski observed that the leachate pond was in use and contained manure. A letter to approve use of the leachate pond for manure storage was prepared and issued by Mr. Zwolinski dated June 9, 2004.

I find it necessary to go “on the record” yet again to warn you that I perceive a pattern of noncompliance that concerns me. In this case, you knew what the rule required, you were told by Gary Zwolinski how to comply but you proceeded to use the leachate pond for manure storage at least 72 hours in advance of receiving authorization. On its face, this appears to be a short period of time and involved some paperwork for compliance. It did not present harm to the environment. But the real problem, which is a potential environmental problem, is your continued inability to manage manure removal in a timely manner and to comply with freeboard. We have only completed the first half of calendar year 2004 and yet this Department has had to warn you three times about

freeboard problems and inspect your facility numerous times. We still find that you have trouble following the rules. My staff informs me that you and members of your family blame everybody and everything for your difficulties and take responsibility for nothing. As a farmer, I, too, understand that weather has positive and negative affects on agricultural operations of all sizes. Nevertheless, we are expected to plan and manage for Ohio weather conditions that are known and foreseeable. It has been my pleasure as Executive Director of this new program to find that farmers can and do manage and plan for the ill effects of weather. Those with problems contact us, work with us, or use the assistance of their local soil and water conservation district to minimize actual or potential water pollution. Most of the CAFFs for which I have regulatory responsibility consistently comply with laws and rules.

With all of the above in mind, I want to remind you that your Permit to Operate expires on July 2, 2008. To be eligible for permit renewal, your compliance history will be evaluated. Your compliance history is in your control. It is your responsibility. Continued inattention to requirements may well result in more enforcement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin H. Elder".

Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Cathy Alexander, Ohio EPA  
Liz Pessefall, Paulding SWCD



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## Certified Mail Return Receipt Requested

June 11, 2004

WestFin, LLC  
c/o Jefferson L. Blauser and Elizabeth E. Blauser  
Rebecca Blauser  
4361 State Route 202  
Tipp City, Ohio 45371

Re: Notice of Deficiencies Resulting in Noncompliance

Dear Mr. and Mrs. Blauser and Ms. Blauser:

On May 21, 2004, I issued a Notice of Deficiencies Resulting in Noncompliance ("Notice") to Jefferson Blauser and to Christopher Blauser, D.V. M. as a result of serious violations discovered at an operation located at 11566 U.S. Route 127 in Versailles, Ohio. By that date, the ODA Division of Animal Industry had issued two violations notices against Ohio Valley Farms, Inc. and planned legal proceedings for violation of 941.14 of the Ohio Revised Code. The May 21<sup>st</sup> letter also notified the recipients of other deficiencies that resulted in noncompliance with the ODA Livestock Environmental Permitting Program. As a result of these notices, Dr. Glauer and Kevin Elder of my staff met with Christopher Blauser and Dr. Minton on May 27, 2004 to discuss the seriousness of the violations and required actions to correct the violations.

You are operating a concentrated animal feeding operation without authorization by permit and you are in violation of a number of rules governing the operation of your operation. A copy of the May 21, 2004 Notice of Deficiencies Resulting in Noncompliance is attached hereto and the findings and actions required for corrective actions are fully incorporated into this Notice.

You are required to do the following:

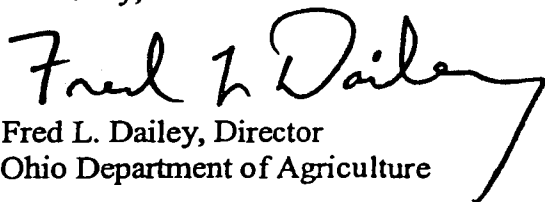
Submit a complete application for a Permit to Operate to the ODA Livestock Environmental Permitting Program not later than July 1, 2004. Reduce the total number of animals at your facility to less than 1,000 animals by June 15, 2004 and maintain the reduced number of swine until such time as those decisions with respect to permits are final and effective.

In the alternative, you may submit a closure plan to ODA Livestock Environmental Permitting Program not later than July 1, 2004. The requirements for closure are set forth in Rule 901:10-2-18 of the Ohio Administrative Code and include reduction or elimination of the total number of animals at your operation.

While the alternative of operation closure may appear to remove you from the jurisdiction of the Livestock Environmental Permitting Program, you are advised that recent changes to Ohio law mean that the Ohio Department of Natural Resources in coordination with the Darke Soil and Water Conservation District, may issue an order pursuant to Section 1511.02 of the Ohio Revised Code to require you to obtain a Permit to Operate from ODA.

ODA will re-inspect the facility to determine if you have complied with this Notice. ODA will expect a complete Permit to Operate application on the date noted above. If it is determined that you are not in compliance, then I will consider an enforcement action and a civil penalty for these violations of Chapter 903 of the Ohio Revised Code.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

c: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Dr. David Glauer, Chief, Division of Animal Industry  
Michelle McKay, LEPP Inspector  
Tim Brunswick, Darke SWCD  
Christopher Blausler, D.V.M. [11566 U.S. Route 127, Versailles, Ohio 45380]  
File



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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June 4, 2004

Certified Mail Return Receipt Requested

Brian and Kevin Winner  
13324 U.S. Route 127  
Rossburg, Ohio 45362  
Attention: Mr. Brian Winner

Re: Warning Letter

Dear Mr. Winner:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on May 24, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint about flies from your facility. The ODA inspector found that insects were well under control and the facility is well kept. However, we find that WB Poultry is not complying with the Permit to Install (PTI) issued to Brian and Kevin Winner, WB Poultry on September 25, 1998.

Section 903.04 of the Ohio Revised Code provides as follows at (B):

“ On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, the authority to enforce terms and conditions of installation permits that previously were issued to animal feeding facilities shall be transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those installation permits. On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, an installation permit concerning which enforcement authority has been transferred shall be deemed to have been issued under this section.”



The Director of the Ohio Department of Agriculture finalized the program to regulate concentrated animal feeding facilities on August 19, 2002. On that date, all PTIs issued by Ohio EPA were transferred to this Department for enforcement.

Our files show that Ohio EPA issued Notice of Violation letters to you dated July 30, 2001 and December 13, 2001. In addition, and as documented in inspection reports dated February 10, 2004 and May 24, 2004, ODA staff finds that WB Poultry is still not complying the PTI. The special conditions in the Ohio EPA PTI for annual manure sampling have not been fulfilled. Special condition 16 of the PTI required insect control measures, including record keeping on the use of fly cards, inspections conducted, and other visual monitoring. This documentation is missing. In short, the PTI required documentation from you of specific operations at your facility and you have not complied with these requirements.

All of the record keeping requirements in your Ohio EPA PTI may also be found in rules 901:10-2-10, 901:10-2-16, and 901:10-2-19 of the Ohio Administrative Code. Any authorization to operate a concentrated animal feeding facility in Ohio will require compliance with these rules. Your immediate attention to this matter is required. If, at the time of your next inspection, your records have not improved, I will recommend enforcement to the Director, including an assessment of a penalty.

Sincerely,



Kevin H. Elder,  
Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Tim Brunswick, Darke SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

May 26, 2004

Mr. Hette DeVries  
7188 Sager Road  
LaRue, Ohio 43332

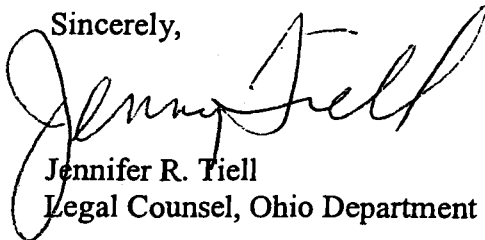
Mr. Ronald L. Waterman  
Barrett, Easterday, Cunningham,  
Eselgroth & Waterman, LLP  
5455 Rings Rd., Ste. 100  
Dublin, Ohio 43017

Re: Settlement Agreement

Gentlemen:

Enclosed please find a copy for each of you of the final executed Settlement Agreement, Order No. 2004-112 effective April 19, 2004.

Sincerely,



Jennifer R. Tiell  
Legal Counsel, Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Mary Beth Ruttan, Assistant Attorney General  
File

**Before the  
Ohio Department of Agriculture**

**In the matter of**

**April 19, 2004**

Mr. Hette de Vries  
De Vries Dairy, LLC  
7188 Sager Road  
LaRue, Ohio 43332

Order No. 2004-112

**Settlement Agreement**

1. This agreement is made between Hette de Vries on behalf of De Vries Dairy, LLC and the Ohio Department of Agriculture (ODA).
2. De Vries Dairy, LLC stipulates to the jurisdiction of ODA over this matter pursuant to Ohio Revised Code Chapter 903.
3. For purposes of this Settlement Agreement, De Vries Dairy, LLC does not dispute the allegations set forth in the Notice of Opportunity for Hearing dated March 8, 2004 sent to De Vries Dairy, LLC by the Director of the Ohio Department of Agriculture. Further, De Vries Dairy, LLC stipulates that it was properly served and received the March 8, 2004 Notice from the Director and that he timely requested a hearing pursuant to that Notice.
4. This Settlement Agreement is made between the parties as the complete and final settlement of all matters referred to in the Notice of Opportunity for Hearing dated March 8, 2004.
5. The parties agree that the terms of the Settlement Agreement bind the parties hereto, their assigns and successors in interest.
6. Based upon the foregoing as a full and complete settlement of this matter and in the mutual best interests of the parties, De Vries Dairy, LLC and ODA agree to the following settlement:
  - a. De Vries Dairy, LLC waives its right to a hearing pursuant to Chapter 119 of the Ohio Revised Code and specifically withdraws its request for a hearing in this matter.

- b. DeVries Dairy, LLC agrees to pay a civil penalty of \$ 700.00, which shall be paid to "The Livestock Management Fund" as required by Section 903.19 of the Ohio Revised Code, the full amount to be paid within ten (10) days after the date this Settlement Agreement is accepted by the Director.
7. Hette de Vries and De Vries Dairy, LLC waive any and all claims and causes of action that they may have against the State of Ohio, ODA, and any officers, employees, or agents of either, arising out of the matters which are the subject to this Settlement Agreement. This document is a public record in accordance with Section 149.43 of the ORC and shall be released by ODA if requested and only if required by law.

DE VRIES DAIRY, LLC

*Hette de Vries*

Hette de Vries

*director*

Title

*Ronald L. Waterman*

Ronald L. Waterman  
Barrett, Easterday, Cunningham,  
Eselgroth & Waterman, LLP  
5455 Rings Rd., Ste. 100  
Dublin, OH 43017.

*Fred L. Dailey*

Fred L. Dailey, Director  
Ohio Department of Agriculture



*John L. Shailer per [unclear] 5/21/04*  
John L. Shailer  
Assistant Attorney General for the  
Ohio Department of Agriculture  
*MJR*



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
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## Certified Mail Return Receipt Requested

Christopher Blausler, D.V.M.  
11566 U.S. Route 127  
Versailles, Ohio 45380

Jefferson Blausler  
4361 State Route 202  
Tipp City, Ohio

May 21, 2004

Re: Notice of Deficiencies Resulting in Noncompliance

Dear Sirs:

Staff of the Ohio Department of Agriculture has advised of serious violations occurring at an operation owned and operated by you in Versailles, Ohio. The ODA Division of Animal Industry has issued two violations notices and may initiate legal proceedings against you for violation of 941.14 of the Ohio Revised Code. The purpose of this letter is to notify you of other deficiencies at your operation that result in noncompliance with the ODA Livestock Environmental Permitting Program. You are operating a concentrated animal feeding operation without authorization by permit and you are in violation of a number of rules governing the operation of your operation.

The following are the sections of law at issue:

Section 903.16(A) of the Ohio Revised Code provides as follows:

“The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A) of section 903.10 of the Revised Code.”

Section 903.03 (A)(2) provides as follows:

“Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the Director under this Section.”(Emphasis added)

Section 903.01(E) provides as follows:

“Concentrated animal feeding facility means an animal feeding facility with a total design capacity of more than one thousand units.” (Emphasis added)

Section 903.01(B) provides as follows:

"Animal feeding facility" means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

"Animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure. (Emphasis added)

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

ODA staff of the Livestock Environmental Permitting Program inspected the operation on April 29 and May 19, 2004. We found that manure from all barns is stored, treated, and handled in a manner that demonstrates that the operation is a single animal feeding facility as defined in the statute. For example, only one separate covered manure storage building is used to store manure from the entire operation. In addition, manure from all barns is commingled over the site such that there is only one common area of manure disposal. ODA finds that you are operating an animal feeding facility with design capacity of more than one thousand animal units or more than 2, 500 swine. You do not

have a permit to install issued by the Director of the Ohio Environmental Protection Agency and do not have a permit to operate issued by the Ohio Director of Agriculture.

The following rule is at issue:

Rule 901:10-2-07 of the Administrative Code provides as follows:

“(A) Unless otherwise indicated, an application for a permit to operate shall contain the information required in rule 901:10-1-02 of the Administrative Code and shall attach all of the following information:

- (1) A manure management plan that complies with the best management practices set forth in rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the Administrative Code.
- (2) An insect and rodent control plan that conforms to best management practices and is in accordance with rule 901:10-2-19 of the Administrative Code.
- (3) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code.
- (4) An emergency response plan in accordance with rule 901:10-2-17 of the Administrative Code.

“(B) If a biosecurity plan is submitted, it shall be included with the permit to operate application.”

In determining that you operate without authorization by permit, staff also finds that your operation lacks all of the plans listed in the rule. Further, mortality and manure are dumped on the premises contrary to any generally acceptable agricultural practices or any applicable best management practices.

To correct these violations, you are required to do the following:

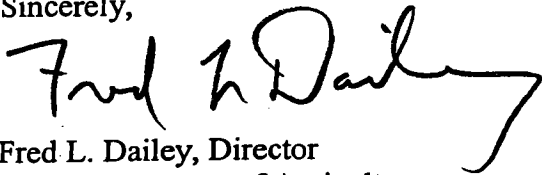
Submit a complete application for a Permit to Operate to the ODA Livestock Environmental Permitting Program not later than July 1, 2004 to the ODA Livestock Environmental Permitting Program. Reduce the total number of animals at your facility to less than 1,000 animals by June 15, 2004 and maintain the reduced number of swine until such time as such time those decisions with respect to permits are final and effective.

In the alternative, you may submit a closure plan to ODA Livestock Environmental Permitting Program not later than July 1, 2004. The requirements for closure are set forth in Rule 901:10-2-18 of the Ohio Administrative Code and include reduction or elimination of the total number of animals at your operation.

While the alternative of operation closure may appear to remove you from the jurisdiction of the Livestock Environmental Permitting Program, you are advised that recent changes to Ohio law mean that the Ohio Department of Natural Resources in coordination with the Darke Soil and Water Conservation District, may issue an order pursuant to Section 1511.02 of the Ohio Revised Code to require you to obtain a Permit to Operate from ODA.

ODA will re-inspect the facility to determine if you have complied with this Notice. If it is determined that you are not in compliance, then I will consider an enforcement action and a civil penalty for these violations of Chapter 903 of the Ohio Revised Code.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Dr. David Glauer, Chief, Division of Animal Industry  
Michelle McKay, LEPP Inspector  
Tim Brunswick, Darke SWCD  
File





Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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**Certified Mail return Receipt requested**

John L. Jackson  
1048 ST RT 235 N  
DeGraff, Ohio 43318

May 19, 2004

**Re: Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Jackson:

This letter is to notify you in writing of the deficiencies resulting in noncompliance at your facility, to inform you of the actions you must take to correct those deficiencies, and to provide you the time period within which the corrections must be made in order to attain compliance.

The following are the sections of law at issue:

Section 903.16(A) of the Ohio Revised Code provides, in pertinent part, as follows:

“ The Director of Agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including.... rules adopted under division (A) of section 903.10 of the Revised Code.”

Section 903.16 of the ORC provides, in pertinent part, as follows:

“Civil penalties shall be assessed under this division as follows:

(1) A person who has violated... rules adopted under division (A) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in

rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.”

Section 903.01 of the ORC defines “manure” and “mortality composting” at divisions (O) and (R) respectively:

“Manure” means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

“Mortality composting” means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.”

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides, in pertinent part, as follows:

“This rule establishes best management practices that govern land application of manure on land application sites. The land application of manure at each land application site shall be recorded in the operating record in accordance with rule 901:10-2-16 of the OAC.”

Rule 901:10-2-14(B)(4) of the OAC provides as follows:

“All land application of manure shall comply with all restrictions contained in appendix A of this rule.”

Rule 901:10-2-15 of the OAC provides as follows:

“A permit to operate shall include a plan for the disposal of dead livestock. The plan shall include best management practices to burn, bury, render or compost consistent with sections 941.14, 953.26, and 1511.022 of the Revised Code. In the alternative, the owner or operator may choose to follow the requirements set forth in section 3734.021 of the Revised Code and rules promulgated thereunder. Records for implementing the plan for the disposal of dead livestock shall be included in the operating record set forth in rule 901:10-2-16 of the Administrative Code.”

Rule 901:10-1-07 of the OAC provides, in pertinent part:

“(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the Director on a form prescribed by the Director:

\* \* \* \* \*

“(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;”

On April 20, 2004, the ODA Livestock Environmental Permitting Program (LEPP) received a complaint regarding manure that was over applied at your farm. LEPP conducted an inspection. At the same time, the Logan Soil and Water Conservation District contacted LEPP as a result of a similar complaint and an investigation by the District. The NRCS District Conservationist and an ODNR Wildlife Biologist also visited your farm on this date to take wetland measurements.

None of the inspectors observed over application of manure or manure run-off that was cited in the complaint. Instead, LEPP discovered that you have disposed of liquid and solid hog manure in the wetland.

On April 22, 2004, LEPP sent an inspector and an engineer to investigate the wetland. Both concluded that the accumulation of manure in the wetland could not have been caused by run-off from the surrounding field or from an application too close to the wetland. Where the solids are accumulated, there are tracks that look as if someone backed into that area of the wetland. The tread was still visible in the soil. The solids (which were easily distinguishable from the dark black soil by their light to medium brown color) were as deep as about 8 inches on the outer 50-75 feet of the wetland and a liquid/slurry type hog manure (mixed with normal runoff water) appeared to be an average of 6-8 inches over about an acre. A little further south, near where the manure applicator got stuck a couple days prior, Jason Bell, Logan County Soil and Water Conservation District, and Michelle McKay, LEPP Inspector, noted additional manure solids that were also very deep, 8+ inches. Hog hair and fly larvae were abundant. LEPP noted that many of the solids were covering the reeds in the wetland, meaning that the vegetation was not growing on the manure, which indicated that the manure was there relatively recently.

The manure was disposed of or dumped into the wetlands. The manure was not stockpiled or land applied according to best management practices set forth in rules adopted pursuant to Section 903.10 of the Revised Code, specifically Rule 901:10-2-14 of the OAC.

LEPP also found bones, carcasses, and other hog parts spread on the surface of your fields. You have not decomposed the hog mortality as allowed by Rule 901:10-2-15 in order to land apply it with other manure in accordance with Rule 901:10-2-14. You have not complied with the alternative best management practices specified in Rule 901:10-2-15 to burn, bury, or render the mortality.

Finally, ODA finds that this is at least the second time that you have failed to have required records available for inspection as is required by Rule 901:10-2-16. While you have previously faxed or mailed much of this information to LEPP's office, you could not provide these records or records of any sampling (including soil and manure samples and the stream samples required by your Ohio EPA permit) the day of the inspection. You have a lack of documentation of manure quantities, manure removal dates, name of applicators, amounts handled by each applicator—all of this is unaccounted for in any records, a violation of Rule 901:10-2-16 of the OAC

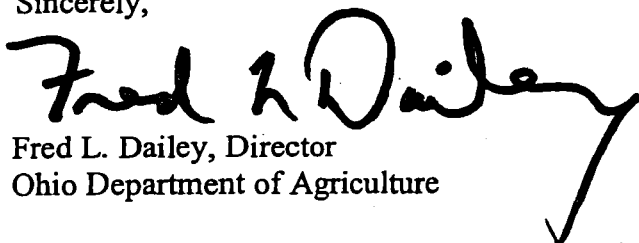
You have thirty (30) days within which you must correct these deficiencies by removing the manure from the wetland and applying it correctly. In the alternative, you may remove the manure from the wetland and arrange for its transport and use through distribution and utilization according to Rule 901:10-2-11 of the OAC. You must keep records of the manure amounts and the final application or use of the manure in your operating records and you must make these records available to the LEPP inspector.

After the thirty (30) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, I will consider other enforcement proceedings, including payment of a penalty.

Finally, I must remind you that you continue to operate your farm without either a Permit to Operate or a Review Compliance Certificate (RCC) as required by Sections 903.03 and 903.04, respectively, of the ORC. By letter dated December 5, 2003, I had proposed to deny a Review Compliance Certificate to Jackson Farms. A hearing on the proposed denial was postponed, pending good faith efforts by you to comply with all RCC requirements, including affidavits submitted by you under oath to comply with the law.

The violations cited in this Notice are serious and require your prompt attention.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Jason Bell, Logan SWCD  
Cathy Alexander, Ohio EPA

**Before the  
Ohio Department of Agriculture**

**In the matter of**

**April 19, 2004**

Mr. Hette de Vries  
De Vries Dairy, LLC  
7188 Sager Road  
LaRue, Ohio 43332

Order No. 2004-112

**Settlement Agreement**

1. This agreement is made between Hette de Vries on behalf of De Vries Dairy, LLC and the Ohio Department of Agriculture (ODA).
2. De Vries Dairy, LLC stipulates to the jurisdiction of ODA over this matter pursuant to Ohio Revised Code Chapter 903.
3. For purposes of this Settlement Agreement, De Vries Dairy, LLC does not dispute the allegations set forth in the Notice of Opportunity for Hearing dated March 8, 2004 sent to De Vries Dairy, LLC by the Director of the Ohio Department of Agriculture. Further, De Vries Dairy, LLC stipulates that it was properly served and received the March 8, 2004 Notice from the Director and that he timely requested a hearing pursuant to that Notice.
4. This Settlement Agreement is made between the parties as the complete and final settlement of all matters referred to in the Notice of Opportunity for Hearing dated March 8, 2004.
5. The parties agree that the terms of the Settlement Agreement bind the parties hereto, their assigns and successors in interest.
6. Based upon the foregoing as a full and complete settlement of this matter and in the mutual best interests of the parties, De Vries Dairy, LLC and ODA agree to the following settlement:
  - a. De Vries Dairy, LLC waives its right to a hearing pursuant to Chapter 119 of the Ohio Revised Code and specifically withdraws its request for a hearing in this matter.

- b. DeVries Dairy, LLC agrees to pay a civil penalty of \$ 700.00, which shall be paid to "The Livestock Management Fund" as required by Section 903.19 of the Ohio Revised Code, the full amount to be paid within ten (10) days after the date this Settlement Agreement is accepted by the Director.
7. Hette de Vries and De Vries Dairy, LLC waive any and all claims and causes of action that they may have against the State of Ohio, ODA, and any officers, employees, or agents of either, arising out of the matters which are the subject to this Settlement Agreement. This document is a public record in accordance with Section 149.43 of the ORC and shall be released by ODA if requested and only if required by law.

DE VRIES DAIRY, LLC

*Hette de Vries*

Hette de Vries

*director*

Title

*Ronald L. Waterman*

Ronald L. Waterman  
Barrett, Easterday, Cunningham,  
Eselgroth & Waterman, LLP  
5455 Rings Rd., Ste. 100  
Dublin, OH 43017.

*Fred L. Dailey*

Fred L. Dailey, Director  
Ohio Department of Agriculture



*John L. Shailer per tel with 5/21/09*  
John L. Shailer  
Assistant Attorney General for the  
Ohio Department of Agriculture  
*MBR*



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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## Certified Mail Return Receipt Requested

Jan and Anja Van Ham  
22177 Road C  
Continental, Ohio 45831

Van Ham Dairy  
7089 Road 22  
Continental, Ohio 45831

March 19, 2004

Re: Warning Letter

Dear Mr. and Mrs. Van Ham:

On March 2, 2004, staff from Ohio EPA contacted this office to relay information from a complainant in regards to manure laden runoff from a land application site. We contacted the Putnam Soil Water Conservation District to see if the District had any knowledge of this occurrence and learned that they had heard of it.

Andy Ety, of my staff, contacted you to discuss plans for construction. I asked Mr. Ety to also investigate the complaint and to coordinate the investigation with Rick Wilson, Ohio EPA. Rick Wilson took care of the stream sampling and Andy Ety investigated the land application and setback observance.

We found that approximately 40 loads of wasted feed and straw bedded waste had been applied to the field located directly south of your facility and on the east side of Township Road 22 during the middle of February on frozen/snow covered ground. You recorded that you applied 40 loads at 4 tons per load and covered approximately 40 acres. Therefore, the estimated application rate would be 4 tons per acre, which meets the requirement of 5 tons per acre on frozen/snow-covered ground conditions. This field is a wheat stubble field that had been chisel plowed and had approximately 40%-50% ground cover. The requirement for frozen/snow-covered ground is 80%, or greater, groundcover.

This field is bordered by a road (Township Road 22) ditch on the West side of the field and a tributary to Auglaize River on the South side of the field. The field is bordered on the west and south side by a 33' vegetative buffer, on which no manure was applied. On approximately the northern ½ of western side of the field, the total setback from the road

edge of the field, the total setback from the road ditch was 115 feet, or approximately 82 feet from the vegetative buffer. The required setback from this road ditch is a total of 100 feet for frozen/snow-covered ground, with no vegetative buffer required. The total setback from the perennial stream along the southern border of the field was an average of 50 feet, or 17 feet beyond the 33-foot vegetative buffer. The requirement from this stream is a 33-foot vegetative buffer and a total setback of 100-foot.

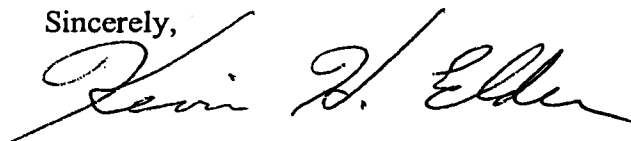
Several other areas of runoff concerns are the shallow surface drains that are located on the northern ½ of the field that drain east to west to the road ditch along Township Road 22. It is understood that this manure was applied when the field was snow-covered and these shallow surface drains would be difficult to detect with a measurable amount of snow on the ground. However, a 100-foot setback should have been maintained from these surface drains for frozen/snow-covered ground application. In each of these surface drains, you took the front-end loader and compacted dirt to reduce the risk of manure-laden runoff. During the time of the inspection, there was no evidence of runoff occurring into the road ditch, although water was backed up in the field as shown in the pictures that were taken.

Mr. Ety talked to you about the requirement to contact ODA prior to applying manure on frozen/snow-covered ground. You said you were unaware of this requirement for solid manure or a wasted feed product.

At the time of the investigation, there appeared to be no visual impairment of the road ditch or the tributary. However, Rick Wilson collected a sample and will send the Ohio EPA findings to you by separate correspondence.

I want to remind you again that you must contact this office prior to any land application of manure because of winter conditions. If another incident occurs this winter then I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: ~~W~~Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Albert Maag, Putman SWCD  
John L. Shailer, Assistant Attorney General  
Robert Karl, Esq.  
Cathy Alexander/Rick Wilson, Ohio EPA





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## Certified Mail return Receipt requested

March 19, 2004

Henk Arts  
5624 Elm Sugar Rd.  
Convoy, OH 45832

Dear Mr. Arts:

On February 20, 2004 Rick Wilson, Ohio EPA, reported to the Livestock Environmental Permitting Program that manure laden water appeared to be in the road ditches along SR49, just south and west of the Arts Dairy. At the time of his observations it was raining and runoff appeared to be coming from fields on which your dairy had recently applied manure on frozen or snow-covered ground. Mr. Wilson took several pictures of the road ditch and collected a sample from the ditch.

LEPP also received calls about this incident from a local person and from Mark Weihrauch, an officer for the Division of Wildlife, Ohio Department of Natural Resources. Andy Ety, of my staff, visited the site on February 25, 2004 to determine if the land application was completed as required in your permit.

Mr. Ety learned that between February 13 and February 17, 2004, you applied 23 loads of manure at 6,000 gallons per load on this field, which at the time of application, was snow covered and frozen. The application rate was estimated at 3,000 gallons per acre. Review of records, including the operating record, showed that all other manure application had been performed by a local crop farmer who was using your equipment to haul manure to his own land near Convoy. This would be considered to be Distribution and Utilization.

For the field on the Eastern side of SR 49, setbacks were roughly 200 feet from any perimeter of the field. Jim Young, also of my staff, had visited this field with you to go over the relevant setbacks and criteria for frozen/snow covered ground application on this field.

Mr. Ety then visited the application field and it was very difficult for him to determine where manure had been applied. This was liquid manure that was applied and very little

solids were present. It was also applied on snow-covered ground and the snow had melted by the time of the visit and this added to the difficulty in determining the exact location of the application. He was able to evaluate tire tracks in the wheat stubble from the application equipment. It appeared that no application equipment had been operated within 200 feet of the western edge of the field and within 150 feet of the eastern edge of the field. Both the western edge and most of the eastern side of the field have open ditches and/or surface drains. The setback for this type of application would have been met with the setbacks you followed. In addition to these ditches, approximately 5-6 surface drains/waterways are present and run perpendicular (West/East) from the way manure was applied. Obviously, the application tire tracks ran through these surface drains, but it was hard to determine if manure had been applied through them or not. Mrs. Arts said that they shut the application equipment off on each side of the drains for 100 feet. The only indication as to whether manure was applied through them was by looking at the color of the wheat stubble. It appeared, but difficult to verify, that you had applied through some of these areas by the darker color of wheat stubble from where you had not applied. In discussions with a neighbor, he said it was difficult to determine during the time of application if the drains had been affected because there was snow on the field. Many waterways had standing water, which was frozen at the time of the inspection, that appeared to be clear and with no manure-laden runoff.

LEPP received a copy of sample results collected by Ohio EPA and finds the presence of ammonia in adjacent waterways at 20 mg/l. Ohio EPA will send its findings to you by separate correspondence.

On January 22, 2004, I sent you a warning letter to advise you of regulatory requirements for applying manure on frozen or snow-covered ground, as required in rule 901:10-2-14 of the Ohio Administrative Code. It appears that you have tried to comply with this rule in terms of notifying and coordinating with Jim Young, LEPP, to observe setbacks and to follow correct application rates. However, all requirements of the rule must be complied with in order to land apply manure in an environmentally safe manner.

In this most recent event, it appeared that applying through these shallow surface drains could have been the cause on contributing to any manure-laden runoff. Each of these surface drains shall have a setback of 100' on each side of the drain during application on frozen or snow-covered ground.

For the future, be advised that ODA's rules will increase the required setbacks from these surface drains to 200', which will affect your plans for manure application in the Fall-Winter 2004. You should recognize that with the numerous surface drains present in this field, this field will more than likely not be suitable for future manure application when field conditions are frozen or snow-covered. Therefore, I request that you respond to this letter with the following information:

1. Provide the total number of acres available for land application of manure and your existing or intended cropping plans for these acres;

2. Provide the total number of gallons of manure to be spread from now until December 15, 2004;
3. Provide the total volume (gallons) of manure storage currently available, less your freeboard requirement;
4. Describe the type of equipment that will be utilized for hauling manure including the capacity of the equipment and the volume that can be applied on a daily basis;
5. Provide the total number of cows that you have now and intend to have by December 15, 2004;

Please provide this information in writing and within the next forty-five (45) days. At that time, my staff and I will contact you again with the purpose of working with you to use the information provided by you (as listed in 1 to 5, above) to develop a plan that demonstrates adequate storage capacity until April 30, 2005 as well as sufficient capacity for land application of manure, in accordance with the rules. The goal of this plan would be to have adequate storage by December 15, 2004 to allow for your facility to not have to land apply manure from this date until April 30, 2005 based on the number of cows you plan to have during this timeframe. Please be reminded that frozen/snow covered ground application is to only be utilized during emergency situations and not a routine practice in any manure management plan. Finally, you may not increase the size or number of your herd until I am satisfied that we have a plan that will ensure your compliance through April 30, 2005.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Mark Weihrauch, ODNR, Division of Wildlife, District 2  
Cathy Alexander/Rick Wilson, Ohio EPA  
Van Wert SWCD



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

March 8, 2004

Stateline Agri, Inc.  
Attention: Mr. Rick Kremer  
9159 State Route 118  
Ansonia, Ohio 45303

### Re: Notice of Hearing

Dear Mr. Kremer:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Stateline Agri imposing a civil penalty of \$ 253.44 because of your failure to comply with the applicable laws and rules listed as follows:

#### The following are the rules at issue:

Rule 901:10-2-08 of the OAC provides, in pertinent part, at paragraph (A)(3):

"(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

"(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard."

The facts in support of the Department's findings are as follows:

You were informed on June 13, 2003 that a Permit to Operate was required for your facility. By letter dated June 17, 2003, Kevin Elder, Executive Director of the Livestock Environmental Permitting Program required you to submit a complete Permit to Operate application, along with submittal of the "as-built plans" for your current facility. You

were asked to submit this information by the end of July to allow for review and decisions on the Permit to Operate by the end of September 2003.

At the June 13<sup>th</sup> inspection, you were also informed that your facility did not have the amount of freeboard required and you were directed to take actions to make corrections to reduce the volume of the lagoon.

At the July 24<sup>th</sup> inspection, ODA staff found the lagoon to be overflowing in four places and ready to overflow at a fifth place.

On October 21, 2003, you were issued a Notice of Deficiencies Resulting in Noncompliance<sup>1</sup> pursuant to rule 901:10-5-03 of the OAC. This rule also requires re-inspection by the Department to determine if the facility is still not in compliance. On January 2, 2004, your facility was re-inspected. The large pond had virtually no freeboard left. The smaller pond had approximately six inches left, though an exact amount was unable to be determined since a level indicator has still not been installed in the ponds. Finally, the inspector determined that the pipe joint was still leaking. Photographs were taken of the pipe joint and ponds.

The inspector made the following observations, which are noted but are not cited here today as violations: Vegetative cover and embankments of the ponds were not good and debris appeared to be floating in the ponds, including a large tree stump.

#### Specific violations

Based upon the above-identified laws and rules, and the results of inspections, the following is a concise statement of the violations:

Failure to maintain freeboard as required by rule 901:10-2-08 of the OAC.

I specifically reserve the right to pursue future enforcement action, if necessary, for any violations of Section 903.03 of the ORC and rules 901:10-2-04 and 901:10-2-06 of the OAC.

#### Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the Ohio Department of Agriculture shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to the considerations given by the Director pursuant to paragraph (D) of

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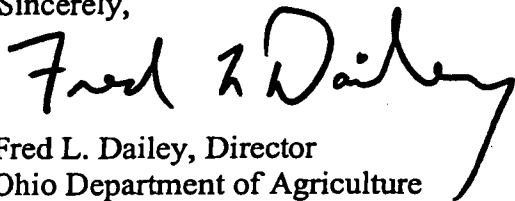
<sup>1</sup> You were required to submit an application for a Permit to Operate no later than August 11, 2003 and to also comply with OAC 901:10-2-06 (A)(8) requiring minimum storage capacity, which, in your case is 180 days. The permit application was received on November 10, 2003 and, if diligently pursued by you should enable you to return to compliance with the minimum storage requirements of this rule.

Rule 901:10-5-04 of the OAC, the Director has referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the second violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level, and that an appropriate penalty in this matter is proposed \$253.44.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: Peter C. Esselburne, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on March 8, 2004.

At the hearing, you may appear in person, be represented by an attorney, or you may represent your position, arguments or contentions in writing. At the hearing, you may present evidence and examine witnesses appearing for and against you to show cause why the proposed action should not be levied against you. The Assistant Attorney General assigned to the Department will represent the Department at this hearing.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
John L. Shailer, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Michelle McKay, LEPP Inspector



Governor Bob Taft  
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## Certified Mail Return Receipt Requested

March 8, 2004

Mr. Hette DeVries  
7188 Sager Road  
LaRue, Ohio 43332

**Re: Notice of Hearing - DeVries Dairy**

Dear Mr. DeVries:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to DeVries Dairy imposing a civil penalty because of DeVries Dairy's failure to comply with the applicable laws and rules listed as follows:

### Applicable Laws

Section 903.16 (A) of the Ohio Revised Code ("ORC") provides

"(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

"(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must

take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.  
“(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

“(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.”

Section 903.02 (A)(2) provides as follows:

“On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.”

Section 903.03 (A)(2), in pertinent part:

“...no person shall operate a concentrated animal feeding facility without a permit to operate issued by the director under this Section.”

The following are the rules at issue:

Rule 901:10-1-01(VV) of the Ohio Administrative Code OAC states, in pertinent part, that a modification means one of the following:

- (1) A material and substantial alteration of the facility including an increase of the number of animal units of the design capacity of an existing facility by 10 percent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or operation's capacity be modified to increase by more than 10 percent in the aggregate.

\* \* \* \* \*

(5) Changes to the manure storage or treatment facility that result from any of the following:

- (a) An expansion of more than ten percent in treatment or storage capacity;
- (b) A significant change in treatment technology; or
- (c) Closure of part of the manure storage or treatment facility.

Rule 901:10-1-09 (A) of the OAC provides:



(A) No facility or activities regulated by a permit to install or a permit to operate or a NPDES permit under this chapter shall be modified as that term is defined in rule 901:10-1-01 of the Ohio Administrative Code unless the permit is modified in compliance with this rule.

The facts in support of the Department's findings are as follows:

On August 19, 2002, the Director finalized the program required under Division (A)(1) of the Revised Code and assumed authority to enforce terms and conditions of the installation permits described and listed in paragraph one that previously were issued and enforced by the Director of Environmental Protection.

On January 3, 2003 ODA Livestock Environmental Permitting Program Engineers visited the DeVries Dairy. The Engineers found DeVries Dairy to be using the manure treatment lagoon that was under review by ODA for draft permit to install and a draft permit to operate.

Due to frozen ground DeVries became unable to land apply, and instead utilized the manure treatment lagoon because construction was complete and the lagoon was ready for use. The DeVries Dairy operated the clay-lined manure treatment lagoon without a permit modification and without the permit to operate from ODA for a period of four to six weeks.

On January 7, 2003, Director Dailey issued a Notice of Deficiencies Resulting in Noncompliance (or, "Notice of Violation" or "NOV") to the DeVries Dairy for operating the manure treatment lagoon without the required permits from ODA.

The Director issued both permits to DeVries Dairy on January 24, 2003.

Subsequent inspections were conducted by ODA on March 7, May 1, and June 3.

#### Specific violations

Based upon the above-identified laws and rules, and the results of inspections, the following is a concise statement of the violations:

Failure to have approved permits issued prior to utilizing the manure storage and treatment facilities.

#### Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the director shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to the

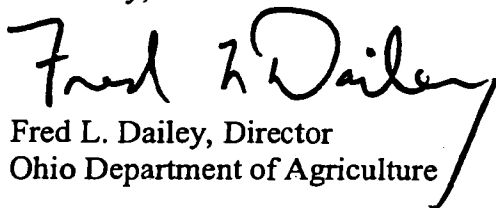
considerations given by the Director pursuant to paragraph (D) of Rule 901:10-5-04 of the OAC, the Director has referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is a first violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level, and that an appropriate penalty in this matter is proposed as \$ 700.00.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: Peter C. Esselburne, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on March 8, 2004.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this letter the Department may proceed without you.

At a Chapter 119 hearing, you may appear in person, an attorney may represent you, or you may present your position, arguments, or contentions in writing. John L. Shailer, Assistant Attorney General representing the Ohio Department of Agriculture, will be representing the Department at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called. You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed order should not be issued against you. At the conclusion of the hearing, the hearing officer will prepare a report of the facts and submit the report to the Director of Agriculture for his consideration.

Sincerely,

  
Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
John L. Shailer, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Ron Waterman, Legal Counsel for DeVries  
Jim Young, LEPP Inspector



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Office  
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## Certified Mail return Receipt requested

March 8, 2004

Zylstra Dairy  
Mr. Willem Zylstra and Mr. Leo Zylstra  
11753 Road 21  
Antwerp, Ohio 45813

### Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Sirs:

I have been informed that you have received a warning letter from the Ohio Department of Agriculture's Livestock Environmental Permitting Program on January 27, 2004. On February 25, 2004, my staff responded to a complaint from the Paulding Soil and Water District about the area of your dairy in response to additional complaints filed because of manure application on frozen or snow covered ground and because manure is flowing into waters of the State.

The following are the rules at issue:

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.
- ODA requires notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard. (Emphasis added)

In the warning letter, you were asked to review your Permit to Install for the maximum operating level of your structures.

You have not notified ODA prior to any manure land application on frozen or snow-covered ground. Setbacks required for drainage ways and/or grassed waterways were not maintained. Manure was not incorporated or could not be incorporated on frozen/snow-covered ground.

This Department issued a Permit to Install and a Permit to Operate to you on July 2, 2003. To date, you have not commenced any construction of the necessary improvements for your facility nor do you conduct operations as required by the Permit to Operate. I am directing my staff to return to your facility for a thorough inspection of your entire operation within the next thirty (30) days. If further investigation shows a continuing pattern of noncompliance, then I will consider an action to propose to revoke the Permits previously issued to you in order to prevent expansion of your facilities until such time as I am confident that you can operate in accordance with requirements. In the alternative, I may consider other legal sanctions such as fines and penalties to be paid by you in an amount of at least \$464.40, depending upon the results of the next inspection to be conducted by my staff.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Cathy Alexander, Ohio EPA  
Liz Pessefall, Paulding SWCD



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

March 3, 2004

Ronald L. Flory  
Ohio Fresh Eggs Manager, LLC  
11212 Croton Road  
Croton, Ohio 43023-0173

### Re: Warning Letter

Dear Mr. Flory:

Violation of Ohio Department of Agriculture laws and rules were discovered during an inspection by my staff on February 20, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that you were land-applying manure on snow-covered ground. This was done at the Tagg Road location. This application took place without the prior notification of the Department. This was a violation of the requirement that when land applying manure during the winter on snow covered or frozen ground you are must notify this Department before you begin.

In addition, my staff discovered two violations at Cooperider Dairy Farm with manure from Ohio Fresh Eggs. While you are not responsible for these violations, your assistance in apprising your manure recipients of the following would be appreciated. First, when land-applying manure on snow covered ground or frozen ground you must first notify the Department. This did not happen at the Cooperider Dairy Farm. Second, the setbacks for manure application were not observed along the application field to the north of Cooperrider Dairy Farm on Tagg Road. Specifically, it was evident that a drier layer of manure had been applied in the setback area between the wet manure application and the road ditch. For winter application all the following requirements must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover.
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.

- Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

You have failed to comply with the notice requirement. Write this office within seven (7) days and provide me with a report on the steps you will take to address your noncompliance. We take these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,

Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc : Larry Cooperrider  
Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA  
Licking County SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Secretary Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

February 10, 2004

Wenning Poultry Farm  
James and Mary Wenning  
1500 Union City Road  
Fort Recovery, Ohio 45846

Re: Warning Letter

Dear Mr. and Mrs. Wenning:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on November 26, 2003. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint that tiles on your farm were flowing and that you had a discharge from land applying egg wash water to a field. I understand that your lagoon was getting full and that you found it necessary to land apply manure. No records were available on freeboard measurements.

The inspection noted that the lagoon was approximately  $\frac{3}{4}$  empty. The tile was plugged and the waterway was dammed. There was a trace of red left in the ditch from the egg wash water, but it was mostly clear. The discharge was taken care of but a discharge occurred. It appeared to the inspector that the discharge flowed into a defined waterway or "waters of the State" in violation of your Ohio EPA Permit to Install, which is now enforced by this Department.

The following are the rules at issue:

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate – general criteria:

"(3) The manure application rate shall be based on the most limiting factor of the following:

"(a) For liquid manure:

\* \* \* \* \*

"(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; ..."

You are currently subject to Ohio EPA Permit to Install 08-044-NW which was transferred to this Department for enforcement on August 19, 2001. As required by law, you are working to obtain a Review Compliance Certificate that will regulate your farm under ODA rules and under those portions of the Ohio EPA permit that do not conflict with any ODA rules. Some of the conditions of the Ohio EPA permit required monitoring and reporting. With the RCC you will find that ODA rules also require monitoring and recordkeeping. Records need to be maintained in good order in an Operating Record that is always available to an inspector. I want to take this opportunity to note the requirements that apply with respect to land application activities at a facility such as yours. The applicable rule is 901:10-2-16 of the OAC and it provides, in part at paragraph (A)(1)(c):

“ Land application site records. Records for each land application site, including:

\* \* \* \* \*

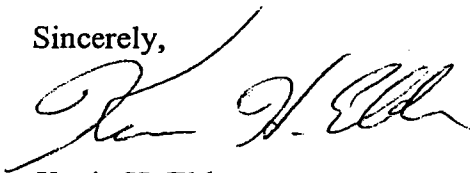
“(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

“(iv) When liquid manure is applied to a land application site with subsurface drain, document the use of drain outlet plugs or other devices in the operating record.”

A copy of Appendix B, which is referred to in the rules, is included here for your use along with a copy of the Complaint Follow-Up Report.

You must contact this office prior to any land application of manure because of winter conditions. In the meantime, my staff will continue to work with you to develop a Review Compliance Certificate for your facility.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Enclosures (2)

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Mercer County SWCD  
Rick Wilson, Ohio EPA



**Complaint Follow-up, Wenning Farm, Mercer County**

**Latitude: 40° 23. 576' N**

**Longitude: 84° 46. 902' W**

**November 26, 2003**

**Michelle McKay, Livestock Environmental Inspector**

I spoke with Mr. Kevin Elder of the Ohio Department of Agriculture Livestock Environmental Permitting Program. He informed me that he had received a complaint that the James Wenning Farm had a discharge from land applying their egg wash water to a field where the tiles were already flowing. He said the Ohio Environmental Protection Agency was already on their way and he wanted me to check it out as well.

I arrived at the farm at about 10:30 am and spoke with Mr. Wenning. He stated that Kahlig's had applied about 290,000 gallons on 60+ acres. This would equal 4,833 gallons per acre or less. He stated that they did not have any application records yet because it had just been applied the day before.

Mr. Wenning said the lagoon was getting full, so they had to apply the manure. I asked about the freeboard and he stated there was more than one foot of freeboard and they probably could have made it until February before the lagoon was too full. It was impossible to tell how much freeboard there had been because the lagoon was probably about  $\frac{3}{4}$  empty at the time of the inspection. No records were available on freeboard measurements.

I explained that freeboard requirements will be required record keeping as part of ODA's rules. Mr. Wenning stated that he just keeps an eye on the lagoon and applies when it is getting too full. He stated this year did not work out so well due to the excessive rainy weather.

Mr. Wenning also stated that Rick Wilson with Ohio EPA had been out to the site and stated everything looked okay and he could break open the dam they had created to block polluted water from continuing down the waterway. He stated the game warden had also been out there and thought everything looked okay as well. He also said the discharge only occurred in his waterway and not Waters of the State. Mr. Wenning had other business to take care of and I went to inspect the situation without him.

As stated before, I noted that the lagoon was probably close to  $\frac{3}{4}$  empty. I noted the tile was plugged and the waterway was dammed. There was a trace of red left in the ditch from the egg wash water, but it was mostly clear. It appeared the situation was taken care of by the time I was out there, though it was obvious a discharge did occur.

Also important to note was the fact that the waterway where the discharge occurred did not appear to be just a "grassed waterway" that farmers will sometimes install to help prevent erosion. It appeared to be defined waterway with water that regularly flows through it. It should be known that any water that flows off a property is considered to be Waters of the State. This includes, but is not limited to, grassed waterways when water is in them, drainage ditches, creeks, streams, and ponds with a discharge outlet. This excludes puddles and ponds with no discharge.

Via email, Rick Wilson confirmed that they also noted a discharge and that Ohio EPA will be handling the situation as an agency as well.

In conclusion, a discharge of egg wash water did occur and was remedied when noticed. The tile was plugged and waterway dammed. While a low rate of wash water appears to have been applied, no manure applications probably should have occurred due to the saturation of the soils and reports that the tiles were already running prior to application. I left the farm at 11:05 am.

Appendix B of rule 901:10-2-14 Available Water Capacity.

This table shall be used to determine the available water capacity (AWC) at the time of application of liquid manure. To determine the AWC in the upper twenty-four inches use a soil probe or similar device to evaluate the soil to a depth of twenty-four inches. To evaluate the upper eight inches only the upper eight inches of soil needs to be evaluated.

For land application, liquid manure application may also be calculated by converting acres per inch to gallons per acre. This conversion is based on the following formula: one acre inch = twenty-seven thousand two hundred gallons per acre.

Available Water Capacity (AWC) Practical Soil Moisture Interpretation for Various Soil Textures and Conditions.

Available Moisture in the Soil	Sands and Loamy Sands	Sandy Loam and Fine Sandy Loam	Very Fine Sandy Loam, Loam, Silt Loam, Silty Clay Loam	Sandy Clay, Silty Clay, Clay, Fine and Very Fine Textured Soils
0% Soil Moisture	Dry, loose and single-grained; flows through fingers.	Dry and loose; flows through fingers.	Powdery dry; in some places slightly crusted but breaks down easily into powder.	Hard, baked and cracked; has loose crumbs on surface in some places.
Soil Depth Amount to reach AWC	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.5''}$ $\frac{0-24''}{3.5''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$
50% or Less Soil Moisture	Appears to be dry; does not form a ball under pressure.	Appears to be dry; does not form a ball under pressure.	Somewhat crumbly but holds together under pressure.	Somewhat pliable; balls under pressure.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{2.0''}$
50 to 75% Soil Moisture	Appears to be dry; does not form a ball under pressure.	Balls under pressure but seldom holds together.	Forms a ball under pressure; somewhat plastic; slicks slightly under pressure.	Forms a ball; ribbons out between thumb and forefinger.
Soil Depth Amount to reach AWC	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$	$\frac{0-8''}{0.75''}$ $\frac{0-24''}{1.8''}$	$\frac{0-8''}{0.5''}$ $\frac{0-24''}{1.3''}$
75% to Field Capacity	Sticks together slightly; may form a weak ball under pressure.	Forms a weak ball that breaks easily, does not stick.	Forms ball; very pliable; slicks readily if relatively high in clay.	Ribbons out between fingers easily; has a slick feeling.
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Above Field Capacity	Free water appears when soil is bounced in hand.	Free water is released with kneading.	Free water can be squeezed out.	Puddles; free water forms on surface.

Source: USDA-NRCS (2001). Field Office Technical Guide – Conservation Practice Standard. Waste Utilization – Code 633. Columbus, OH.



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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**Certified Mail Return Receipt Requested**

February 10 2004

Mr. Todd Stoll  
Vice President  
Stoll Farms, Inc.  
6818 Coal Bank Road  
Marshallville, Ohio 44645

**Re: Warning Letter**

Dear Mr. Stoll:

Violation of Ohio Department of Agriculture laws and rules was discovered during inspections by my staff on November 26 and November 27, 2003. On those dates, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated complaints that your farm had had applied manure to a field so that there was manure runoff to properties other than the land application site and that manure ponded on these other properties. The results of the investigations are summarized here.

The following was observed during the investigation on November 27, 2003:

- Manure had been surface applied to a corn stubble field at the location owned by William Kaufman and farmed by Stoll Farms Incorporated. The part of the field along Coal Bank Road had soybean stubble as residue.
- Some of the manure had flowed along the corn rows south to the end rows. At this point the manure had flowed east along the end rows and at one (1) location had flowed out of the corn field, into the shared driveway, down the driveway, and crossed into a field of barley owned by Don Grimes.
- There was some standing manure laden water in the shared driveway and in the Grimes barley field. There was an estimated volume of 500-1000 gallons of manure runoff from the application field.
- The application of manure had been terminated and the edge of the application field bordering the shared driveway and a short stretch along the unnamed tributary had been plowed [incorporated?]. The inspector observed no manure leaving the application field and there was no manure laden water reaching the unnamed tributary.
- Upon examining the application field it was observed that a fifty-two and one half (52 ½) foot setback from the grass along the unnamed tributary had been observed and the same setback maintained along the shared driveway. The ponded manure laden water in the barley field was eighty-two (82) feet from the tributary.
- The weather was overcast and warming.

The following was observed during the investigation on November 27, 2003:

- The plow furrows along the shared driveway were full of manure-laden water.
- After walking the entire unnamed tributary bank along the application field, there was no evidence of water-laden manure leaving the application field and entering neither the tributary nor a grass waterway in the field.

The shared driveway had some standing manure laden water standing in the tracks and the barley field had a small ponded area of manure-laden water. However, there was no evidence of manure-laden water reaching the tributary.

- The water at the culvert used for a crossing of the tributary by the shared driveway had a brownish black coloring. A water sample was taken at this location, down stream. The water sample was a light brown in color with a pH of 7.0 and the sample had the following results:

Sample #61184	
Ammonia	1.23 mg/l
Nitrate + Nitrite	5.30 mg/l
TKN	3.98 mg/l
Total Phosphorus	0.418 mg/l

- Another water sample was taken at the road culvert under Back Massillon Road, upstream. The water sample was clear with a pH of 7.0 with the following results:

Sample #61185	
Ammonia	0.16 mg/l
Nitrate + Nitrite	5.83 mg/l
TKN	0.70 mg/l
Total Phosphorus	0.098mg/l

- A third water sample was taken at a culvert passing under Coal Bank Road with the water source coming from the west side of Coal Bank Road and exiting a tile into the unnamed tributary. The sample at this location was a light brown in color and had a pH of 8.0 with the following results:

Sample #61186	
Ammonia	0.498 mg/l
Nitrate + Nitrite	0.67 mg/l
TKN	1.15 mg/l
Total Phosphorus	0.946mg/l

- The water source for the third water sample comes from a ditch and a wooded area. Upon walking south on Coal Bank Road an odor similar to that of sewage could be detected as the ditch neared several homes. There appears to be a septic line out letting into this ditch and eventually entering the unnamed tributary of the Newman Creek. After the tile

carrying this ditch water enters the tributary the water and the plant growth in the tributary carry a brownish black color. Accordingly, we are sending a copy of this letter to the Wayne County Health Department for its information.

The following rules are at issue:

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

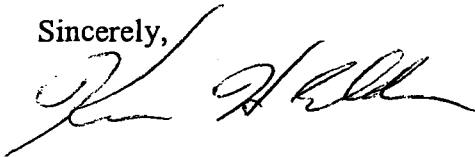
\* \* \* \* \*

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; and

“(v) The application rate shall be adjusted to avoid surface ponding and/or runoff from a land application site.”

Stoll Farms, Inc. continues to work with my staff in order to complete a Review Compliance Certificate (RCC), which is required by Section 903.04 of the Revised Code. Incidents of manure runoff and ponding on properties that are not part of the selected application site violate the rules and raise concern as to whether you can perform manure application in a manner that will protect waters of the State. I understand that actions were taken while the inspector was present to correct problems with runoff and ponding. But please be advised that any subsequent violations could require escalated enforcement action by this Department.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
John L. Shailer, Assistant Attorney General  
Jennifer Tiell, LEPP Legal Counsel  
Mike Nishimura – ODNR-DSWC  
Rick Wilson – Ohio EPA  
Bob Humpil, Wayne County Health Dept

Don Grimes  
Daniel Kaufman  
Duane Wood, Wayne SWCD

Appendix B of rule 901:10-2-14 Available Water Capacity.

This table shall be used to determine the available water capacity (AWC) at the time of application of liquid manure. To determine the AWC in the upper twenty-four inches use a soil probe or similar device to evaluate the soil to a depth of twenty-four inches. To evaluate the upper eight inches only the upper eight inches of soil needs to be evaluated.

For land application, liquid manure application may also be calculated by converting acres per inch to gallons per acre. This conversion is based on the following formula: one acre inch = twenty-seven thousand two hundred gallons per acre.

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Available Moisture in the Soil	Sands and Loamy Sands	Sandy Loam and Fine Sandy Loam	Very Fine Sandy Loam, Loam, Silt Loam, Silty Clay Loam	Sandy Clay, Silty Clay, Clay, Fine and Very Fine Textured Soils
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Soil Depth Amount to reach AWC	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$	$\frac{0-8''}{1.5''}$ $\frac{0-24''}{3.5''}$	$\frac{0-8''}{1''}$ $\frac{0-24''}{2.6''}$
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## Certified Mail Return Receipt Requested

Kalmbach Swine Management  
Paul Kalmbach, President  
Dick Regnier, Secretary/Treasurer  
PO Box 38  
7148 State Highway 199  
Upper Sandusky, Ohio 43351

February 10, 2004

Re: Warning Letter

Dear Mr. Kalmbach:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint that your farm had a discharge of hog manure from the pit in barn #3.

The inspection found that approximately 5,000 gallons of manure was discharged. This manure flowed between barn #2 and barn #3 to the west and ponded in an area of a wheat field. Your staff tried to clean the manure up but the manure made ground underneath soft and smeary and was difficult.

We have been informed that a 5,000 gallon vacuum tanker was rented from a neighbor and five loads of manure were removed from the facility on the evening of January 27 and land applied. We have also been informed that current manure levels are as follows: barn #1 and barn #2 have two (2) inches of freeboard barn #3 has no freeboard, and barn #4 has three (3) inches of freeboard.

The following rules are at issue:

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)

(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

\* \* \* \* \*

(b) The operating level of fabricated structures must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four hour storm event, plus an additional six inches of freeboard. (Note: For fabricated structures that do not receive rainfall or runoff, the twenty-five year, twenty-four hour storm event shall not apply.)

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate – general criteria:

“(3) The manure application rate shall be based on the most limiting factor of the following:

“(a) For liquid manure:

\* \* \* \* \*

“(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; and

“(v) The application rate shall be adjusted to avoid surface ponding and/or runoff from a land application site.”

Finally, I understand that my staff has reviewed with your staff other requirements in the rules that apply to manure applications to frozen or snow-covered ground. I want to take the opportunity presented with this warning to remind you of those requirements:

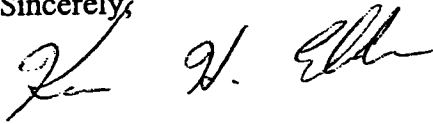
The chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: For unincorporated manure application on frozen or snow covered ground, all of the following must be met:

- Greater than or equal to 80 percent ground cover;
  - If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
  - Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
  - Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
  - Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
  - Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. The KSM-Dola Swine Farm continues to work with my staff in order to complete a Review Compliance Certificate (RCC), which is required by Section 903.04 of the Revised Code and the RCC is nearly final. I remind you, however, that work on the RCC should have been completed by August 19, 2003. We take these violations and these deadlines seriously. If we do not hear from you, I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Howard Lyle, Hardin County SWCD  
Rick Wilson, Ohio EPA  
Todd Stickley

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Source: USDA-NRCS (2001). Field Office Technical Guide – Conservation Practice Standard. Waste Utilization – Code 633. Columbus, OH.



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## Certified Mail return Receipt requested

January 27, 2004

Henk Arts  
5624 Elm Sugar Rd.  
Convoy, OH 45832

Re: Warning Letter

Dear Mr. Arts:

On January 16, 2004, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility at 10 inches. The purpose of this letter is to remind you of rules requiring proper freeboard and to warn you of possible violations of Ohio Department of Agriculture laws and rules.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

**“(8) Freeboard.**

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume.” (Emphasis added)

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

**“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:**

(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-

hour storm event, plus an additional one foot of freeboard." (Emphasis added) Please review your Permit to Install for the maximum operating level of your structures.

Again, ODA requires notification when manure is being applied to frozen or snow-covered ground.

You recently received a warning letter from me that concerned land application of manure and our investigation of a complaint. If you have not responded to that letter yet, then you may respond to both the January 22 letter and this letter at the same time. But it is important that you contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA





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8995 East Main Street • Reynoldsburg, Ohio 43076  
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## Certified Mail Return Receipt Requested

Mr. Hette DeVries  
DeVries Dairy  
7188 Sager Road  
LaRue, Ohio 43332

January 27, 2004

Re: Warning Letter

Dear Mr. DeVries:

On January 13, 2004, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility at 12 inches. The purpose of this letter is to remind you of rules requiring proper freeboard and to warn you possible violations of Ohio Department of Agriculture laws and rules.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume.” (Emphasis added).

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides

adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard." (Emphasis added) Please refer to your Permit to Install for the maximum operating level of your existing structures.

ODA requires notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground: All of the following must be met:

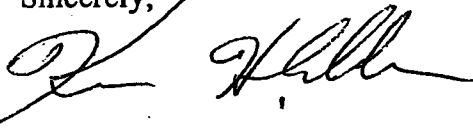
- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc : Andy Ety, LEPP Engineer

Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA



Governor Bob Taft  
Lieutenant Governor Jennette B. Bradley  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

Jan and Anja Van Ham  
22177 Road C  
Continental, Ohio 45831  
Van Ham Dairy  
7089 Road 22  
Continental, Ohio 45831

January 27, 2004

Re: Warning Letter

Dear Mr. and Mrs. Van Ham:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 16, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility and found only one-inch freeboard remaining. This measurement was taken at the lowest elevation of the manure storage structures that would allow manure to overflow the system. With your existing manure storage system, this point would be the top of the concrete ramp that goes into your concrete sand settling basins. As a temporary solution, it appeared that you had piled excess dirt, or solid manure, at the upper end of this ramp to contain the manure within the structure. This should be considered a temporary solution and is not authorized as part of your permanent manure storage structure.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if

there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume." (Emphasis added)

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

"(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard." (Emphasis added) Please refer to your Permit to Install for the maximum operating level of your structures.

ODA reminds you that we require notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

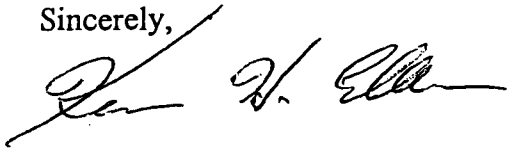
- Greater than or equal to 80 percent ground cover;
  - If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
  - Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
  - Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
  - Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
  - Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take

these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is written in a cursive style with a long horizontal stroke at the end.

Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Robert Karl, Esq.  
Rick Wilson, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette B. Bradley  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 4306  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

Zylstra Dairy  
Mr. Willem Zylstra  
11753 Road 21  
Antwerp, Ohio 45813

January 27, 2004

Re: Warning Letter

Dear Mr. Zylstra:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 16, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that you were land-applying manure on snow-covered ground. Setbacks for manure application were not observed along the main surface drain south of the facility along Township Road 21. South of the facility along State Route 111, liquid manure had been surface applied to soybean stubble and setbacks were not observed.

If you land apply manure during the winter on snow-covered or frozen ground you are required to notify this Department before you begin. In addition, all of the following requirements must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways.

On January 16, 2004, inspectors observed that you recently removed liquid manure from your concrete manure storage pond. It was noted that prior to removing the manure, the level in this pond was at, or above, the top of the concrete wall. It was evident that temporary measures were taken to prevent an overflow of the manure storage pond by pushing fill material up against these walls. This earthen embankment is considered a temporary measure and is not considered as part of the permanent structure authorized in your operations. Let me take this opportunity to remind you of requirements in the rules:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume.”

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard.”

Please refer to your Permit to Install for the maximum operating level of your structures.

I have also been informed that you may have stocked animals to the capacity of over 700 dairy cows as described in permits issued on July 3, 2003 for your facility. This presents a serious problem because you have so far failed to begin construction necessary to manage manure for a herd of this size. Your facility does not have the required capacity of 180 days manure storage for this number of dairy cows.

Rule 901:10-2-06 (A)(7) provides as follows:

“(7) Storage period.

The minimum storage period of manure for a manure storage pond and manure treatment lagoon shall be one hundred eighty days of manure production unless alternative use and design is otherwise approved by the department. This section is not intended to address the surface water runoff where the runoff does not enter into the pond or lagoon. (Emphasis added).”



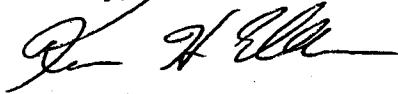
Rule 901:10-2-02 of the Ohio Administrative Code provides, in pertinent part:

“Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals. (Emphasis added)

You have failed to comply with any of the steps listed in this rule. Please be advised that you have no authority or permission to increase your stock above 700 animals without appropriate construction of the facilities authorized in the PTI, which requires a minimum of 180 days manure storage. It is believed that you have capacity for 60 to 90 days of storage.

Contact this office immediately and in writing and provide me with a report on the steps you will take to address your noncompliance. We take these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc : Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA



Governor Bob Taft  
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## Certified Mail Return Receipt Requested

Nine Mornings Dairies  
Jetse Theunts Boersma  
6787 Road 144  
Antwerp, Ohio 45813

January 27, 2004

Re: Warning Letter

Dear Mr. Boersma:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on January 16, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility and found only one-inch freeboard remaining.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

“(8) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume.” (Emphasis added)

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard."  
(Emphasis added)

ODA reminds you that we require notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:  
All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

In order to obtain a Review Compliance Certificate from ODA, which you are required to do, you are expected to comply with the rules listed above for freeboard and for land application of manure. You must also follow Rule 901:10-2-15 of the OAC for the proper disposal of dead livestock. My staff reports that carcasses were scattered about the surface ground of your facility. In Ohio, best management practices require you to burn, bury, render, or compost consistent with laws and rules enforced by ODA in Sections 941.14 and 953.26 of the Revised Code

R.C. Section 941.14 provides, in part:

“(A) The owner shall burn the body of an animal that has died of, or been destroyed because of, a dangerously infectious or contagious disease, bury it not less than four feet under the surface of the ground, remove it in a watertight tank

to a rendering establishment, or otherwise dispose of it in accordance with section 953.26 or 1511.022 [1511.02.2] of the Revised Code within twenty-four hours after knowledge thereof or after notice in writing from the department of agriculture.

“(B) The owner of premises that contain a dead animal shall burn the body of the animal, bury it not less than four feet beneath the surface of the ground, remove it in a watertight tank to a rendering establishment, or otherwise dispose of it in accordance with section 953.26 or 1511.022 [1511.02.2] of the Revised Code within a reasonable time after knowledge thereof or after notice in writing from the department or from the township trustees of the township in which his premises are located.”

Section 953.25 provides:

“(A) No raw rendering material shall be fed to an avian, equine, ovine, bovine, or porcine animal.

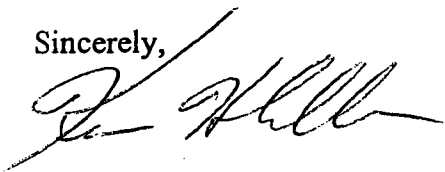
“(B) Except as provided in division (C) or (D) of this section, no raw rendering material shall be sold or offered for sale to a person who is not licensed under section 953.23 of the Revised Code unless the material is in a labeled wrapper or is in some other way identified or denatured in a manner approved by the department of agriculture. The label or identification shall state plainly in legible letters at least two inches high that the product is inedible and is not sold or intended for human consumption.

“(C) Raw rendering material may be sold or otherwise transferred to a person who operates a mink ranch, dog kennel, zoo, captive wildlife farm, or pet food manufacturing plant and who has written permission from the department to handle raw rendering material.

“(D) Raw rendering material may be sold or otherwise transferred to a person who operates a composting facility in accordance with rules adopted by the director of environmental protection under section 3734.02 of the Revised Code.”

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems and proper disposal of dead livestock. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take these violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Dr. R. David Glauer, Chief, ODA Division of Animal Industry  
Mr. Lewis Jones, Chief, ODA Division of Dairy  
Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA



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## Certified Mail Return Receipt Requested

Schilderink Dairy Farm  
Mr. Tonnie Schilderink  
12593 Rd. 71  
Paulding, Ohio 45879

January 27, 2004

Re: Warning Letter

Dear Mr. Schilderink:

On January 16, 2004, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility at 13 inches. The purpose of this letter is to remind you of rules requiring proper freeboard and to warn you possible violations of Ohio Department of Agriculture laws and rules.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraph (A)(8):

**“(8) Freeboard.**

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume. (Emphasis added)

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

**“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:**

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides

adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard." (Emphasis added) Please review your Permit to Install for the maximum operating level of your structures.

ODA requires notification when manure is being applied to frozen or snow-covered ground.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

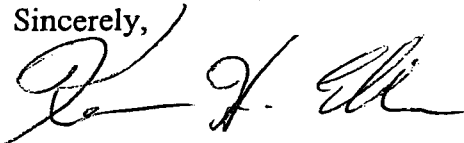
- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.
- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and

No application in flood plains and/or floodways.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground.

Contact this office immediately and in writing and provide me with a report on the steps you have taken to address your freeboard problems. In addition, you must contact this office prior to any land application of manure because of winter conditions. We take violations seriously. If we do not hear, from you I will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc :Andy Ety, LEPP Engineer

Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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January 24, 2004

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

## **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance for the Croton Layer No. 3 facility. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC), Rule 901:10-2-04, and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

### **I. FIRST VIOLATION- MANURE MOISTURE**

#### **A. VIOLATION**

ODA has determined that for 48 weeks, from January 1, 2004 through December 5, 2004, the terms and conditions of the March 2001 Consent Order and of OFE's Insect and Rodent Control Plan (IRCP) have been violated. Paragraph 30 of the Consent Order requires that OFE "maintain the moisture content in the manure . . . at/or below 30% . . ." OFE's IRCP requires that OFE "keep manure as dry as possible in order to maintain

30% moisture or less . . .” As noted by an ODA inspector on December 6, 2004, the manure moisture in Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 exceeded 30%.

## **B. CORRECTIVE ACTION REQUIRED**

Within ten days of receipt of this letter, OFE must submit a schedule indicating the dates OFE intends to remove the manure from Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40. OFE must complete manure removal and distribution and utilization for the barns by March 31, 2005.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D), (F), (J) and (K). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for 48 weeks, for a total of \$120,000.00, and the potential for escalated enforcement.

## **II. SECOND VIOLATION- BAIT STATIONS**

### **A. VIOLATION**

ODA has determined that the terms and conditions of OFE's IRCP have been violated. OFE was required to place bait stations on the outside perimeter of each barn. As noted by an ODA inspector on December 6, 2004, no rodent bait stations or traps were placed at the perimeter of any barns at the Croton Layer No. 3 facility in violation of the terms and conditions of the permit.

### **B. CORRECTIVE ACTION**

Bait stations shall immediately be placed around the perimeter of each barn at the Croton Layer No. 3 facility and shall be managed in accordance with the terms and conditions of OFE's permit.

### **C. PENALTY ASSESSMENT**

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment

of civil penalty in the amount of \$2,500.00 per week for one week, for a total of \$2,500.00, and the potential for escalated enforcement.

### **III. THIRD VIOLATION- WEEKLY INSPECTIONS**

#### **A. VIOLATION**

ODA has determined that the terms and conditions of OFE's permit have been violated. OFE was required to perform weekly inspections of the storage ponds or treatment lagoons or fabricated structures to determine that there is no evidence of erosion, animal damage, leaks or discharge. As noted by the ODA inspector on December 6, 2004, water from the old inlet pipe into egg wash cell No. 1 had eroded the interior embankment of the storage pond. Several animal burrows located in the interior embankment of egg wash cell No. 1 were noted. In egg wash cell No. 2, two locations in the embankment were eroded. Several animal burrows located in the interior embankment of egg wash cell No. 2 were noted.

#### **B. CORRECTIVE ACTION**

The storage ponds and interior embankments should be immediately and regularly checked for evidence of erosion, animal damage, leaks and discharge. Any erosion, animal damage, leaks, and/or discharges shall be repaired immediately.

#### **C. PENALTY ASSESSMENT**

ODA has determined that the violations herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$800.00 per week for one week, for a total of \$800.00, and the potential for escalated enforcement.

### **IV. FOURTH VIOLATION-RESHAPING AND REGRADING**

#### **A. VIOLATION**

ODA has determined that OFE has violated O.A.C. 901:10-2-04(E). OFE is required to prevent pollution from discharge of precipitation runoff from manure storage or treatment facilities by implementing one or more of the provisions contained in O.A.C. 901:10-2-04(E)(1). As noted by on ODA inspector on December 6, 2004, the areas between the high-rise barns at the Croton Layer No. 3 Operation needed to be reshaped and regraded to avoid ponding water and to allow for vegetative growth.

## B. CORRECTIVE ACTION

By February 15, 2005, OFE must submit plans to Kevin Elder, Executive Director, Livestock Environmental Permitting Program, detailing how OFE intends to reshape and regrade the areas between high rise barns at Croton Layer No. 3 to avoid ponding water and to allow for vegetative growth.

## C. PENALTY ASSESSMENT

ODA has determined that the violations herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$800.00 per week for one week, for a total of \$800.00, and the potential for escalated enforcement.

After 45 days from the date of this letter, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, or its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$124,000.00, and the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Hardin SWCD



Governor Bob Taft  
Lieutenant Governor Jennette B. Bradley  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 4306  
Phone: 614-387-0470 • Fax 614-728-6333

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## Certified Mail return Receipt requested

January 22, 2004

Henk Arts  
5624 Elm Sugar Rd.  
Convoy, OH 45832  
419-749-0033

Re: Arts Dairy  
5624 Elm Sugar Rd.  
Convoy, OH 45832  
419-749-0033  
Tully Township  
Van Wert County

Dear Mr. Arts:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 16, 2003 which we attribute to your farm with land application of manure at Feasby-Wisener Road on the west side of Middle Creek. A copy of the Complaint Follow-Up Report is being sent to you by the inspector, Michelle McKay and provides details of her findings during the inspection.

First, ODA requires notification when manure is being applied to frozen or snow-covered ground; this notification was not obtained.

Rule 901:10-2-14(B)(4) of the Ohio Administrative Code establishes best management practices that govern land application of manure on land application sites. All land applications of manure shall comply with all restrictions contained in appendix A of this rule. Item 15 on the chart of Appendix A of rule 901:10-2-14(15) of the OAC provides as follows: Unincorporated manure application on frozen or snow covered ground:

All of the following must be met:

- Greater than or equal to 80 percent ground cover;
- If slope is greater than 6%, then 90% residue or grass/legume cover must be present.
- Setbacks from drainage ways and waters of the state increased to a minimum of 100 feet, with the first 33 feet being vegetative cover
- Maximum application rate is 10 wet tons per acre for solid manure and 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method.

- Setback of 300 feet from private/public wells, public drinking water surface intakes, drainage wells or sink holes, and springs.
- Setback of 500 feet from neighboring residences; and
- No application in flood plains and/or floodways.

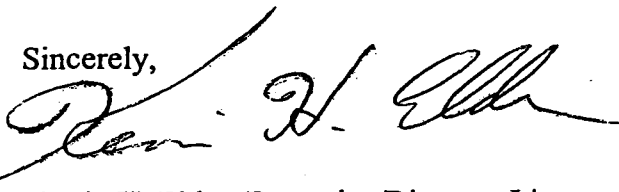
The field complained of had been worked so that the required ground cover was not met.

In addition, a minimum 100 feet setback is required from drainage ways and/or grassed waterways when manure is not incorporated on frozen/snow-covered ground. This buffer was not met along either Middle Creek or the drainage ditch alongside the road. More importantly, manure was directly applied through a main surface drainage ditch in the northern part of the field.

The Van Wert County Soil and Water District took photographs on December 16, 2003, that verify that the field was snow covered when application occurred. It was also clear that manure was not incorporated and it was not incorporated the following day when ODA inspected the site. The application rate was not known, but was estimated to be 6,000 gallons/acre.

Andy Ety, ODA Engineer, met with Helma Arts on December 19, 2003 to briefly discuss this matter with you and to assure that the requirements for manure application on snow covered/frozen ground were understood, if such application were necessary in the immediate future. To follow up on this meeting and to show compliance with your Permit to Operate, please contact this office immediately so we can schedule a time to review your land application sites for possible snow covered/frozen ground applications and address any concerns we may have with these sites. We take these violations seriously. If we do not hear from you, we will recommend that the Director commence enforcement actions against you.

Sincerely,



Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program

Cc : Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Rick Wilson, Ohio EPA



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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**Certified Mail return Receipt requested**

John Douglass  
Catalpadale  
4981 Fox Lake Road  
Marshville, OH 44645

December 19, 2003

**Re: Notice of Deficiencies Resulting in Noncompliance**

Catalpadale  
Marshville, Ohio

Dear Mr. Douglass:

On 29 September 2003 the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint of manure running down the creek, into a pond on neighboring Kelbly property, and to waters of the State. The source of the manure was from west of Black Diamond Road on property farmed by Catalpadale Farms.

The following are the sections of law at issue:

Section 903.04(C) of the Ohio Revised Code (ORC):

“ A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs:

- (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section.
- (2) The person is required under division (H) of this section to obtain a permit to operate.”

Section 903.04(F) of the ORC provides, in pertinent part:

“(F) After a review of the existing installation permit, an inspection of the facility, and a review of the information furnished under division (E)(2) of this section, and upon determining that the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas, the director shall issue an order issuing a review compliance certificate to the facility. In issuing the certificate, the director shall consider technical feasibility and economic costs. The director shall not require a significant capital expenditure, as defined by rule, by the facility before issuing a certificate.

“The director may issue an order denying a review compliance certificate if the facility's insect and rodent control plan or manure management plan does not conform to best management practices and the requirements established in section 903.06 of the Revised Code and in rules. The denial of a review compliance certificate terminates the existing installation permit that was issued to the facility. (Emphasis added)

Section 903.03 (A)(2) of the ORC provides:

“Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the Director under this Section.” (Emphasis added)

The following rules are at issue:

Rule 901:10-1-03(A) of the Ohio Administrative Code (OAC) provides, in pertinent part:

“ Criteria for decision making by the director. The director shall deny, suspend or revoke a permit to install or permit to operate if:

\* \* \* \* \*

(5) The facility is not designed or constructed as a non-discharge system or operated to prevent the discharge of pollutants to waters of the state or to otherwise protect water quality;”

Rule 901:10-2-08(A) of the OAC provides, in pertinent part:

“ A manure management plan is a plan developed to minimize water pollution and protect waters of the state. The manure management plan shall include best management practices for reuse and recycling nutrients and best management practices to minimize odors resulting from manure storage, handling, transportation, land application and odors from mortality.



"(1) The manure management plan shall specify the frequency of inspections to be conducted by the owner or operator at the manure storage or treatment facility.

\* \* \* \* \*

"(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one-foot of freeboard."

Based on the inspection conducted in response to the complaint filed, staff of the Ohio Department of Agriculture's Livestock Environmental Permitting Program found the following:

- The manure storage pond had over-topped in the southeastern corner, an apparent low spot in the earthen bank, in violation of Rule 901:10-2-08 of the OAC. The remainder of the manure storage pond had one to two feet of freeboard.
- The manure that over-topped the pond had meandered southeast through a hay field of alfalfa and grass mix. A small amount of manure was observed at the point of entry into the road ditch to the west of Black Diamond Road.
- Upon examining the Black Diamond Road ditch, a six-inch PVC pipe outlet was located. This pipe outlet had a one-half to one-inch flow of brown discolored liquid being discharged into the road ditch. This road ditch passed through a culvert under Black Diamond road then flowing east through the Kelbly property.
- On the Kelbly property, a small upstream pond that discharged into both a larger down stream pond and the stream had brown discolored water. No dead fish were observed. The down stream pond discharges back into the stream and continues to flow east.
- The creek then passes under Dalton-Fox Lake Road and proceeds north along the road and was brown and discolored.
- Water samples were taken from the following locations with the results from Ohio EPA Division of Environmental Services Laboratory Inorganic Analysis Data Report as follows:

Sample Location	Sample Results
#1 Stream start at Black Diamond Road GPS Location	Ammonia 47.4 mg/L

N 40° 53' 05.71"	Nitrate + Nitrite	9.0 mg/L
W 81° 41' 08.91"	TKN	63.4 mg/L
Elevation 297 meters	Total Phosphorus	6.39 mg/L
#2 Upstream Pond at Surface Outlet		
GPS Location	Ammonia	12.0 mg/L
N 40° 53' 06.55"	Nitrate + Nitrite	7.10 mg/L
W 81° 40' 44.96"	TKN	14.3mg/L
Elevation 290 meters	Total Phosphorus	1.17 mg/L
#3 Downstream Pond at Surface outlet		
GPS Location	Ammonia	11.4 mg/L
N 40° 53' 08.53"	Nitrate + Nitrite	1.64 mg/L
W 81° 40' 41.61"	TKN	17.3 mg/L
Elevation 286 meters	Total Phosphorus	1.52 mg/L
#4 East of Dalton – Fox Lake Road		
GPS Location	Ammonia	10.8 mg/L
N 40° 53' 12.74"	Nitrate = Nitrite	4.44 mg/L
W 81° 40' 33.20"	TKN	12.8 mg/L
Elevation 283 meters	Total phosphorus	0.997mg/L

#### Specific violations

Based upon the above identified law and rules and the results of our inspection and testing, the following is a concise statement of violations:

1. Discharge of manure on or about September 29, 2003 in violation of special condition 2 of Ohio EPA Permit To Install No. 08-048-NE.
2. Failure to maintain manure lagoon freeboard. OAC 901:10-2-08(A)(3)(a)
3. Failure to properly inspect lagoon, including failure to inspect lagoon on the required frequency. OAC 901:10-2-08(A)(1) and (A)(3).
4. Failure to operate manure lagoon as a non-discharge facility. OAC 901:10-1-03.
- 5.

Your facility is the subject of Ohio EPA Permit to Install No. 08-048-NE for which enforcement was transferred to the Ohio Department of Agriculture on August 19, 2002. That permit and these facilities were required by September 30, 2003, to submit an RCC application pursuant to Section 903.04 of the ORC. In lieu of making such a filing, you submitted an application for a permit to operate, which permit application is currently incomplete due to the failure to include a CNMP with the application. In a letter dated June 27, 2003, you acknowledged that the permit application is on hold

The following actions shall performed as specified below:

1. Preventative actions:

- a. Insert a tile plug into the six-inch PVC pipe.
- b. Lower the manure pond level to maintain the required freeboard within thirty (30) days of the receipt of this letter.
- c. Perform regular inspections of the freeboard level of the pond each month and record in an Operating Record. The frequency of these inspections may change only if a Review Compliance Certificate or a Permit to Operate specifies a different inspection frequency.
- d. Find the location that manure is entering the field tile doing the discharge no later than January 31, 2004.

2. Promptly complete all required actions to properly complete the application for permit to operate currently pending by January 31, 2004. Respond to any and all corrections required by the review of that application by the Livestock Environmental Permitting Program.

You must complete all of these actions by January 31, 2004 to the satisfaction of the Department of Agriculture in order to "return to compliance" for the above noted violations. My authorized representative will re-inspect the facility, to determine if you have complied with this Notice. If it is determined that Catalpadale is not in compliance, then I will consider enforcement proceedings.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jim Young, LEPP Inspector  
John L. Shailer Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture



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**Certified Mail return Receipt requested**

Anton Pohlmann  
Buckeye Egg Farm, L.P.  
11212 Croton Road  
Croton, Ohio 43013

Croton Farm, LLC  
11212 Croton Road  
Croton, Ohio 43023-0173

November 7, 2003

Dear Mr. Pohlmann,

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on Wednesday, November 5, 2003 at the Croton Hatchery/Breeder Pullets site. Prior to this inspection, Cale Ayers of your staff telephoned Kevin Elder, Executive Director, Livestock Environmental Permitting Program (LEPP) and Stephanie Tudor contacted the LEPP Inspector, Jim Young. In addition, Ron Flory, Fresh Eggs Manager, contacted Mr. Elder to confirm that this Department had indeed been notified. Mr. Elder was told that a valve that is part of the tank or silo used to collect cockerel mortality broke or opened and resulted in a discharge of the cockerel waste contents that flowed in to Bowl Run. Mr. Elder was informed of the actions that were underway to contain the cockerel waste and to clean up the discharge. This included use of a sump pump to try to intercept the manure, which proved unsuccessful because the sump hole hit a tile. BEF next installed a dike to contain the spilled manure within a stream segment approximately 700 feet in length and then pumped this manure to egg wash ponds, which are authorized to store manure. Nevertheless, the cockerel waste mortality flowed into Bowl Run, which is "waters of the state."

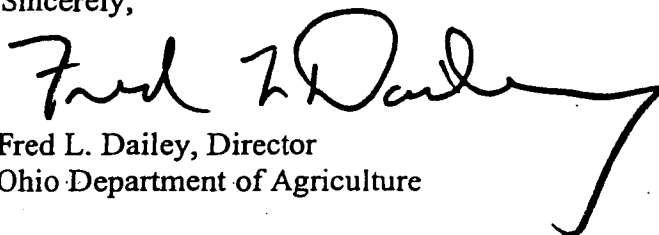
The cockerel waste contents are "manure" as this term is defined in Section 903.01(N) of the Ohio Revised Code (ORC):

"Manure means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs; animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta."

The cockerel wastes are mortality to be managed as manure and as part of a "manure management plan" as required in rule 901:10-2-07(A)(1) of the Ohio Administrative Code (OAC). A manure management plan cannot include mortality management that is inconsistent with rule 901:10-2-15 of the OAC. This rule allows dead livestock to be burned, buried, rendered or composted according to the rules. In fact, ODA recognizes that the manure management plan used by Fresh Eggs Manager, LLC specifies rendering of this waste. But a discharge to waters of the state is not authorized and is thus a violation of rules 901:10-2-07 and 901:10-2-15 of the OAC.

In accordance with rule 901:10-5-03 of the OAC, you must take actions to correct the violations. While recognizing that actions were taken to contain and clean up the discharged manure, to correct the violations you are required to submit a report in writing within five (5) days of receipt of this letter that explains in detail the cause of the manure discharge, including all of the information required by rule 901:10-2-17(A)(4) of the OAC. This report must include details of any corrective actions to be taken to assure ODA that this type of failure and discharge will not re-occur. Please direct your report to Mr. Elder, Livestock Environmental Permitting Program. After receipt and review of your report, an inspector from the LEPP staff will inspect the Croton Hatchery/Breeder Pullets site to determine if you have returned to compliance.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John L. Shailer, Assistant Attorney General  
Cathy Alexander/Rick Wilson, Ohio EPA  
Ronald L. Flory, Fresh Eggs Manager, LLC  
William Leininger/Cale Ayers, Buckeye Egg Farm



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Lieutenant Governor Maureen O'Connor  
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October 21, 2003

## Certified Mail return Receipt requested

Rick Kremer Hog Farm  
9159 State Route 118  
Ansonia, Ohio 45303

**Re: Notice of Deficiencies Resulting in Noncompliance**  
Rick Kremer Hog Farm

Dear Mr. Kremer,

Section 903.16 of the Ohio revised Code (ORC) provides that the Director may request the Ohio Attorney general to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03 and 903.04 of the ORC.

The following are the sections of law at issue:

Section 903.02 (A)(2): On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.

Section 903.03 (A)(2): Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the Director under this Section.

The following are the rules at issue:

Rule 901:10-2-06 of the Administrative Code provides, in pertinent part, at paragraphs (A)(7) and (A)(8):

“ A manure storage pond or manure treatment lagoon subject to this rule shall be designed and the plans stamped by a professional engineer. The following design and construction criteria shall be followed:

\* \* \* \* \*

“(7) Storage period.

The minimum storage period of manure for a manure storage pond and manure treatment lagoon shall be one hundred eighty days of manure production unless alternative use and design is otherwise approved by the department. This section is not intended to address the surface water runoff where the runoff does not enter into the pond or lagoon.

“(8) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than one foot above the liquid level of the total storage volume.”

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard.”

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

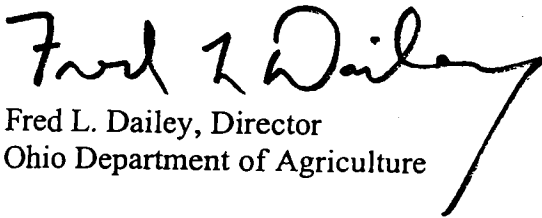
This Notice of Violation is sent to you as a result of violations of the laws and rules listed above as discovered during an inspection and discussion that you had with my staff on Friday, June 13, 2003 at your farm and as a result of a subsequent inspection conducted by my staff on June 24, 2003. You were informed on June 13, 2003 that a Permit to Operate was required for your facility. By letter dated June 17, 2003, Kevin Elder, Executive Director of the Livestock Environmental Permitting Program required you to submit a complete Permit to Operate application, along with submittal of the “as-built plans” for your current facility. You were asked to submit this information by the end of July to allow for review and decisions on the Permit to Operate by the end of September 2003. At the June 13<sup>th</sup> inspection, you were informed that your facility did not have the amount of freeboard required and you were directed to take actions to make corrections to reduce the volume of the lagoon.

At the June 24<sup>th</sup> inspection, ODA staff found the lagoon to be overflowing in four places and ready to overflow at a fifth place. This is a violation of ODA laws and rules. You must take steps immediately to return to compliance. You are required to submit an application for a Permit to Operate no later than August 11, 2003. In the alternative, you may choose to de-populate to 2,500 hogs or less not later than August 31, 2003.

To date, you have not submitted the required permit application. Therefore, I require you to submit the application for a Permit to Operate within 20 business days or to submit a letter sent certified mail return receipt requested notifying Kevin Elder, Executive Director, Livestock Environmental Permitting Program, of your plans to de-populate. Upon receipt of this notice to Mr. Elder, an inspector will be assigned to verify your actions.

If it is determined that Rick Kremer Hog Farm is not in compliance, then I will consider enforcement proceedings and seek a penalty.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
John Shailer, Assistant Attorney General



**OHIO DEPARTMENT OF AGRICULTURE  
STATE OF OHIO**

In re:

**BUCKEYE EGG FARM, L.P.**  
**CROTON FARM, LLC**  
**ANTON POHLMANN**

Respondents/Applicants

Order No. 2003-255

**ORDER**

Based on the record before me I find that on August 19, 2002, the Ohio Department of Agriculture ("the Department") issued a Notice of Opportunity for Hearing to Buckeye Egg Farm, L.P. and Croton Farm, LLC. The Notice advised Buckeye Egg Farm and Croton Farm of the Department's proposal to issue an order revoking certain permits to install held by Buckeye Egg Farm or Croton Farm for failure to comply with Rules 901:10-1-03(A)(5), 901:10-1-03(B), and 901:10-1-10(F) of the Ohio Administrative Code ("OAC"). Further, the Department proposed to deny certain pending applications for permits submitted by Buckeye Egg Farm based on the applicant's history of substantial noncompliance in violation of OAC Rule 901:10-1-03(B). The specific permits proposed for revocation were:

Croton facility -

PTI 01-382  
PTI 01-454  
PTI 01-491  
PTI 01-382M  
PTI 01-2475  
PTI 01-039-IW  
PTI 01-7152  
PTI 01-7269

Mt. Victory facility -

PTI 03-7224  
PTI 03-9594

Goshen facility -

PTI 03-11083-IW  
PTI 03-10878-IW.

The specific permit applications proposed for denial were:

Croton facility -

PTI 01-265

	PTI 08-075-CD
Mt. Victory facility -	PTI 03-137-IW PTI 08-071-NW PTI 08-072-NW
Goshen facility -	PTI 08-070-NW
Marseilles facility -	PTI 03-113-IW PTI 03-139-IW PTI 03-9775 PTI 08-043-NW PTI 08-073-NW.

Buckeye Egg Farm and Croton Farm submitted a timely request for a hearing before the Department with respect to the proposed revocations and denials.

On October 11, 2002, a second Notice of Opportunity for Hearing was issued by the Department. The purpose of this Notice was to name Anton Pohlmann as a respondent in this matter (hereinafter, Buckeye Egg Farm, Croton Farm and Anton Pohlmann may be referred to collectively as "Respondents" or "Respondents/Applicants"). A timely request for a hearing before the Department was submitted with respect to the October 11, 2002 Notice.

The hearing was held before Alan L. Lapp, Hearing Officer. The hearing began November 25, 2002 and concluded December 11, 2002. The Department of Agriculture was represented by Margaret A. Malone, Barbara A. McGinn, and Robert W. Cheugh II, Assistant Attorneys General. The Respondents/Applicants were represented by David E. Northrop and Daniel T. Swanson of Porter, Wright, Morris & Arthur. On June 19, 2003 the Hearing Officer issued his Report and Recommendation, which was received by Appellant on June 20, 2003.

The Appellant filed objections to the Report and Recommendation on July 1, 2003. Both parties filed briefs with the Hearing Officer prior to the issuance of the Report and Recommendation.

Appellants' objections to the Report and Recommendation, the parties' briefs, and relevant portions of the transcript and exhibits were considered by the Department before approving, modifying or disapproving the Report and Recommendation.

After careful consideration, by the authority vested in my office by law, it is hereby ORDERED:

1. That the Findings of Fact and Conclusions of Law contained in the Report and Recommendation attached hereto as Exhibit A, are specifically adopted as my own;
2. That the Recommendation contained in the Report and Recommendation attached hereto as Exhibit A is approved and confirmed;
3. That the following permits of Respondents/Applicants, Buckeye Egg Farm, L.P., Croton Farm, LLC and Anton Pohlmann are hereby revoked:

Croton facility - PTI 01-382  
PTI 01-454  
PTI 01-491  
PTI 01-382M  
PTI 01-2475  
PTI 01-039-IW  
PTI 01-7152  
PTI 01-7269

Mt. Victory facility - PTI 03-7224  
PTI 03-9594

Goshen facility - PTI 03-11083-IW  
PTI 03-10878-IW.

4. That the following permits of Respondents/Applicants, Buckeye Egg Farm, L.P., Croton Farm, LLC and Anton Pohlmann are hereby denied:

Croton facility - PTI 01-265  
TI 08-075-CD

Mt. Victory facility - PTI 03-137-IW  
PTI 08-071-NW  
PTI 08-072-NW

Goshen facility - PTI 08-070-NW

Marseilles facility - PTI 03-113-IW  
PTI 03-139-IW  
PTI 03-9775  
PTI 08-043-NW  
PTI 08-073-NW.

5. That to assure the orderly and environmentally acceptable cessation of operations at the Respondents' facilities, the Respondents shall proceed as follows:

a. Respondents shall close two barns every five (5)-business days, commencing within twenty (20) business days of the effective date of this ORDER in the sequence set forth in paragraphs (a)(1) through (a)(4). All barns closed as of the effective date of this ORDER shall be considered closed and shall remain closed. Respondents shall adhere to all applicable laws in completing the closures.

1) Respondents shall begin barn closures commencing at the Marseilles facilities located in Wyandot County.

2) Respondents shall next commence barn closures at the Croton facilities, located in Licking County. Respondents shall proceed as follows for the Croton facilities:

- a) Close all barns at Layer Site No. 2;
- b) Close all barns at Layer Site No. 1;
- c) Close all barns of the pullet sites, breeder site, and hatchery.
- d) Close all barns of the remaining Layer sites.

3) Respondents shall next commence barn closure at the Goshen facility, located in Hardin County.

4) Respondents shall next commence barn closure at the Mt. Victory facilities, located in Hardin County.

6. Barn closures include but are not limited to:

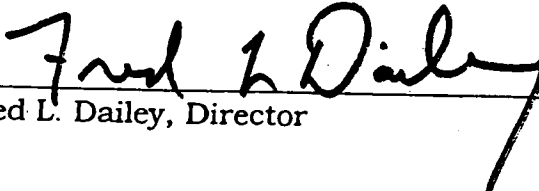
a. Remove all poultry;


- b. Clean and remove feed from feed bins and feed conveyor lines;
  - c. Drain all water lines and shut off service to all water lines.
7. Concurrent with the barns closures listed above, Respondents shall commence closure of any manure storage ponds or manure treatment lagoons not authorized by NPDES permits issued by the Director of Ohio EPA. Closure shall be performed in accordance with rule 901:10-2-18 paragraph (A) items (2), (3) and (4) of the Ohio Administrative Code. Item (A)(1) shall not apply.
8. Barn closures of all of Respondents' facilities shall be completed no later than June 1, 2004. Manure shall be removed from all manure storage or treatment facilities, including all barns, no later than September 1, 2004.
9. That upon journalization a certified copy of this Order be sent to the following:

Margaret A. Malone  
Barbara A. McGinn  
Robert W. Cheugh II  
Assistant Attorneys General  
Ohio Attorney General's Office  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215; and

David E. Northrop  
Daniel T. Swanson  
Porter, Wright, Morris & Arthur,  
41 South High Street, Suite 2900,  
Columbus, Ohio 43215.

Effective date of this Order: Upon journalization

  
Fred L. Dailey, Director

  
8 July, 2003  
Date

Entered Ohio Department of Agriculture Journal on this 8th day of  
July, 2003 by Craig Ellis

#### NOTICE OF APPEAL RIGHTS

This ORDER may be appealed within 30 days to the Environmental Review Appeals Commission (ERAC), 309 South Fourth Street, Room 222, Columbus, Ohio 43215, pursuant to Sections 903.09 and 3745.04 of the Revised Code. The notice of appeal must set forth the ORDER appealed from and the grounds of the party's appeal. A copy of the Notice of Appeal shall also be filed with the Director of Agriculture within three days after filing the appeal with ERAC.

**CERTIFICATION**

STATE OF OHIO,  
COUNTY OF LICKING, SS

:  
:

Order No. 2003-255

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of ORDER #2003-255, which was entered upon the order journal of the Ohio Department of Agriculture on 8th, day of July, 2003.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 8th day of July, 2003.

Fred L. Dailey  
Fred L. Dailey, Director  
Ohio Department of Agriculture





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-466-2732 • Fax 614-466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [wwwagri@ohio.gov](mailto:wwwagri@ohio.gov)

March 4, 2003

The Honorable Jim Petro  
Attorney General of Ohio  
C/o Dale T. Vitale, Senior Deputy for Environmental Enforcement  
State Office Tower  
30 East Broad Street, 17<sup>th</sup> floor  
Columbus, Ohio 43215

**Re: Referral of 5C Farm, Mr. Bill Cleland, Sr. Mr. Bill Cleland, Jr.**

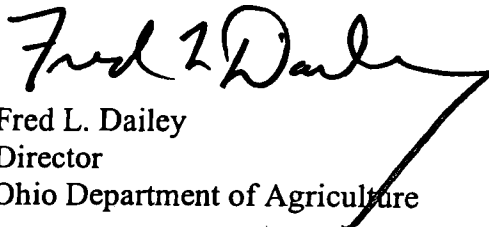
Dear Mr. Petro:

In accordance with Sections 903.16 of the Ohio Revised Code, I hereby request that your office take appropriate enforcement action against the above-referenced individuals as owners/operators of 5C Farm for violations of Sections 903.02 and 903.03 of the Ohio Revised Code.

On February 14, 2003, I issued a Notice of Violation letter to Mr. Cleland, Sr. and Mr. Cleland, Jr., informing them that a copy of the Notice would be forwarded to your office with a request to bring an action that includes a civil penalty. A copy of the Notice was subsequently transmitted to your office along with a copy of the file.

If there are any questions about this case or matters related to this request, please direct them to Jennifer Tiell, an attorney on my staff.

Sincerely,



Fred L. Dailey  
Director  
Ohio Department of Agriculture





Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Office  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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## Certified Mail Return Receipt Requested

Mr. William Cleland, Jr. and  
Mr. William Cleland, Sr. Co-owners  
5C Farm  
05191 Thiel  
Hicksville, Ohio 43526

February 14, 2003

Re: Notice of Deficiencies Resulting in Noncompliance  
5C Farm

Gentlemen:

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03, and 903.04 of the ORC.

The following are the sections of law at issue:

Section 903.02 (A)(2): On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.

Section 903.05 of the ORC requires a background check on your record of compliance prior to issuing any permit.

Section 903.01(E): Concentrated animal feeding facility means an animal feeding facility with a total design capacity of more than one thousand units.

Section 903.03 (A)(2): Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on

which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit issued by the Director under this Section.

The following is the rule at issue:

901:10-2-01 of the Ohio Administrative Code: Permit to install; purpose and applicability.

(A) Purpose and applicability of a permit to install.

(1) No person shall construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director.

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

Based upon an inspection on January 8, 2003, the 5C Farm was found to have installed an animal feeding facility with design capacity of more than one thousand animal units. Your farm does not have a permit to install issued by the Director of the Ohio Environmental Protection Agency and does not have a permit to install issued by the Ohio Director of Agriculture. In fact, I have been informed that this Department has not received any applications for required permits from you.

Given the fact that much of the construction is well underway, be advised that a copy of this Notice will be forwarded to the Office of the Attorney General with a request to bring an enforcement action that includes a civil penalty.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Barbara A. McGinn, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

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## Certified Mail Return Receipt Requested

Mr. Hette DeVries  
7188 Sager Road  
LaRue, Ohio 43332

January 7, 2003

Re: Notice of Deficiencies Resulting in Noncompliance  
DeVries Dairy  
7188 Sager Road  
LaRue, Ohio 43332

Gentlemen:

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03, and 903.04 of the ORC.

The following are the sections of law at issue:

Section 903.02 (A)(2): On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.

The following are the rules at issue:

Rule 901:10-1-01(VV) of the Ohio Administrative Code OAC states, in pertinent part, that a modification means one of the following:

- (1) A material and substantial alteration of the facility including an increase of the number of animal units of the design capacity of an existing facility by 10 percent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or operation's capacity be modified to increase by more than 10 percent in the aggregate.
- (5) Changes to the manure storage or treatment facility that result from any of the following:
  - (a) An expansion of more than ten percent in treatment or storage capacity;
  - (b) A significant change in treatment technology; or
  - (c) Closure of part of the manure storage or treatment facility.

901:10-1-09 Permit modification.

(A) No facility or activities regulated by a permit to install or a permit to operate or a NPDES permit under this chapter shall be modified as that term is defined in rule 901:10-1-01 of the Ohio Administrative Code unless the permit is modified in compliance with this rule.

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

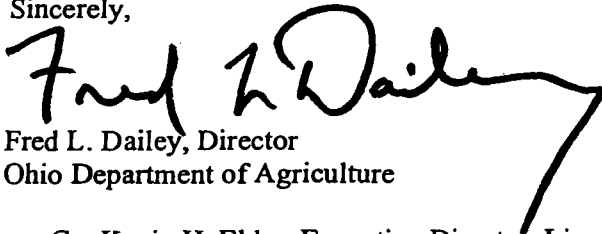
Based upon a visit on January 3, 2003, by ODA Livestock Environmental Permitting Program Engineers, DeVries Dairy was found to be using the manure treatment lagoon that is currently under review as a draft permit by the Ohio Department of Agriculture.

DeVries Dairy is currently operating under an Ohio EPA PTI No. 08-050-NW issued June 2002. The Ohio EPA PTI authorized the installation and operation of a concrete or cement fabricated structure. DeVries Dairy submitted applications to ODA for a permit to install modification and a permit to operate. The applications submitted to ODA propose to modify the fabricated structure, previously approved, to a manure treatment lagoon with a clay liner and a higher degree of permeability and protectiveness.

I recognize that the modification implemented by DeVries is an environmentally sound choice, but DeVries has not yet been issued the permits in accordance with the law, including, but not limited to, the procedures set forth in Section 903.09 of the ORC.

I recommend that you contact legal counsel for the Ohio Department of Agriculture in order to schedule a meeting to discuss actions to be taken. Contact Jenny Tiell, Legal Counsel or Kristi Ford, Legal Assistant at 614-387-0470 to further discuss this issue.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Barbara A. McGinn, Assistant Attorney General  
Shannon McQuade, Chief Legal Counsel, Ohio Department of Agriculture  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Ron Waterman, Counsel for DeVries



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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## Certified Mail Return Receipt Requested

Mr. Andrew Brehm  
15188 US 127  
West Unity, Ohio 43570

Dr. Leon Weaver  
4962 Burkwood Court No. 101  
Sylvania, Ohio 43560

September 4, 2002

Re: Notice of Deficiencies Resulting in Noncompliance  
Mill Creek Dairy  
20858 Williams Co. Road P  
Alvordton, Ohio 43501

Gentlemen:

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02, 903.03, and 903.04 of the ORC.

The following are the sections of law at issue:

Section 903.02 (A)(2): On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.

Section 903.01(E): Concentrated animal feeding facility means an animal feeding facility with a total design capacity of more than one thousand units.

The following is the rule at issue:

901:10-2-01 Permit to install; purpose and applicability.  
(A) Purpose and applicability of a permit to install.

(1) No person shall construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director.

On August 19, 2002, the Director finalized the program required under Division of (A)(1) of Section 903.02 and Division (A)(1) of Section 903.03 of the ORC.

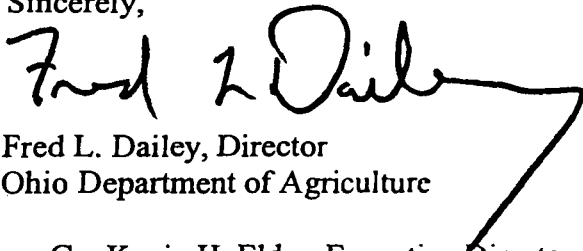
Based upon an inspection on August 29, 2002, Mill Creek Farm was found to have installed an animal feeding facility with design capacity of more than one thousand animal units. Mill Creek Farm does not have a permit to install issued by the Director of the Ohio Environmental Protection Agency and does not have a permit to install issued by the Ohio Director of Agriculture.

Mill Creek Farm has submitted applications for a permit to install and a permit to operate but has not been issued the permits in accordance with the law, including, but not limited to, the procedures set forth in Sections 903.05 and 903.09 of the ORC.

To correct these violations, you are required to cease construction immediately. You may not commence construction until such time that the decisions with respect to the permits are final and effective.

The Director or his authorized representative will re-inspect the facility to determine if you have complied with this Notice. If it is determined that Mill Creek Farm is not in compliance, then the Director may bring an action for an injunction and a civil penalty. In addition, be advised that violation of Section 903.02(A)(2) of the ORC is a misdemeanor violation, subject to fines of up to \$1,000.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Barbara A. McGinn, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335  
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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Mike Pastore  
Mr. Earl Long, Farm Manager  
General Poultry, Inc.  
22501 Courtney Road  
Alliance, Ohio 44601

Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 29, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

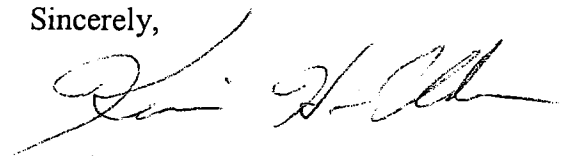
1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mahoning County SWCD  
Cathy Alexander, Ohio EPA





# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Jim Pastore, Jr. and Mr. Mike Pastore  
Ms. Anna Carroll, Farm Manager  
J and M Poultry, Inc.  
10450 Oyster Road  
Alliance, Ohio 44601

Re: Warning Letter

Gentlemen and Ms. Carroll:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 29, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

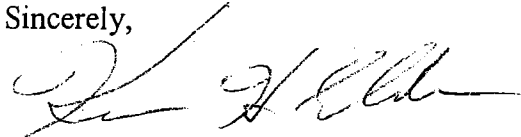
“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection this year indicates the

continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mahoning County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Ted Hawk and Ms. Diana Hawk  
Mr. Devlan Carroll, Farm Manager  
LK Poultry, Inc.  
6135 Union Ave. N.E.  
Alliance, Ohio 44601

Re: Warning Letter

Gentleman and Ms. Hawk:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 28, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

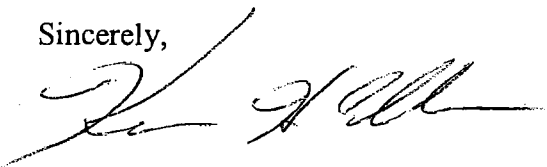
Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the

aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. James Pastore, Sr.  
Steve and Vickie Lynn Erich, Farm Managers  
North Preston Farm, Inc.  
9635 Ravenna Road  
Louisville, Ohio 44641

Re: Warning Letter

Mr. Pastore and Mr. and Mrs. Erich:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

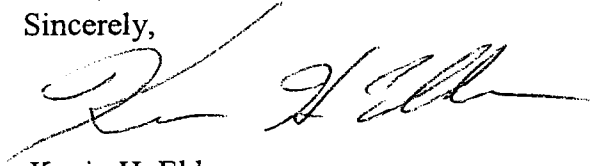
1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Jim Pastore, Jr.  
Laura Cameron, Farm Manager  
Pine Tree Farms  
21425 North Benton West  
North Benton, Ohio 44449

Re: Warning Letter

Dear Mr. Pastore and Ms. Cameron:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 28, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

I. Need for annual manure analysis.

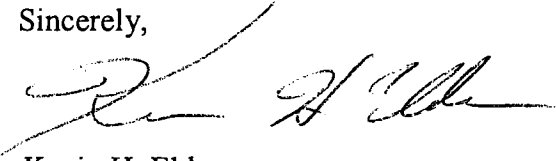
Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the

aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder", written in a cursive style.

Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mahoning County SWCD  
Cathy Alexander, Ohio EPA





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Jim Pastore, Jr.  
Mr. Jay Blake, Farm Manager  
Red Rose Farm, Inc.  
21620 Courtney Road  
Alliance, Ohio 44601

Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 28, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

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Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mahoning County SWCD  
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# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Anthony Pastore  
Jay Braid, Farm Manager  
Reeder Road Farm, Inc.  
11480 Reeder Road  
Alliance, Ohio 44601

Re: Warning Letter

Gentleman and Ms. Hughes:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 28, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

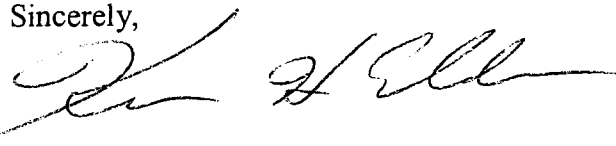
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aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Tony Pastore  
Kevin and Brenda Klingensmith, Farm Managers  
St. Peters Church Farm, Inc.  
8110 St. Peters Church Road  
Louisville, Ohio 44641

Re: Warning Letter

Gentlemen and Ms. Klingensmith:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

I. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

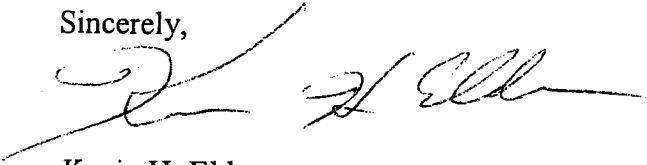
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“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

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·  
aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
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Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

January 14, 2005

Tim and Joyce Vizzuro  
V.I.Z. Poultry, Inc.  
4129 Bandy Road  
Homeworth, Ohio 44634

Re: Warning Letter

Dear Mr. and Mrs. Vizzuro:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 29, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):


“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

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continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Columbiana County SWCD  
Cathy Alexander, Ohio EPA





# Ohio Department of Agriculture

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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Ted Hawk  
Mark and Charlene Hughes, Farm Manager  
Willow Creek Farm, Inc.  
6135 Union Ave., N.E.  
Alliance, Ohio 44601

Re: Warning Letter

Gentleman and Ms. Hughes:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 29, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

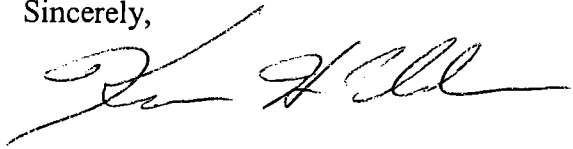
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continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

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Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. James Pastore, Sr.  
Pauline Guthrie, Farm Manager  
Alberta Beach Farm, Inc.  
8276 Alberta Beach Rd. N.E.  
Louisville, Ohio 44641

Re: Warning Letter

Dear Mr. Pastore and Ms. Guthrie:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

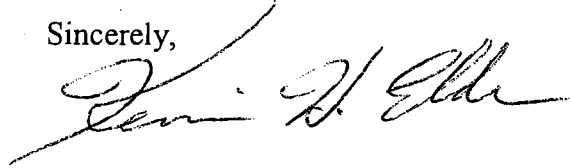
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Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. James Pastore, Sr.  
Larry and Shelly Furbee, Farm Managers  
Beeson West Farm, Inc.  
8187 Beeson West  
Louisville, Ohio 44641

### Re: Warning Letter

Gentleman and Ms. Furbee:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 27, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

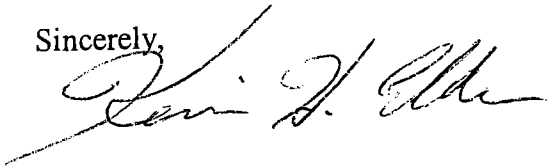
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“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

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Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



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## Certified Mail Return Receipt Requested

January 12, 2005

Wenning Poultry Farm  
James and Mary Wenning  
1500 Union City Road  
Fort Recovery, Ohio 45846

Re: Warning Letter

Dear Mr. and Mrs. Wenning:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on November 5, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found numerous violations of Ohio law surrounding your operation. These violations include the following:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.

In addition, Rule 901:10-2-16(A)(1)(b) of the OAC provides:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the

facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(b) Manure characterization records. Manure characterization data and other information as required in rule 901:10-2-10 of the Administrative Code.

2. Need for annual water well sample which should be maintained in your operating record.

Rule 901:10-2-08(A)(3)(i) of the OAC provides:

Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraph (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code. In the event that a well does not already exist at the facility, then the owner or operator shall install a well at the facility that is properly located, protected and operated. The well shall be easily accessible for sampling and have an adequate water quantity for sampling. Results of sampling and analysis shall be documented in the operating record.

3. Need to provide copies of the annual manure analysis to those who receive manure from you and need to maintain records of these transactions with recipients.

Rule 901:10-2-11(A)(2) and (A)(3) of the OAC provides:

If the owner or operator elects to use distribution and utilization methods, the following is required:

(2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall receive a written agreement signed by the person accepting the manure that states the following: "I have been provided with a copy of analytical results that list the nutrient content of the manure and total quantities of manure. The manure will be distributed and utilized according to best management practices and according to any state laws regulating these uses."

(3) All of the information in paragraphs (A)(1) to (A)(2) of this rule shall be recorded in the operating record as described in rule 901:10-2-16 of the Administrative Code.

In addition, Rule 901:10-2-16(A)(1)(e) of the OAC provides:

(e) The records for implementation of distribution and utilization methods, if used, shall include:

- (i) Quantity of manure transferred off-site;
- (ii) Date of off-site transfer;
- (iii) Name of recipient of manure; and



(iv) A statement signed by the recipient acknowledging that the recipient shall follow best management practices for land application, if applicable, required by rule 901:10-2-14 of the Administrative Code.

4. Need to maintain records in the operating record of freeboard measurements in the manure lagoon.

Rule 901:10-2-08(A)(3)(a) of the OAC provides:

(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one-foot of freeboard.

In addition, Rule 901:10-2-16(A)(1)(a)(i) of the OAC provides:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility. Records required by rule 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(i) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan.

5. Need to maintain the required information in the operating record for land application of manure, including date, rate, amounts of commercial fertilizer applied and method of commercial fertilizer application, a soil survey map, and nitrogen leaching index test results.

Rule 901:10-2-16(A)(1)(c)(v), (A)(1)(c)(xii), and (A)(1)(c)(xiv) of the OAC provide:

Land application site records. Records for each land application site, including:

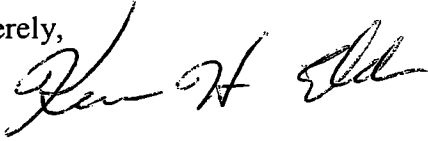
(v) Land application sites as described on a soil survey map.

(xii) Results of the nitrogen leaching risk assessment procedure and the phosphorus soil test assessment procedure or phosphorous index risk assessment procedure.

(xiv) Date, rate, quantity and method of application of the nutrient, and/or form and source of manure, commercial fertilizer and/or other organic by-products. (Emphasis added)

An inspector plans to inspect your operation in late February to mid-March, 2005. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mercer County SWCD  
Cathy Alexander, Ohio EPA



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-466-2732 • Fax 614-466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [wwwagri@ohio.gov](mailto:wwwagri@ohio.gov)

January 10, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in paragraphs 8 and 34 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## **I. VIOLATIONS**

ODA has determined that the Consent Order and terms and conditions in permit to operate OFL1-0001.PO0001.LICK issued for OFE Croton Layer No.1 have been violated. Specifically, Paragraph 34 of the Consent Order requires that OFE perform "daily monitoring of all barns which is reliable, verifiable and documented" by OFE. Additionally, the Moisture Management section of OFE's Insect and Rodent Control Plan

provides that: "Every day an inspector walks each pit to ... record ... water leaks immediately. Water leaks are repaired immediately."

ODA has determined that for 18 weeks from June 1, 2004 through October 8, 2004, OFE failed to accurately complete Pit Inspection Reports, FEM-3. According to OFE's quarterly manure analysis, manure moisture levels in four barns at Croton Layer No. 1 exceeded 30%. Despite the information contained in the quarterly manure moisture analysis, Pit Inspection Reports, FEM-3, completed from June 1, 2004 through October 8, 2004 consistently reported manure moisture as "dry."

## **II. CORRECTIVE ACTIONS REQUIRED**

OFE is required to revise its employee training for daily barn inspections for OFE Croton Layer No. 1. OFE is required to complete the revisions to employee training within thirty (30) days of receipt of this letter. Thereafter, OFE shall train employees and training shall be complete no later than February 15, 2005. OFE shall submit an affidavit to ODA documenting that each production employee, whether a full-time, part-time, or temporary employee, has been trained. OFE shall submit the affidavits to Kevin Elder, Executive Director, Livestock Environmental Permitting Program, no later than February 20, 2005. OFE shall retain records on file of employee training, including training of any new employees, for periodic inspection by ODA.

OFE is required to submit a written report to LEPP within ten (10) days of the date of this letter explaining in detail the duties and responsibilities of Site Production Managers at Croton Layer No. 1, as this term is used in all permits issued to OFE. OFE shall identify by name each Site Production Manager within the context of the Table of Organization for the Croton Layer No. 1 facility. This information included in the Table of Organization shall be submitted to ODA.

Finally, OFE is required to immediately establish all necessary policies, practices and procedures to insure that all barns at the Croton Layer No. 1 facility are being inspected daily for water leaks and all inspections are being properly recorded in accordance with OFE's permit. OFE shall submit to ODA within 30 days of the date of this letter a report explaining the policies, practices and procedures placed into operation and their effectiveness.

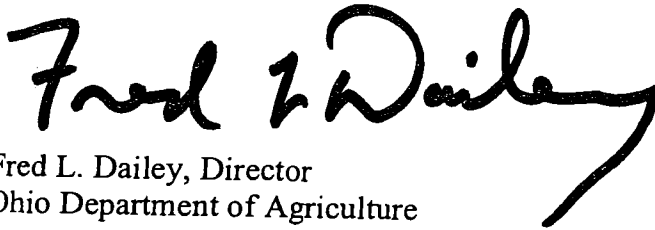
## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (D), (F) and (K). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category II and the gravity of the violations as

high. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$6,000.00 per week for 18 weeks, for a total of \$108,000.00, and the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell/Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-466-2732 • Fax 614-466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [wwwagri@ohio.gov](mailto:wwwagri@ohio.gov)

January 10, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aoughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in paragraphs 8 and 34 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## **I. VIOLATIONS**

ODA has determined that the terms and conditions in the Consent Order and the permit to operate OFMA-0001.PO0001.WYAN issued for OFE Marseilles Layer No. 6 have been violated. Specifically, Paragraph 34 of the Consent Order requires that OFE document daily monitoring of barns. Additionally, the Moisture Management section of the OFE's Insect and Rodent Control Plan provides that: "Every day an inspector walks each pit to . . . record, . . . water leaks immediately. Water leaks are repaired immediately."

ODA has determined that for 18 weeks from July 1, 2004 to November 8, 2004 OFE failed to complete any Water Loss Repair Logs (FEM-2) at Marseilles Layer No. 6 to record water losses and leaks as required by the terms and conditions of Permit OFMA-0001.PO0001.WYAN.

## **II. CORRECTIVE ACTION REQUIRED**

OFE is required to revise its employee training for daily barn inspections for OFE Marseilles Layer No. 6. OFE is required to complete the revisions to employee training within thirty (30) days of receipt of this letter. Thereafter, OFE shall train employees and training shall be complete no later than February 15, 2005. OFE shall submit an affidavit to ODA documenting that each production employee, whether a full-time, part-time, or temporary employee, has been trained. OFE shall submit the affidavits to Kevin Elder, Executive Director, Livestock Environmental Permitting Program, no later than February 20, 2005. OFE shall retain records on file of employee training, including training of any new employees, for periodic inspection by ODA.

OFE is required to submit a written report to LEPP within ten (10) days of the date of this letter explaining in detail the duties and responsibilities of Site Production Managers at Marseilles, as this term is used in all permits issued to OFE. OFE shall identify by name each Site Production Manager within the context of the Table of Organization for the Marseilles facilities. This information included in the Table of Organization shall be submitted to ODA.

Finally, OFE is required to immediately establish all necessary polices, practices and procedures to insure that all barns at the Marseilles facilities are being inspected daily for water leaks and all inspections are being properly recorded in accordance with OFE's permit. OFE shall submit to ODA within 30 days of the date of this letter a report explaining the policies, practices and procedures placed into operation and their effectiveness.

## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (D), (F) and (K). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00, and the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD





# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

January 3, 2005

Mr. Ed Stoll  
Mr. Todd Stoll  
Stoll Farms, Inc.  
6818 Coal Bank Road  
Marshallville, Ohio 44645

### Re: Warning Letter

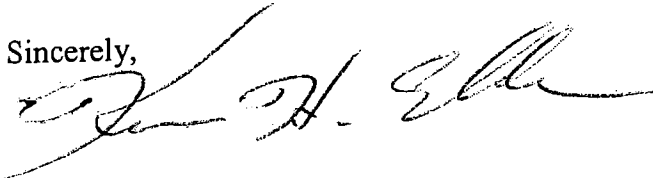
Gentlemen:

My staff discovered violation of Ohio Department of Agriculture laws and rules on December 8, 2004. On that date three violations of Ohio law surrounding your operation's surface manure application to the field located east of 6848 Dalton-Fox Lake Road were discovered. The land application set back requirements are provided in Appendix A of Table 2 of Ohio Administrative Code (OAC) Rule 901:10-2-14 and Ohio EPA Permit Number 08-047-NW. The three violations are as follows:

1. Setback from neighboring residence when surface application not followed by incorporation within twenty-four hours is 300 feet. (Source: Appendix A of Table 2 of OAC 901:10-2-14) December 8, 2004 manure application was in violation at forty-three feet from the property line and one hundred and twenty-three feet from the neighboring home.
2. Setback from private water well when surface application not followed by incorporation within twenty-four hours is 300 feet from the edge of the field. (Source: Appendix A of Table 2 of OAC 901:10-2-14) December 8, 2004 manure application was one hundred and three feet from the private water well.
3. Setback from road ditch for liquid manure application shall be fifty feet as provided in OEPA Permit to Operate Number 08-047-NW on page 41. December 8, 2004 manure application was in violation at twenty-seven feet from the road ditch.

Please review and familiarize yourself with these restrictions. We take these violations seriously. In the event there are future violations enforcement actions may be recommended against you.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Duane Wood, Wayne SWCD  
Jennifer Tiell, Kristen Davidson, LEPP Legal Counsel  
Mike Nishimura – ODNR-DSWC  
Rick Wilson – Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
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Director Fred L. Dailey

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December 20, 2004

**Certified Mail Return Receipt Requested**

Kurt Lauseker  
Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

As operators of Daylay Egg Farm #3 and Mad River Egg Farm, the Ohio Department of Agriculture (ODA) is issuing this Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the

director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*  
\*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating

conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

### **Facts in Support of Findings of Deficiencies**

1. Daylay Egg Farm #3 and Mad River Egg Farm are existing concentrated animal feeding facilities. Daylay Egg Farm #3 is located at 27,400 Coder Holloway Road, West Mansfield, Ohio 43358-0005. Mad River Egg Farm is located at 27322 SR 739, Raymond, Ohio 43067. Daylay Egg Farm #3 and Mad River Egg Farm are located in Union County and are referred to as "the Facilities."
2. Margaret Zimmerer is the owner and Kurt Lauseker and Mark Meyer are operators of Daylay Egg Farm #3 and Mad River Egg Farm.
3. Daylay Egg Farm #3 has the design capacity to raise or maintain approximately 820,000 layers or 8,200 animal units. Mad River Egg Farm has the design capacity raise or maintain approximately 1.6 million layers or 16,000 animal units, which constitutes more than one thousand animal units at each of the Facilities.
4. The Facilities were issued Ohio EPA Permits to Install No. EPA 01-224-PW, and 08-022-CD on March 13, 1991 and September 21, 1999 respectively by the Ohio Environmental Protection Agency. PTI No. 08-022-CD authorized installation, Livestock Waste Management Plan and Revised Manure Management applicable to Daylay Egg Farm #3. PTI No. 08-022-CD also authorized Revised Manure Management for Daylay Egg Farm #2 and Mad River Egg Farm. PTI No. 01-224-PW authorized manure management at all of the Facilities.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed

responsibility to enforce permits to install previously issued by the Ohio EPA.

6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facilities were required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Mark Meyer of the Facilities' obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated April 14, 2003, April 23, 2003, June 3, 2004, July 8, 2004, August 9, 2004, and September 7, 2004.
8. As of December 1, 2004, the Department received and reviewed the application for an RCC submitted by Mark Meyer and found that each of the Facilities fails to provide the following document required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of a RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facilities are being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.

You have twenty-one (21) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the twenty-one (21) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the

category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,



Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program  
Jennifer Tiell, Kristen Davidson, ODA Legal Counsel  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Union SWCD



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## Certified Mail Return Receipt Requested

December 20, 2004

Jan and Anja Van Ham  
22177 Road C  
Continental, Ohio 45831

Van Ham Dairy  
7089 Road 22  
Continental, Ohio 45831

### **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. and Mrs. Van Ham:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code Van Ham Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (Notice). ODA has determined that Van Ham Dairy has failed to maintain adequate freeboard as required by Ohio Administrative Code Section 901:10-2-08(A)(3). At a November 19, 2004 visit, no freeboard remained in your manure storage pond. As of December 15, 2004, you continued to have no freeboard available in your manure storage pond.

### **Corrective Actions**

You have twenty-one (21) days from the date on this letter within which you must correct these deficiencies by removing the manure and handling it correctly. You must keep records of the manure amounts and the final application or use of the manure in your operating records. You must make these records available to the ODA Livestock Environmental Permitting Program inspector.

After the twenty-one (21) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, I will consider proceeding with other enforcement options, including assessing a civil penalty of \$5,200.



Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is low and the gravity of the violations is low level. The appropriate penalty in this matter will be \$200.00 per day for 26 days (November 19, 2004 to December 15, 2004) for a total of \$5,200 unless the deficiencies are corrected.

ODA reminds you of the need to comply with the land application rules if you decide to land apply to reduce the manure level in the pond.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Robert Karl, Esquire  
Cathy Alexander, Ohio EPA  
Putnam County SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

December 15, 2004

Henk Arts  
5624 Elm Sugar Rd.  
Convoy, OH 45832

### Re: Director's Notice of Hearing

Dear Mr. Arts:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority of Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Arts Dairy imposing a civil penalty of \$5,760.00 because of ODA's determination that you have failed to comply with rule 901:10-2-08 of the Ohio Administrative Code (OAC).

Rule 901:10-2-08(A)(3) of the OAC provides, in pertinent part:

"(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

"(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard."

(Emphasis added)

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On January 27, 2004, ODA's LEPP issued Arts Dairy a warning letter due to the lack of freeboard in the manure storage pond, a violation of rule 901:10-2-08 of the OAC. In

February inspectors discovered that Arts Dairy applied manure on frozen or snow-covered ground, which was attributed to your failure to properly maintain manure storage capacity. On March 19, 2004, Kevin Elder, Executive Director, LEPP wrote to you with recommended steps to take to improve manure management in order to manage manure storage capacity. On July 28, 2004, LEPP Instructor, Jim Young, from the Livestock Environmental Permitting Program visited Arts Dairy to inspect the freeboard and found continuing failure to comply with the freeboard requirements in rule 901:10-2-08 of the OAC.

On August 6, 2004, ODA issued a Notice of Deficiencies Resulting in Noncompliance (Notice) based on Arts Dairy's failure to maintain freeboard as required by rule 901:10-2-08 of the OAC. Arts Dairy was required to correct the deficiencies within sixty (60) days by removing the manure from the manure storage pond and land applying it correctly. The Dairy was required to maintain Operating Records containing the manure amounts distributed or land applied and the manner in which the manure was applied or used. The Dairy was required to make these records available to the LEPP inspector. In addition to removing and applying manure to obtain the required freeboard, Arts Dairy was required to remove and apply enough additional manure to create sufficient storage space for the manure this winter and to prevent having to apply manure on frozen or snow covered ground.

On November 19, 2004, a LEPP inspector re-inspected the Dairy to determine whether the Dairy had complied with the requirements included in the August 6, 2004 Notice. The LEPP inspector determined that Arts Dairy had not complied with the Notice and that there was an imminent threat that the manure storage pond would overflow. Based on your failure to correct the deficiencies noted in the August 6, 2004 Notice and return to compliance, ODA is now issuing this Notice of Hearing and proposing the imposition of the \$5,760.00 penalty.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: Peter C. Esselburne, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on December 15, 2004.

Please note that if your company is a corporation, only an attorney at law admitted to practice in the State of Ohio may represent a corporation at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program

William J. Hopper, Chief Counsel, ODA  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Kristen Davidson, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Jim Young, LEPP Inspector  
Van Wert SWCD  
File



# Ohio Department of Agriculture

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Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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December 15, 2004

David Worden  
Albright Farms  
4017 Lower Leesville Road  
Bucyrus, Ohio 44820

**Certified Mail Return Receipt Requested**

**Re: Warning Letter**

Dear Mr. Worden:

I am writing to you as a result of an inspection conducted by my staff on December 1, 2004. The Inspector from the Livestock Environmental Permitting Program (LEPP) found that your farm does not have a staff gauge or depth marker or other device to measure the liquid levels in your manure lagoon. You are required to install a staff gauge as soon as possible but no later than February 15, 2004.

Not only does Rule 901:10-2-06 of the Ohio Administrative Code (OAC) require you to install a staff gauge in the lagoon, but other ODA rules require you to use the gauge to monitor the liquid levels of the lagoon and to record the levels in your Operating Record. These requirements are in Rules 901:10-2-08 and 901:10-2-16.

Finally, I advise you that these requirements for an installed staff gauge, periodic monitoring, and records of liquid levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,

Kevin H. Elder  
Executive Director, Livestock Environmental Permitting Program

Cc: Chris Rodabaugh/Jim Young, LEPP Inspectors  
Cathy Alexander, Ohio EPA  
Crawford SWCD  
File



# Ohio Department of Agriculture

**OHIO**  
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Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
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December 15, 2004

Sheldon Farms  
C/o Kurt Sheldon  
10736 State Route 701  
Kenton, Ohio 43226

**Certified Mail Return Receipt Requested**

Re: **Warning Letter**

Dear Mr. Sheldon:

In a letter dated November 30, 2004, the Livestock Environmental Permitting Program Inspector summarized the findings of an inspection conducted on November 12, 2004. The Inspector noted freeboard conditions at your facility that were deficient and that needed improvement to meet Ohio Department of Agriculture requirements and to prevent violations and possible enforcement actions. Further, the Inspector noted that corrections, if any, would be verified in the next inspection.

Rule 901:10-2-05 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) Freeboard.

Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be not less than six inches above the liquid level of the total storage volume.” (Emphasis added)

Rule 901:10-2-08 of the Administrative Code provides, in pertinent part, at paragraph (A)(3):

“(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(b) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional six inches of freeboard.” (Emphasis added) Please review your Permit to Install for the maximum operating level of your structures.

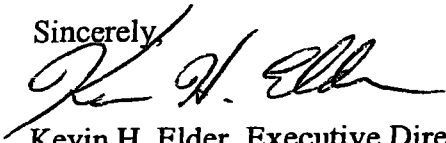
ODA requires notification when manure is being applied to frozen or snow-covered ground.

As reported, some manure from the barn located on the northwest side of the Sheldon Farms had run out from the pit fans. This manure is contained along the sides of the barn and needs to be cleaned up and either land applied or put back into a pit under the barn, depending on both soil conditions and weather conditions. Sheldon Farms is required to maintain all barns at the freeboard levels required by ODA rules.

You are reminded that you must notify ODA prior to any winter applications of manure and you are required to plan for manure storage through the winter in order to comply with the new and very strict limitations on manure applications to frozen or snow covered ground.

Please contact your Inspector or this office if you have any questions.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc: Jim Young, LEPP Inspector  
Chris Rodabaugh, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Hardin SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

November 16, 2004

Jan and Anja Van Ham  
22177 Road C  
Continental, Ohio 45831

**Certified Mail Return Receipt Requested**

Van Ham Dairy  
7089 Road 22  
Continental, Ohio 45831

**Re: Warning Letter**

Dear Mr. and Mrs. Van Ham:

Violation of Ohio Department of Agriculture laws and rules were discovered during my inspection on July 28, 2004. On that date I found four violations of Ohio law surrounding your operation. Below I have set out each violation and the accompanying guiding legal authority. The violations include the following:

1. Staff gauges, or another appropriate device approved by the director, need to be installed in the manure holding pond and stormwater pond.

The Ohio Administrative Code (OAC) provides at 901:10-2-06(A)(2):

“(2) A liquid level board, staff gauge or other appropriate device, approved by the director, shall be installed within the interior of the liquid storage or treatment volume of the manure storage pond or manure treatment lagoon. The liquid level board or staff gauge or other appropriate device shall include the elevation at the liquid level corresponding to the summation of the residual manure volume and minimum storage or treatment design volume and shall be designated as the stop pumping elevation. The liquid level board or staff gauge shall also indicate the elevation at the liquid level elevation corresponding to the summation of the volumes of: residual solids, minimum storage volume, runoff and wash down volumes and manure volume, and shall be designated as the start pumping elevation.”



2. Must have an executed Manure Sales Agreement when another is accepting facility manure.

OAC 901:10-2-11(A)(2) provides:

“(2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall receive a written agreement signed by the person accepting the manure that states the following: “I have been provided with a copy of analytical results that list the nutrient content of the manure and total quantities of manure. The manure will be distributed and utilized according to best management practices and according to any state laws regulating these uses.”

3. Must have water well test results in your operating record.

OAC 901:10-2-8(A)(3)(i) provides:

“(i) Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraphs (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code. In the event that a well does not already exist at the facility, then the owner or operator shall install a well at the facility that is properly located, protected and operated. The well shall be easily accessible for sampling and have an adequate water quantity for sampling. Results of sampling and analysis shall be documented in the operating record.”

4. The cropping record yields for those fields owned by Van Ham Dairy must be recorded in the operating record.

OAC 901:10-2-16(A)(1)(c)(viii) provides:

“(A)(1) An operating record shall be considered as part of the permit to operate. The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c)(viii) Records of the cropping schedule for each land application site for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year.”

I plan to reinspect you facility on or about December 15, 2004. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

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

Jim Young  
Inspector, Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jennifer Tiell, LEPP Legal Counsel  
Cathy Alexander, Ohio EPA



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-466-2732 • Fax 614-466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [wwwagri@ohio.gov](mailto:wwwagri@ohio.gov)

November 15, 2004

Donald Hershey  
Ohio Fresh Eggs LLC                      **Certified Mail**  
9300 Croton Road  
Croton, Ohio 43013

Orland Bethel                                      **Certified Mail**  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

Ronald L. Flory                                      **Certified Mail**  
Ohio Fresh Eggs LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs LLC                              **Certified Mail**  
11212 Croton Road  
Croton, Ohio 43013-0173

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**  
**Medical Waste Disposal**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and with Paragraph 33 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

ODA has determined that the following conditions in Permit to Operate OFP4-0001.PO0001.LICK issued for OFE have been violated:

Land Application. The following describes the procedures to be used in the Manure Management Plan for land application as required by rule 901:10-2-14 of the OAC.

\* \* \* \*

Solid manure will use Distribution and Utilization.

Rule 901:10-2-11 of the OAC governs Distribution and Utilization and provides, in pertinent part:

(A) If the owner or operator elects to use distribution and utilization methods, the following is required:

(1) The owner or operator may submit distribution and utilization methods for the beneficial use of manure as part of the manure management plan. (Emphasis added)

\* \* \* \*

### Facts in Support of Findings of Deficiencies

On October 27, 2004, ODA received an anonymous complaint regarding manure discarded at the Davisson farm located on Martin Road near the Middleburg-Plain City Road in an area adjacent to the county boundary lines of Union and Champaign Counties. Upon investigation, ODA discovered two manure piles. One of the manure piles had many vaccine vials labeled "Avian Encephalomyelitis-Fowl Pox Vaccine Live Virus" in the manure. Other trash was also discovered in the manure including broken light bulbs, hoses, cardboard, containers marked "hister houses," and other trash.

The manure was discarded on a farm owned by the Davisson family and the person who hauled the manure to the Davisson Farm is John Davisson according to Robin Sweeny, Union County NRCS District Conservationist. Mr. Davisson received the manure from Ohio Fresh Eggs as confirmed by the ODA inspector's conversation with Davisson on October 28, 2004 and as further verified by the ODA inspector on October 29, 2004. Specifically, ODA found that vaccine vials were discarded into manure at OFE Croton Pullet no. 4 in barn no. 17 and around the perimeter of barn no. 17. OFE thereafter arranged with Mr. Davisson for manure distribution and utilization as authorized by Rule 901:10-2-11 of the OAC and by the terms and conditions of the OFE permit.

Beneficial use of the manure as part of manure distribution and utilization approved in the Manure Management Plan is prevented due to the presence of medical wastes and other wastes in the manure, thus violating the terms and conditions of the permits.

### Corrective Actions

OFE is required to correct these deficiencies with the actions and schedule as follows:

Immediately remove manure from the Davisson farm site. Haul the manure back to OFE in order to remove all medical wastes, debris, and other wastes from the manure. In the

alternative, as authorized by the Davissons, remove all medical wastes, debris, and other wastes from the manure at the Davisson farm. Notify ODA by telephone or e-mail of the chosen alternative within 24 hours, with written confirmation in five (5) days. In any event, all medical wastes, debris, and other wastes shall be managed and disposed of in accordance with applicable State and local laws within 14 days of the date of this letter.

After 14 days from the date of this letter, an ODA inspector will inspect your facilities or the Davisson farm based upon the option selected by OFE to return to compliance. The inspector will determine whether you have returned to compliance. If OFE is still not in compliance, I will consider proceeding with other enforcement options, including assessing a civil penalty as permitted by ORC § 903.16 of \$1,600.

A response to this letter is required. In your letter, indicate if you are responding only on your own behalf or on behalf of all recipients.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (J) and (K) of Rule 901:10-5-04 of the OAC to determine that this is a first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is medium, and that the gravity of the violations is medium level. The appropriate penalty in this matter will be \$1,600 unless the deficiencies are corrected.

Sincerely,

  
Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Robin Burton, ODA, Division of Animal Industry  
Cathy Alexander, Ohio EPA  
Wyandot SWCD  
Hardin SWCD  
Champaign SWCD  
Union SWCD  
Jim Kiracofe, Licking SWCD



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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November 5, 2004

**CERTIFIED MAIL RETURN RECEIPT  
REQUESTED**

KSM-DOLA  
Attn: Todd Stickley  
7148 SR 199  
Upper Sandusky, Ohio 43351

Re: Warning Letter

Dear Mr. Stickley:

In a letter dated March 5, 2004, the Livestock Environmental Permitting Program Inspector summarized the findings of an inspection conducted on February 26, 2004. The Inspector noted two areas of your facility that were deficient and that needed improvement to meet Ohio Department of Agriculture requirements and to prevent violations and possible enforcement actions. Further, the Inspector noted that corrections, if any, would be verified in the next inspection.

The next inspection was conducted on August 12, 2004, and it was discovered that you were still violating your Review Compliance Certificate and the rules for the Livestock Environmental Permitting Program by not conducting a required annual sampling and analysis of groundwater.

The following rule is at issue:

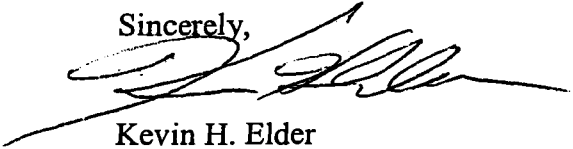
Rule 901:10-2-08 of the Ohio Administrative Code (OAC) provides as follows as (3):

(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (i) Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraph (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code. In the event that a well does not already exist at the facility, then the owner or operator shall install a well at the facility that is properly located, protected and operated. The well shall be easily accessible for sampling and have an adequate water quantity for sampling. Results of sampling and analysis shall be documented in the operating record.

You corrected this deficiency only after the inspector reminded you of your obligation during his second inspection in August. Please be warned that failure to comply the rules within the time set by the inspector can result in enforcement action by the Director and a penalty assessment. We anticipate your compliance in 2005.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Jennifer Tiell, ODA Legal Counsel  
Jim Young, LEPP Inspector  
Hardin SWCD



Governor Bob Taft  
Lieutenant Governor Jennette B. Bradley  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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## CERTIFIED MAIL RETURN RECEIPT REQUESTED

October 29, 2004

Mark and Marie Osterholt Farm  
C/o Mr. and Mrs. Mark Osterholt  
1289 Burville Road  
Ft. Recovery, Ohio 45846

Re: Warning Letter

Dear Mr. and Mrs. Osterholt:

In a letter dated February 5, 2004, the LEPP Inspector summarized the findings of an inspection conducted on January 22, 2004. The Inspector noted several areas of your facility that were deficient and that needed improvement to meet ODA requirements and to prevent violations and possible enforcement actions. Further, the Inspector noted that corrections, if any, would be verified in the next inspection.

The next inspection was conducted on August 26, 2004 and it was discovered that you are violating your Permit to Operate and the rules for the Livestock Environmental Permitting Program. The inspection in January of the year identified at least six (6) violations. In August, it was noted by the Inspector that while some of the previous violations had been addressed, there were several violations that had not been taken care of, primarily with respect to the turkey part of the operation, and they are outlined below. In addition, you have failed to continuously maintain records of inspections for insect and rodent control.

The following rules are at issue:

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraph (C):

At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.



Rule 901:10-2-16 of the OAC provides as follows at paragraph (A):

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

\* \* \* \* \*

(b) Manure characterization records. Manure characterization data and other information as required in rule 901:10-2-10 of the Administrative Code.

(c) Land application site records. Records for each land application site, including:

(i) The owner or operator shall maintain or have access to adequate land application equipment and record this in the operating record.

Rule 901:10-2-08 of the OAC provides as follows at paragraph (A)(3):

(a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard.

(b) The operating level of fabricated structures must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four hour storm event, plus an additional six inches of freeboard.

Rule 901:10-2-11 of the OAC provides as follows:

If the owner or operator decides to use distribution and utilization methods then the owner or operator shall receive a written agreement signed by the person accepting the manure that states the following: "I have been provided with a copy of analytical results that list the nutrient content of the manure and total quantities of manure. The manure will be distributed and utilized according to best management practices and according to any state laws regulating these uses."

Rule 901:10-2-16 of the OAC provides as follows at (A)(1)(e):

An operating record shall be considered as part of the permit to operate.

The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

\* \* \* \* \*

- (e) The records for implementation of distribution and utilization methods, if used, shall include;
- (i) Quantity of manure transferred off-site;
  - (ii) Date of off-site transfer;
  - (iii) Name of recipient of manure; and
  - (iv) A statement signed by the recipient acknowledging that the recipient shall follow best management practices for land application, if applicable, required by rule 901:10-2-14 of the Administrative Code.

Rule 901:10-2-14 provides as follows at paragraph (C)(3):

In determining how to minimize nitrogen leaching that may impact waters of the state, the owner or operator shall do the following:

- (a) Assess each land application site with the Ohio nitrogen leaching risk assessment procedure contained in appendix C, table 5 of this rule;

Rule 901:10-2-16 of the OAC provides as follows at paragraph (A):

An operating record shall be considered as part of the permit to operate.

- (1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

- (c) Land application site records. Records for each land application site, including:

\* \* \* \* \*

- (xii) Results of the nitrogen leaching risk assessment procedure and the phosphorus soil test assessment procedure or phosphorus index risk assessment procedure.

Rule 901:10-2-19 of the OAC provides as follows at paragraph (B)(3)(a):

- (a) Management controls. The following management controls require regular inspections to be conducted by the owner or operator in intervals as described in the insect and rodent control plans. Monitoring records and inspection records shall be maintained in the operating record as required by rule 901:10-2-16 of the Administrative Code.

You are required to begin the required record keeping immediately upon receipt of this letter. The LEPP Inspector will visit your operation within the next 60 days. If, at that time, you have not returned to compliance, I will recommend stronger enforcement action to the Director including payment of a penalty. If you do not understand the requirements of the rules, then

please contact your inspector and ask questions in order to resolve any misunderstandings. Nearly all of the rules listed here are both state and federal rules and it will be necessary for you to understand these and work within these requirements for the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. H. Elder', written in a cursive style.

Kevin H. Elder, Executive Director  
Ohio Department of Agriculture  
Livestock Environmental Permitting Program

Cc: Michelle McKay, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Mercer County SWCD  
Bill Knapke, Cooper Farms  
File

IN THE COURT OF COMMON PLEAS  
DEFIANCE COUNTY, OHIO

STATE OF OHIO, ex rel.  
JIM PETRO  
ATTORNEY GENERAL OF OHIO,  
Environmental Enforcement Section  
30 East Broad St., 25th Floor  
Columbus, Ohio 43215-3428,

Plaintiff,

v.

5 C'S FARM, INC.  
05-327 Thiel Road  
Hicksville, Ohio 43526

Defendant.

CASE NO. 04CV36948

FILED  
IN COURT OF COMMON PLEAS  
DEFIANCE COUNTY, OHIO

OCT 2 2006

JUDGE SCHMENK

---

CONSENT ORDER

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The Complaint in the above-captioned matter having been filed herein and the Plaintiff, State of Ohio ("Plaintiff" or "Director"), and the Defendant 5 C's Farm, Inc. ("Defendant") having agreed to the entry of this Consent Order.

NOW THEREFORE, without trial of any issue of law or fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has both personal jurisdiction over the parties and subject matter jurisdiction over the case pursuant to R.C. Chapter 903. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 903 and the rules and regulations promulgated thereunder. Venue is proper in this Court.

## **II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, their agents, officers, employees, assigns, successors in interest, and any other person acting either in concert or in participation, or both, with any of them who receive actual notice of the Consent Order.

## **III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

3. Defendant currently operates a concentrated animal feeding facility ("CAFF") located at Route 2, Box 05191 Thiel Road, Hicksville, Defiance County, Ohio 43526 (the "Facility"). Plaintiff alleges in its Complaint that, since August 19, 2002, Defendant has operated and continues to operate the Facility without a Permit to Install ("PTI") from Ohio EPA, a Review Compliance Certificate ("RCC") from the Director, or a Permit to Operate ("PTO") from the Director as required by R.C. 903.03(A)(2). Defendant denies these allegations. The execution by Defendant of this Consent Order shall not constitute an admission that any of the allegations are true. Defendant has submitted a completed PTO application to the Director.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction and release of any civil liability by Defendant and its shareholders, agents, officers, employees, assigns, and successors in interest for all claims of violations alleged in the Complaint up through the date the Director either approves or denies Defendant's application for a PTO. This Consent Order shall also constitute full satisfaction and release of any civil liability by Defendant and its shareholders, agents, officers, employees, assigns, and successors in interest for any installation, construction, or modification of the Facility occurring between August 19, 2002 through the date this Consent Order is signed without the issuance of a PTI by the Director under R.C. 903.02. However, if the Director denies Defendant's PTO application and Defendant continues to operate the Facility after such denial, this Consent Order does not preclude Plaintiff

from bringing claims for any violations resulting from Defendant's continuing operation of the Facility without a PTO or RCC after such denial.

5. Nothing in this Consent Order shall be construed to limit the authority of Plaintiff to seek relief against appropriate persons other than those released in paragraph 4 above for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to seek relief against Defendant or any other appropriate persons for claims not alleged in the Complaint and violations occurring after the filing of the Complaint, except for the failure to obtain a PTI under R.C. 903.02 for any installation, construction, or modification of the Facility occurring between August 19, 2002 through the date this Consent Order is signed and except for any continuing operation of the Facility before the Director approves or denies Defendant's PTO application. Nothing in this Consent Order shall limit Defendant's right to raise any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Further, nothing in this Consent Order shall be construed to diminish the Director's authority or discretion to grant, deny or revoke the permit application or any future permit application associated with the Facility.

#### **IV. PERMANENT INJUNCTION**

6. Defendant is hereby enjoined and immediately ordered, as follows:

A. Defendant shall not make any future modifications, as defined by the rules promulgated under R.C. Chapter 903, to 5C's Farm without first applying for and receiving a PTI from the Director in accordance with R.C. 903.02.

B. Defendant shall not construct or operate any new concentrated animal feeding facility without first applying for and receiving a PTI and PTO from the Director in accordance with R.C. 903.02 and 903.03.

**V. TIME EXTENSIONS**

7. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

**VI. CIVIL PENALTY**

8. Defendant is hereby ordered and enjoined to pay a civil penalty of \$11,000.00 within sixty (60) days of the signing of this Consent Order by the Court. The civil penalty shall be paid by certified or cashier's check for the appropriate amount, made payable to "Treasurer, State of Ohio, for deposit to the Livestock Management Fund 5L8", which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal, or her successor at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

**VII. MISCELLANEOUS**

9. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state, or local laws, regulations, rules, or ordinances. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

**VIII. RETENTION OF JURISDICTION**

10. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

**IX. COURT COSTS**

11. Defendant is hereby ordered to pay the court costs of this action.

**X. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK**

12. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**XI. SIGNATORIES**

13. The undersigned is a representative of Defendant and understands the terms and conditions of the Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the Defendant to this document.

**IT IS SO ORDERED.**

/s/ Joseph N. Schmenk

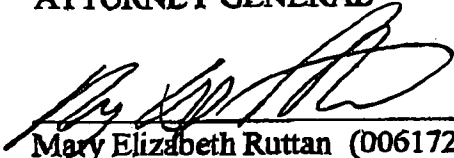
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JUDGE, COURT OF COMMON PLEAS  
DEFIANCE COUNTY

\_\_\_\_\_  
DATE



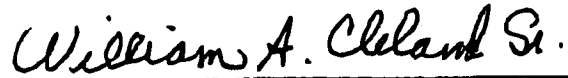
APPROVED:

JIM PETRO,  
ATTORNEY GENERAL



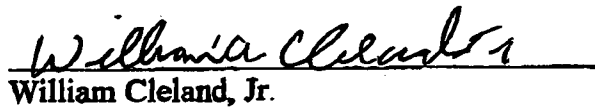
Mary Elizabeth Ruttan (0061721)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
Counsel for Plaintiff

5 C's FARM, INC.



William Cleland, Sr.  
President

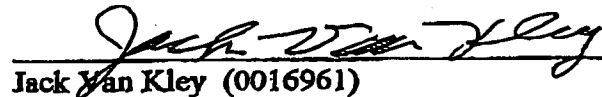
Title



William Cleland, Jr.

v. p.

Title



Jack Van Kley (0016961)  
Jones, Day  
41 South High Street, Suite 1900  
Columbus, Ohio 43215  
Telephone: (614) 469-3875  
Counsel for Defendant



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Office  
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October 15, 2004

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43031

**Certified Mail Return Receipt Requested**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

Ronald L. Flory  
Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43023-0173

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756 . Specifically, OFE has violated Section VI paragraph 8 and Section VII at E Operating Requirements for all Facilities as set forth in paragraphs 30 & 34.

Further, ODA has determined that the following conditions in permits to operate issued for OFE Croton Layer no. 1, 2, 3 and 4 and Pullet no. 4 have been violated .

The Moisture Management section of OFE's Insect and Rodent Control Plan provides that:

- a. Keeping manure as dry as possible in order to maintain 30% moisture or less (as sampled by the Fresh Eggs Protocol on a quarterly basis); utilizing daily water leak inspections, a good maintenance program, and proper barn ventilation. ODA will be notified when Ohio Fresh Eggs LLC sends in samples to the lab and OFE will forward all results to the ODA. If manure moisture is over 30%, OFE will inform ODA of possible remedial actions, if chosen.

\* \* \* \*

- c. Pit fans are used in two layer barns (barns 27A and 28B) at Layer #2 as a method to enhance manure drying. Pit fans will be run as long as necessary to control manure moisture levels and as long as the proper environmental conditions in the barn can be maintained to allow for the requirements for the layers or pullets and the house personnel.

- d. Manure that has become wet shall be removed when the following two conditions occur:

- a. When manure cannot be properly contained
- b. When insect control is not effective (Emphasis added)

\* \* \* \*

Daily

House Inspections:

- a) Every day an inspector walks each pit to locate, record, and repair water leaks immediately. Water leaks are repaired immediately.

\* \* \* \*

Based upon recent inspections, ODA has found that OFE has failed to have effective daily water leak inspections, a good maintenance program, and proper barn ventilation to achieve manure with moisture of less than 30%. As you are aware, ODA issued a Warning Letter to OFE earlier this year. This letter was based upon the first quarter analysis of manure moisture. On June 18, 2004, OFE responded with a list of corrective actions intended to address these violations. However, the results of subsequent ODA inspections show that corrective actions undertaken by OFE since June 18, 2004 have been inadequate or ineffective to maintain compliance with the terms of the permits to operate and with the requirements of the March 2001 Consent Order.

Further, ODA has reviewed OFE's quarterly manure moisture analyses and daily barn inspection reports for this year. ODA's review is included with this letter and is based on daily barn inspection reports for May 2004 to August 2004 and based on the quarterly manure moisture analyses for January 2004 to March 2004 and April 2004 to June 2004. This analysis has also demonstrated that OFE has failed to achieve manure with moisture of less than 30%.

### Barn Inspection Reports

In particular, ODA has made the following observations for each of the facilities:

- At Layer no. 1, barns 5, 13A, and 14B had problems with wet manure and water leaks that were not fixed for at least a month. ✓
- At Layer no. 3, barns 34, 37, and 41 had leaks that caused some manure release via pit doors (PD) at all three barns. Pit fans were either not used or they required maintenance in barns 41A and 42B and so were not capable of controlling manure moisture levels as required by the permits.
- At Layer no. 2 barns 20, 24, 27, 28, 27A, and 28B had problems with either pit fans or wet manure from birds.
- ~~At Layer no. 2, the terms and conditions of the permit required OFE to keep manure as dry as possible in order to maintain 30% moisture or less utilizing daily water leak inspections, a good maintenance program, and proper barn ventilation. However, OFE employee teams failed to note that the birds were producing very wet manure. As a result, manure moisture far exceeded the 30% limit established in the consent order and the permit. Wet manure developed in early to mid-June 2004. At an inspection on September 15, 2004, OFE stated that the birds and the bird feed were "probably the problem" causing the wet manure. ODA believes that OFE had data two months ago that showed wet manure from the birds and the causes of such wet manure, such as feed type, should have been investigated at that time.~~

### Manure Moisture Reports

The following list of deficiencies is based on reports submitted to ODA for the first quarter (January 2004 to March 2004) and second quarter (April 2004 to June 2004).

- Layer no. 2 had standing water in barn 15 for 6 weeks followed by abundant flies for 3 weeks. Beginning in June 2004, barn 15 had birds producing wet manure. [permit OFL2-0001.PO0001.LICK 21 days abundant flies at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation. Note that for violations of the permits' Insect and Rodent Control Plans throughout this Notice of Deficiencies Resulting in Noncompliance, are attributed to "extreme" and

“abundant” levels of flies as determined by ODA referring to the criteria described in terms and conditions of the permits.]

- During the same timeframe barns 16, 17, 18, 19, 20, 21, 22, 23, and 26 had birds producing wet manure.

The following barns exceed the 30% manure moisture limit:

- At Layer no. 1 barn 5 [permit OFL1-0001.PO0001.LICK 30 days exceedance of the 30 % moisture limit at \$ 2, 500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation] ✓
  - At Layer no. 2 barns 15-20, 22, 26, 27, 27A, and 28B [permit OFL2-0001.PO0001.LICK 30 days exceedance of the 30% moisture limit at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation] ✓
  - At Layer no. 3 barns 31, 34, 36, 37, and 41 [permit OFL2-0001.PO0001.LICK 30 days exceedance of the 30% moisture limit at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation]
  - At Layer no.4 barns 43, 47, 49, 50, 51, and 56 [permit OFL2-0001.PO0001.LICK 30 days exceedance of the 30% moisture limit at \$ 2,500 per week in accordance with Rule 901:10-5-04(J) Category II, low violation]
- 

The following barns not only exceeded the 30% manure moisture but moisture increased from the first quarter to second quarter such that the moisture exceedances were exacerbated over the subsequent quarter. These increases occurred after the Warning Letter was issued by ODA.

- At Layer no. 1 barns 3, 7, 10, and 13 [permit OFL1-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]
- At Layer no. 2 barns 21, 23-25, and 28 [permit OFL2-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]
- At Layer no. 3 barns 30, 32, 35, 40, and 42 [permit OFL3-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]
- At Layer no. 4 barns 45, 53, and 55 [permit OFL3-0001.PO0001.LICK 60 days exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

ODA Inspections

In addition, the following deficiencies, also resulting in noncompliance, were observed by ODA staff during an inspection on September 14, 2004:

Layer no.1

- Barn 2 is newly remodeled and was recently stocked with layers. Moderate to abundant flies were noted on the manure conveyer belts. There was also about 2 –3 inches of manure-laden water in the conveyer belt pit that transports the manure from the barn and currently loads the manure into spreaders for land application.
- Fly levels in the clean out areas around the doors of barn 13 were moderate to abundant.  
[permit OFL2-0001.PO0001.LICK at 1 day abundant flies at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

Layer no.2

- Barn 15 had exceptionally wet manure. The manure pit in barn 15 resembled a liquid manure storage building. The manure was so moist that the manure was level from door to door and wall to wall. Both flies and larvae were moderate to abundant. Larvae were noted in the top part of the manure. Large amounts of red, unhatched fly pupae were noted in the manure. Abundant to extreme amounts of adult flies were noted inside the barn.
- Barn 16 had a small cone on the manure and the manure was wet. There were abundant flies on the walls and on the manure but the inspectors could not perform an inspection because the manure was too wet.
- Barn 17 had pit barn doors falling off tracks or broken. There was a bad water leak running from the inside of the barn to the outside. Stephanie Tudor, OFE Compliance Team, called an OFE manager to have it checked out and later a manager called her back. The manager stated that OFE had fixed a leak earlier and swept all the water towards the wall and so it was now running out of the barn, but the original “problem” had been fixed. No coning was noted of the manure. Although the manure it was too wet for the inspectors to go into barn, abundant levels of flies were noted. In Barn 17 the manure was very moist and was level from door to door and wall to wall. Both flies and larvae were moderate to abundant.
- Barn 18 had “soupy” manure, as the manure coming from the birds was very wet and yellow in color. The center row in the barn did not appear to be as wet but inspectors could not get to it through the rest of the wet manure. Inspectors could not do a complete inspection due to the soupy

manure and could not get close to the center row. Fly levels were moderate.

- Barn 24 had a hole in the pit wall.
- Barn 26 had wet manure with a little more coning noted. The middle of aisles appeared to be very wet and moderate to abundant flies appeared to be on the posts. There were abundant flies in the feathers on the manure. Inspectors could not walk through this barn either due to the wet manure conditions.
- Barn 23 had black liquid oozing from the front door and the clean out doors were blocked with dirt.
- Barn 26 had dry manure on top but when pressure was applied to the top of the manure the manure would move in a wave type manner similar to the motion of a waterbed. Fly levels were moderate to abundant.
- Barn 27 had manure "rolling out" or flowing slowly from of the clean out door when inspectors opened it.

#### Layer no. 2 generally

Inspectors noted poor drainage and maintenance between barns. Flies were swarming the inspectors' vehicles. There were many instances of dirt piled up by the doors holding the manure in and some dirt piled by sections of walls. Many cinder blocks of the buildings were noted missing from some pit walls and the tops of barn walls were rusted out in areas.

The feed bin areas between barns 16 and 18 have severe drainage problems. There was no more feed pad under one of the feed bins – it had badly deteriorated.

Overall, Layer no. 2 was in poor condition.

[permit OFL2-0001.PO0001.LICK at 1 day abundant flies at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation], [permit OFL2-0001.PO0001.LICK at 1 day exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

#### Layer no. 3

Although no barns were entered, inspectors drove through the site. ODA noted that walls and other building parts are deteriorating. Barn doors were blocked with dirt piles. Areas noted had leaking foundations due to manure releases from the manure pits. The overall appearance and upkeep of this facility was below average.

#### Layer no. 4

This site is belt-battery. Inspectors examined one of the storage barns and noted abundant to extreme amounts of flies. Larvae amounts were abundant-plus. Flies were covering the inspectors' vehicle. Walls of storage buildings were cracked. Not only is this amount of flies is atypical at other farms where belt-battery systems are used, but also this is atypical for poultry farms in general.

Dead flies were thick and covering the ground in most locations. Flyspecks were noted to have coated and blackened fan shields. Flies were noted all through the grass areas that had just been mowed.

- Barn 49, a belt battery barn, had moderate levels of larvae in the manure storage area. The manure was flattened against the walls and appeared to have been wet at one time. The flies were abundant both inside and outside the manure storage door way.
- Barn 50 is being remodeled. The manure has been pushed to the east end of the barn and is very soupy. There is construction debris in this manure.
- Barn 53 had a wall near the manure clean out door with a horizontal crack in the wall and manure stains were observed on the outside walls. The manure stains appear to have come from manure juices that seeped through the walls.

The overall condition of this farm was below average to poor.

[permit OFL4-0001.PO0001.LICK at 1 day abundant flies at \$ 4,500 per day in accordance with Rule 901:10-5-04(K) Category II, low violation], [permit OFL4-0001.PO0001.LICK at 1 day exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

#### Pullet no. 1

A moderate amount of flies were flying around. Black liquid was again noted outside of the barn. Not too many feet away from where the black liquid was observed was the storm water pond with the water well located in the corner.

#### Pullet no. 2

Inspectors did not go into the barns. However, the following was observed from outside of the barns. There was a block out of the wall in barn 7 with manure coming out of the resulting open space in the wall. Barn 8 had an area of dense flies on the outside of a wall. The feed bins were in dire need of being cleaned-up. The pit walls were showing much deterioration. Black liquid was noted under fans at barn 8 and 6. The doors on



barn 6 appeared ready to burst open. The site's appearance and upkeep overall appeared to below average to poor.

#### Pullet no. 4

- Barn 20 had manure that was "moving" because in spots, there were more larvae than manure. These spots resembled "rolling balls of larvae." Extreme amounts of flies were noted in the front part of the barn.
- Barn 21 was hot and abundant larvae were noted. Both living and dead abundant flies were noted with extreme amounts of flies noted in the front of the pit, on the floor. The manure was wet.
- Flies were swarming outside and covering the inspectors' vehicle. Fly levels outside the barns were abundant. Feed bins needed to be cleaned up. Extreme amounts of flies were noted around most feed bins.
- This is the facility closest to the Rutherford home, the source of the most recent fly complaints.  
[permit OFP4-0001.PO0001.LICK at 1 day abundant flies at \$4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation], [permit OFL4-0001.PO0001.LICK at 1 day exceedance of the 30% moisture limit at \$ 4,500 per week in accordance with Rule 901:10-5-04(K) Category II, low violation]

#### Pullet no. 3

This site was not inspected on September 14, 2004.

#### Corrective Actions

OFE is required to correct these deficiencies with the actions and schedule as follows:

First, OFE must revise its employee training for daily barn inspections. Our analysis shows that inspections, if performed, are conducted by teams that are limited to counting flies, larvae, beneficials, and water leaks with no examination of other causes of wet manure. Inspections by an individual such as by Cale Ayres or Chris Art are more encompassing and include the condition of the birds, the pit fans, and the walkways. OFE is not examining the barns as a whole as required by the permits and as a result, OFE has not addressed other conditions that stimulate fly blooms such as the bird feed and pit fans.

Second, trend analyses must be performed as required by your permits, under the following provision of the permits:

The Insect and Rodent Control Plan at Hierarchy of Oversight:

In order to evaluate the effectiveness of the pest control program and the ability of the insect monitoring program to provide accurate and timely information to management for pest control decisions, the Director of the Compliance Department, the Senior Production Manager, and the Director of Operations will review inspection forms quarterly.

Trend analyses will be developed by a compliance officer of all monitoring data and compared with actions and effectiveness of the pest control program for the purpose of continuing program evaluation and modification for improvement. The trend analyses will be evaluated monthly by a professional entomologist who will provide a report interpreting trends and make recommendations as to plan changes (if deemed necessary).

Copies of these trend analyses shall be submitted quarterly to ODA to confirm that analyses are performed to ODA's satisfaction and for ODA use. At the end of the quarter, insert manure moisture data from the required quarterly analysis of manure moisture.

Third, OFE must repair or replace all broken doors and barn openings at Layer no.2 to prevent weathering of manure by December 1, 2004.

Fourth, OFE must fix all water leaks immediately upon discovery and document the repairs in the daily barn inspections reports.

Fifth, the permits require that "Manure that has become wet shall be removed when the following two conditions occur:

- i. When manure cannot be properly contained
- ii. When insect control is not effective"

Accordingly, OFE must submit a schedule within 45 days to ODA for ODA approval that does all of the following:

- 1) Lists each barn that exceeds the manure moisture rate of 30%.
- 2) Lists each barn that exceeds 50% manure moisture or those barns where the manure cannot be properly contained within the walls of the barn or those barns where manure cannot be prevented from flowing out of pit doors or barn clean out doors or those barns with no coning.
- 3) Prioritize barns for manure removal beginning with the barns described here at item 2), so that manure is removed from each listed barn as soon as feasible, given current winter restrictions for land application of manure.
- 4) Provides, however, that the schedule submitted for all of the barns described here at item 2) shall not exceed March 31, 2005 by which time OFE will complete manure removal and distribution and utilization for all of those barns.
- 5) Lists the dates for manure removal for all other barns.

After 45 days from the date of this letter, an ODA inspector will inspect your facility to determine whether you have returned to compliance by assessing OFE's compliance with

corrective actions one through 4, above, and by determining whether the schedule submitted by OFE for corrective action 5 shall be approved. If OFE is still not in compliance, I will consider proceeding with other enforcement options, including assessing a civil penalty as permitted by ORC § 903.16 of \$456,000.

Penalty assessment

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the Administrative Code. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (J) and (K) of Rule 901:10-5-04 of the OAC to determine that these are both first cited violations and past violations of the above-identified laws and rules, that the category of seriousness of the violations is medium and the gravity of the violations is low level. The appropriate penalty in this matter will be \$ 456,000 unless the deficiencies are corrected.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Enclosures

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Licking SWCD

Pullets

Barns	5/20/2004	5/27/04	6/3/04	6/9/04	6/16/04	6/23/04	6/30/04	7/16/04	7/21/04	7/29/04	8/4/04	8/11/04	8/19/04	8/25/04
1												fly abn		
2	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
3	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
4	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
5	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
6									water leak			3water leak		water leak
7		fly abn		water leak								No birds	No birds	No birds
8					2water leak				fly abn leak	water leak	2 water leak			
9	fly abn	fly abn				water leak			feed leak	6 water leak	water leak	water leak		
10	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
11	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
12		water leak abn fly					mice	mice						
13	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
14													fly abn	
15	rotten chick b	fly abn				water leak	No birds	feed leak						
16	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
17			fly abn	fly abn					water leak		fly abn			
18	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
19									fly abn					
20				6 water leak		fly abn	wet manure							
21														fly abn

If beneficials abundant not noted  
\*Cale

w/w = walkways  
Abn. = abundant

Nothing noted =  
flies few to mod

Layer #1

Barns	5/20/04*	5/27/04	6/3/04*	6/9/04	6/17/04*	6/23/04	7/2/04*	7/7/04	7/16/04*	7/21/04	7/29/04	8/4/04	8/11/04	8/19/08	8/25/04
1	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
2	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
3(51%)					Birds removed	58%									
4	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
5(42%)					Damp manure	40%		water leak				3 water leaks	3 water leaks	3 water leaks	3 water leaks
6	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
7(44%)			Barn closed?		w/w collaspe	63%					water leak			flies abn.	
8	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
9(22%)	No birds	No birds	No birds	No birds	No birds	16%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
10	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
11(43%)	No birds	No birds	No birds	No birds	No birds	68%	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
12	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
13(35%)	w/w no walk				wet manure fr.birds	62%								3 water leaks	
14	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
13A(61%)	"coffee"	water leak abn fly	priority larvae	priority flies/larvae	priority wet	priority fly abn (20%)		priority water leak							
14B(58%)	manure wet top	priority flies	wet manure	priority flies/larvae	very wet priority	26%							water leak		

If beneficials abundant not noted  
\*Cale

w/w = walkways  
Abn. = abundant

Nothing noted =  
flies few to mod

Layer #2

Barns	5/20/04*	5/27/04	6/3/04*	6/9/04	6/17/04*	6/23/04	7/2/04*	7/7/04	7/16/04*	7/21/04	7/29/04	8/4/04	8/11/04	8/19/08	8/25/04
15(75%)	1-2" water	priority	1-2" water no w/w		manure sludge	water 5-6"	no w/w	70%	disaster bird wet manure				priority flies abn.	priority flies abn.	priority flies
16 (77%)	priority fly abn.				wet manure	wet manure water leak	wet house	68%	birds wet manure						priority larvae
17 (64%)	1-2" water		wet house cleaned out	water leak	wet manure	wet manure	wet manure	abn larvae 49%	bird wet manure	priority larvae			priority flies larvae	priority flies larvae	
18(70%)		priority	wet manure		very wet house	very wet house		abn larvae 51%				priority larvae			
19(71%)		w/w bad		damp manure	damp manure			61%	bird wet manure						
20(67%)		birds wet manure						57%							
21(72%)	w/w bad		ww/bad			water leak	w/w collapse wet	74%	birds wet manure			water leak			
22(71%)			birds wet manure			water leak	w/w . collapse	60%			water leak		water leak		
23(61%)			birds wet manure	water leak			w/w collapse	67%	wet house						
24(67%)								70%							
25(56%)			w/w bad		damp on top		wet manure	62%	wet house						
26	"coffee"		w/w bad "coffee"	priority larvae abn.	very wet manure	priority larvae	wet slop manure	76%		2 water leaks		water leak		priority flies	
27(69%)					damp		w/w bad	51%						water leak	
28(71%)								73%							
27A (29%)	*		*		scraper wet		scraper wet	21%							
28B*(37%)	*				scraper wet			26%							

\*Cale  
w/w = walkways

abn.=abundant  
Nothing noted = few to mod. files

\* = drying fan problem

Layer #3

Barns	5/20/04*	5/27/04	6/4/04*	6/9/04	6/16/04*	6/30/04	7/2/04*	7/7/04	7/14/04*	7/22/04	7/28/04	8/4/04	8/11/04	8/19/08	8/25/04
29	No birds	No birds	No birds		3-4" water	14 water leaks			13 water leaks	birds wet manure	7 water leaks		6 water leaks	10 water leaks	priority leak
30(50%)	priority larvae						61%		priority larvae	w/w bad			priority larvae		
31(73%)							63%		water leak	w/w bad					
32(55%)	priority flies larvae		priority larvae			water leak	71%							water leak	2 water leaks
33	No birds	No birds	No birds	No birds	No birds	No birds			Birds added	Birds rooster	8 water leaks		6 water leaks		2 water leaks
34(72%)		priority larvae					55%		priority larvae	large water leak - PD w/w bad				2 water leaks	
35(54%)					priority larvae extreme	water leak	61%			w/w bad					
36(71%)							67%					water leak			
37(71%)					priority larvae		55%						water leak - manure PD	same water leak	
38	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	repopulate house	No birds	No birds	No birds	No birds	8 water leaks
39	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds		No birds	No birds		4 water leaks
40(54%)	priority flies larvae				2 water leaks		67%					water leak			
41(67%)						water leak	71%		water leak	w/w bad			PD		
42(66%)			water leak				67%			w/w bad				water leak	
41A(47%)	water leak				9 water leaks	3 water remain	18%			*	2 water leaks		water leak		2 water leaks
42B(59%)					2 water leaks		19%			*	water leak	water leak	same water leak		

\* = Chris # = Cale  
 + = please submit missing report

w/w = walkways  
 bad = collapsed

\* = pit fan issue  
 PD = manure out of pit door

Layer #4

Barns	5/20/04*	5/27/04	6/4/04*	6/9/04	6/16/04*	6/30/04	7/2/04*	7/7/04	7/14/04*	7/22/04	7/28/04	8/4/04	8/11/04	8/19/08	8/25/04
43(67%)						37%									
44	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
45(37%)						50%									
46	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
47(66%)					priority larvae	53%									
48	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
49(59%)						33%									
50(73%)		priority larvae				65%				mow grass		No birds	No birds	No birds	But has manure
51						59%									
52	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds	No birds
53(60%)						65%									
54	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
55(51%)	wet manure flies abn.	wet manure flies abn.				56%									
56(50%)	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn	No barn
55A(50%)				scraper wet water leaks		18%				* wet area					
56B(44%)	*			scaper wet						wet area				No birds	No birds

\* = Chris + = Cale

abn. = abundant

\* = pit fan





Governor Bob Taft  
Lieutenant Governor Jennette B. Bradley  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

October 4, 2004

E & J Farms  
C/o Mr. Eric Siefring  
3241 Mercer-Darke Country Line Road  
New Weston, Ohio 45348

**Re: Warning Letter**

Dear Mr. Siefring:

Upon reviewing our files I found that a letter that I had drafted to sent on July 14, 2004 was never signed and sent. I wanted to correct the matter and inform you that I reviewed and approved the inspection report for the Ohio Department of Agriculture's July 9, 2004 inspection of E & J Farms.

Overall, your facility and your operations are in good shape. Your management practices are acceptable. But you were missing some important information required for your Operating Record. Rule 901:10-2-16 (A)(1)(b) requires manure characterization records. This means test data or sample results collected annually for total manure produced and your manure nutrient content. See also Rule 901:10-2-10.

I cannot emphasize enough the importance of routine record keeping for your Operating Record. These are the documents that my staff and I rely upon to assess your management practices. Under the best circumstances we use these records to work with a producer to identify any potential problems and do so as early as possible in order to avoid the unnecessary cost and expense of enforcement. Most producers find that maintaining a good Operating Record is the "key" to making plans for the future of the farm, for business planning, and for good relations with neighbors.

I urge to address this and any other items noted in your most recent inspection as early as possible. If you have any questions, I can be reached at (614)387-0470.

Sincerely,

Kevin Elder, Executive Director, Livestock Environmental Permitting Program

Cc: Michelle McKay, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Mercer County SWCD  
File



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-466-2732 • Fax 614-466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [wwwagri@ohio.gov](mailto:wwwagri@ohio.gov)

September 8, 2004

**Certified Mail Return Receipt Requested**

Andreas Farms Inc.  
446 Ragersville Road SW  
Sugarcreek, Ohio 44681

Dan Andreas  
8482 Bowman Rd SW  
Sugarcreek, Ohio 44681

Bill Andreas  
9597 Yoder Rd SW  
Sugarcreek, Ohio 44681

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

As the owners and operators of Andreas Farms Inc., the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal

feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

### **Facts in Support of Findings of Deficiencies**

1. Andreas Farms Inc. is an existing concentrated animal feeding facility, at 446 Ragersville Road SW, Sugarcreek, Ohio 44681, Tuscarawas County and is referred to as "Facility."
2. Bill Andreas and Dan Andreas are the owners and operators of Andreas Farms Inc.
3. The Facility has the design capacity to raise or maintain approximately 1,095 dairy cattle or 1,694 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 06-5055 on November 3, 1997 by the Ohio Environmental Protection Agency.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Andreas Farms Inc. of the Facility's obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated July 31, 2003, February 2, 2004, May 25, 2004, and August 20, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Andreas Farms Inc. and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of an RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the

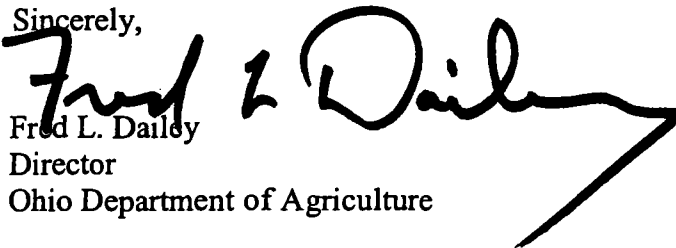
Director cannot determine that the Operation conforms to the best management practices of the rules. You are required to submit soil samples in compliance with rule 901:10-2-13 of the O.A.C.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,

  
Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Jim Young, LEPP Inspector  
Tuscarawas SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

September 8, 2004

Todd Stoll and Ed Stoll  
Stoll Farms Incorporated  
6818 Coal bank road  
Marshallville, Ohio 44645

### Re: Director's Notice of Deficiencies Resulting in Noncompliance

Gentlemen:

As the owners and operators of the Stoll Farm Incorporated, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, the actions 2) you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

### Facts in Support of Findings of Deficiencies

1. Stoll Farm is an existing concentrated animal feeding facility at 6818 Coal Bank Road, Marshallville, Ohio 44645, Wayne County and is referred to as "Facility."
2. Ed Stoll and Todd Stoll are the owners and operators of Stoll Farm.
3. The Facility has the design capacity to raise or maintain approximately 3,250 dairy cattle or 4,450 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 08-047-NE on May 12, 2000 by the Ohio Environmental Protection Agency.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Stoll Farm of the Facility's obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated May 15, 2003 and May 10, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Stoll Farm and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the OAC for the Director to make a determination in support of issuance of a RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the OAC.
  - b. Insect and Rodent Control Plan as required by rule 901:10-2-19 of the O.A.C.
  - c. Mortality Management Plan as required by rule 901:10-2-15 of the O.A.C.
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.



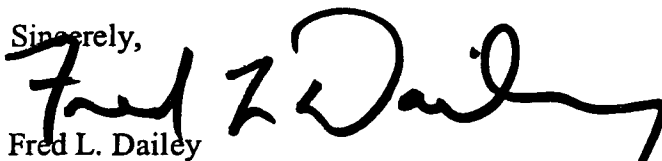
10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine that the presence and negative effects of insects and rodents at the facility and in the surrounding areas will be minimized.
11. Without a complete and accurate Mortality Management Plan the Director cannot determine that the Mortality Management Plan conforms to the best management practices of the rules.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,



Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Jim Young, LEPP Inspector  
Wayne SWCD



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

September 8, 2004

Jim and Mary Wenning  
1500 Union City Road  
Ft. Recovery, Ohio 45846

### **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. and Mrs. Wenning:

As the owner and operator of the Wenning Farm, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best

management practices of these rules, the director may issue an order denying a review compliance certificate.”

### **Facts in Support of Findings of Deficiencies**

1. Wenning Farm is an existing concentrated animal feeding facility, 1596 Union City Road, Fort Recovery, Ohio, Mercer County and is referred to as “Facility.”
2. Jim and Mary Wenning are the owners and operators of Wenning Farm.
3. The Facility has the design capacity to raise or maintain approximately 600,000 layers or 6,000 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-074-IW on August 19, 1991 by the Ohio EPA.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to obtain a RCC.
7. The Department notified Wenning Farm of the Facility’s obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated October 17, 2002, March 4, 2004, July 12, 2004, and August 25, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted by Wenning Farm and found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the O.A.C for the Director to make a determination in support of issuance of an RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the O.A.C. Correspondence from the Department sent to you on October 17, 2002 and March 4, 2004 informed you that you are required to install a liquid level indicator, depth marker, or other device to measure manure capacity and freeboard in your lagoon. Without this installation, you cannot comply with the requirements of your Manure Management Plan. You are further required to submit soil samples in compliance with rule 901:10-2-13 of the O.A.C.

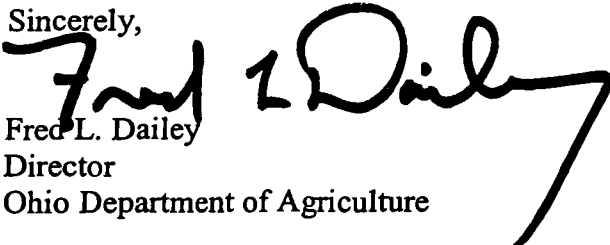
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Manure Management Plan conforms to the best management practices of the rules.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,

  
Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Michelle McKay, LEPP Inspector  
Mercer SWCD



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Administrative Offices  
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Phone: 614-466-2732 • Fax 614-466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [wwwagri@ohio.gov](mailto:wwwagri@ohio.gov)

## Certified Mail Return Receipt Requested

September 8, 2004

Gene and Sharron Evers  
1105 Goettemoeller Rd.  
Maria Stein, OH 45860

Rick and Brenda Evers  
6795 Ft. Recovery-Minster Rd.  
Maria Stein, OH 45860

### **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. and Mrs. Gene Evers and Mr. and Mrs. Rick Evers:

As the owner and operator of A.J. Evers and Sons, the Ohio Department of Agriculture (ODA) is issuing Director's Notice of Deficiencies Resulting in Noncompliance pursuant to ODA's authority under O.R.C. § 903.16. This Notice is 1) your written notice of deficiencies resulting in noncompliance, 2) the actions you must take to correct the deficiencies, and 3) the time period within which you must correct the deficiencies and attain compliance with the statutes and regulations governing concentrated animal feeding facilities. ODA asserts that you have failed to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

O.R.C. § 903.04(C) and (D) provides that, when submitting a Review Compliance Certificate (RCC) application to ODA,

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs: (1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section. (2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of Section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal

feeding facility unless the person holds a review compliance certificate.

O.A.C. 901:10-1-07(A) and (B) provides that:

(A) The owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(2) The type of livestock and number of animal units that the facility has the design capacity to raise or maintain;

(3) A manure management plan for the facility that conforms to best management practices regarding the handling, storage, transportation and land application of manure generated at the facility and that contains any other information required by rules 901:10-2-07 to 901:10-2-14, rules 901:10-2-16 and 901:10-2-18 of the Administrative Code;

(4) A plan for the disposal of dead livestock in accordance with rule 901:10-2-15 of the Administrative Code;

(5) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with rule 901:10-2-19 of the Administrative Code;

\* \* \* \* \*

(B) The owner or operator need not furnish any information otherwise required under paragraph (A) of this rule if that information is included in the permit to install that was issued for the existing facility. The owner or operator shall revise or amend information to reflect current operating conditions or otherwise verify that the information is accurate.

O.A.C. 901:10-1-07(F) provides that, "The Director shall review the existing installation permit, the facility, the information furnished under paragraph (A) or (B) of rule 901:10-1-07 of the O.A.C and determine if the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas."

O.A.C. 901:10-1-07(G) provides that, "If the Director finds that the existing facility is not being operated in a manner that protects the waters of the state and that the insect and rodent control plan and the manure management plan do not conform to the best management practices of these rules, the director may issue an order denying a review compliance certificate."

### **Facts in Support of Findings of Deficiencies**

1. A.J. Evers and Sons is an existing concentrated animal feeding facility at 1105 Goettemiller Road , Maria Stein, Ohio, Mercer County and is referred to as "Facility."
2. Gene and Sharron Evers and Rick and Brenda Evers are the owners and operators of A.J. Evers and Sons.
3. The Facility has the design capacity to raise or maintain approximately 120,600 layers or 1,206 animal units, which constitutes more than one thousand animal units.
4. The Facility was issued Ohio EPA Permit to Install No. EPA 03-138B-IW, on November 7, 1996 by the Ohio EPA.
5. On August 19, 2002, ODA finalized the program required under O.R.C. § 903.02(A)(1) and O.R.C. § 903.03(A)(1) and assumed responsibility to enforce permits to install previously issued by the Ohio EPA.
6. Pursuant to O.R.C. § 903.04(E), by August 19, 2004, the Facility was required to submit an application and all supporting documentation to ODA to obtain an RCC.
7. The Department notified Mr. and Mrs. Gene Evers of the Facility's obligations to comply with O.R.C 903.04 and to obtain an RCC in correspondence dated December 2, 2003, May 24, 2004, and August 24, 2004.
8. As of September 2, 2004, the Department received and reviewed the application for an RCC submitted for A.J. Evers and Sons. ODA found that the Facility failed to provide the following documents required in Rule 901:10-1-07 of the O.A.C. for the Director to make a determination in support of issuance of an RCC for the Facility:
  - a. Manure Management Plan as required by rules 901:10-2-08 to 901:10-2-14 and 901:10-2-18 of the O.A.C.
  - b. Insect and Rodent Control Plan as required by rule 901:10-2-19 of the O.A.C.



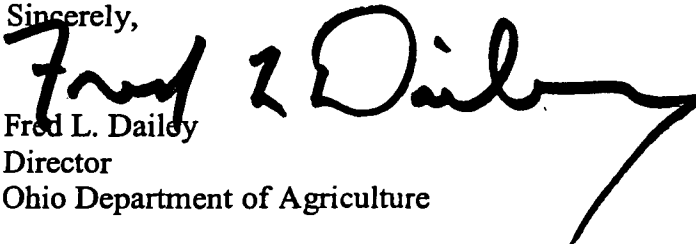
9. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Facility is being operated in a manner that protects the waters of the state. Without a complete and accurate Manure Management Plan, the Director cannot determine that the Manure Management Plan conforms to the best management practices contained in the rules.
10. Without a complete and accurate Insect and Rodent Control Plan, the Director cannot determine whether the presence and negative effects of insects and rodents at the facility and in the surrounding areas are minimized.

You have thirty (30) days from the date this letter is sent within which you must correct these deficiencies by submitting the required documents, including any required corrections to these documents.

After the thirty (30) day time period specified in this Notice has elapsed, an ODA inspector will determine whether you have submitted the required information to be in compliance with O.R.C. 903.04 and O.A.C. 901:10-1-07. If you are still not in compliance, I will consider proceeding with other enforcement options, including denying the RCC application and assessing a civil penalty in accordance with O.A.C. 901:10-5-03 and O.A.C. 901:10-5-04 of up to \$1, 000.00 for failure to comply with O.R.C. § 903.04 and O.A.C. 901:10-1-07.

Pursuant to O.A.C. 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with O.A.C. 901:10-5-04. In addition to the considerations given by the Director pursuant to O.A.C. 901:10-5-04(D), the Director has referred to the penalty matrix in O.A.C. 901:10-5-04(E) and (F) and concluded that the appropriate penalty in this matter is up to \$1, 000.00 based on the fact that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is major for failure to have a RCC, and the gravity of the violation is a low level violation.

Sincerely,

  
Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: ~~M~~ Mary Beth Ruttan, Assistant Attorney General  
Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Jennifer Tiell, ODA Legal Counsel  
Michelle McKay, LEPP Inspector  
Mercer SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aoughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.4 (OFL4-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that, with the exception of the week of February 24, 2005, OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildebrand, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Layer No. 4 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005, with the exception of the week of February 24, 2005.

The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Layer No.4.

**B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has

also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 17 weeks, for a total of \$42,500.00 and the potential for escalated enforcement. **\$42,500.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Layer No.4 which ODA construes as the individuals and titles of persons of the OFE Management Team

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Layer No. 4.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.


### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$87,500.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

  
Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No. 2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Pullet Site No. 2 (OFP2-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Croton Pullet No. 2 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

With the exception of eight (8) weekly pit inspections conducted by Mark Wargo, Pullet Site Manager, or Stephanie Tudor, Compliance Manager, the records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Pullet No. 2.

**B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04.

In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 10 weeks, for a total of \$25,000.00 and the potential for escalated enforcement. **\$25,000.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. The records show that, with the exception of two inspections by the Compliance Officer, Stephanie Tudor, weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Pullet No. 2.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.



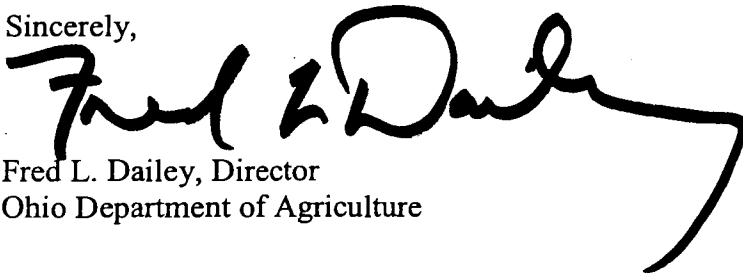
### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 16 weeks, for a total of \$40,000.00 and the potential for escalated enforcement. **\$40,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$65,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No.4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

## **A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Pullet Site No. 4 (OFP4-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Croton Pullet No. 4 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

With the exception of eight (8) weekly pit inspections conducted by Mark Wargo, Pullet Site Manager, or Stephanie Tudor, Compliance Manager, the records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Pullet No. 4.

## **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the

category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 10 weeks for failure to comply with the permit with respect to FEM-5, for a total of \$25,000.00 and the potential for escalated enforcement. **\$25,000.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Pullet No. 4 which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that, with the exception of two inspections by the Compliance Officer, Stephanie Tudor, weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Pullet No. 4.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 16 weeks for failure to comply with the permit with respect to FEM-6, for a total of \$40,000.00 and the potential for escalated enforcement. **\$40,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$65,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-MAD RIVER FARM

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Mad River Farm. ODA has determined that Daylay Egg Mad River Farm has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10, 901:10-2-08, 901:10-2-10, and 901:10-2-16.

### I. FIRST VIOLATION-BURNING COMPOST -MAD RIVER

#### A. VIOLATION

ODA has determined O.A.C. 901:10-1-10(F) has been violated. The Manure Management Plan contained in the RCC issued to Daylay for Mad River (RCC RIVE-0001.RC001-UNIO) authorizes Daylay to compost manure in compliance with Certificate 80-C3R-0377, a Class III Compost Operation, licensed by the Director of the Ohio Environmental Protection Agency. ODA further finds that Certificate 80-C3R-0377 requires compliance with O.A.C. 3745-27-45(C)(1)(a) and (C)(1)(c), which provide that in daily operations:

(1) The owner or operator of a composting facility shall conduct operations at the composting facility in such a manner that:

(a) Noise, dust, and odors are controlled so as not to cause a

nuisance or a health hazard.

(c) Fires are prevented so as not to cause a nuisance or a health hazard.

Compost stored at the facility as of May 5, 2005 was burning and generating a strong offensive odor. Daylay had been warned by ODA on September 11, 2003 about odor problems caused by burning compost. On May 5, 2005, the odor was very strong throughout the facility and adjacent on State Route 31. The LEPP Inspector visited the facility again on May 31, 2005 and found that the situation had not changed and that compost continued to burn and to generate strong odors.

#### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by putting out the fire in the compost building. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

#### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if Daylay fails to comply with the corrective action required herein, Daylay will be subject to the assessment of a civil penalty in the amount of \$1000.00 for each day after the deadline given, as well as the potential for escalated enforcement.

### **II. SECOND VIOLATION- MANURE STORAGE INSPECTIONS/RECORD KEEPING- MAD RIVER**

#### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-1-10 and O.A.C. 901:10-2-16 have been violated. Specifically, O.A.C. 901:10-1-10(F) provides that no person shall violate the terms and conditions of an RCC. In addition, the facility's Operating Record must include records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the Manure Management Plan. O.A.C. 901:10-2-16(A)(1)(a)(iii).

The RCC issued to Daylay for Mad River (RCC RIVE-0001.RC001-UNIO), includes a chart in the Manure Management Plan that shows manure storage buildings with dry manure are required to be inspected daily.

During an inspection conducted by LEPP on April 12, 2004, the LEPP Inspector informed Daylay that Daylay was required to conduct daily inspections to record the measurements of manure storage capacity remaining. Daylay was also told that the records of the results of these inspections were required to be maintained in the Operating Record. During the inspection conducted on May 5, 2005, the LEPP Inspector found that Daylay does not record any of these inspections. Daylay has not maintained records of inspections as required by the RCC and by the above-cited rules since at least March 11, 2005.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter you must correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation. On or about September 1, 2005 a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

## **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay will be subject to the assessment of a civil penalty in the amount of \$150.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## **III. THIRD VIOLATION- MANURE LAGOON INSPECTIONS/RECORD KEEPING- MAD RIVER**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(f) requires inspections for manure volume and requires that these inspections be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(iii) requires that the owner or operator maintain in the Operating Record, records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.

The RCC issued to Daylay for Mad River (RCC RIVE-0001.RC001-UNIO) includes a chart in the Manure Management Plan that requires that manure storage capacity in three lagoons be inspected weekly and inspected after a rain event.

During an inspection on April 12, 2004, the LEPP Inspector told Daylay to inspect the lagoons weekly for storage capacity and to record the results of these inspections in the Operating Record.

During the inspection conducted on May 5, 2005, the LEPP Inspector found that Daylay does not record weekly storage capacity inspections or post storm event inspections of the egg wash lagoons. Daylay has not maintained records as required by the RCC and by the rules since at least March 11, 2005.

## **B. CORRECTIVE ACTION REQUIRED**



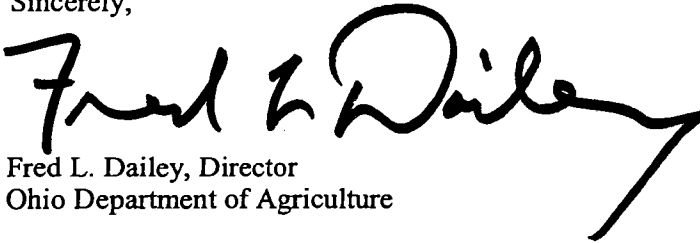
Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

**C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay will be subject to the assessment of a civil penalty in the amount of \$150.00 for each day after the date of the receipt of this letter, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt – Union SWCD  
Cathy Alexander/Alison Shockley– Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips – Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

### **Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE – FARM 3**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Egg Farm 3. ODA has determined that Daylay Egg Farm 3 has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10, 901:10-2-16, and 901:10-2-19.

### **I. FIRST VIOLATION- INSECT AND RODENT CONTROL PLAN-FARM 3**

#### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-19 and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-19(B)(3)(a) requires that the monitoring and inspection records required by the Insect and Rodent Control Plan (IRCP) be maintained in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vii) requires that the records required by the IRCP be recorded and documented in the Operating Record.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. RCC FAR2-0003.RC001-UNIO lists Operating Record Requirements as part of the Insect and Rodent Control Plan and includes forms for Monitoring of Rodents, Reports

from Ralph E. Williams, Ph.D., Fly Inspection Data Sheets, and a Weekly Fly Activity Evaluation.

During an inspection on May 5, 2005, the LEPP Inspector found that Daylay failed to maintain records of its monitoring and inspection since at least March 11, 2005 in violation of the above-cited rules and of the facility's Insect and Rodent Control Plan in RCC FAR3-0001.RC001.UNIO.

### **B. CORRECTIVE ACTION REQUIRED**

Daylay is required to immediately begin conducting the required IRCP inspections. Daylay is also required to document the inspections in the Operating Record. On or about September 1, 2005 a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Daylay or its owners and/or operators fail to comply with any of the corrective action required herein, Daylay or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2500.00 per week for 8 weeks, for a total of \$20,000.00 and the potential for escalated enforcement.

## **II. SECOND VIOLATION MANURE STORAGE AND INSPECTIONS/RECORD KEEPING-FARM 3**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-1-10 and O.A.C. 901:10-2-16 have been violated. Specifically, pursuant to O.A.C. 901:10-1-10(F) no person shall violate the terms and conditions of a Review Compliance Certificate. In addition, the Operating Record must include records of inspections of structural integrity, based upon inspections conducted at intervals specified in the manure management plan. O.A.C. 901:10-2-16(A)(1)(a)(ii).

The RCC issued to Daylay for Farm 3 (RCC FAR3-0003.RC001-UNIO) lists manure storage capacity at the manure storage building located at the facility as 7,000 tons. The RCC also states, "Frequency of Manure Residuals Removal" for the manure storage building means manure removal is "Continual as sold."

During the inspection conducted on May 5, 2005, the LEPP Inspector found that the manure storage building was completely full and exceeding the authorized building capacity. This was evident from the large amount of manure piled within the building and in front of the building.

The LEPP Inspector also found that Daylay has not maintained records of monthly inspections for manure capacity, had not maintained records of bi-annual inspections of structural integrity, and had not maintained records of manure removal as required by the RCC FAR3-0001.RC001-UNIO and by the above-cited rules since at least March 11, 2005. The RCC requires Daylay to

maintain "records of manure residual removal, ...manure storage capacity remaining and the overall structural integrity of the manure storage and treatment facilities."

**B. CORRECTIVE ACTION REQUIRED**

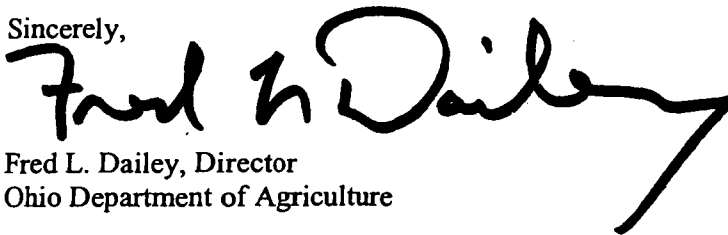
Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation. Manure must be removed as soon as possible and either composted or land applied in accordance with the rules and the terms and conditions of the RCC. All manure removal shall be completed no later than September 1, 2005.

**C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as low. Therefore, if Daylay, its owners, or operators fail to comply with the corrective action required herein, Daylay, its owners, or operators will be subject to the assessment of a civil penalty in the amount of \$1,000.00 for each day after September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt – Union SWCD  
Cathy Alexander/Alison Shockley– Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips – Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Frank Zimmerer  
Topaz Real Estate, Inc.  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE –FARM  
2**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. and Topaz Real Estate, Inc. ("Daylay" and "Topaz") are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker and Topaz Real Estate are the owners of Daylay Egg Farm 2. Frank Zimmerer is the owner of Topaz Real Estate. Mark Meyer is the operator of Daylay Egg Farm 2. ODA has determined that the following rules have been violated at Daylay Egg Farm 2: Ohio Administrative Code (O.A.C.) 901:10-2-08, 901:10-1-10, 901:10-2-16, and 901:10-2-19.

### I. FIRST VIOLATION- WATER WELL TESTS-FARM 2

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08, 901:10-2-16, and 901:10-1-10 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(i) requires that the permittee conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record. O.A.C. 901:10-2-16(A)(1)(a)(vi) also requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) FAR2-0001.RC001-UNIO requires annual ground water sampling and analysis in the Manure Management Plan at item 5., Groundwater Sampling and Analysis, at one well location (number 702).

During the May 5, 2005 inspection, the LEPP Inspector determined that Daylay and Topaz failed to conduct sampling and analysis of groundwater and to maintain ground water sampling analysis in the Operating Record in violation of the above-cited rules and Farm 2's RCC FAR2-0001.RC001-UNIO.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by collecting or obtaining the required sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay and Topaz have returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if Daylay, Topaz, their owners and/or operators fail to comply with the corrective action required herein, Daylay, Topaz, their owners and/or operators will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## **II. SECOND VIOLATION- INSECT AND RODENT CONTROL PLAN-FARM 2**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-19, 901:10-2-16, and 901:10-1-10 have been violated.

Specifically, O.A.C. 901:10-2-19(B)(3)(a) requires that the monitoring and inspection records required by the Insect and Rodent Control Plan (IRCP) be maintained in the Operating Record. O.A.C. 901:10-2-16(A)(1)(a)(vii) also requires that the records required by the IRCP be recorded and documented in the Operating Record.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. RCC FAR2-0001.RC001-UNIO lists Operating Record Requirements as part of the Insect and Rodent Control Plan and includes forms for Monitoring of Rodents, Reports from Ralph E. Williams, Ph.D., Fly Inspection Data Sheets, and a Weekly Fly Activity Evaluation.

During an inspection on May 5, 2005, the LEPP Inspector determined that Daylay and Topaz failed to maintain records of monitoring and inspection as required by the IRCP since at least

February 2, 2005 in violation of the above-cited rules and Farm 2's Review Compliance Certificate's Insect and Rodent Control Plan (RCC FAR2-0001.RC001-UNIO).

**B. CORRECTIVE ACTION REQUIRED**

Daylay and Topaz are required to immediately begin conducting the required IRCP monitoring and inspections. Daylay and Topaz are also required to document the inspections in the Operating Record. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Daylay, Topaz, their owners and/or operators fail to comply with any of the corrective action required herein, Daylay, Topaz, their owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2500.00 per week from February 2, 2005 through May 5, 2005, for 13 weeks, for a total of \$32,500.00 and the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt - Union SWCD  
Cathy Alexander/Alison Shockley - Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips - Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-FARM 1**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Egg Farm 1. ODA has determined that Daylay Egg Farm 1 has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10, 901:10-2-08, 901:10-2-10, and 901:10-2-16.

### I. FIRST VIOLATION- WATER WELL TESTS-FARM 1

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(i) requires that the permittee conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vi) requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) FAR1-0001.RC001-UNIO



requires annual ground water sampling and analysis in the Manure Management Plan at item 5., Groundwater Sampling and Analysis, at one well location (number 701).

During an inspection on April 12, 2004, the LEPP Inspector told Daylay to complete annual ground water sampling and analysis for total coliform and nitrates. The LEPP Inspector also informed Daylay that the results of the analysis were required to be maintained in the Operating Record.

On May 5, 2005, ODA conducted another inspection. Daylay had not yet performed the required ground water sampling and analysis although this is a requirement of the above-cited rules and of the RCC FAR1-0001.RC001-UNIO issued on February 7, 2005.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by collecting or obtaining the required ground water sample, having the sample tested for total coliform and nitrates and recording the analytical results in the facility's Operating Record. On or about September 1, 2005 a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay, its owners, and/or operators will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline of September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

## **II. SECOND VIOLATION-UNAUTHORIZED MANURE STORAGE**

ODA has determined the O.A.C. 901:10-1-10(F) has been violated.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) FAR1-0001.RC001-UNIO requires Daylay to transfer manure every four to seven days as provided in the Manure Management Plan (MMP) at item 3., Manure Storage Ponds, Manure Treatment Lagoons, and Fabricated Structures. According to the RCC there is no manure storage at Farm 1: "Raw manure is transported from the belt battery system every 4-7 days routinely, no records [of storage are] kept. Manure is sold from Farm 3 and see Farm 3 MMP for copy of records."

During an inspection on April 12, 2004, the LEPP Inspector discovered that manure is removed from barns 7A and 7B approximately every 17 weeks, concurrent with flock removal. Manure storage in these barns is not authorized by the RCC and is stored in violation of O.A.C. 901:10-1-10(F), which states that no person shall violate the terms and conditions of a Review Compliance Certificate.

RCC FAR1-0001.RC001-UNIO provides that manure shall be removed from barns at Farm 1 every 4-7 days for transport to Daylay Farm 3. ODA concludes that manure stored in the pits of barns 7A and 7B constitutes "manure storage" in a "fabricated structure" as those terms are defined in O.A.C 901:10-1-01.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by moving all manure from Farm 1 to Farm 3 every four to seven days. On or about September 1, 2005, a LEPP Inspector will re-inspect the operation to determine if Daylay has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as high.

Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$5,000.00 for each day after the deadline of September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

## **III. THIRD VIOLATION- MANURE STORAGE WITHOUT THE REQUIRED TESTS- FARM 1**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-10(C) and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C 901:10-2-10(C) provides:

At a minimum, manure from each manure storage or treatment operation shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids.

In addition, O.A.C. 901:10-2-16(A)(1)(b) requires that the owner or operator maintain manure characterization data, as well as other information required by O.A.C. 901:10-2-10, in the Operating Record.

During the inspection conducted on May 5, 2005, the LEPP Inspector learned that Daylay was using barns 7A and 7B to store manure. Daylay has not analyzed the manure stored in barns 7A and 7B, and has not maintained this analysis in the Operating Record.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, Daylay shall begin manure sampling and analysis immediately at barns 7A and 7B at Farm 1 using the procedures in "Recommended Methods of Manure Analysis" (a3769), University of Wisconsin Extension, 2003 and Daylay shall comply with all requirements in O.A.C. 901:10-2-10. Copies of manure analysis results must be maintained in the facility's Operating Record and must be immediately available to the LEPP Inspector. Daylay shall complete sampling and record keeping no later than September 1, 2005.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline of September 1, 2005 set forth in the corrective action, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP.

I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt - Union SWCD  
Cathy Alexander/Alison Shockley - Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips - Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



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Lieutenant Governor Jennette Bradley  
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## Certified Mail Return Receipt Requested

July 13, 2005

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

**Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-PULLET FARM**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Daylay Egg Farm, Inc. ("Daylay") is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Lausecker is the owner and Mark Meyer is the operator of Daylay Pullet Farm. ODA has determined that Daylay Pullet Farm has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10(F), 901:10-2-08, 901:10-2-10, and 901:10-2-16.

### VIOLATION- WATER WELL TESTS-PULLET FARM

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-08(A)(3)(i) requires that the permittee conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vi) requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) PULL-0001.RC001-LOGA requires annual ground water sampling and analysis in the Manure Management Plan at item 5., Groundwater Sampling and Analysis, at one well location (number 704).

Following an inspection on April 12, 2004, ODA's Livestock Environmental Permitting Program (LEPP) Inspector provided Daylay with an Inspection Report informing Daylay that Daylay needed to complete annual ground water sampling and analysis for total coliform and nitrates. The LEPP Inspector also informed Daylay that groundwater analysis were required to be taken yearly and the results maintained in the Operating Record.

On May 5, 2005, ODA conducted another inspection. Daylay had not performed the required ground water sampling and analysis in violation of the above-cited rules and RCC PULL-0001.RC001-LOGA issued on February 7, 2005.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by collecting or obtaining the required ground water sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record. On or about September 1, 2005, a LEPP Inspector will re-inspect the facility to determine if Daylay has returned to compliance.


### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if Daylay, its owners, and/or operators fail to comply with the corrective action required herein, Daylay, its owners, and/or operators will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after September 1, 2005, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,

  
Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Terri Gravatt - Union SWCD  
Cathy Alexander/Alison Shockley - Ohio EPA  
Mike Nishimura - ODNR  
Jim Phillips - Logan SWCD  
Jennifer Tiell/Kristen Davidson, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

July 8, 2005

Kurt Lausecker  
Frank Zimmerer  
Topaz Real Estate, Inc.  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp 133, Box 5  
West Mansfield, Ohio 43358-0005

Re: Warning Letter

Gentlemen:

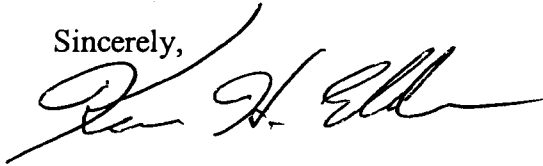
I am writing because I am concerned that Daylay Egg Farm, Inc. ("Daylay") Farm 2 may be planning or may be engaged in conduct that could result in enforcement action and penalties. During the inspection conducted on May 5, 2005, the LEPP Inspector found that concrete walls for a 60-foot by 120-foot manure storage barn had been poured. RCC FAR2-0001.RC001-UNIO does not authorize this new building. Specifically, O.R.C. Section 903.02(A)(2) provides that after August 19, 2002, no person is permitted to modify an existing concentrated animal feeding facility without first obtaining a permit to install from the Director of ODA.

O.A.C. 901:10-2-01 provides:

- (1) No person shall construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director.

I urge you to contact Gary Zwolinski, LEPP Engineer, or Chris Rodabaugh, LEPP Inspector, to discuss any plans that you may have for additional manure storage including manure storage in a new fabricated structure. It is important that any changes comply with the RCC and rules. Please assure that at the next inspection the items noted in this letter have been addressed. If the follow-up inspection indicates any violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Union County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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## Certified Mail Return Receipt Requested

May 23, 2005

Van Ham Dairy  
22177 Road C  
Continental, OH 45831

Gerald E. Niese  
348 T268  
McComb, OH 45858

Niese Farms & Custom Pumping LLC  
9022 RD-X  
Leipsic, OH 45856

### Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on May 10, 2005 and again on May 12, 2005. On those dates, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

1. Need to maintain the operating record to record and document the following information on observations made of drain outlets when liquid manure is applied and need to document the use of drain outlet plugs or other devices used when applying liquid manure.

Rule 901:10-2-16 provides as follows at (A)(1)(c):

(c) Land application site records. Records for each land application site, including:

(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

(iv) When liquid manure is applied to a land application site with subsurface drain, document the use of drain outlet plugs or other devices in the operating record.



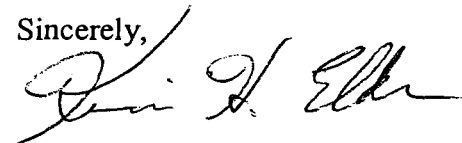
The investigations showed that Niese Farms & Custom Pumping LLC had applied manure to a 60-acre field south of SR 613 and east of Road 22 on May 9, 2005 and on May 10, 2005 at appropriate rates of application. Three tile outlets from this field were located but only one was plugged.

Manure was also applied to another field of 80-acres located on the southwest corner of Road 22 and SR 613. Again, manure was applied at an appropriate rate. In this application, surface drains in the field were blocked with dirt but field tile outlets were not monitored as required by rules. The inspector noted that a plug had been inserted into one of the tile outlets and into a tile outlet entering an inspection/service box. However, the inspector proceeded west along SR613 about a quarter of a mile to investigate the source of the Fishkill reported for this area. Further investigation revealed three more tile outlets, pools of manure-laden water in the adjacent roadside ditch, and dead fish floating in the ditch.

While I appreciate prompt action to remedy the manure spills, these spill incidents could have been prevented by checking all field tile outlets and making field observations during manure application. ODA holds both of you responsible. First, Mr. Van Ham is the owner and operator of the dairy and, regrettably, has had prior experience with manure spills into roadside ditches that previously occurred during application of his manure. Second, Mr. Niese, as a certified livestock manager, has been trained through this Department in applying manure with environmentally sound practices

Please assure that at that the items noted in this letter are prevented in future applications by taking all steps to insure that one of you or both of you are responsible to observe field tile outlets during application of liquid manure. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

CC: Chris Rodabaugh/Jim Young, LEPP Inspectors  
Jason Porinchok/Mark Weihrauch- Wildlife Officer  
Cathy Alexander/Rick Wilson- Ohio EPA  
Mike Nishimura - ODNR  
Albert Maag- Putnam SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
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## Certified Mail Return Receipt Requested

May 23, 2005

JP Poultry  
C/o Mr. Jim Fleck  
8704 State Route 274  
New Bremen, Ohio 45869

Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Dear Mr. Fleck:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), JP Poultry is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that JP Poultry has failed to comply with O.R.C. Sections 903.02 and 903.04.

### I. FIRST VIOLATION- MODIFYING A CAFF WITHOUT A PTI

#### A. VIOLATION

ODA has determined that O.R.C. Section 903.02 has been violated. Specifically, you made two modifications to your existing Concentrated Animal Feeding Facility (CAFF) without first obtaining a Permit to Install (PTI) from the Director as required by O.R.C. Section 903.02(A)(2). First, you constructed a new manure storage barn without obtaining a PTI. Second, you modified your Insect and Rodent Control Plan (IRCP) without first obtaining a PTI.

The Review Compliance Certificate issued for your CAFF on April 9, 2004 (JPPO-0001.RC001-MERC) approved your facility to operate with the approximately 646,000 cubic feet of manure storage. During an inspection conducted by the ODA Livestock Environmental Permitting Program (LEPP) on February 9, 2005, ODA discovered that a new and additional manure storage barn had been constructed at your facility. The new manure storage barn has a storage capacity of approximately 96,000 cubic feet. The new

barn increases your manure storage capacity approximately fifteen per cent from approximately 646,000 cubic feet to approximately 742,000 cubic feet.

Any expansion of manure storage capacity of more than ten per cent is considered to be a modification of the CAFF. O.A.C. 901:10-1-01(VV). After August 19, 2002, no person shall modify an existing CAFF without first obtaining a Permit to Install (PTI) issued by ODA. O.R.C. Section 903.02(A)(2). Therefore, prior to building the new manure storage barn, you were obligated to obtain a PTI.

In addition, each RCC is required to contain an IRCP. O.R.C. Section 903.04(E)(2)(d). The IRCP included in your RCC only covers the manure storage facilities that were in existence at the time ODA issued the RCC. By constructing a new manure storage barn, you should have submitted a new IRCP to ODA that included information related to the new manure storage barn. Any changes to the IRCP constitute a modification. O.A.C. 901:10-1-01(VV)(3). Therefore, changing the IRCP to include the new manure storage barn required the submittal of a PTI application. O.R.C. Section 903.02(A)(2).

### **B. CORRECTIVE ACTIONS**

JP Poultry is required to submit an application for a Permit to Install in order to correct violations of O.R.C. Section 903.02. An application shall be submitted within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. Thereafter, JP Poultry shall have 60 days to respond to comments made by LEPP on the permit application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the permit application, JP Poultry shall have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary permit as expeditiously, as possible, subject to the public participation requirements of O.R.C. Section 903.09.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as medium.

Therefore, if you fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, you will be subject to the assessment of a civil penalty in the amount of \$4,800.00 for each day after the new barn was discovered (February 9, 2005) until the date of this Notice of Deficiencies letter (May 17, 2005) for violation of O.R.C. Section 903.02. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

## **II. SECOND VIOLATION- VIOLATING THE RCC**

### **A. VIOLATION**

ODA has also determined that O.R.C. Section 903.04 has been violated. You are operating a CAFF in violation of your RCC. The RCC merged and became part of the PTI previously issued by the Ohio Environmental Protection Agency (OEPA). O.R.C. Section 903.04(G). A facility that is issued an RCC, must comply with the OEPA issued PTI as amended by the RCC. O.R.C. Section 903.04(I).

The RCC issued to Jim Fleck and JP Poultry authorized JP Poultry to continue operating based on findings made by the Director that the Facility is "of correct design capacity; that the Facility is in compliance with the PTI issued by the Ohio Environmental Protection Agency; that the Facility's Manure Management Plan, Insect and Rodent Control Plan, and Mortality Management Plan all conform to best management practices; and that the Facility is operated in a manner that protects the waters of the state and minimizes the presence and negative effects on insects and rodents at the facility and in surrounding areas." (See Order 2004-066 at 11)

By constructing the new manure storage barn without authorization from OEPA or ODA, JP Poultry's RCC does not contain information that reflects current operating conditions at JP Poultry, including, but not limited to the following:

- 1) The RCC does not have a Manure Management Plan that specifies the frequency of inspections to be conducted at all manure storage and treatment facilities, including the new manure storage barn at JP Poultry, as required by rule 901:10-2-08 of the O.A.C.
- 2) The RCC has not had an Insect and Rodent Control Plan submitted that specifies management controls for all manure and storage and treatment facilities, including the new manure storage barn, as required by rule 901:10-2-19 of the O.A.C.

### **B. CORRECTIVE ACTIONS**

JP Poultry is required to submit an application for a Permit to Operate (PTO) in order to correct violations of O.R.C. Section 903.04. An application shall be submitted within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. JP Poultry shall submit the PTI and the PTO applications simultaneously. O.A.C. 901:10-2-01(A)(2). Thereafter, JP Poultry shall have 60 days to respond to comments made by LEPP on the permit application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the permit application, JP Poultry shall have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary permit as expeditiously, as possible, subject to the public participation requirements of O.R.C. Section 903.09.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D). Based upon this review, ODA has determined that the violations cited herein are the first cited violations with the category of seriousness of the violations as Category I, and the gravity of the violations as medium.

Therefore, if you fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, you will be subject to the assessment of a civil penalty in the amount of \$4,800.00 for each day after the new barn was discovered (February 9, 2005) until the date of this Notice of Deficiencies letter (May 17, 2005) for violation of O.R.C. Section 903.04. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Mercer SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

May 12, 2005

Mr. Ed Stoll  
Stoll Farms, Inc.  
6818 Coal Bank Road  
Marshallville, Ohio 44645

Mr. Steve Gruskiewicz  
Gruskiewicz Pumping Inc.  
8421 Rt. 193  
Williamsfield, Ohio 44093

### Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on April 23, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

1. Need to maintain distance of 100 feet as setback between the manure application field and a residence.

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides as follows at (B)(4) and Appendix A at number 8:

(B)(4) All land applications of manure shall comply with all restrictions contained in appendix A of this rule.

#### Appendix A of Rule 901:10-2-14

Manure may be applied at the prescribed distance from the edge of the land application site, provided that any such application, including application to the edge of a land application site, shall utilize manure

application as that term is defined by paragraph (OO) of rule 901:10-1-01 of the Administrative Code and manure application shall comply with the application restrictions in this appendix. If a buffer strip is required, the owner or operator shall comply with that term as defined in paragraph (N) of rule 901:10-1-01 of the Administrative Code

#### 8. Neighboring residences Setback

Injection application - 50 feet.

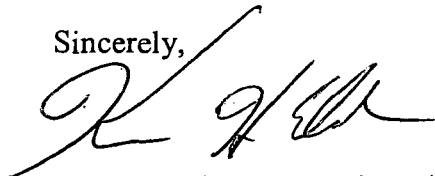
Surface application followed by incorporation within twenty-four hours - 100 feet.

Surface application not followed by incorporation within twenty-four hours - 300 feet.

The investigation showed that manure had been applied to a 14.7-acre field located west of 78129 Black Diamond Road on April 16, 2005 at the rate of 13,000 gallons per acre. Gruskiewicz Pumping, Inc. performed the application with a dragline equipped with a hay bar. The field had previously been chisel plowed and therefore incorporation setback requirements were to be followed. Measurements showed the manure was applied 66 feet and 8 inches from the complainant's residence.

Please assure that at that the items noted in this letter are prevented in future applications. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder, Executive Director

CC: Roy Darr

Eric Ucker – Wildlife Officer

Cathy Alexander– Ohio EPA

Mike Nishimura – ODNR

Duane Wood – Wayne SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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May 9, 2005

DeVries Dairy  
C/o Hette DeVries  
7138 Sager Road  
LaRue, OH 43332

## Re: Warning Letter

Dear Mr. DeVries:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on April 25, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found numerous violations of Ohio law surrounding your operation. These violations include the following:

1. Need to maintain records on storage capacity or manure volume at the manure storage and treatment facility.

Rule 901:10-2-16(A)(1)(a)(iii) of the Ohio Administrative Code ("OAC") provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility. Records required by rules 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(iii) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.

2. Need evidence in the operating record of regular inspections of the manure storage or treatment facilities for erosion, leakage, animal damage, or discharge.

Rule 901:10-2-08(A)(3)(e) of the OAC provides:



(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

(e) Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage or discharge.

3. Need to properly record maintenance inspections and upkeep of any protective vegetative cover in the operating record.

Rule 901:10-2-16(A)(1)(a)(iv) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage treatment facility. Records required by rules 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(iv) Records of inspections of stormwater conveyances and of any protective vegetative cover.

An inspector plans to inspect your operation towards the end of June of this year. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Marion County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
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## Certified Mail Return Receipt Requested

May 9, 2005

Wenning Poultry Farm  
James and Mary Wenning  
1500 Union City Road  
Fort Recovery, Ohio 45846

### Re: Warning Letter

Dear Mr. and Mrs. Wenning:

On January 12, 2005, I sent a Warning Letter to Wenning Poultry Farm regarding violations discovered during the November 5, 2004 inspection. In that Warning Letter I informed you that an inspector would return in mid-March 2005 to assure that violations listed in that letter had been addressed. On April 8, 2005, your operation was re-inspected by my staff. Violation of numerous Ohio Department of Agriculture laws and rules was discovered on that date. These violations include the following:

1. Need to maintain records in the operating record of freeboard measurements in the manure lagoon.

Rule 901:10-2-08(A)(3)(a) of the Ohio Administrative Code ("OAC") provides:

- (3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:
  - (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four hour storm event, plus an additional one foot of freeboard.

In addition, Rule 901:10-2-16(A)(1)(a)(i) of the OAC provides:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator of the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility.

Records required by rule 901:10-2-08 or 901:10-19 of the Administrative Code, including:

(1) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan. (Emphasis added)

2. Need to maintain the required information in the operating record for land application of manure, including date and quantity of application.

Rule 901:10-2-16(A)(1)(c)(v), (A)(1)(c)(xii), and (A)(1)(C)(xiv) of the OAC provide:

Land application site records. Record for each land application site, including:

(xiv) Date, rate, quantity and method of application of the nutrient, and/or form and source of manure, commercial fertilizer and/or other organic by-products. (Emphasis added)

3. Bird populations must be within 10% of your permitted numbers or a permit modification must be sought. In no case during a five year period shall your operation's capacity be modified to increase by more than 10% in the aggregate.

Rule 901:10-1-01(VV) provides:

(VV) Modification means one or more of the following:

(1) A material and substantial alteration of the facility including an increase of the number of animal units of the design capacity of an existing facility by ten per cent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or operation's capacity be modified to increase by more than ten per cent in the aggregate.

4. Need to inspect the composter building for structural integrity.

Rule 901:10-2-08(A)(3) of the OAC provides:

At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (e) Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage or discharge.

5. For newly acquired land that you plan to apply manure to certain revisions must be made to your manure management plan.

Rule 901:10-2-09(C) of the OAC provides:

The manure management plan shall include the total summary of acres of land to be used for land application sites. This summary includes the land that is available for the duration of the permit and the land that is available for manure that is generated by the facility. The total summary shall be further characterized as follows:

- (1) The total nutrient budget requirements on land application sites under the control of the owner or operator;
- (2) The quantity of commercial fertilizer nutrients to be applied on land application sites under the control of the owner or operator; and
- (3) The quantity of nutrients to be managed by the owner or operator through distribution and utilization methods utilized in accordance with rule 901:10-2-11 of the Administrative Code.

6. You must specifically list the sections of the Pax farm that are applied with manure.

Rule 901:10-2-16(1)(c)(ii) of the OAC provides:

- (1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:
  - (c) Land application site records. Record for each land application site including:
    - (ii) The owner or operator shall list or otherwise describe those acres of land in the operating record for land application of manure.

7. You must maintain records of equipment maintenance.

Rule 901:10-2-16(1)(c)(i) of the OAC provides:

- (1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or

operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(i) The owner operator shall maintain or have access to adequate application equipment and record this in the operating record.

8. You must record tile observation when land applying liquid manure.

Rule 901:10-2-16(A)(1)(c)(iii) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

9. You must record soil conditions when land applying.

901:10-2-16(A)(1)(c)(xv) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(xv) Condition of soil at the time of application including, but not limited to, available water capacity and evidence of soil cracks and related information on soil conditions.

10. Your operating record must record the setbacks from waterways, wells, homes, etc. that you maintained during land application.

901:10-2-14(B)(4) of the OAC provides:

This rule establishes best management practices that govern land application of manure on land application sites. The land application of manure at each land application site shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

(B) Manure application rate-general criteria:

(4) All land applications of manure shall comply with all restrictions contained in appendix A of this rule. (Appendix A provides setback requirements and is included with this letter for your reference.)

11. You must record weather conditions at the time of application.

901:10-2-16(A)(1)(c)(xvi) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site including:

(xvi) Temperature, including general weather conditions at time of application.

12. You must provide, if available, your actual crop yields.

901:10-2-16(A)(1)(c)(xi) of the OAC provides:

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(c) Land application site records. Records for each land application site, including:

(xi) Actual yields if available.

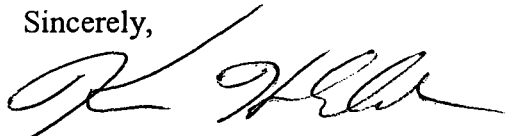
13. Need to follow your Insect and Rodent Control Plan as it is part of your Review Compliance Certificate.

901:10-1-10(F) of the OAC provides:

(F) No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.

You corrected three (3) of five (5) violations noted in the January 12, 2005 Warning Letter, but the re-inspection shows two remaining violations and ten additional, new violations. An inspector plans to re-inspect your operation in late October or early November of this year. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt corrections of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations after two Warning Letters have been issued, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Michelle McKay, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mercer County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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May 6, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013  
**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137  
**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173  
**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173  
**Certified Mail**

**Re: Director's Notice of Hearing**

Gentlemen:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department" or "ODA"), under the authority of Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Ohio Fresh Eggs, LLC ("OFE") imposing a civil penalty of \$212,000.00 because of ODA's determination that OFE has failed to return certain Croton Layer facilities to compliance with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756 ("Consent Order").

OFE has not returned to compliance with paragraph 8 of the Consent Order which enjoins OFE to comply with, inter alia, the terms and conditions of all permits issued by the Director of Agriculture pursuant to Chapter 903 of the ORC. Specifically, OFE has not returned to compliance with the Insect and Rodent Control Plan ("IRCP") contained



in the Permits to Operate ("PTO") issued to Croton Layer Site No. 2 (PTO OFL2-0001.PO0001.LICK) and Croton Layer Site No. 3 (PTO OFL2-0001.PO0001.LICK).

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

#### **October 15, 2004 Notice of Deficiency**

1. During an inspection of the Croton Layer facilities on September 14, 2004, inspectors discovered that OFE had failed to have effective daily water leak inspections, a good maintenance program, and proper barn ventilation in order to maintain 30% manure moisture or less.

2. On October 15, 2004, ODA issued a Notice of Deficiencies Resulting in Noncompliance ("NOD") due to OFE's failure to "maintain the moisture content in the manure . . . at/or below 30%" as required by OFE's IRCP. The NOD proposed a penalty of \$2,500.00 for the thirty days the manure moisture exceeded 30%. Manure exceeded 30% in the following barns:

- At Layer No. 1, barn 5
- At Layer No. 2, barns 15-20, 22, 26, 27, 27A, and 28B
- At Layer No. 3, barns 31, 34, 36, 37, and 41
- At Layer No. 4, barns 43, 47, 49, 50, 51, and 56

3. The October 15, 2004 NOD also cited the following barns for not only exceeding the 30% manure moisture, but also increasing the manure moisture levels in the barns from the first quarter to second quarter of 2004. The NOD proposed a penalty of \$4,500.00 for each week the manure moisture exceeded 30%. Manure moisture levels increased in the following barns:

- At Layer No. 1, barns 3, 7, 10, and 13
- At Layer No. 2, barns 21, 23-25, and 28
- At Layer No. 3, barns 30, 32, 35, 40, and 42
- At Layer No. 4, barns 45, 53, and 55

4. The NOD issued on October 15, 2004 required OFE to correct the deficiencies by submitting and complying with a schedule that did all of the following:

- 1) List each barn that exceeds the manure moisture rate of 30%.

- 2) List each barn that exceeds 50% manure moisture or those barns where the manure cannot be properly contained within the walls of the barn or those barns where manure cannot be prevented from flowing out of pit doors or barn clean out doors or those barns with no coning.
- 3) Prioritize barns for manure removal beginning with the barns described here at item 2), so that manure is removed from each listed barn as soon as feasible, given current winter restrictions for land application of manure.
- 4) Provided, however, that the schedule submitted for all of the barns described here at item 2) shall not exceed March 31, 2005 by which time OFE will complete manure removal and distribution and utilization for all of those barns.
- 5) List the dates for manure removal for all other barns.

5. By letter dated November 24, 2004, OFE provided ODA with a schedule for manure removal in response to the NOD. The schedule provided by OFE listed barns exceeding the 30% manure moisture rate; listed barns exceeding the 50% manure moisture rate; and prioritized barns for manure removal. The schedule set forth in this letter prioritized barns at Layer No. 2 and Layer No. 3 to be cleaned by the fall of 2004 or early spring 2004 before the March 31, 2005 deadline. Manure from all the barns at the Croton Layer facilities that exceeded 30% manure moisture listed in the October 15, 2004 NOD would be removed by March 31, 2005.

#### **January 24, 2005 Notice of Deficiency**

6. On December 6, 2004, ODA conducted an inspection at OFE Layer No.3 and determined that the manure moisture in Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 exceeded 30%.

7. On January 24, 2005, ODA issued an NOD to OFE based on ODA's determination that for 48 weeks, from January 1, 2004 through December 5, 2004, the terms and conditions of paragraph 8 of the Consent Order and of OFE's IRCP had been violated. OFE's IRCP requires that OFE "keep manure as dry as possible in order to maintain 30% moisture or less . . . ."

8. The NOD issued on January 24, 2005 required OFE to correct the deficiencies by submitting a schedule within ten days indicating the dates OFE intended to remove the manure from Barn Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40. OFE was required to complete manure removal and distribution and utilization for the barns by March 31, 2005 or OFE would be subject to the assessment of a civil penalty.

9. By letter dated February 14, 2005, OFE submitted a schedule for manure to be removed from Barn Nos. 29-40 by March 31, 2005. In addition, OFE requested both of the following:

- To modify the operating permits to reflect that the 30% manure moisture requirement only applies to certain barns at the Croton Facilities prior to conversion of these barns to belt battery manure management.
- To change the deadline for manure removal to May 31, 2005.

During an inspection conducted by ODA, the LEPP Inspector informed OFE that the deadline would not be changed. During a telephone conversation, the LEPP Executive Director also informed OFE by that the deadline would not be changed.

#### **April 4, 2005 Re-Inspection**

10. On April 4, 2005, ODA re-inspected OFE Croton Facilities to determine whether OFE had complied with the corrective action requirements contained in the October 15, 2004 and January 24, 2005 NODs by removing manure from the barns listed in the NODs by March 31, 2005.

11. ODA has determined that OFE has not fully complied with corrective actions contained in the NODs. OFE failed to completely remove manure by March 31, 2005 from the following barns:

- At Layer No. 2, barns 15-28, 27A, and 28B.
- At Layer No. 3, barns 29-41.

#### **Penalty Assessment**

12. Section 903.16 of the ORC provides at paragraph (A):

The Director of Agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the Director or the Director's authorized representative determines that the owner or operator is not in compliance with . . .the terms and conditions of a . . . permit to operate, or . . . rules adopted under division (A) of section 903.10 of the Revised Code. However, the Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(2) After the time period specified in the notice has elapsed, the Director or the Director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the Director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

13. Based on OFE's failure to completely correct the deficiencies and return to compliance, ODA is now issuing this Notice of Hearing and proposing the imposition of a \$212,000.00 penalty.

14. Manure was not cleaned out of the following barns by March 31, 2005 as required by the October 15, 2004 NOD:

- At Layer No. 2, barns 15-20, 22, 26, 27, 27A, and 28B a 30 day exceedance of the 30% moisture limit at \$ 2,500.00 per week for a total of \$10,000.00.
- At Layer No. 3, barns 31, 34, 36, 37, and 41, a 30 day exceedance of the 30% moisture limit at \$ 2,500.00 per week for a total of \$10,000.00.
- At Layer No. 2, barns 21, 23-25, and 28, a 60 day exceedance of the 30% moisture limit at \$ 4,500.00 per week for a total of \$36,000.00.
- At Layer No. 3, barns 30, 32, 35, 40, and 42, a 60 day exceedance of the 30% moisture limit at \$ 4,500.00 per week for a total of \$36,000

15. Manure was not cleaned out of the following barns by March 31, 2005 as required by the January 24, 2005 NOD:

- At Layer No. 3, barns 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40, a 48 week exceedance of the manure moisture limit at \$2,500.00 per week for a total of \$120,000.00

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on May 6, 2005.

Please note that if your company is a limited liability company or a corporation, only an attorney at law admitted to practice in the State of Ohio may request the hearing and represent the company at the hearing. A court reporter will be present at the hearing to make a record of the proceedings and to swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. Following the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within 30 days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
William A. Hopper, Chief Counsel, ODA  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Kristen Davidson, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Jim Young, LEPP Inspector  
Licking SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

May 6, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Breeder/Hatchery Facility. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F), OAC 901:10-2-16, and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

**I. FIRST VIOLATION-FAILURE TO COMPLY WITH THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the

terms and conditions in the Permit to Operate (PTO) issued to OFE for the Croton Breeder/Hatchery Facility (OFHB1-0001.PI001.LICK) have been violated. Specifically, the Moisture Management section of the OFE's Insect and Rodent Control Plan provides that: "Every day an inspector walks each pit to . . . record, . . . water leaks immediately. Water leaks are repaired immediately."

During an inspection conducted by ODA on April 11, 2005, the LEPP Inspector determined that the Insect and Rodent Control Plan records were lacking three items. First, the Water Loss and Water Repair Logs (FEM-2 forms) were not completed and on file in the Operating Record. Water Loss and Water Repair Logs (FEM-2) are required pursuant to the IRCP Maintenance Activities, Watering System at item 1.a. Water Leaks.

Second, the Pit Insect Inspection Reports (FEM-5 forms) were not completed and on file. Pit Insect Inspection Reports (FEM-5) are required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records.

Third, the Fly Control Logs (FEM-4 forms) with the required actions recorded were not completed and on file. Fly Control Logs (FEM-4) are required pursuant to the IRCP Use of Fly Speck Cards to Monitor Fly Levels and Action Level Used to Trigger Fly Control.

ODA has determined that for 14 weeks from January 1, 2005 to at least April 11, 2005, OFE failed to complete any Water Loss and Water Repair Logs, Pit Inspection Reports, or Fly Control Logs at the Croton Breeder/Hatchery Facility.

#### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to provide employee training for daily barn inspections for OFE Breeder/Hatchery Operation. OFE is required to provide employee training within thirty (30) days of receipt of this letter. OFE shall train employees and training shall be complete no later than July 15, 2005. OFE shall submit an affidavit to ODA documenting that each production employee, whether a full-time, part-time, or temporary employee, has been trained. In the event that employees have been trained previously as reported and documented by OFE in affidavits submitted to ODA on February 14, 2005, then OFE shall provide re-training or additional training to the employees of the Breeder/Hatchery Operation and, as appropriate, to the Site Manager by July 15, 2005. Thereafter, OFE shall submit the affidavits to Kevin Elder, Executive Director, Livestock Environmental Permitting Program (LEPP), no later than August 15, 2005. OFE shall retain records on file of employee training, including training of any new employees, for periodic inspection by ODA.

OFE is required to submit a written report to LEPP within ten days of the date of this letter explaining in detail the duties and responsibilities of Site Production Managers at the Breeder/Hatchery, as this term is used in all permits issued to OFE. OFE shall provide a Table of Organization for the Breeder/Hatchery Operation and identify by name each Site Production Manager within the context of the Table of Organization for the Breeder/Hatchery Operation.

Finally, OFE is required to immediately establish all necessary policies, practices, and procedures to insure that the Breeder/Hatchery Facility is being inspected, with all inspections properly recorded in accordance with OFE's permit. OFE shall submit to ODA within 30 days of the date of this letter a report explaining the policies, practices, and procedures placed into operation and their effectiveness.

## C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2500.00 per week for 14 weeks, for a total of \$35,000.00 and the potential for escalated enforcement.

## II. SECOND VIOLATION-FAILURE TO COMPLY WITH DISTRIBUTION AND UTILIZATION RECORD KEEPING REQUIREMENTS

### A. VIOLATION

ODA has determined that OFE has violated OAC 901:10-2-16, which requires OFE to maintain records of distribution and utilization methods used. OAC 901:10-2-16 provides at paragraph (A)(1)(e):

- (e) The records for implementation of distribution and utilization methods, if used, shall include;
  - (i) Quantity of manure transferred off-site;
  - (ii) Date of off-site transfer;
  - (iii) Name of recipient of manure; and
  - (iv) A statement signed by the recipient acknowledging that the recipient shall follow best management practices for land application, if applicable, required by OAC 901:10-2-14.

During an inspection conducted by ODA on April 11, 2005, the LEPP Inspector determined that the Operating Record lacked records documenting the hatchery waste removed by G.A. Wintzer & Company in 2005. Hatchery waste is "manure" as ORC Section 903.01(O) defines this term.

ODA has determined that for 14 weeks from January 1, 2005 to at least April 11, 2005 OFE failed to maintain the required records.

### B. CORRECTIVE ACTIONS

OFE is required to comply with OAC 901:10-2-16 by immediately instituting procedures to routinely record the information on distribution and utilization of all manure. This includes making arrangements with G.A. Wintzer & Company to provide necessary documentation of distribution and utilization as between OFE and the Company.



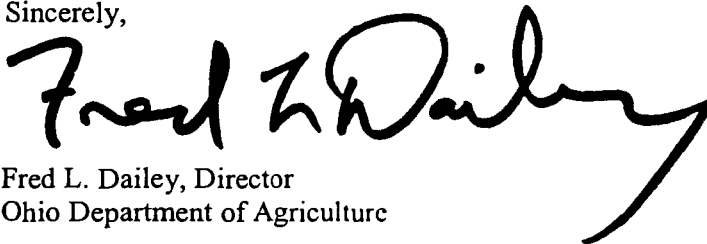
### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (D), (E) and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as low or Category III, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$200.00 per week for 14 weeks, for a total of \$2,800.00 and the potential for escalated enforcement.

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$37,800.00, and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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May 3, 2005

Donald Hershey  
Ohio Fresh Eggs, LLC  
9300 Croton Road  
Croton, OH 43013

**Certified Mail Return Receipt Requested**

Orland Bethel  
Hillandale Farms, Inc.  
3<sup>rd</sup> Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail Return Receipt Requested**

Ronald L. Flory  
Ohio Fresh Eggs, LLC  
11212 Croton Road  
Croton, OH 43013-0173

**Certified Mail Return Receipt Requested**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs, LLC  
11212 Croton Road  
Croton, OH 43013-0173

**Certified Mail Return Receipt Requested**

**Re: Warning Letter**

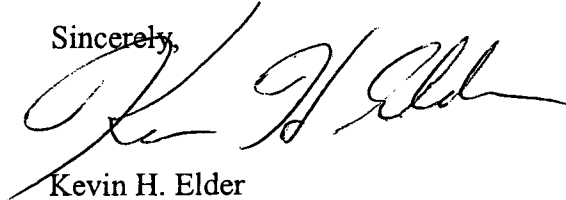
Gentlemen:

Violation of Ohio Fresh Eggs Permit to Operate Insect and Rodent Control Plan was discovered during a complaint investigation by my staff on April 11, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found two manure stockpiles located in a field south of 2711 Finley-Guy Road. There were a moderate number of flies observed on the manure and in the immediate area surrounding the stockpiles. My staff also observed abundant amounts of fly pupae in the manure on the stockpiles and on the ground around the stockpiles. Upon investigation it was discovered that the origin of the manure was Ohio Fresh Eggs Mt. Victory Layer #5.

Your Insect and Rodent Control Plan provides under the heading "Land application management manure loading" at item number one (1) that "all manure will be treated with an appropriate insecticide prior to removal from barn." This was not done with the

aforementioned stockpiles. I understand that you have since sprayed the stockpiles for flies. Henceforth, you must assure that all manure is treated with an appropriate insecticide prior to removal from the barn. We take this violation very seriously and anticipate your prompt correction of your deficient practice. If you are subsequently found in violation of your Insect and Rodent Control Plan this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Jennifer Michaelson, Madison County-London City Health District  
Hardin County SWCD  
Hardin County Health Department  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

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## Certified Mail Return Receipt Requested

May 3, 2005

Nine Mornings Dairies  
Jetse Theunts Boersma  
6787 Road 144  
Antwerp, Ohio 45813

### Re: Warning Letter

Dear Mr. Boersma:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on April 20, 2005. On that date, the LEPP Inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program noted several violations of Ohio Department of Agriculture laws and rules. These violations include the following:

1. Need to maintain freeboard. The LEPP Inspector measured the freeboard allowance at your facility and found only one foot of freeboard remaining.

Rule 901:10-2-08 of the Ohio Administrative Code (OAC) provides, in pertinent part, at paragraph (A):

(3) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:

- (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four-hour storm event, plus an additional one foot of freeboard."  
(Emphasis added)

At your facility, in order to contain a minimum of a twenty-five year, twenty-four-hour storm event, an uncovered manure storage pond will need to contain 4.4 inches of precipitation plus an additional one-foot of freeboard. In addition, your manure storage ponds collect contaminated stormwater from the silage/compost pad area. The volume of

runoff from this pad, for a 25-year, 24-hour storm event, will need to be accounted for in determining the maximum operating level of these ponds, in addition to the 1 foot of freeboard and the 4.4 inches of rainfall on the surface of the pond. With only one foot of freeboard, the manure storage pond does not have sufficient capacity and manure removal is required.

2. Need to install liquid level indicators in the manure storage pond and the stormwater ponds as soon as the ponds are low enough for installation and install or use a temporary gauge on the banks of each pond to measure and record pond levels.

OAC 901:10-2-06 provides, in part, at paragraph (A)(2):

A liquid level board, staff gauge or other appropriate device, approved by the director, shall be installed within the interior of the liquid storage or treatment volume of the manure storage pond or manure treatment lagoon.

OAC 901:10-2-16 provides at paragraph (A)(1):

The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(a) The manure storage or treatment facility. Records required by rule 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(i) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan.

3. Need to maintain information on manure distribution and utilization in the operating record by placing "agreements" in your records.

OAC 901:10-2-11 provides at paragraph (A)(2):

If the owner or operator elects to use distribution and utilization methods, the following is required:

(2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall receive a written agreement signed by the person accepting the manure that states the following: "I have been provided with a copy of analytical results that list the nutrient content of the manure and total quantities of manure. The manure will be distributed and utilized according to best management practices and according to any state laws regulating these uses."

OAC 901:10-2-16 provides at paragraph (A)(1)(e):

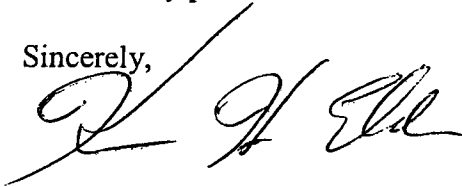
The records for implementation of distribution and utilization methods, if used, shall include:

- (i) Quantity of manure transferred off-site;
- (ii) Date of off-site transfer;
- (iii) Name of recipient of manure; and
- (iv) A statement signed by the recipient acknowledging that the recipient shall follow best management practices for land application, if applicable, required by rule 901:10-2-14 of the Administrative Code.

In order to obtain a Review Compliance Certificate from ODA, which you are required to do, you are expected to comply with the rules listed above for freeboard, staff gauges, and record keeping.

An inspector plans to re-inspect your operation within the next 30 days. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt corrections of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Mr. Lewis Jones, Chief, ODA Division of Dairy  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell/Kristen Davidson, Legal Counsel  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Paulding SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Secretary Fred L. Dailey

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## Certified Mail Return Receipt Requested

April 25, 2005

Van Ham Dairy  
22177 Road C  
Continental, OH 45831

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Dear Mr. Van Ham:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Van Ham Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Van Ham Dairy has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-08 and 901:10-2-16.

### I. FIRST VIOLATION- FREEBOARD

#### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(3)(a) requires the owner or operator as follows, with respect to the operating level of manure treatment lagoons and manure storage ponds: "The operating level must not exceed the level that provides adequate storage to contain at a minimum a twenty-five year, twenty-four hour storm event, plus an additional one foot of freeboard."

During an inspection on February 16, 2005, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that the manure-contaminated stormwater pond at the Van Ham Dairy was overtopping its embankments and spilling out to the fields. Although corrective measures were taken to pump the stormwater into a manure pond, your PTI requires that you maintain adequate storage to contain a twenty-five year, twenty-four hour storm event, plus one foot of freeboard. The fact that stormwater was overtopping the embankment on February 16, 2005 demonstrates that Van Ham Dairy failed to maintain adequate storage capacity in the stormwater pond.

### B. CORRECTIVE ACTIONS REQUIRED

You have sixty days from the date on this letter within which you must correct this deficiency by removing stormwater and land applying it correctly or pumping the storm water to the manure storage pond. If you pump the storm water to the manure storage pond, you must maintain freeboard in both the stormwater pond and the manure pond. If the stormwater is land applied,

you must keep all the required application records of this contaminated stormwater in your operating records. You must make these records available to the LEPP inspector.

### C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$1,000.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

## II. SECOND VIOLATION-INSPECTIONS/RECORD KEEPING

### A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(3) provides, in pertinent part, that the operating level of the manure treatment lagoons and manure storage ponds must be inspected, monitored, maintained, and documented in the operating record. The LEPP inspector noted at the February 16, 2005 inspection that you had no records for storage capacity or manure volume.

ODA has also determined that O.A.C. 901:10-2-16(A)(1)(a)(i) to (A)(1)(a)(v) have been violated. Paragraph (A) of O.A.C. 901:10-2-16 states:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

- (a) The manure storage or treatment facility. Records required by rule 901:10-2-08 of the Administrative Code, including:
  - (i) Measurements of operating levels of freeboard taken at intervals specified in the manure management plan.
  - (ii) Records of inspections of the structural integrity and vegetative management systems of the manure storage or treatment facility taken at intervals specified in the manure management plan.
  - (iii) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.
  - (iv) Records of inspections of stormwater conveyances and of any protective vegetative cover.
  - (v) Implementation dates of those best management practices necessary to operate and maintain settling basins, grass filtration or soil infiltration systems or diverting land surface water and roof water away from the manure storage or treatment facilities.



Review of your operating record provided no evidence of regular inspections of the manure storage facility for erosion, leakage, animal damage, or discharge.

**B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

**C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$150.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

**III. THIRD VIOLATION- WATER WELL TESTS**

**A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08(A)(3)(i) and 901:10-2-16 of the O.A.C. have been violated.

O.A.C. 901:10-2-08(A)(3)(i) provides:

“(i) Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraphs (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code . . . Results of sampling and analysis shall be documented in the operating record.”

O.A.C. 901:10-2-16(A)(1)(a)(vi) requires that the owner or operator shall maintain the operating record. “The operating record shall be retained for a minimum period of five years and shall record and document the following information:

- (a) The manure storage or treatment operation. Records required by rules 901:10-2-08 or 901:10-2-19 of the O.A.C., including:

\* \* \* \* \*

- (vi) Records of groundwater sampling and analysis.

Following an inspection conducted on July 28, 2004, ODA issued a Warning Letter informing you that you needed to conduct groundwater analysis for total coliform and nitrates, and maintain records of that analysis in your operating record. During the February 16, 2005 inspection, LEPP inspectors determined that Van Ham Dairy continues to fail to maintain groundwater sampling analysis in the Operating Record. Although you have provided LEPP with well analysis information that you had previously submitted to ODA's Dairy Division, these well samples only test for coliform and do not serve the same purpose as the samples required by the Permit to Operate. In addition, the groundwater analysis results must be maintained in your operating records at the facility and be immediately available for the LEPP inspector.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter you must immediately correct these deficiencies by collecting or obtaining the required sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low.

Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Kristen Davidson Legal Counsel  
Mary Beth Ruttan, Assistant Attorney General  
Putnam SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Sherry L. Mowry, Esq.



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

April 6, 2005

Ohio Valley Farms, Inc.  
C/o Christopher Blausner, D.V.M.  
11566 U.S. Route 127  
Versailles, Ohio 45380

Jefferson L. Blausner  
4361 State Route 202  
Tipp City, Ohio 45371

Rebecca Blausner  
4361 State Route 202  
Tipp City, Ohio 45371

WestFin, LLC  
C/o Jefferson L. Blausner and Rebecca Blausner  
4361 State Route 202  
Tipp City, Ohio 45371

### Re: Notice of Deficiencies Resulting in Noncompliance

To All Concerned:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Valley Farms, Inc., Christopher Blausner, D.V.M., Jefferson L. Blausner, and Rebecca Blausner are hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Ohio Valley Farms, Inc., Westfin, LLC, Jefferson Blausner, Christopher Blausner, and Rebecca Blausner have failed to comply with Section 903.03 of the ORC.

#### I. VIOLATION

ODA has determined that Section 903.03 of the ORC has been violated. Specifically, you are operating a Concentrated Animal Feeding Facility (CAFF) without authorization by permit.

An animal feeding facility "includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure

originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure." O.R.C. § 903.01(B).

The facility owned and/or operated by you and referred to as Ohio Valley Farms, Inc. (Ohio Valley Farms) has been in operation at 11566 U.S. Route 127, Versailles, Ohio 45380 since at least September 2002. Ohio Valley Farms consists of 14 buildings including seven hog barns. ODA staff of the Livestock Environmental Permitting Program (LEPP) inspected the operation on April 29, 2004 and May 19, 2004 and discovered that Ohio Valley Farm commingled manure during storage, treatment, and handling in a manner that demonstrated that the Ohio Valley Farms was a single animal feeding facility as defined in the statute.

ODA conservatively estimates that the seven hog barns at Ohio Valley Farms have a total design capacity of 10,250 hogs qualifying Ohio Valley Farms as a concentrated animal feeding facility (CAFF). O.R.C. §§ 903.01(F) and 903.01(M)(4). No person may operate a CAFF without a permit to operate (PTO) issued by the Director of ODA. O.R.C. § 903.03(A)(2).

On May 21, 2004 and June 11, 2004, the Director issued Notices of Deficiencies Resulting in Noncompliance based on Ohio Valley Farms operation as a CAFF without a permit issued by the Director. In the Notices of Deficiency, the owners and/or operators of Ohio Valley Farm were instructed to either submit a completed PTO application to ODA, or to submit a closure plan reducing or eliminating the number of swine at the facility.

In a letter dated June 15, 2004, Ohio Valley Farms informed Kevin Elder, Executive Director, LEPP, that Ohio Valley Farms would maintain two separate 2400-swine sites. Each site would have its own roofed manure storage building, as well as its own mortality compost facility.

ODA staff from LEPP inspected Ohio Valley Farms on February 3, 2005 and found that manure, including compost, continues to be commingled during storage, treatment, and handling in a manner that demonstrates that Ohio Valley Farms remains as a single animal feeding facility as defined in the statute. Ohio Valley Farms continues to use only one separate covered manure storage building to store manure at the facility. In addition, compost from all barns is commingled over the site such that there is only one common area of manure disposal. ODA finds that you are operating a CAFF without the required PTO.

## **II. CORRECTIVE ACTION REQUIRED**

Ohio Valley Farms, its owners, and/or operators are required to submit a complete application and permit fee for a PTO to the ODA Livestock Environmental Permitting Program within 15 days of your receipt of the Comprehensive Nutrient Management Plan

(CNMP) completed for you by the Darke Soil and Water Conservation District (Darke SWCD or the District).

All soil and manure test results shall be submitted to Darke SWCD no later than May 15, 2005. You shall have permit application to ODA no later than July 1, 2005.

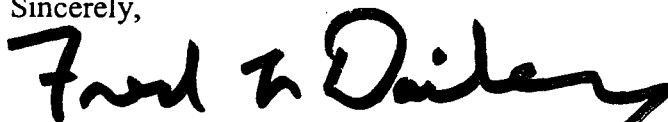
You are advised that the responsibility to comply with Ohio law and this NOD is required notwithstanding the availability of assistance from the District. However, we understand that the District is trying to work with you to complete a CNMP. At this time, the District is waiting for manure spreading agreements and soils samples from Ohio Valley Farms, Inc. Ohio Valley Farms, its owners, and/or operators are required to immediately provide the District with all information the District needs to complete the CNMP.

### III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04(D). In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04 (G). Based upon this review, ODA has determined that the violations cited herein are repeat violations with the category of seriousness of the violations as high or Category I and the gravity of the violations as low. Therefore, if the owners and/or operators fail to comply with the corrective action required herein, the owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$3,000 and the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Dr. David Glauer, Chief, Division of Animal Industry  
Michelle McKay, LEPP Inspector  
Tim Brunswick, Darke SWCD  
Mike Nishimura, ODNR-SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

## Certified Mail Return Receipt Requested

March 16, 2005

Banks of the Wabash  
C/o Mr. John Will  
1331 Darke-Mercer County Line Road  
Ft. Recovery, Ohio 45846

### RE: Warning Letter

Dear Mr. Will:

I reviewed and approved the inspection report for the Ohio Department of Agriculture's (ODA's) February 28, 2005 inspection of Banks of the Wabash Farm. I understand that your management practices were mostly acceptable but your record keeping requires improvement. With respect to your record keeping, you need the following records:

#### 1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.

In addition, Rule 901:10-2-16(A)(1)(b) of the OAC provides:

An operating record shall be considered as part of the permit to operate.

(1) The owner or operator shall maintain the operating record on forms provided by the department and other forms selected by the owner or operator for the facility. The operating record shall be retained for a minimum period of five years and shall record and document the following information:

(b) Manure characterization records. Manure characterization data and other information as required in rule 901:10-2-10 of the Administrative Code.

2. Need for annual water well sample which provides a nitrate analysis of well water should be maintained in your operating record.

Rule 901:10-2-08(A)(3)(i) of the OAC provides:

Ensure surface water and groundwater protection, including any pathways of contamination, by annual sampling and analysis of ground water from a well as described by paragraph (A)(3) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code. In the event that a well does not already exist at the facility, then the owner or operator shall install a well at the facility that is properly located, protected and operated. The well shall be easily accessible for sampling and have an adequate water quantity for sampling. Results of sampling and analysis shall be documented in the operating record.

In addition, please note the following:

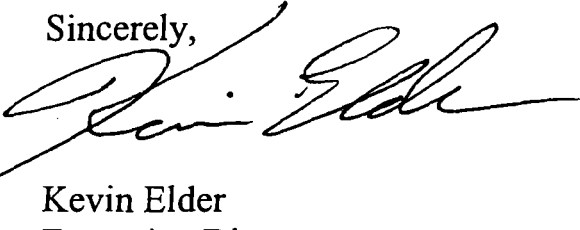
- Actual date of water leaks. This is currently a federal requirement imposed by U.S. EPA and imposed also by Ohio EPA. ODA expects to adopt and enforce a similar requirement. I urge you to begin maintaining these records now.
- Record date when chickens are no longer composted in manure to be hauled (this must be at least 50 days beforehand, so plan ahead)

If you are missing any records, do not try to recreate documents or use old and out-of-date documents as current information. False or misleading records are listed in the Ohio Administrative Code rule 901:10-5-04 (E)(2)(i)(d) as a Category I (major) violation for which a penalty of over \$1,000 could be assessed.

I cannot emphasize enough the importance of routine record keeping for your Operating Record. These are the documents that my staff and I rely upon to assess your management practices. Under the best circumstances we use these records to work with a producer to identify any potential problems and do so as early as possible in order to avoid the unnecessary cost and expense of enforcement. Most producers find that maintaining a good Operating Record is the "key" to making plans for the future of the farm, for business planning, and for good relations with neighbors.

I urge to address this and any other items noted in your most recent inspection as early as possible. If you have any questions, I can be reached at (614) 387-0470.

Sincerely,



Kevin Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Michelle McKay, LEPP Inspector  
Jennifer Tiell/ Kristen Davidson, Legal Counsel  
Cathy Alexander, Ohio EPA  
Ft. Recovery Equity  
Darke County SWCD  
Mike Nishimura, ODNR  
File





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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Phone: 614-387-0470 • Fax 614-728-6335

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March 4, 2005

Mr. Johannes De Groot  
DeGroot Dairy LLC  
8628 West 200 South  
Andrews, In. 46702

**Certified Mail Return Receipt Requested**

Dennis Rieman  
8297 Road 7-D  
Ottawa, Ohio 45875

**Certified Mail Return Receipt Requested**

Re: Warning Letter

Gentlemen:

The Ohio Department of Agriculture (ODA) has been made aware that you intend to construct a new manure storage pond in the near future. It is understood that the facility currently has a manure storage pond capable of storing 2.5 million gallons for approximately 525 dairy cattle. A new manure storage pond is planned in the near future that will have a capacity of 12-14 million gallons, giving you a total manure storage volume of 14.5-16.5 million gallons. It appears that this amount of manure storage volume is being constructed for future expansion of this facility for over 700 mature dairy cows, which would require a Permit to Install from ODA. It is understood that additional manure storage is warranted for the existing number of dairy cattle. However, you shall also be cautioned that constructing manure storage for a number of dairy cows over the permitting threshold is against the law without first obtaining a Permit to Install and Permit to Operate from the Department.

On February 24, 2005 the Putnam SWCD was approached by a pond contractor regarding pond size and soils information for a 12 - 14 million-gallon pond at the DeGroot Dairy LLC. The operator has now called the SWCD asking about cost share programs and suggested that you plan to begin construction within two (2) weeks.

ODA requires a permit application for a facility that plans to expand to the size indicated. The Department also requires a thorough review of existing manure storage structures to assure that there are no environmental concerns with these existing structures. A set of "as-built" plans will be requested for existing manure storage structures to provide such documentation. In addition, a background check is required on the owners and operators of the facility to verify that these individuals do not have a significant history of noncompliance with environmental laws in Ohio or in any other State or country. All of these individuals must have a suitable history of compliance before the Director would consider issuing a permit that would allow for such an expansion.

Section 903.16 of the Ohio Revised Code ("ORC") provides that the Director may request the Ohio Attorney General to bring an action for an injunction and civil penalty in any court of competent jurisdiction against any person violating or threatening to violate Sections 903.02 and 903.03 of the ORC.

The following are the sections of law at issue:

Section 903.02 (A)(2): On and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under this Section.

Section 903.05 of the ORC requires a background check on your record of compliance prior to issuing any permit.

Section 903.01(E): Concentrated animal feeding facility means an animal feeding facility with a total design capacity of more than one thousand units.

Section 903.03 (A)(2): Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the Director has finalized the program required under Division (A)(1) of this Section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the Director under this Section.

I assure you that I will not hesitate to recommend to the Director that an enforcement action be brought against you, together with an assessment of civil penalties, if you violate the law. I urge you to contact me immediately at (614) 387-0470 to discuss any concerns or questions you may have on these issues.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

CC: Chris Rodabaugh, ODA Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Kristen Davidson, Legal Counsel  
Albert Maag, Putnam SWCD  
Cecelia Conway, Karen Miller, Vreba-Hoff LLC



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

March 2, 2005

Mr. Ed Stoll  
Stoll Farms, Inc.  
6818 Coal Bank Road  
Marshallville, Ohio 44645

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Dear Mr. Stoll:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Stoll Farms, Inc. (Stoll Farms) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Stoll Farms has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-14.

### **I. VIOLATION**

ODA has determined that O.A.C. 901:10-2-14(B) of the OAC has been violated. Specifically, O.A.C. 901:10-2-14(B)(3)(a)(iv) requires, in pertinent part, that: "The application rate [of liquid manure] shall not exceed the available water capacity of the soil as described in appendix B of this rule .."

#### **Appendix B. Available Water Capacity.**

This table shall be used to determine the available water capacity (AWC) at the time of application of liquid manure. To determine the AWC in the upper twenty-four inches use a soil probe or similar device to evaluate the soil to a depth of twenty-four inches. To evaluate the upper eight inches only the upper eight inches of soil needs to be evaluated.

For land application, liquid manure application may also be calculated by converting acres per inch to gallons per acre. This conversion is based on the following formula: one acre inch = twenty-seven thousand two hundred gallons per acre.

Available Water Capacity (AWC) Practical Soil Moisture Interpretation for Various Soil Textures and Conditions:

*	*	*	*	*
Above Field Capacity		Free water appears when soil is bounced in hand.	Free water is released with kneading.	Puddles; free water forms on surface.

On February 9, 2005, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) received and investigated a complaint regarding land application of manure. The investigation revealed a discharge of manure-laden water discharging into a stream at the very northern end of the application field. The inspector determined that the discharge was caused by the over application of liquid manure, as well as an exceedance of the available water capacity of the soil in the field.

On February 9, 2005, the application field was so saturated that there was standing water in the field and the inspector sunk up to six inches into the field in various locations. Referring to Appendix B of OAC 901:10-2-14, the ODA inspector characterized the field, following the application of the liquid manure, as "Above Field Capacity," a condition where free water appears and puddles form on the land surface. This "Above Field Capacity" condition allowed the manure laden water to be discharged from the field.

## **II. CORRECTIVE ACTIONS REQUIRED**

You must inspect any site that is owned or leased by you both before and after manure application to insure that application of manure from your facility is done correctly. You must control access to your facilities to insure that you, and not the custom applicators, decide whether field conditions and weather conditions will allow for proper manure application. You must have these corrective actions in place before April 1, 2005, after which time an inspector will visit your facility.

In addition, you are reminded that you must continue to contact this office prior to any land application of manure because of winter conditions as required by OAC 901:10-2-14 Appendix A at 15.

## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E), penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with OAC 901:10-5-04. In addition to OAC 901:10-5-04(D), staff have referred to the penalty matrix in OAC 901:10-5-04(F) to determine that this is a second cited violation of the above-identified

rule, that the category of seriousness of the violations is Moderate Category II and the gravity of the violations is low level. Therefore, if Stoll Farms fails to comply with any of the corrective actions required herein, Stoll Farms would be subject to an assessment of a civil penalty in the amount of \$800.00, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Duane Wood, Wayne SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
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February 22, 2005

## Certified Mail Return Receipt Requested

Van Ham Dairy  
22177 Road C  
Continental, OH 45831

Dear Mr. Van Ham:

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Van Ham Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance. ODA has determined that Van Ham Dairy has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-01(B)(2).

### I. VIOLATION

ODA has determined that O.A.C. 901:10-2-01(B)(2) of the OAC has been violated. Specifically, O.A.C. 901:10-2-01(B)(2) requires, in pertinent part, that: "Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record."

To date, ODA has not received a copy of the completed and approved as-built plans. On December 16, 2004, ODA informed Van Ham Dairy that Van Ham Dairy needed to submit to ODA a complete set of as-built plans before ODA could authorize Van Ham Dairy to utilize the manure storage pond. Despite failing to provide ODA with a copy of the as-built plans, during an inspection by ODA on December 21, 2004, the inspector noted that Van Ham Dairy is using the manure storage pond.

## **II. CORRECTIVE ACTIONS REQUIRED**

Van Ham shall provide ODA with a copy of completed and approved as-built plans for the manure storage pond. as soon as the manure storage pond is emptied of manure and construction is completed in accordance with the approved design plans, but not later than November 1, 2005.

Van Ham shall notify ODA by telephone and in writing as soon as the manure storage pond is emptied by contacting Andy Ety, Engineer, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068 and 614-387-0470. In this notification letter, Van Ham shall also describe actions to remove the temporary dike and complete the construction of the bottom of the manure storage pond.

The complete and approved set of as-built plans shall identify, but not be limited to, the following:

1. Location of exploratory trench, with approximate location of all tile encountered and a brief description of how these tiles were plugged and/or rerouted.
2. Documentation of proof-rolling requirements of all final surfaces of the manure storage pond and confirmation that all material in the bottom of this manure storage pond are as identified in the approved plans.
3. Documentation that the bottom 9-inches of the ponds was disked and recompacted as described in the approved plans.
4. Documentation that all engineered fill was placed as was described in the approved plans.
5. Location and description of liquid level markers as was described in the approved plans.
6. Verification that scour protection was installed as was described on the approved plans.
7. A final survey of the entire manure storage pond, after dike removal, that shows compliance with the approved set of design plans.

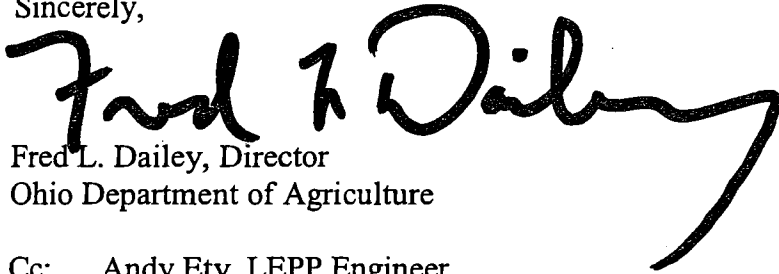
## **III. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-4-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if you fail to comply with the corrective action required herein, you will be



subject to the assessment of a civil penalty in the amount of \$800 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

Sincerely,

A large, stylized handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Putnam SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Sherry L. Mowry, Esq.



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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February 15, 2005

Certified Mail Return Receipt Requested

Mr. William Cleland, Jr.  
5C Farm  
05191 Thiel  
Hicksville, Ohio 43526

Re: Warning Letter

Dear Mr. Cleland:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on February 4, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operation. These violations include the following:

1. ODA requires notification when manure is being applied to frozen or snow-covered ground; this notification was not obtained. Rule 901:10-2-14(B)(4) of the Ohio Administrative Code (OAC) requires that ODA is notified.
2. All land applications of manure shall comply with all setback restrictions. Rule 901:10-2-14(B)(4) of the OAC and terms and conditions of the Permit to Operate issued to 5C Farm establish best management practices that govern land application of manure on land application sites.

Unincorporated manure application on frozen or snow-covered ground:

All of the following must be met:

- Greater than 90 percent ground cover;
- Slope less than 6 percent;
- Maximum application rate is 5,000 gallons per acre for liquid manure. This application is not to be used for the primary application method; and
- Setbacks from drainage ways and waters of the state increased to a minimum of 200 feet.
- Manure shall not be applied on more than 20 contiguous acres. Contiguous areas for application are to be separated by a break of at least 200 feet.

- Manure shall not be applied closer than 300 feet from a private/public well, 300 feet from a Public Surface Drinking Water Intake, 300 feet from a spring or 300 feet from a neighboring residence.

As observed by the LEPP inspector, the setback from the stream at the southwest end of the application field for 5C manure was only 50 feet. As I understand, 5C Farm will take steps to incorporate this manure as soon as weather allows in order to mitigate any potential for water pollution.

An inspector plans to inspect your operation April 1, 2005. Please assure that the items noted in this letter have been addressed. In addition, the most recent inspection of 5C Farm revealed a number of deficiencies with respect to record keeping. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations as noted, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Jeff Ankney, Defiance County SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

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February 9, 2005

Mike Grand  
9715 Erwin Road  
Erwin, Ohio 43029

## Certified Mail Return Receipt Requested

Re: Warning Letter

Dear Mr. Grand:

On January 18, 2005, the Ohio Department of Agriculture (ODA) Livestock Environmental Permitting Program received a complaint about the application of manure at the Assen Dairy, LLC and Twin Oak Dairy, LLC farms. Manure was spilled into area streams. Upon investigation, the LEPP Inspector reported that you and your employee were responsible for manure application at Assen Dairy. I am writing to warn you that you are in violation of Section 903.07 of the Ohio Revised Code (ORC) and rule 901:10-1-06 of the Ohio Administrative Code because you are not certified by ODA as a Certified Livestock Manager.

Section 903.07 of the ORC states at (A)(1) and at (B):

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination

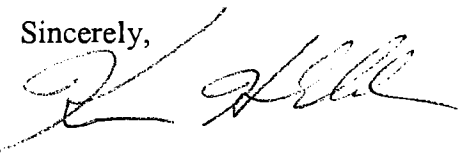
Rule 901:10-1-06 of the OAC states at (A)(2):

(2) No person shall transport, buy or sell annually more than four thousand five hundred dry tons of manure unless the person holds a valid livestock manager certification.

I understand that you have attended training courses that should allow you to obtain certification from ODA. However, our records show that you have not submitted an application for certification or the required fee in order to receive a Livestock Manger Certificate.

I recommend that you contact the Livestock Environmental Permitting Program at (614) 387-0470 and contact Ms. Kelly Harvey of my staff in order to complete the steps necessary for certification.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Kelly Harvey, LEPP  
Jennifer Tiell, Legal Counsel  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Madison SWCD  
Pieter and Johannes Assen



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

February 9, 2005

Joe Beam  
359 Jamestown Road  
Wilmington, Ohio 45177

**Certified Mail Return Receipt Requested**

Re: **Warning Letter**

Dear Mr. Beam:

On January 18, 2005, the Ohio Department of Agriculture (ODA) Livestock Environmental Permitting Program received a complaint about the application of manure at the Assen Dairy, LLC and Twin Oak Dairy, LLC farms. Manure was spilled into area streams. Upon investigation, the LEPP Inspector reported that you were responsible for manure application at Twin Oak Dairy. I am writing to warn you that you are in violation of Section 903.07 of the Ohio Revised Code (ORC) and rule 901:10-1-06 of the Ohio Administrative Code because you are not certified by ODA as a Certified Livestock Manager.

Section 903.07 of the ORC states at (A)(1) and at (B):

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination

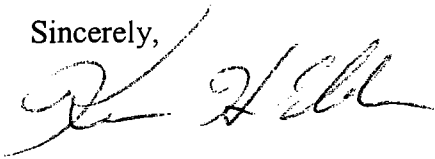
Rule 901:10-1-06 of the OAC states at (A)(2):

(2) No person shall transport, buy or sell annually more than four thousand five hundred dry tons of manure unless the person holds a valid livestock manager certification.

Our records show that you have not submitted an application for certification or the required fee or participated in the required training in order to receive a Livestock Manger Certificate.

I recommend that you contact the Livestock Environmental Permitting Program at (614) 387-0470 and contact Ms. Kelly Harvey of my staff in order to complete the steps necessary for certification.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Kelly Harvey, LEPP  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR  
Jennifer Tiell, Legal Counsel  
Madison SWCD



# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

February 7, 2005

Mr. Henk Arts  
Arts Dairy LLC  
5624 Elm Sugar Rd.  
Convoy, Ohio 45832

**Re: Final Order**

Dear Mr. Arts:

Enclosed please find the Final Order issued by the Director of the Ohio Department of Agriculture. If you have any questions regarding this Order my office can be reached at (614) 387-0470.

Sincerely,

Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: William J. Hopper, Chief Counsel, ODA  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, ODA Legal Counsel  
Kristen J. Davidson, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Jim Young, LEPP Inspector  
Van Wert SWCD  
File



Ohio Department of Agriculture  
State of Ohio

In the matter of:

Mr. Henk Arts  
Arts Dairy LLC  
5624 Elm Sugar Rd.  
Convoy, Ohio 45832

Respondent

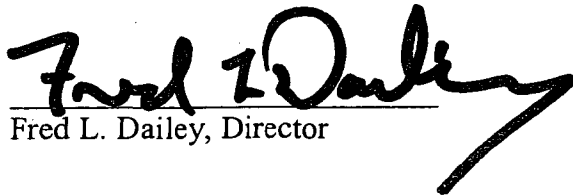
Order

On December 18, 2004, Respondent received, via certified mail, a Director's Notice of Hearing dated December 15, 2004 from the Ohio Department of Agriculture ("ODA"), pursuant to O.R.C. § 903.16. The Notice of Hearing notified Respondent of ODA's intention to impose a \$5,760.00 penalty upon Respondent based on Respondent's failure to return to compliance with O.A.C. 901:10-2-08(A)(3) by October 6, 2004.

The December 15, 2004 Notice of Hearing also notified Respondent that, pursuant to O.R.C. § 903.16(A), Respondent had the right to request a formal adjudication hearing if he did not agree with the imposition of the penalty. Respondent was notified that the request for an adjudication hearing was required to be made within thirty days from December 15, 2004. Respondent did not request an adjudication hearing. Therefore, Respondent has waived his opportunity for a hearing.


It is therefore ORDERED that based on Respondent's failure to return to compliance with O.A.C. 901:10-2-08(A)(3) by October 6, 2004, Respondent shall pay a penalty in the amount of \$5,760.00. This penalty shall be made payable to "Treasurer, State of Ohio, for the Livestock Management Fund 5L8," and sent to: Peggy Jackson, Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068. This penalty check shall be sent within ten days after this ORDER is signed and journalized.

Effective date of this ORDER: Upon journalization.

  
Fred L. Dailey, Director

2-7-05  
Date

Entered, Ohio Department of Agriculture  
Journal this 7th day of Feb., 2005

By: 

**CERTIFICATION**

STATE OF OHIO,  
COUNTY OF LICKING, SS

:  
:

Order No. 2005- 042

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of ORDER 2005- 042, which was entered upon the order journal of the Ohio Department of Agriculture on this 7th day of February, 2005.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 7th day of February, 2005.

Fred L. Dailey  
Fred L. Dailey, Director  
Ohio Department of Agriculture



**NOTICE OF APPEAL RIGHTS**

This ORDER and the assessment of the civil penalty may be appealed. The provisions of Section 119.12 of the ORC govern your appeal. Notice of appeal shall be filed with the Department within fifteen days after the mailing of the notice of this ORDER and shall set forth the ORDER appealed from and the grounds of the party's appeal. A copy of such notice of appeal shall also be filed to the court of common pleas of Franklin County.



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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## Certified Mail Return Receipt Requested

February 4, 2005

Zylstra Dairy  
Mr. Willem Zylstra  
11753 Road 21  
Antwerp, Ohio 45813

Re: Warning Letter

Dear Mr. Zylstra:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 22, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found a violation of Ohio law surrounding your operation. This violation includes the following:

1. Manure storage pond in use prior to ODA approval.

Rule 901:10-2-01 of the Ohio Administrative Code (OAC) provides at paragraph (B)(2):

(2) The owner or operator may amend the application for a permit to install prior to the conduct of any public meeting that may be held for the draft permit to install and/or while the permit to install application is pending before the director. Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals.

You were informed by ODA during the December 22, 2004 inspection that the pond was not authorized for use. Nevertheless, the pond was clearly in use with a depth of several feet of manure present in the pond. You were told to complete the work required by the above-cited rule by submitting a notarized statement to ODA certifying that the facility was constructed in

accordance with the design plans. In addition you were required to submit completed and approved as-built plans to ODA for the permanent record.

On January 8, 2005, ODA received a copy of the as-built plans. On February 3, 2005, ODA received a notarized statement certifying that the facility was constructed in accordance with the design plans.

This is the second time in the history of your operation that you have disregarded ODA rules for construction completion and authorized pond use. On June 17, 2004, Zylstra Dairy LLC was issued a formal warning letter for use of a silage leachate pond for manure storage prior to submitting the required notarized statement. I trust that you share my concern that these actions contribute to a pattern of noncompliance documented in our records.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc:

Gary Zwolinski, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Paulding SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124

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January 24, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

## **Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance for the Goshen Pullet 5 facility. ODA has determined that OFE has failed to comply with Rule 901:10-1-10(F) of the Ohio Administrative Code (OAC) and certain requirements set forth in the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

### **I. FIRST VIOLATION- WATER LEAKS**

#### **A. VIOLATION**

ODA has determined that the terms and conditions in the Consent Order and the permit to operate OFGO-0001.PO0001.HARD issued for Goshen Pullet 5 have been violated. Specifically, Paragraph 34 of the Consent Order requires that OFE document daily monitoring of barns. Additionally, OFE'S Insect and Rodent Control Plan (IRCP) provides that "everyday an inspector walks each pit to locate, record, and repair water

leaks immediately." Water Loss Repair Logs, Form FEM-2, should be used to record such activities and be maintained in the operating record.

ODA has determined that for 18 weeks, from August 1, 2004 through December 6, 2004, OFE failed to complete any Water Loss Repair Logs.

## **B. CORRECTIVE ACTION REQUIRED**

OFE is required to revise its employee training for daily barn inspections for OFE Goshen Pullet No. 5. OFE is required to complete the revisions to employee training within thirty (30) days of receipt of this letter. Thereafter, OFE shall train employees and training shall be complete no later than February 15, 2005. OFE shall submit an affidavit to ODA documenting that each production employee, whether a full-time, part-time, or temporary employee, has been trained. OFE shall submit the affidavits to Kevin Elder, Executive Director, Livestock Environmental Permitting Program, no later than February 20, 2005. OFE shall retain records on file of employee training, including training of any new employees, for periodic inspection by ODA.

OFE is required to submit a written report to LEPP within ten (10) days of the date of this letter explaining in detail the duties and responsibilities of Site Production Managers at the Goshen Facilities, as this term is used in all permits issued to OFE. OFE shall identify by name each Site Production Manager within the context of the Table of Organization for the Goshen facilities. This information included in the Table of Organization shall be submitted to ODA.

Finally, OFE is required to immediately establish all necessary policies, practices and procedures to insure that all barns at the Goshen facilities are being inspected daily for water leaks and all inspections are being properly recorded in accordance with OFE's permit. OFE shall submit to ODA within 30 days of the date of this letter a report explaining the policies, practices and procedures placed into operation and their effectiveness.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D), (F), (J) and (K). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00, and the potential for escalated enforcement.

## **II. SECOND VIOLATION- BAIT STATIONS**

### **A. VIOLATION**

ODA has also determined that the terms and conditions of OFE's IRCP have been violated. OFE was required to place bait stations on the outside perimeter of each barn. As noted by an ODA inspector on December 6, 2004, no rodent bait stations or traps were placed at the perimeter of any barns at Goshen Pullet 5 facility in violation of the terms and conditions of the permit.

### **B. CORRECTIVE ACTION REQUIRED**

Bait stations shall immediately be placed around the perimeter of each barn at the Goshen Pullet 5 facility and shall be managed in accordance with the terms and conditions of OFE's permit.

### **C. PENALTY ASSESSMENT**

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for one week, for a total of \$2,500.00, and the potential for escalated enforcement.

## **I. THIRD VIOLATION- MANURE MOISTURE**

### **A. VIOLATION**

ODA has determined that the terms and conditions of OFE's IRCP have been violated. OFE was required to "keep manure as dry as possible in order to maintain 30% moisture or less . . ." As noted by an ODA inspector on December 6, 2004, the manure moisture in Barn No. 6 and Barn No. 10 at Goshen Pullet No. 5 exceeded 30%.

### **B. CORRECTIVE ACTION REQUIRED**

Within 10 days of receipt of this letter, OFE must submit a schedule indicating the dates OFE intends to remove the manure from Barn No. 6 and Barn No. 10. OFE must complete manure removal and distribution and utilization for both barns by March 31, 2005.

### **C. PENALTY ASSESSMENT**

ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category I, and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$6,000.00 per week for one week, for a total of \$6,000.00, and the potential for escalated enforcement.

### **IV. FOURTH VIOLATION- ODOR CONTROL**

#### **A. VIOLATION**

ODA has determined that the terms and conditions of OFE's permit have been violated. OFE failed to clean and repair the exhaust fans for odor control and minimization. Specifically, OFE's permit requires that on a daily basis OFE personnel shall note any malfunctioning fans, missing louvers or other damage, as well as dirt accumulation that may interfere with proper operation. These will be reported verbally and with the inspection form FEM-3 daily to the Site Production Manager for action. On the date of inspection all exhaust fans at Goshen Pullet No. 5 were dirty and some exhaust fans were in need of repair.

#### **B. CORRECTIVE ACTION REQUIRED**

All exhaust fans should be immediately cleaned and repaired if malfunctioning or damaged, with corrective actions complete by March 31, 2005.

#### **C. PENALTY ASSESSMENT**

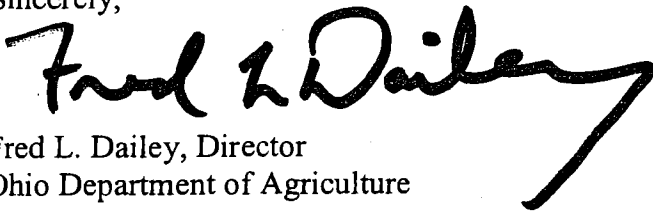
ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with this corrective action, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$2,500.00 per week for one week, for a total of \$2,500.00, and the potential for escalated enforcement.

After 45 days from the date of this letter, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, or its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$56,000.00, and the potential for escalated enforcement.



Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Maureen O'Connor  
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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Jim Pastore, Jr.  
Robert and Tonya Carrol, Farm Managers  
Big Muddy Acres, Inc.  
10500 Martin Road  
Alliance, Ohio 44601

Re: Warning Letter

Gentlemen and Ms. Carroll:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 29, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

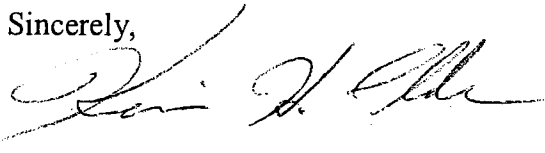
Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection this year indicates the

continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Mahoning County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



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## Certified Mail Return Receipt Requested

January 14, 2005

Mr. Anthony Pastore  
Mr. Tom Guthrie, Farm Manager  
Beeson East Farm, Inc.  
8881 Beeson East  
Louisville, Ohio 44641

Re: Warning Letter

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on December 28, 2004. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found one violation of Ohio law surrounding your operation:

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

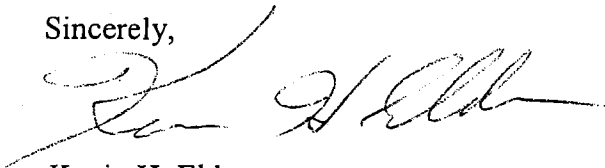
“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Please assure that at the next inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the

aforementioned violations. If the subsequent inspection this year indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Cameron, Park Farms, Inc.  
Andy Ety, LEPP Engineer  
Jim Young, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristen Davidson, Legal Counsel  
Stark County SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



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March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE – CROTON LAYER SITE NO. 1**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY  
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 1 (OFL1-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect

Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Kevin Hendershot as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 13, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through February 4, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, Kevin Hendershot, and Dan Scanlon conducted pit inspections as members of the Management Team. However, from December 1, 2005 through February 13, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 5, 2006.

ODA has determined that from December 1, 2005 through February 4, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

## **II. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are second cited violations with

the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$4,500.00 per week for 9 weeks, for a total of \$40,500 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$40,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kiracofe, Licking SWCD





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE - CROTON LAYER SITE NO. 2**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G), 901:10-2-08 and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT DAILY FREEBOARD  
INSPECTIONS AND RECORD IN THE OPERATING RECORD**

**A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 2 (OFL2-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds and document the results of these inspections in the operating record in accordance with OAC 901:10-2-08.

At a limited inspection on January 19, 2006, the LEPP Inspector observed that there was no freeboard available in storm water pond, measurements taken confirmed a total lack of freeboard, and it was discovered that there were no inspection records documenting daily inspections in the Operating Record. ODA has determined that OFE failed to inspect each

storm water containment pond daily for freeboard. The inspection is to be recorded on the Croton Checklist form for the operating record.

### **B. CORRECTIVE ACTION REQUIRED**

Immediately, OFE shall conduct the required daily freeboard inspections and record inspection results in the operating record.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations for failure to keep freeboard inspection records with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$200.00 per day and the potential for escalated enforcement.

## **II. SECOND VIOLATION: FAILURE TO MAINTAIN FREEBOARD**

### **A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) at 4. Surface Water Protection and Stormwater Controls contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.2 (OFL2-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds to ensure that freeboard of two feet is maintained.

On January 19, 2006, the LEPP Inspector inspected Croton Layer No. 2 and found that the storm water pond associated with Croton Layer No. 2 was completely full and overflowing into the perimeter containment berms. Specifically, at Croton Layer No. 2, the perimeter ditch on the north side of the facility was full with storm water, backed up between the barns and in front of Barn #16. The perimeter ditch on the south side of the facility was full and very near discharging at the southeast corner of the ditch. There were no discharges observed during this inspection, however, a significant amount of storm water was accumulating at the barn doors. Freeboard was not maintained in the storm water pond at Croton Layer No. 2, in violation of OAC 901:10-2-08.

### **B. CORRECTIVE ACTION REQUIRED**

OFE shall continue to haul storm water until such time the levels in the storm water ponds correspond with the Manure Management Plan Waste Water/Storm Water Plan for Croton Layer No. 2 PTO OFL2-0001.PO001.LICK. By March 31, 2006, ODA will re-inspect the facility to determine if freeboard levels comply with OAC 901:10-2-08.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$1,600.00 per day and the potential for escalated enforcement.

If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$129,600.00 based on a total of \$1,800.00 per day for 72 days, beginning January 19, 2006 and ending March 31, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Harry Kallipolitis, Ohio EPA  
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March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

Certified Mail

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE – CROTON LAYER SITE NO. 4**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY  
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

**A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections.

The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Don Scanlon as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton Layer Site No. 4, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 13, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through February 4, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Dan Scanlon conducted pit inspections as members of the Management Team. However, from December 1, 2005 through February 4, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 5, 2006.

ODA has determined that from December 1, 2005 through February 4, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

#### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

#### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (K). Based upon this review, ODA has

determined that the violations cited herein are second cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$4,500.00 per week for 9 weeks, for a total of \$40,500.00 and the potential for escalated enforcement.

**II. SECOND VIOLATION: FAILURE TO COMPLY WITH  
FREEBOARD REQUIREMENTS SET FORTH IN THE ODA PTO  
OFL4-0001.PO001.LICK**

**A. VIOLATION**

OAC 901:10-1-10(G) requires OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE maintain freeboard of two feet and maintain a total storage capacity of 10,174,000 gallons in the storm water ponds. Also, OFE must document the aforementioned inspections in the Operating Record.

During an inspection conducted by the ODA Inspector on February 13, 2006 it was discovered the southern embankment of the storm water pond has been lowered. In doing so, the original operating level of 4.75 feet for the pond has been altered, eliminating the 2 feet of freeboard as required by the PTO, in violation of the PTO for this facility. ODA files show that some lowering of the southern embankment commenced on or about December 5, 2005.

**B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately take elevations of the southern embankment, which shall be used by OFE to determine the revised maximum operating level and the revised freeboard level for the pond. The elevations, the revised maximum operating level, and the revised freeboard level shall be submitted to ODA in writing and shall be recorded in the Operating Records of the facility.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of

penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$800.00 per day for 116 days, for a total of \$92,800.00 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$113,300.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
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March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE – CROTON PULLET NO. 3**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No. 3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and 901:10-2-08 and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY  
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

**A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Pullet No. 3 (OFP3-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.



According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Ronald Bishop as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton Pullet No. 3, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 20, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through January 30, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Ronald Bishop conducted pit inspections as members of the Management Team. However, from December 1, 2005 through January 30, 2006, the entire Management Team conducted only one inspection. This inspection occurred on January 9, 2006.

ODA has determined that from December 1, 2005 through January 30, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

#### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

#### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of

penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total of \$22,500.00 and the potential for escalated enforcement.

## **II. SECOND VIOLATION: FAILURE TO MANAGE VEGETATIVE GROWTH ON POND EMBANKMENTS**

### **A. VIOLATION**

OAC 901:10-2-08(A)(4)(k) requires OFE to ensure that any emerging vegetation such as tress, shrubs, and other woody species not be allowed to grow on the ponds or side slopes of the ponds. Pond areas are to be kept mowed and accessible.

During an inspection on February 20, 2006 the ODA Inspector observed and documented trees growing on the embankment of the storm water pond at Croton Pullet No. 3.

### **B. CORRECTIVE ACTION REQUIRED**

OFE shall immediately remove the trees and any other shrubs or woody species growing in the storm water pond embankment.

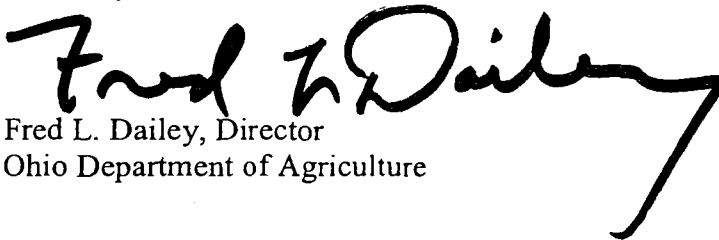
### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violation cited herein is a first cited violation with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$500.00 per day for 40 days, for a total of \$20,000.00, and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$42,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kiracofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
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February 17, 2006

**Certified Mail Return Receipt Requested**

Sheldon Farms  
9612 Twp. Road 64  
Kenton, OH 43326

Kurt Sheldon  
10736 St. Rt. 701  
Kenton, OH 43626

**Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-  
SHELDON FARM  
RCC: SHEL-0001.RC001-HARD**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Sheldon Farms (Sheldon) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Sheldon is the owner and the operator of Sheldon Farms. ODA has determined that Sheldon Farms has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10(F), 901:10-2-08, 901:10-2-10, and 901:10-2-16.

## **VIOLATION- WATER WELL TESTS**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-08(A)(4)(I)(i) requires that Sheldon Farms conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vii) requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) SHEL-

0001.RC001-HARD requires annual ground water sampling and analysis at one well location.

Following an inspection on August 4, 2005, you were notified that a water sample had not been taken since July of 2004, and a sample was to be taken immediately to prevent a notice of violation. The LEPP Inspector also informed Sheldon Farms that groundwater analysis were required to be taken yearly and the results maintained in the Operating Record.

At a routine inspection on January 26, 2006, it was discovered that a well water sample had still not been taken since July 2004 and that Sheldon Farms needed to complete annual ground water sampling and analysis for total coliform and nitrates. Sheldon had not performed the required ground water sampling and analysis in violation of the above-cited rules and RCC SHEL-0001.RC001-HARD.

### **B. CORRECTIVE ACTIONS REQUIRED**

Upon receipt of this letter, you must immediately correct these deficiencies by collecting or obtaining the required ground water sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record. You must keep the results of this test in your operating records. You must make these records available to the ODA Livestock Environmental Permitting Program inspector. A LEPP Inspector will re-inspect the facility by March 31, 2006 to determine if Sheldon Farms has returned to compliance.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if Sheldon Farms fails to comply with the corrective action required herein, Sheldon will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after March 31, 2006 as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Chris Rodabaugh, LEPP Inspector  
Hardin SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura - ODNR  
Jennifer Tiell, ODA Legal  
Mary Beth Ruttan, Assistant Attorney General



# Ohio Department of Agriculture



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January 23, 2006

Certified Mail Return Receipt Requested

Jackson Farms  
1048 S. R. 235 N  
DeGraff, OH 43318

John and Sam Jackson  
1048 S. R. 235 N  
DeGraff, OH 43318

RCC#: JACK-0001.RC001-LOGA

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Jackson:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Jackson Farms is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Jackson Farms has failed to comply with Rule 901:10-2-08(A)(4)(a) of the Ohio Administrative Code (OAC).

**I. VIOLATION: FAILURE TO MAINTAIN FREEBOARD**

ODA has determined that Jackson Farms has failed to maintain adequate freeboard as required by Ohio Administrative Code Rule 901:10-2-08(A)(4)(a). At a limited inspection on January 6, 2006, the required freeboard was not maintained in your manure storage pond. As of January 6, 2006, there was no freeboard available in your manure storage pond. A subsequent inspection on January 12, 2006 was conducted and measurements were taken at the manure storage pond, confirming a total lack of freeboard.

**II. CORRECTIVE ACTIONS REQUIRED**

You have ten (10) days from the date on this letter within which you must correct these deficiencies by removing the manure from the manure storage pond and handling it correctly. Jackson Farms must remove an amount of freeboard sufficient to create and maintain two feet of freeboard. In your operating records you must keep records of the manure amounts removed and the final application or use of the manure. You must make these records available to the ODA Livestock Environmental Permitting Program inspector.

After the ten (10) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

### III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level. The appropriate penalty in this matter will be \$800.00 per day beginning January 12, 2006, unless the deficiencies are corrected within ten (10) days from the date on this letter.

ODA reminds you of the need to comply with the land application rules if you decide to land apply to reduce the manure level in the pond.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Chris Rodabaugh, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Logan County SWCD





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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Phone: (614) 466-2732 • Fax: (614) 466-6124  
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January 23, 2006

## Certified Mail Return Receipt Requested

Longview Cattle, LLC  
C/O Mr. Al Holthaus  
11002 Reed Road  
Versailles, Ohio 45380

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Dear Mr. Holthaus,

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Longview Cattle, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Longview Cattle, LLC has failed to comply with Rule 901:10-2-01(B)(3) of the Ohio Administrative Code (OAC).

#### **I. VIOLATION: FAILURE TO COMPLY WITH PERMIT TO INSTALL PRIOR TO STOCKING WITH ANIMALS**

ODA has determined that OAC 901:10-2-01(B)(3) has been violated. Specifically, facilities constructed in accordance with a Permit to Install (PTI) issued by ODA are required to be inspected by the Director or an authorized representative in a timely manner **prior** to stocking with animals. OAC 901:10-2-01(B)(3)

On September 9, 2005, the Director of the Ohio Department of Agriculture issued PTI LONG-0001.PI001.DARK to Longview Cattle. The PTI authorized remodeling of three starter barns and 5 grower barns at 11002 Reed Road. Two partial approval letters were sent to you. The first was a stocking approval letter for the three starter barns on September 21, 2005. The second letter was sent on October 28, 2005 and was for stocking approval of one grower barn. Between October 28, 2005 and January 9, 2006, three more grower barns were stocked without stocking approval from ODA. On January 17, 2006 the three stocked grower barns were inspected, but—again-- after stocking and in violation of the rule.

## II. CORRECTIVE ACTIONS REQUIRED

Longview shall not populate the remaining grower barn until such time as that it has been inspected by the Director or the Director's authorized representative

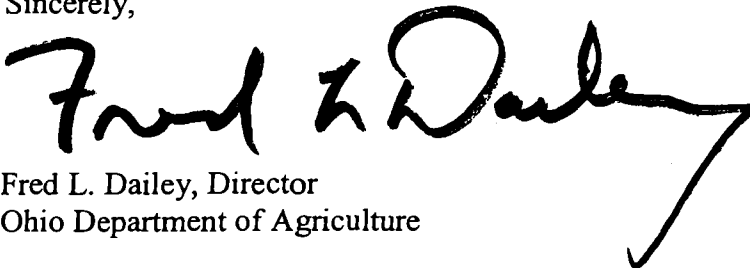
## III. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are the first cited violations with the category of seriousness of the violations as Category Major, and the gravity of the effect of the violations as minor.

Therefore, if you fail to comply with the corrective actions required herein, you will be subject to the assessment of a civil penalty in the amount of \$1,600 for each day grower barn 2, 3, 4 and 5 violated OAC 901:10-2-01(B).

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Rogowski, LEPP Engineering  
Jennifer Tiell Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Gail Rodabaugh, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Darke SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

November 23, 2005

Ohio Fresh Eggs, LLC  
Attention: Ron Flory  
11212 Croton Road  
P.O. Box 288  
Croton, Ohio 43013-0288

Certified Mail # 7099 3400 0008 7266 805

Re: Warning Letter  
Stocking Letter Two Barns

Mr. Flory,

On September 30, 2005, the Director of the Ohio Department of Agriculture proposed to revoke all permits that had been issued by ODA to Ohio Fresh Eggs, LLC. This action includes the Director's proposal to revoke Permit to Install (PTI) OFLA-0001.PI004.LICK. Subsequently, OFE requested a hearing in order to appeal the Director's proposed action. While this action and the appeal are pending, OFE has completed a portion of the barn renovations required by PTI OFLA-0001.PI004.LICK and by the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

On November 21, 2005, the ODA Inspector for the Livestock Environmental Permitting Program (LEPP) conducted an inspection of OFE Croton Layer Site No. 4, PTI OFLA-0001.PI004.LICK, and that OFE had stocked Barn No. 44 with poultry in violation of Rule 901:10-2-02(B)(2) of the Ohio Administrative Code. This Rule states, in pertinent part, "Facilities are required to be inspected by the Director or an authorized representative in a timely manner prior to stocking with animals.

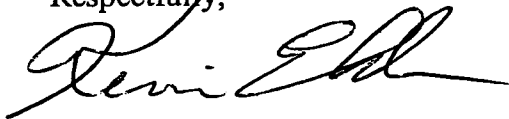
This letter is provided for the limited purpose of documenting that recent construction of two of the seven barns renovated to belt battery facilities at OFE Croton Layer Site No. 4 are approved for use. This letter is also meant to serve as a partial stocking letter for two of the seven belt battery barns, that is, barns 44 and 46.

Further, barns 44 and 46 may be stocked with birds only on condition that water is removed from the manure conveyor and the manure pit. In addition, construction debris must also be removed from the entire length of the manure cross conveyor belt.

Please inform this office when barns 48 and 50 are ready for inspection. Before ODA can document completion of the work for all seven barns at Croton Layer Site No. 4, all earthwork, grading, and seeding on the eastern half of the operation and between the even numbered barns and the manure storage building need to be completed by the time barns 52, 54, and 56 are completed in order to prevent standing water between the barns and along the eastern portion of these barns. This shall also include the installation of the pump station and reception pit to pump the water to the stormwater pond.

Nothing in this letter shall be interpreted to contravene the Director's proposed action to revoke PTI OFLA-0001.PI004.LICK while the Director's action is pending. If you have any questions or concerns, please feel free to contact my attorney, Jenny Tiell, at (614) 387-0912 or me at 614-387-0470.

Respectfully,



Kevin Elder  
Executive Director, ODA-LEPP

Cc: Andy Rogowski, ODA-LEPP Engineer  
Jim Young, ODA-LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Legal Counsel  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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October 27, 2005

**Certified Mail Return Receipt Requested**

Pieter Assen  
Johannes Assen  
8500 Yankeetown-Chenoweth Road  
London, Ohio 43140

**Re: Warning Letter**

Gentlemen:

I am writing to you as a result of an inspection conducted by my staff on October 19, 2005. The Inspector from the Livestock Environmental Permitting Program (LEPP) found that your farm does not have a staff gauge or depth marker or other device to measure the liquid levels in your manure lagoon. You are required to install a staff gauge as soon as possible but no later than December 15, 2005.

Not only does Rule 901:10-2-06 of the Ohio Administrative Code (OAC) require you to install a staff gauge in the lagoon, but other ODA rules require you to use the gauge to monitor the liquid levels of the lagoon and to record the levels in your Operating Record. These requirements are in Rules 901:10-2-08 and 901:10-2-16.

Finally, I advise you that these requirements for an installed staff gauge, periodic monitoring, and records of liquid levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,

Kevin H. Elder  
Executive Director, Livestock Environmental Permitting Program

Cc: Jim Young, LEPP Inspectors  
Cathy Alexander, Ohio EPA  
Madison SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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October 21, 2005

Mr. Don Belt  
9317 Young Road  
Union City, Ohio 45390

**Certified Mail**

Re: **Warning Letter**

Dear Mr. Belt:

Violation of Ohio Department of Agriculture (ODA) laws and rules was discovered during a complaint investigation by staff from the Livestock Environmental Permitting Program (LEPP) on October 13, 2005. On that date, the LEPP Inspector noted that darkling beetles had infested several homes in the area of 2116 Greenville-Nashville Road. Poultry manure had been applied to a nearby field and incorporated. No beetles were observed in the field but residences located within a quarter mile of the field had problems with beetles. Violations include the following:

PSA-Cherrystone is required to comply with the Insect and Rodent Control Plan that is an approved Plan in the facility's Review Compliance Certificate (RCC). Rule 901:10-2-19(B)(3)(a)(iii) states:

Appropriate control actions shall be undertaken promptly when activity of insects and rodents is observed that requires actions as described in the plan.

Further, rule 901:10-2-19(B)(3)(a)(v) states:

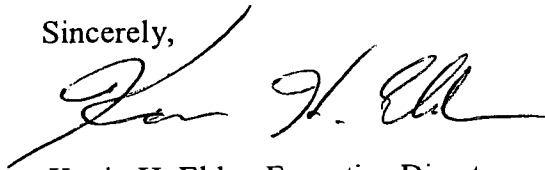
Appropriate control actions shall be undertaken prior to the removal of manure to minimize the activity and reduce the presence of insects and rodents at the facility.

Finally, RCC CHER-0001.RC001-DARK, issued to PSA-Cherrystone for the facility at 1593 Wildcat Road, Union City requires compliance with the Insect and Rodent Control Plan in the RCC. This Plan states:

1. Before manure is removed from the buildings the manure pits will be treated for darkling beetles.

An inspector plans to re-inspect your operation within the next 30 days. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc: Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Darke SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Layer Site No. 1 Permit to Operate (PTO) (OFL1-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005,



OFE failed to maintain a 30% or less manure moisture levels at Barn Nos. 2, 4, 6, 8, and 14B. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn No. 13A.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Croton Layer No. 1 on September 6, 2005, showed that the 7 tier belt-battery Barns Nos. 2, 4, 6, 8 and 10 were promoting fly breeding due to lower rates of air flow and lack of proper barn ventilation for manure drying. Barn No. 14B had extreme levels of larvae and extreme levels of pupae because the manure was not being dried as rapidly as possible by the use of pit fans, as required by the permit.

Finally, the manure storage building was put in use on September 3, 2005. The permit requires that belts in the barns will be operated once every day to ensure that good drying occurs on the belts and that a dry product is carried to storage. Due to insufficient air to dry the manure on the belts coming out of the layer barns, the manure in the manure storage building was wet, starting to turn anaerobic, and had abundant larvae.

#### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately take appropriate measures to control larvae and pupae in Barn Nos. 2, 4, 6, 8, 10, and 14B and in the manure storage barn. OFE shall repair air ducts and undertake any related work that is necessary to increase airflow on the conveyor belts and improve ventilation in the barns in order to dry the manure at Barn Nos. 2, 4, 6, 8, and 10. OFE shall fix, repair, and/or clean the turbo fans in Barn 14B to improve airflow and manure drying and /or scrape manure every day with scraperboards.

#### **C. PENALTY ASSESSMENT**

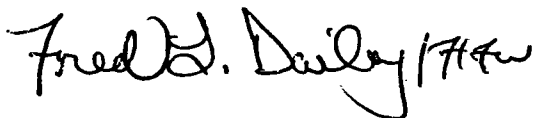
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$27,683, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject

to the assessment of a civil penalty up to \$27,683.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Fred L. Dailey". To the right of the signature, there are some initials that appear to be "HFW".

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
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Jim Kirakofe, Licking SWCD



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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Layer Site No.2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Layer Site No. 2 Permit to Operate (PTO) (OFL2-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn Nos. 16, 17, 18, 20, 24, 27, and 28. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn Nos. 15, 19, 21, 22, 23, 25, 26, 27A, and 28B.

OFE's IRCP requires that manure is dried as rapidly as possible in order to maintain 30% moisture or less (as sampled on a quarterly basis). An inspection at OFE Croton Layer No. 2 on September 6, 2005, showed that the manure in these barns is too wet to be removed. The manure in Barn No. 28 was wet with flies actively breeding in the manure

#### B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to take appropriate measures to allow thorough manure drying prior to manure removal from the barns. OFE shall immediately begin to use turbo fans in Barn No. 28 to assist in drying the manure.

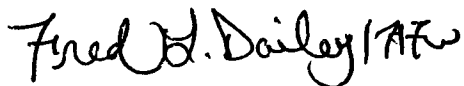
#### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$37,209.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$37,209.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Layer Site No.3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Layer Site No. 3 Permit to Operate (PTO) (OFL3-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn Nos. 29, 30, 32, 33,

34, 35, 37, 38, 39 and 42. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn No. 31, 40, 41, 41A and 42B.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Croton Layer No. 3 on September 6, 2005, showed the following:

- The manure in Barn Nos. 30 and 32 was too wet to allow inspectors to enter the barns. Larvae and pupae (in Barn No. 30) and flies (in both Barn Nos. 30 and 32) were observed at abundant levels.
- The manure in Barn Nos. 32, 34, 37, 38 and 42 was wet and seeping or running out of the doors or the concrete block of barn walls.
- The manure in Barn Nos. 33, 34, 35, 37, 39, and 42 was wet and blocking the doors, preventing entry by the inspectors.

#### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to plan for manure removal only at such time as the daily low temperatures are below 40 degrees F. However, OFE shall not land apply manure from late November-December 2005 until March-April of 2006. Application on frozen or snow-covered ground is to only be utilized during emergency situations and not used as a routine practice in any manure management plan. Please keep in mind that if manure is to be applied on frozen or snow covered ground, the ODA must be contacted prior to this application.

Upon receipt of this letter, OFE is required to immediately take measures to control flies, larvae, and pupae in Barn Nos. 30 and 32. Further, OFE shall take appropriate action to dry the manure and/or contain manure within the barns until such time as the manure can be removed.

#### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$61,383.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying

with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$61,383.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey" followed by a stylized flourish.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the OFE Croton Layer Site No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**A. VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least January 1, 2005 through March 31, 2005, OFE has failed to



maintain a 30% manure moisture level or less at Barn Nos. 43, 45, 47, 49, 51, 53, 55, and 55A.

OFE's IRCP requires that manure is dried as rapidly as possible and stay dry in order to suppress fly and fly larval development.

An inspection at OFE Croton Layer No. 4 on September 6, 2005, showed that flies in the 7-tier belt-battery Barns Nos. 43, 47, and 49 had moderate to abundant flies. Attached at the end of the belt battery barns were banks of fans that were covered with plastic. Barn No. 55 contained manure that was too wet to allow inspectors to enter. Barn No. 55A contained abundant larvae and moderate to abundant flies. The permit requires that pit fans are used in Barn No. 55A to enhance manure drying and pit fans will be run as long as necessary to control manure moisture levels. Pit fans in Barn No. 55A disconnected and were sitting on the floor.

### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately take measures to control flies and larvae in Barn Nos. 43, 47, and 49. OFE shall fix, repair, or clean the turbo fans in Barn No. 55A to improve airflow and manure drying to less than 30% moisture in the manure. OFE shall reconnect or reinstall and use the pit fans in Barn No. 55A to dry manure to less than 30% moisture.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$8,411.00, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$8,411.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey" followed by a stylized flourish.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillendale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Pullet Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Pullet Site No. 1 Permit to Operate (PTO) (OFP1-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has

determined that from at least January 1, 2005 through March 31, 2005, OFE has failed to maintain a 30% manure moisture level at Barn No. 5.

In addition, OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. The permit requires that belts in the barns will be operated once every day to ensure good drying on the belts and that a dry product is carried away from the barn to manure storage or land application. An inspection at OFE Croton Pullet No. 1 on September 6, 2005, showed that flies in Barn Nos. 4 and 5 were moderate to abundant due to lower rates of air flow and lack of proper ventilation for manure drying on the conveyor belts.

The permit also requires complete vegetation control within a 3 ft. perimeter of all buildings e.g. gravel, mulch, chemical control. Vegetation height shall be kept to six inches or less between the buildings throughout the facility grounds. The inspection showed uncontrolled vegetation between the barns at Croton Pullet Site No. 1.

### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately and permanently cover the conveyor belt that removes manure from the barns to the load out area and to clean up any spilled manure. OFE shall maintain vegetation below 6 inches around and between the buildings. OFE shall fix, repair, or clean the exhaust fans to improve airflow and manure drying. OFE shall repair air ducts and undertake any related work that is necessary to increase airflow and ventilation on the conveyor belts in order to dry the manure.

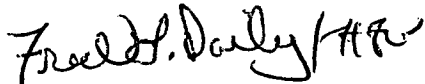
### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$446.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$446.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



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Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Pullet Site No. 3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Pullet Site No. 3 Permit to Operate (PTO) (OFP3-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005, OFE has failed to maintain 30% manure moisture level or less at Barn No. 12. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE has failed to maintain 30% or less at Barn Nos. 14 and 15.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Croton Pullet No. 3 on September 6, 2005, showed that flies and larvae in Barn Nos. 12, 14, and 15 were abundant and extreme because the manure is not dried as rapidly as possible by more frequent manure turning.

### B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately take appropriate actions to dry manure by improvements to manure turning by adding sufficient equipment, such as a custom spray rig, and personnel for chemical spraying. OFE shall fix, repair, and/or clean the exhaust fans to improve airflow and manure drying.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$8,100.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$8,100.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the OFE Croton Pullet Site No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**A. VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS  
REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for OFE Pullet Site No. 4 (OFFP4-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis). ODA has determined that from at least January 1, 2005 through June 30, 2005, OFE has failed to maintain a 30% at Barn Nos. 17, 19 and 21 in order to reduce the presence of insects. ODA has determined that from at least January 1, 2005 through March 31, 2005, OFE has failed to maintain a 30% manure moisture level or less (as sampled on a quarterly basis) at Barn No. 20 in order to reduce the presence of insects.



OFE's IRCP requires that manure is dried as rapidly as possible and stay dry in order to suppress fly and fly larval development. An inspection at OFE Croton Pullet No. 4 on September 6, 2005, showed that larvae and pupae in Barns Nos. 17, 19, and 20 were abundant and extreme.

### B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately improve manure turning by adding sufficient equipment, such as a custom spray rig, and personnel for chemical spraying. OFE shall fix, repair, or clean the exhaust fans to improve airflow and manure drying.

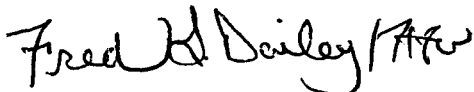
### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$4,050.00, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$4,050.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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October 14, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Mt. Victory Layer Site No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least January 1, 2005 through June 30, 2005, OFE has failed to maintain a 30% manure moisture level at Barns Nos. 2, 3, 4, 5, 9, and 10.

Further, OFE's IRCP requires that pit fans be installed and used as a method to enhance manure drying in order to suppress fly and larval activity. An inspection at Mt. Victory on September 7, 2005, showed that in Barns Nos. 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15 pit fans were not working or disconnected, could not be utilized as the fans were designed to be used on cables so that the fans could be moved around the whole barn to any area where manure needed to dry. The

ODA inspector found that cables could not be used to move the pit fans for ventilation since bait cards hanging on wires are placed on the cables and block cable movement.

### B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately remove wires and bait cards running the length of the barns that are blocking the cables to allow the movement of pit fans to manure rows where drying is most needed. Pit fans shall be repaired or replaced and connected for use as required by the IRCP in the permits. OFE shall repair air ducts and undertake any related work that is necessary to increase airflow and ventilation, including replacement of missing louvers and removal of accumulated dirt on fans and louvers.

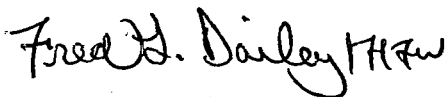
### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$85,342.00, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$85,342.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Howard Lyle, Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Administrative Office  
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Phone: 614-466-2732 • Fax 614-466-6124

ODA home page: [www.ohioagriculture.gov](http://www.ohioagriculture.gov) • e-mail: [administration@mail.agri.state.oh.us](mailto:administration@mail.agri.state.oh.us)

September 29, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail 7001 0320 0003 1554 2935**

Orland Bethel  
Ohio Fresh Eggs, LLC c/o Hillandale  
Farms  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail 7001 0320 0003 1554 2928**

Brian Babb, Esq.  
Keating, Muething & Klekamp, P.P.L.  
1400 Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 43202

**Certified Mail 7001 0320 0003 1554 2911**

Re: Proposed Action to Issue a Revocation Order

Gentlemen:

This document is notice that the Director of the Ohio Department of Agriculture ("Director" or "ODA"), under the authority of the Ohio Revised Code ("ORC") section 903.09(F) proposes to issue an order to Ohio Fresh Eggs, LLC ("OFE") to revoke the Permits to Operate ("PTO" or "PTOs") and Permits to Install ("PTI" or "PTIs") listed below in Paragraph 1 due to OFE's failure to comply with ORC section 903.02(C)(1), ORC section 903.03(C)(1), ORC section 903.05, and Ohio Administrative Code ("OAC") 901:10-1-02(A)(4).

### Notice

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Chief Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio

Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on September 30, 2005.

Please note that if your company is a limited liability company or a corporation, only an attorney at law admitted to practice in the State of Ohio may request the hearing and represent the company at the hearing. A court reporter will be present at the hearing to make a record of the proceedings and to swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed order should not be issued as a final order. Following the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of the Ohio Department of Agriculture for consideration.

Be advised that if you fail to request a hearing within 30 days from the mailing of this proposed action, the Ohio Department of Agriculture will issue as a final order the proposed action attached hereto without a hearing.

#### Director's Proposed Findings and Orders

1. ODA previously issued and now proposes to revoke the following PTIs and PTOs:

##### Croton Facilities

- a. OFL1-0001.PI001.LICK for Croton Layer Site Number 1 in Licking County;
- b. OFL2-0001.PI001.LICK for Croton Layer Site Number 2 in Licking County;
- c. OFL3-0001.PI001.LICK for Croton Layer Site Number 3 in Licking County;
- d. OFL4-0001.PI001.LICK for Croton Layer Site Number 4 in Licking County;
- e. OFL1-0001.PO001.LICK Croton Layer Site Number 1 in Licking County;
- f. OFL2-0001.PO001.LICK Croton Layer Site Number 2 in Licking County;
- g. OFL3-0001.PO001.LICK Croton Layer Site Number 3 in Licking County;
- h. OFL4-0001.PO001.LICK Croton Layer Site Number 4 in Licking County;
- i. OFP1-0001.PO001.LICK for Croton Pullet Site Number 1 in Licking County;
- j. OFP2-0001.PO001.LICK for Croton Pullet Site Number 2 in Licking County;
- k. OFP3-0001.PO001.LICK for Croton Pullet Site Number 3 in Licking County;
- l. OFP4-0001.PO001.LICK for Croton Pullet Site Number 4 in Licking County;
- m. OFHB-0001.PO001.LICK for Croton Breeder-Hatchery in Licking County;

##### Northern Facilities

- n. OFGO-0001.PO001.HARD for Goshen Pullet Site Number 5 in Hardin County;
- o. OFMT-0001.PO0001.HARD for Mt. Victory Layer Site Number 5 in Hardin County;
- p. OFMA-0001.PO001.WYAN for Marseilles Layer Site Number 6 in Wyandot County.

2. OFE has violated and is in violation of ORC section 903.02(C)(1), ORC section 903.03(C)(1), ORC section 903.05, and OAC 901:10-1-02(A)(4).

Proposed Revocation for Providing False or Misleading Information

3. ORC section 903.02(C)(1) requires that an applicant for a Permit to Install include on the application the name and address of “any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant . . . .”

4. ORC section 903.03(C)(1) requires that an applicant for a Permit to Operate include on the application the name and address of “any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant . . . .”

5. OAC 901:10-1-02(A)(4)(a) requires that “An application for a permit to install, permit to operate or NPDES permit shall include information on ownership and background, including but not limited to, the following information: The name and address . . . of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors or managers of the applicant . . . .”

6. OAC 901:10-1-02(A)(4)(b) requires that “each application for a permit to install or permit to operate must contain information on a record of past compliance if the applicant has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application.”

7. ODA has determined that OFE failed to notify ODA prior to the issuance of the permits of the names and addresses of “any other person who has the right to control, or in fact controls, the management of the applicant or the selection of officers, directors, or managers of the applicant.”

8. Beginning in June 2003, OFE submitted applications to ODA for permits that failed to include the name and address of Austin J. “Jack” DeCoster, an individual associated with the applicant who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant.

9. By failing to list Austin DeCoster on the permit applications as required, OFE’s permit applications contained misleading or false information.

10. ORC section 903.02(D)(1) and ORC section 903.03(D)(1) provide that the Director shall deny a PTI and/or PTO if “the permit application contains misleading or false information.”

11. In addition, OAC 901:10-1-03(A)(1) provides that “The Director shall deny, suspend or revoke a permit to install or permit to operate if: (1) The permit application contains misleading or false information . . . .”

12. Based on OFE's submission of false or misleading permit applications, the Director proposes to revoke all permits issued to OFE.

Proposed Revocation for History of Substantial Non-compliance

13. In addition to submitting false or misleading permit applications, OFE failed to disclose that Austin DeCoster has a history of substantial noncompliance in the operation of concentrated animal feeding facilities that indicates that he lacks sufficient reliability, expertise, and competence to control the management of OFE, or the selection of officers, directors, or managers at OFE.

14. ORC section 903.05(B) provides that, "If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of a concentrated animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the 'Safe Drinking Water Act,' as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with [ORC chapter 903] and rules adopted under it."

15. OAC 901:10-1-03(B)(1)(a) provides, in part:  
"The Director may deny, suspend or revoke a permit to install or permit to operate if:

"(1) The applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in Section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise and competence to operate the proposed new or modified facility in substantial compliance with Chapter 903. of the Revised Code and these rules.

"(a) In evaluating a history of substantial noncompliance as required, the director may consider all of the following for a period of five years preceding the date of the application:

\* \* \* \*

"(ii) Any administrative enforcement action (including an administrative order of notice of violation), civil suit, or criminal proceeding that is:

\* \* \* \*

“(b) Resolved or dismissed in a settlement agreement, in a consent order or decrees, is adjudicated or otherwise dismissed and that may or may not have resulted in the imposition of:

“(i) A sanction such as a fine, penalty, payment or work or service performed in lieu of a fine or penalty; or

“(ii) Cessation or suspension of operations.

\* \* \* \*

“(c) Any revocation, suspension, or denial of a license or permit or equivalent authorization . . . .”

16. Based on OFE’s failure to submit any information regarding Austin DeCoster’s past compliance with laws pertaining to environmental protection, and the Director’s finding that Austin DeCoster has a history of substantial non-compliance with laws pertaining to environmental protection that indicates Austin DeCoster lacks sufficient reliability, expertise, and competence to operate a Concentrated Animal Feeding Facility in substantial compliance with ORC chapter 903 and the rules adopted under it, the Director proposes to revoke all permits issued to OFE.

Violations

17. Based on OFE’s failure to disclose the identity of DeCoster, an individual with the right to control, or control of the management of OFE, or the selection of officers, directors, or managers of the applicant; OFE has violated ORC section 903.02(C)(1), ORC section 903.03(C)(1), and OAC 901:10-1-02(A)(4)(a).

18. Based on OFE’s failure to disclose DeCoster’s history of substantial noncompliance with laws pertaining to environmental protection in the operation of Concentrated Animal Feeding Facilities (“CAFF”); OFE has also violated, ORC section 903.05, and OAC 901:10-1-02(A)(4)(b).

19. Due to OFE’s violation of the statutes and rules cited above, the Director proposes to revoke OFE’s PTIs and PTOs pursuant to ORC section 903.02(D)(1), ORC section 903.03(D)(1), OAC 901:10-1-03(A), and OAC 901:10-1-03(B).

The findings in support of the Director’s proposed revocation are as follows:

1. Beginning in June of 2003 and continuing until November 24, 2003, OFE submitted permit applications, additions and corrections to the applications, as well as supporting documents to ODA to obtain the permits listed above.

2. Ohio Fresh Eggs, LLC is a limited liability company owned 70% by Hillandale Farms, LLC and 30% by Ohio Ag Investors, LLC. Donald Hershey wholly owns Fresh



Eggs Manager, LLC, which wholly owns Ohio Ag Investors. Orland Bethel is the sole member of Hillandale Farms.

3. OFE's permitted facilities consist of:
  - a. Four commercial layer sites, four commercial pullet sites, and a hatchery-breeder-pullet site in Croton, Ohio. These facilities are hereinafter referred to as the "Croton facilities" or "Croton."
  - b. The Mt. Victory Layer Site Number 5, Mt. Victory, Ohio; Marseilles Layer Site Number 6, Harpster, Ohio; and Goshen Pullet Site Number 5, LaRue, Ohio. These facilities are hereinafter referred to as the "Northern Facilities."
4. As part of the application process, OFE was required to include on each application the name and address "of any other person who has the right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant . . . ." O.R.C. section 903.02(C)(1) and ORC section 903.03(C)(1).
5. As part of the application process, OFE was also required to provide information regarding the history of environmental compliance of "persons associated with the applicant." "If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of a concentrated animal feeding facility, the director of agriculture may deny the application if the director finds . . . that the applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of noncompliance with the Federal Water Pollution Control Act, the 'Safe Drinking Water Act,' as defined in section 6109.01 of the Revised Code, and other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it." ORC section 903.05(B).
6. OFE was required to submit names, addresses, and background investigation information consistent with ORC section 903.02, ORC section 903.03, ORC section 903.05, and OAC 901:10-1-02 for the owners and operators of the facilities, any person associated with the applicant, and any person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant.

Permit Applications and Information Submitted by OFE

7. In the permit applications, OFE named and provided background information for only Donald Hershey and Orland Bethel as the owners of OFE, and Ronald L. Flory and Mohamed Mousa Aboughazala<sup>1</sup> as the operators of OFE.

8. In August of 2003, OFE represented to ODA that, although there would be an anonymous purchaser of an option to purchase OFE ("optionee"), that anonymous purchaser could not be classified as anyone in control of the management of OFE or the selection of officers, directors or managers of OFE.

9. Throughout the permitting process, counsel for ODA continued to express concerns to counsel for OFE regarding the identity of the optionee, as well as the level of control the optionee would have at OFE. OFE continued to reassure ODA that the optionee would exercise no more oversight or control over OFE than a bank would.

10. OFE failed to name or fully disclose the level of control Austin J. DeCoster ("DeCoster") would have at OFE despite ODA's demonstrated concern that an unacceptable person would exercise management control over OFE.

OFE's Purchase of the Croton and Northern Facilities from Anton Pohlman and Buckeye Egg Farm

11. On April 15, 2003, OFE entered into a Letter Agreement with Anton Pohlman ("Pohlman") and Buckeye Egg Farm, LP ("BEF") in which OFE transferred a sum of money for the exclusive right to purchase the Croton facilities under the terms and conditions of the Letter Agreement.

12. Ohio Investments Co., LLC, a one person limited liability company owned by DeCoster, lent money to OFE for the deposits for the purchase of the Croton facilities. The April 15, 2003 Letter Agreement between BEF and OFE was accompanied by a Confidential Guarantee signed by Austin and Peter DeCoster guaranteeing payment and performance by OFE of the terms of the Letter Agreement. The Confidential Guarantee also includes the statement that, "All parties to such Letter Agreement acknowledge that it is a critical condition of this guarantee (and of Buyer's payment of the Deposit and entering into the Letter Agreement) that the undersigned's involvement in this transaction be kept absolutely confidential and not released to any party (including the Seller's lending group) or agency without the express written consent of the undersigned or their counsel."

13. On August 6, 2003, counsel for OFE notified ODA that an anonymous optionee would be acquiring an option to purchase OFE. Counsel asserted that the optionee could not be classified as anyone in control of management of the applicant, or the selection of officers, directors, or managers.

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<sup>1</sup> Mohamed Mousa Aboughazala resigned effective August 31, 2005.

14. On August 12, 2003, OFE entered into a Letter Agreement with Pohlman and BEF in which OFE transferred a sum of money for the exclusive right to purchase the Northern facilities under the terms and conditions of the Letter Agreement.
15. Ohio Investments Co., LLC, also lent money to OFE for the deposits for the purchase of the Northern facilities. The August 12, 2003 Letter Agreement was accompanied by a Confidential Guarantee signed by Austin DeCoster guaranteeing payment and performance by OFE of the Letter Agreement. The Confidential Guarantee also includes the statement that, "All parties to such Letter Agreement acknowledge that it is a critical condition of this guarantee (and of Buyer's payment of the Deposit and entering into the Letter Agreement) that the undersigned's involvement in this transaction be kept absolutely confidential and not released to any party (including the Seller's Lenders Group) or agency without the express written consent of the undersigned or their counsel."
16. On September 12, 2003, OFE entered into an Asset Purchase Agreement with Pohlman and BEF setting forth the terms and conditions of the sale of the Croton facilities to OFE. Ohio Investments Co., LLC lent money to OFE for this purchase.
17. On December 23, 2003, ODA issued permits to OFE for the Croton facilities. At this time OFE's applications for permits for the Northern facilities were still pending at ODA.
18. On December 26, 2003, OFE entered into an Asset Purchase Agreement with Pohlman and BEF setting forth the terms and conditions of the sale of the Northern facilities to OFE. Ohio Investments Co., LLC lent money to OFE for this purchase.
19. Ownership of the Croton facilities transferred from Pohlman and BEF to OFE on December 26, 2003, three days after OFE received permits for the Croton facilities.

Option to Purchase and Master Agreement

20. The same day that OFE obtained ownership of the Croton facilities, December 26, 2003, OFE entered into a separate Option to Purchase and a Master Agreement, with DeCoster regarding the Croton facilities.
  - a. The December 26, 2003 Option to Purchase among Ohio Investments Co., LLC and Ohio Ag Investors, LLC, and Hillandale Farms, LLC provides DeCoster with the opportunity to purchase either the shares of OFE or the assets of OFE through 2020 with the possibility of DeCoster extending the option to 2030. In addition, the Option to Purchase establishes certain rights and responsibilities among the parties.
  - b. The Master Agreement among OFE, Donald Hershey, Fresh Eggs

Manager, Ohio Ag Investors, Hillandale Farms, Hillandale Farms of PA, Croton Construction, Ohio Investments, Austin DeCoster the sole trustee for the DeCoster Revocable Trust, and Austin DeCoster as the Guarantor of the revocable trust's and Ohio Investments' obligations establishes additional rights and responsibilities among the parties.

21. The December 26, 2003 Option to Purchase indicates OFE's intention to also purchase the Northern facilities from BEF and Anton Pohlmann. The Option to Purchase includes the provision that, upon OFE's acquisition of the Northern facilities from BEF, DeCoster's Option to Purchase would extend to the Northern facilities.
22. Eight weeks elapsed between the date the parties signed the Option to Purchase and the date ownership of the Northern facilities transferred to OFE.
23. OFE never amended the permit applications pending for the Northern facilities between the date the parties signed the Option to Purchase and the date ODA issued the permits for the Northern facilities
24. ODA issued permits for the Northern facilities on February 2, 2004.
25. Ownership of the Northern facilities transferred from Anton Pohlman and BEF to OFE on February 18, 2004.
26. Between June of 2003 and February 2, 2004, OFE, ODA, as well as their respective counsel, communicated on numerous occasions regarding the applications, supporting documentation, background investigation information, and other information.
27. Until October 2004, OFE did not disclose to ODA the fact that the Option to Purchase between OFE and DeCoster was signed and effective.
28. On October 12, 2004, Jerry Crawford, an attorney representing DeCoster, met with ODA counsel and divulged that DeCoster held the Option to Purchase OFE.
29. On October 14, 2004, representatives of OFE met with ODA and acknowledged that the Option to Purchase Agreement existed between OFE and DeCoster whereby, in exchange for the Option to Purchase, DeCoster loaned money to OFE to allow OFE to purchase the Croton and Northern facilities.
30. Following the disclosure of the Option to Purchase, OFE continued to represent to ODA that the holder of the Option to Purchase could not be classified as anyone in control of management of the applicant or the selection of officers, directors, or managers of the applicant. OFE asserted that there was no obligation to name DeCoster on the permit applications. However, the Option to Purchase and Master Agreement demonstrate that DeCoster has a sufficient level of control over OFE management and the selection of officers, directors, or managers, that OFE should have included DeCoster's name and address on the permit applications.

31. On October 18, 2004, OFE's legal counsel transmitted to ODA a redacted copy of the Option to Purchase Agreement dated December 23, 2003. The Option to Purchase is between Ohio Investments Co., and Ohio Ag Investors, and Hillandale. ODA was not provided a copy of the Option to Purchase, signed or in draft, until counsel for OFE provided a redacted version on October 18, 2004.

32. In addition to the Option to Purchase, OFE's counsel sent a letter to ODA in which counsel asserted that:

a. OFE retains full authority and control of OFE's egg production facility and the optionee's role is limited;

b. The Option to Purchase imposes conditions and/or contractual conditions on OFE similar to the restriction a bank would impose under a loan to protect the bank's interest;

c. The drop in egg prices and the costs incurred by OFE at its facilities have resulted in increased interest and involvement by the optionee to protect his investment.

33. ODA was unaware that a Master Agreement existed until seeing a reference to it in the Option to Purchase. By letter dated November 3, 2004, counsel for OFE provided ODA with a redacted version of the Master Agreement among Ohio Fresh Eggs, LLC, Donald C. Hershey, Ohio Ag Investors, LLC, Fresh Eggs Manager, LLC, Hillandale Farms, LLC, Hillandale Farms of PA, Inc., Croton Construction, LLC, Ohio Investments Co., LLC, the DeCoster Revocable Trust, and Austin J. DeCoster.

34. On January 6, 2005, ODA counsel requested complete and accurate owner and operator information from OFE to allow ODA to properly evaluate the amount of control individuals have at the Croton and Northern facilities.

35. On January 28, 2005, counsel for OFE responded by letter stating that the optionee, Ohio Investments Co., LLC, did not have the contractual right to control or manage OFE or the Croton and Northern Facilities and did not in fact control the management of OFE, or the selection of its officers, directors, or managers. OFE counsel opined that the optionee had a legitimate interest to protect a substantial monetary investment but that the optionee did not control or manage the Croton and Northern facilities.

Extent of DeCoster's Control over the Management of OFE, or the Selection of Officer, Directors, or Managers

36. OFE's assertions beginning in August 2003 that the anonymous purchaser of the Option to Purchase would have no control over the management or the selection of officers, directors, or managers of OFE was inaccurate. The Option to Purchase and

Master Agreement signed by OFE and DeCoster three days after the issuance of the Croton permits, and before the issuance of permits for the Northern facilities, grants DeCoster a level of control over the OFE facilities such that DeCoster is a person who has a right to control or in fact controls management of OFE, or the selection of officers, directors, or managers of OFE. DeCoster's name and address should have been included on the permit applications.

37. The Option to Purchase, gives DeCoster the following authority:
- a. The OFE three-person Management Committee must include a representative designated by DeCoster.
  - b. The expansion of the number of members of the Management Committee of OFE, the replacement of any member of the Management committee or the Manager with any other person or entity must be approved by DeCoster's representative.
  - c. Although OFE's two representatives on the Management Committee elect any replacement for DeCoster's designated representative, DeCoster designates the replacement for whom OFE's representatives must vote.
  - d. OFE's annual budget requires the approval of DeCoster's representative.
  - e. Any borrowing of funds by OFE must be approved by DeCoster's representative.
  - f. The issuance of any additional membership units in OFE, or the grant of any options or rights to acquire additional membership interests in OFE must be approved by DeCoster's representative.
  - g. The employment or termination of any senior management employee with OFE must be approved by DeCoster's representative.
  - h. The sale or transfer of any material assets must be approved by DeCoster's representative.
  - i. The purchase or acquisition by OFE of any material asset of OFE exceeding a redacted cost must be approved by DeCoster's representative.
  - j. The cancellation or modification of the Consulting and Management Agreement or the Marketing and Output Agreement must be approved by DeCoster's representative
  - k. The amendment or modification of the Certificate of Organization or

Operating Agreement of OFE must be approved by DeCoster's representative.

- l. DeCoster must be notified of all meetings of the OFE Management committee and of all meetings of the Members of OFE. DeCoster's representative has the right to be present at all meetings. No issue can be voted on at a meeting unless DeCoster was notified that the issue would be on the agenda unless DeCoster waives such notice.
  - m. DeCoster has the power to modify a previously approved annual budget to meet production costs or efficiency needs, or current market conditions.
38. The Master Agreement, also dated December 26, 2003, gives DeCoster the following rights and responsibilities:
- a. For tax purposes, the Option to Purchase is treated as a current sale of all property and DeCoster, through Ohio Investments, Co., will be treated as the owner of 100% of the outstanding membership interests in OFE.
  - b. DeCoster is responsible for supplying OFE with all of OFE's requirements for the acquisition of the Croton and Northern facilities and all working capital.
  - c. All of OFE's business revenues shall be deposited into banks approved by DeCoster.
  - d. OFE will provide weekly cash flow reports to DeCoster.
  - e. DeCoster's representative has unrestricted access to examine the books, records, bank accounts, and statements of OFE during normal business hours with reasonable advance notice.
  - f. DeCoster indemnifies Donald Hershey, OFE, Manager, Ohio Ag, and Hillandale.

Requirement that DeCoster Be Named on the Permit Applications

39. The Option to Purchase states that DeCoster's approval would not be required for necessary expenditures to permit OFE to comply with its environmental and structural commitments to agencies of Ohio and with any consent decrees to which OFE is subject.
40. The Master Agreement states that during the option period, DeCoster shall supply or cause to be supplied to OFE adequate funds to allow OFE to timely finance the improvements required by the State of Ohio and the related Consent Decree.
41. The language in Option to Purchase and the Master Agreement purportedly limiting DeCoster's authority regarding environmental compliance is superficial and does

not negate OFE's obligation to have provided DeCoster's name and address on the permit applications.

42. Given the extensive control and oversight over OFE that the Option to Purchase and the Master Agreement give to DeCoster, OFE falsified the permit applications or misled ODA by failing to include DeCoster on the permit applications and by claiming that the holder of the Option to Purchase was simply a passive investor.

43. The authority over OFE that the Option to Purchase and the Master Agreement give to DeCoster through Ohio Investments, Co., make DeCoster a "person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant," within the meaning of ORC Sections 903.02 and 903.03.

44. OFE was required to include DeCoster's name and address on the initial permit applications for the Croton and Northern facilities submitted to ODA in 2003.

History of Substantial Non-compliance with Laws Pertaining to  
Environmental Protection

45. If OFE had properly included DeCoster's name on the permit applications, ODA would have required information concerning DeCoster's environmental compliance history prior to the Director's deciding whether to issue the permits.

46. ORC section 903.05 requires that an applicant who has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application must provide information pertaining to the applicant's history of compliance with environmental laws.

47. When the permit applications were submitted by OFE in June 2003, DeCoster had not operated a concentrated animal feeding operation in Ohio for at least two of the five years immediately preceding the submission of the applications.

48. OAC 901:10-1-02 (A)(4) requires, that an applicant provide the following information:

"An application for a permit to install, permit to operate or NPDES permit shall include information on ownership and background, including but not limited to, the following information:

"(a) The name and address of the applicant, of all partners if the applicant is a partnership or all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors or managers of the applicant;



“(b) When required by section 903.05 of the Revised Code, each application for a permit to install or permit to operate must contain information on a record of past compliance if the applicant has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application. If the permit to install and the permit to operate are submitted simultaneously as provided in division (A)(9) of section 903.10 of the Revised Code, then the following information is sufficient to satisfy the requirements of the permits:

“(i) A listing of all concentrated animal feeding facilities that the owner or operator of the proposed new or modified concentrated animal feeding facility has operated or is operating in Ohio:

“(ii) A listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating outside the United States:

“(iii) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted during the five years immediately preceding the submission of the application in connection with any violation of the federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating outside of the United States. The lists of concentrated animal feeding facilities operated by the owner or operator within or outside this state or outside the United States shall include, respectively, all such facilities operated by the owner or operator during the five-year period immediately preceding the submission of the application.”

49. Because DeCoster had not owned or operated a concentrated animal feeding operation in Ohio for at least two of the five year immediately preceding the submission

of the permit application, OFE had an obligation to disclose the following information pursuant to ORC section 903.05 and OAC 901:10-1-02:

- a. DeCoster was classified as a habitual violator pursuant to Iowa Code section 455B.191(7)(1999) by the State of Iowa through the Department of Natural Resources on June 13, 2000 due to continued failure to comply with Iowa's environmental laws.
- b. DeCoster was classified as a chronic violator pursuant to Iowa Code Section 657.11(3)(1999) by the State of Iowa through the Department of Natural Resources on June 13, 2000 due to continued failure to comply with Iowa's environmental laws.
- c. The classification as a habitual violator under Iowa law means that a person has committed three or more violations as described by Iowa Code Section 459.604 [formerly 455B.191 of the Iowa Code, which was transferred to this chapter in 2003, by legislation in 2002], that the violations occurred within the prescribed five-year statutory time period, that the violations included operations of confinement feeding operations, which caused pollution to water of the state, and that the violations were referred to the Iowa attorney general for assessment of civil penalty or court conviction.

50. ODA also would have considered the following additional pertinent information related to DeCoster's history of substantial non-compliance with laws pertaining to environmental protection pursuant to ORC section 903.05:

- a. DeCoster Finishing Unit #3. On July 8, 1999, the Iowa Supreme Court affirmed a Wright County District Court ruling finding Austin J. DeCoster in violation of several statutory and rule provisions at his animal feeding operations. One set of violations resulted from an incident, which occurred on April 27-28, 1995. Spray irrigation of manure from DeCoster Finishing Unit #3 entered a tile line and discharged into an Iowa River tributary. The Environmental Protection Commission referred the matter to the Iowa Attorney General on July 17, 1995. The District Court assessed a civil penalty of \$10,000.00 for two violations resulting from this incident. This incident constitutes at least one violation for the purpose of determining habitual violator status in Iowa.
- b. DeCoster Nursery Unit #3, Sow Unit #1. On March 22, 2000, the Iowa Supreme Court affirmed Wright County District Court rulings finding Austin J. DeCoster in violation of several statutory and rule provisions due to incidents, which occurred during May and November 1996. A break in an old tile line under a lagoon berm at DeCoster Nursery Unit #3 allowed manure in the lagoon to leak into the tile and then discharge into a drainage ditch. Application of manure from Sow Unit #1 on frozen ground resulted in runoff

to a road ditch and tile line intake. The Environmental Protection Commission referred the matters to the Iowa Attorney General on August 19, 1996, and January 22, 1997. The District Court assessed a civil penalty of \$10,000.00 for the violations resulting from these incidents. These incidents constitute at least two violations for the purpose of determining habitual violator status in Iowa.

- c. DeCoster Nursery Unit #4, Nursery Unit #7, Sow Unit #11. On June 13, 2000, the Iowa District Court, Lucas County, approved a Joint Stipulation and Agreement between the State of Iowa and Austin J. DeCoster, which, among other things, resolved DeCoster's appeal of a ruling by the Iowa District Court, Wright County. That ruling found violations of statutory and rule provisions due, among other violations, to manure runoff incidents, which occurred during February and April 1997, and assessed a civil penalty of \$25,000.00. The Environmental Protection Commission referred these matters to the Iowa Attorney General on June 20, 1997, and August 18, 1997. These incidents constitute at least three violations for the purpose of determining habitual violator status in Iowa.
- d. DeCoster Nursery Unit #M-1. On June 13, 2000, the Iowa District Court, Lucas County, issued a Consent Order, Judgment and Decree, which approved a Joint Stipulations and Agreement between the State of Iowa and Austin J. DeCoster. As part of that settlement DeCoster admitted that on or about April 24, 1998, and October 6-11, 1999, manure was not retained at Nursery Unit #M-1 and that the manure was discharged into a water of the state in violation of state law. DeCoster also agreed to pay \$125,000.00 for the admitted violations. The Environmental Protection Commission referred these matters to the Iowa Attorney General on November 16, 1998, and December 20, 1999. These incidents constitute at least three violations for the purpose of determining habitual violator status in Iowa.

51. Paragraphs 49 and 50 above do not necessarily represent an exhaustive list of DeCoster's failures to comply with laws pertaining to environmental protection. Additional failures might have been disclosed by OFE, or discovered by ODA, if OFE had provided information related to DeCoster's involvement with concentrated animal feeding facilities as required.

52. Accurate disclosure by OFE of DeCoster's level of control over OFE would have resulted in the Director denying OFE's permit applications.

53. In addition, accurate disclosure by OFE of DeCoster's history of substantial non-compliance with laws pertaining to environmental protection would have resulted in the Director denying OFE's permit applications.

#### Proposed Order

The Director hereby proposes an order as follows:

1. Based on the foregoing findings, the Director hereby proposes to revoke all permits issued to OFE for the Croton and Northern facilities.
2. By failing to provide the name and address of Austin J. DeCoster on any of the applications, OFE's permit applications contained false or misleading information. Therefore, the Director hereby proposes to revoke all of OFE's permits based on the provision of false or misleading information on the permit applications.
3. In addition, OFE failed to provide information regarding Austin J. DeCoster's history of substantial non-compliance with laws pertaining to environmental protection. Therefore, the Director also proposes to revoke all of OFE's permits based on OFE's failure to provide information to ODA that would have allowed ODA to assess Austin J. DeCoster's history of substantial non-compliance and his lack of sufficient reliability, expertise, and competence to operate a concentrated animal feeding operation.

Be advised that if you fail to request a hearing within 30 days from the mailing of this proposed action, the Ohio Department of Agriculture will issue as a final order the proposed action without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, slightly slanted style. The "F" is large and loops around the "r". The "L" is tall and thin. The "D" is large and loops around the "a". The "i" is small and loops around the "l". The "e" is small and loops around the "y". The signature ends with a long, sweeping horizontal stroke that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
William J. Hopper, Chief Counsel, ODA  
Mary Beth Ruttan, Assistant Attorney General  
Jennifer Tiell, Kristen Davidson, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Jim Young, LEPP Inspector  
Licking SWCD  
Hardin County SWCD  
Wyandot County SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette B. Br  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

September 28, 2005

Monte Tuck  
7895 Parker Road  
Bloomville, OH 44818

**Certified Mail**

Re: Warning Letter

Dear Mr. Tuck,

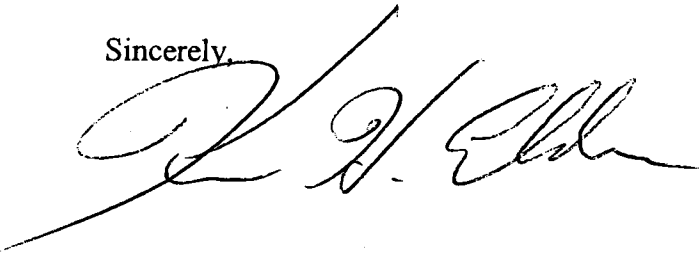
Be advised that due to your failure to cooperate with the Crawford Soil and Water Conservation District, you are required to obtain a Permit to Operate from ODA. If ODA finds that your facilities are inadequate to manage the current number of animals and manure at your operation, you will also be required to obtain a Permit to Install. As stated in the last letter we sent, you must have both pits entirely cleaned out by November 1, 2005. Since your hogs have recently gone out and you do not have adequate manure storage, no more hogs can be stocked into the barns until both pits are entirely empty. You should call us and setup an inspection prior to restocking. ODA will also not allow an expansion of your farm until you have a proven track record of adequately operating your current farm. If needed, ODA personnel can assist you with the PTI/PTO process. As an alternative, you may be required to close your operation.

You are required to submit an application for a Permit to Operate in order to comply with O.R.C. Section 903.082. An application shall be submitted by January 2, 2006, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. Thereafter, you will have 60 days to respond to comments made by LEPP on the permit application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the permit application, you will have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary permit as expeditiously, as possible, subject to the public participation requirements of O.R.C. Section 903.09.

Enclosed please find a copy of the Final Inspection for the inspection conducted on September 18, 2005. I urge you to read this report carefully. You are required to do all the actions listed by the inspector in the attached report on page 22 under the Summary. ODA expects all swine finishing facilities in ODA's jurisdiction to comply with all items listed in this inspection report and swine finishers in this program have a positive record of compliance. We expect the same from you.

If you have any questions, do not hesitate to call me at 614 387-0469.

Sincerely,

A handwritten signature in black ink, appearing to read "K. H. Elder". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Kevin H. Elder  
Executive Director, Livestock Environmental Permitting Program

cc: Chris Rodabaugh, LEPP Inspector  
Andy Rogowski, LEPP Engineer  
Jennifer Tiell, ODA Legal Counsel  
John Kessler/ Mike Nishimura, ODNR-SWCD  
Crawford SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette B. Br  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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September 20, 2005

Monte Tuck  
7895 Parker Road  
Bloomville, OH 44818

**Certified Mail**

Re: Warning Letter

Dear Mr. Tuck,

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on September 19, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility and found no freeboard remaining.

The following are the rules at issue:

Rule 901:10-2-05 of the Administrative Code provides, in pertinent part, at paragraph (A)(4):

“(4) Freeboard.

A fabricated structure shall be designed and maintained to have an operating level that does not exceed the level that provides adequate storage to contain a precipitation event plus six inches of freeboard...”

Rule 901:10-2-05 of the Administrative Code provides at paragraph (A)(5):

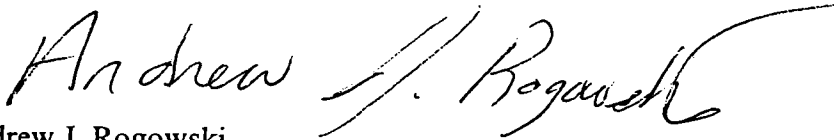
“(5) Fabricated structures for liquid manure shall have a liquid level board, staff gauge, depth marker, or other appropriate device approved by the director, installed within the interior to monitor manure levels.

During the site visit, ODA staff observed that your pits were full and did not have adequate freeboard. You must take immediate action to lower the manure level in both barns. When you begin to haul manure, please adequately agitate both barns to mix the solids. If this does not adequately mix the solids you will need to find a way to remove the solids. You may want to try a pit additive similar to the one that Rodger Rader used to break up a solids problem in their pit. Removal of all manure from both barns shall be top priority. ODA staff will be out on Monday, October 3<sup>rd</sup> to check on your manure hauling progress. Please take soil samples from all fields that will be receiving manure prior to your application this fall. After this we will periodically check your manure hauling progress to ensure the pits are emptied by November 1<sup>st</sup>. When you are applying manure, check tiles regularly to ensure no manure is entering the tiles.

The November 1<sup>st</sup> date is critical if you are to avoid winter application of manure. ODA agrees with U.S. EPA, Ohio EPA, and the Ohio Department of Natural Resources that surface application of manure is only for emergencies. You have sufficient time to plan so that you will not have an emergency.

If you have any questions, do not hesitate to call me at 614 728-9213.

Sincerely,



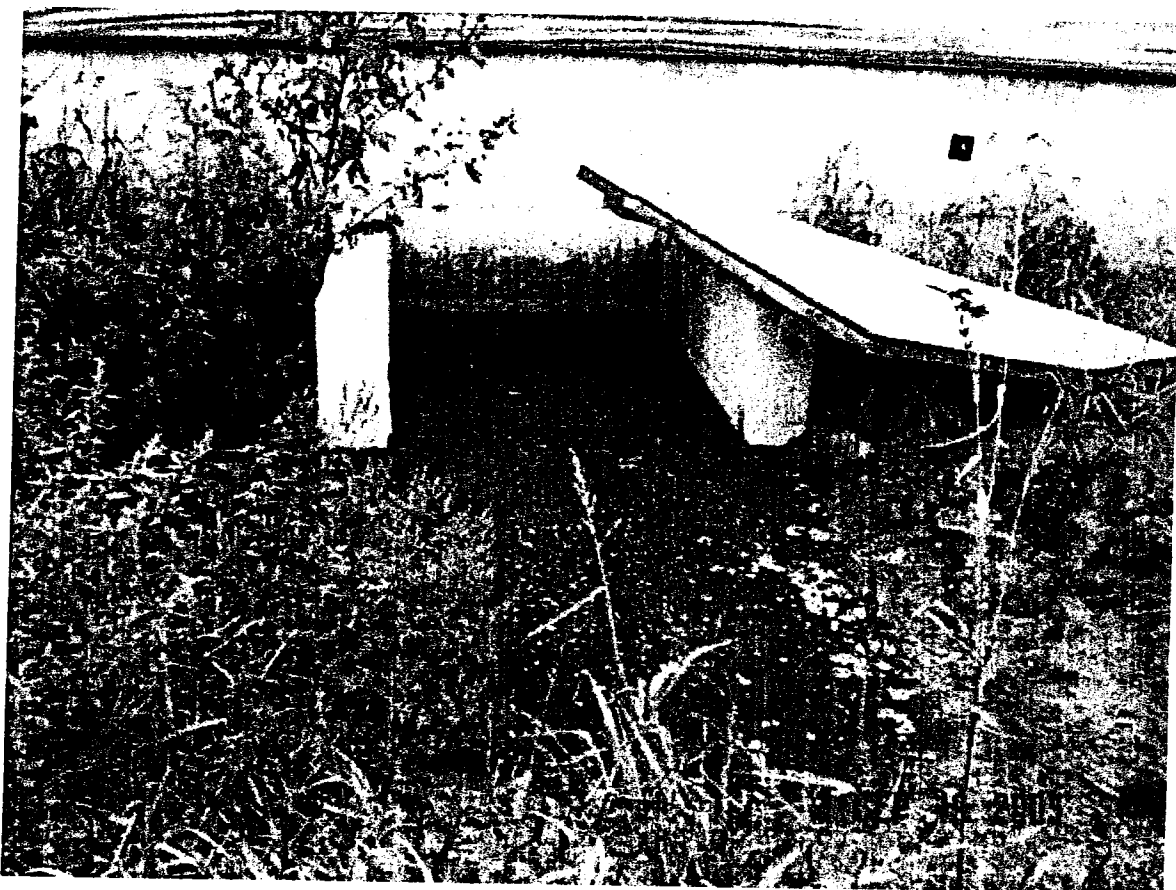
Andrew J. Rogowski  
Livestock Environmental Permitting Program Engineer

cc: Kevin Elder, Executive Director, LEPP  
Chris Rodabaugh, LEPP Inspector  
John Kessler/ Mike Nishimura, ODNR-SWCD  
Crawford SWCD





Barn 1 - full pit shown with liquid feed waste in manure, 9/19/05



Barn 2 - full pits, 9/19/05



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

September 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1 and Croton Pullet Site No. 1. ODA has determined that, by failing to comply with the Insect and Rodent Control Plan (IRCP) contained in the PTOs, that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## **I. FIRST VIOLATION: FAILURE TO TREAT MANURE PRIOR TO REMOVAL FROM BARN.**

### **A. VIOLATION**

ODA has determined that the Consent Order and terms and conditions in the Permit to Operate issued for OFE Croton Layer No.1 and the PTO issued for OFE Croton Pullet No. 1 have been violated. Specifically, the IRCP portions of the PTOs require OFE to treat all manure with an appropriate insecticide prior to removal from barns. During an

inspection on August 12, 2005, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) found a manure stockpile located in a field on OFE property behind Croton Layer No. 4. On August 17, 2005, an inspector found two additional manure stockpiles located in fields belonging to the Clever farm on Foundation Road in Licking County. These two manure stockpiles are identified as Clever East #4 and Clever West #5. The LEPP inspector learned that the manure in these stockpiles originated as OFE Croton Layer No. 1 and Pullet No. 1. There were abundant to extreme levels of flies and larvae observed on the manure of all stockpiles.

## **B. CORRECTIVE ACTIONS**

OFE is required to comply immediately with the terms and conditions of the PTO issued for Croton Layer No. 1 and the PTO issued for Croton Pullet No. 1 by treating all manure with an appropriate insecticide prior to the manure leaving the barns.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D) and (J). Based upon this review, ODA has determined that the violations cited herein are first violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$7,500.00 per week for one week, for a total of \$7,500.00 and the potential for escalated enforcement, including an assessment of \$7,500.00 for each week hereafter for noncompliance with the Corrective Action listed above.

## **II. SECOND VIOLATION: FAILURE TO MONITOR MANURE STOCKPILES AND TO TREAT FOR FLY ACTIVITY.**

### **A. VIOLATION**

ODA has determined that the Consent Order and terms and conditions in the PTO issued for OFE Croton Layer No.1 and the PTO issued for OFE Croton Pullet No. 1 have been violated. Specifically, the IRCP portions of the PTOs require that, if a manure stockpile has abundant to extreme insect populations, OFE monitor the stockpiles every other day for beetle and fly activity until activity has subsided. OFE is required to apply insecticide as necessary to reduce insect populations sufficiently to "few" for imminent land application activities. OFE shall monitor manure stockpiles between applications for pest activity. OFE shall not land apply the stockpiled manure until insect activity has subsided, or when an insecticide can be applied with manure as manure is land applied.

On August 15, 2005, an inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program found a manure stockpile located in a field on OFE property behind Croton Layer No. 4. There were abundant to extreme levels of flies and larvae on and around the stockpiles that swarmed in the fields adjacent to the stockpile. The ODA inspector learned that the manure originated at Ohio Fresh Eggs Croton Layer No. 1 and Pullet Site No. 1.

On August 17, 2005, an inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program conducted a complaint investigation in the fields south of Foundation Road and east of Downing Road. The inspector found two manure stockpiles located in fields belonging to the Clever farm on Foundation Road in Licking County. The manure stockpiles are identified as Clever East #4 and Clever West #5. There were abundant to extreme levels of flies and larvae on and around the stockpiles that swarmed in the fields adjacent to the stockpiles. The ODA inspector learned that the manure in these two stockpiles originated at Ohio Fresh Eggs Croton Layer No. 1 and Pullet Site No. 1.

## **B. CORRECTIVE ACTIONS**

- 1) OFE is required to treat the manure stockpiles at Layer Site No. 4 and at the Clever Farm with insecticide to kill insects when pest insect populations in the manure surface from this stockpile.
- 2) OFE shall monitor the manure stockpile at Layer Site No. 4 and both of the stockpiles on the Clever Farm every other day for pest activity until pest activity has subsided, provided further that insecticide treatment shall continue until pest populations have been reduced sufficiently to "few".
- 3) Once the pest populations have been reduced to few, OFE shall monitor both stockpiles for pest activity every week until such time as the manure stockpiles are removed for land application or some other approved method of disposal.
- 4) OFE shall conduct all activities listed in 1) through 3) above until the manure stockpiles are removed for land application or some other approved method of disposal. The manure stockpiles shall be eliminated no later than October 1, 2005 at which time ODA will inspect the stockpile sites to determine if OFE has returned to compliance.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D) and (J). Based upon this review, ODA has determined that the violations cited herein are first violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action

required herein, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$7,500.00 per week for one week, for a total of \$7,500.00, and the potential for escalated enforcement, including an assessment of \$7,500.00 for each week hereafter for noncompliance with the Corrective Actions listed.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell/Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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September 2, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Mt. Victory Layer Site No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY  
INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS  
REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for

Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE conduct weekly inspections of the barns and that OFE complete operating records documenting the weekly inspections.

Specifically, OFE's IRCP requires that a Compliance Officer inspect each pit once per week. The inspection is to be recorded on the Pit Insect Inspection Report (FEM-5 form). In addition, the Site Production Manager is required to evaluate FEM-5 forms, record corrective actions taken on the FEM-5 forms, and sign the FEM-5 forms. On June 13, 2005, ODA requested that OFE provide the FEM-5 Pit Inspection Report forms from the Operating Records maintained at the Mt. Victory facilities from April 1, 2005 to June 14, 2005.

ODA has determined that from at least April 5, 2005 through June 8, 2005, OFE's Compliance Officer and Site Production Manager failed to record the results of the weekly inspections on the Pit Insect Inspection Reports (FEM-5 forms) that are included in and required by OFE's PTO. Further, Jim Pitsenberger is not a Compliance Officer or a Site Production Manager but completed the FEM-5 forms.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE's Compliance Officer is required to immediately begin conducting the required weekly inspections. The results of the weekly inspections shall be recorded on the FEM-5 form as contained in the PTO. The FEM-5 forms shall thereafter be maintained in the Operating Record. In addition, the Site Production Manager is required to immediately begin evaluation of the weekly inspection of each manure pit, ensure that the appropriate corrective actions are taken, and sign his name to the form.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total of \$22,500.00, and the potential for escalated enforcement.

## **II. SECOND VIOLATION: FAILURE TO UTILIZE THE BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTION FORMS**

### **A. VIOLATION**



OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE's management team conduct bi-weekly pit inspections of the barns from November through April and monthly pit inspections from May through October. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

The PTO requires that the results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Management Team Walk-Through Report (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

ODA reviewed the Management Walk-Through Reports (FEM-6) that are required pursuant to the IRCP for the period of April 5, 2005 through June 8, 2005. The records show that pit inspections were conducted by Cale Ayres or by Harry Palmer. None of individuals conducting the pit inspections used the FEM-6 forms that are included in and required by OFE's PTO.

ODA has determined that from the period of April 5, 2005 through June 8, 2005, OFE's Management Team failed to complete the Management Walk-Through Reports (FEM-6 forms) as required by OFE's PTO.

#### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the correct FEM-6 form, and implementing the action items required to correct any deficiency noted on the FEM-6 form.

#### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 bi-weekly or \$5,000.00

for April 2005 and \$2,500 per month for May and June 2005 (\$5, 000) for a total of \$10,000.00 and the potential for escalated enforcement.

By September 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$32,500.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Howard Lyle, Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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September 2, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Marseilles Layer Site No. 6. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY  
INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS  
REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for

the Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN) requires that OFE conduct weekly inspections of the barns and that OFE complete operating records documenting the weekly inspections.

Specifically, OFE's IRCP requires that a Compliance Officer inspect each pit once per week. The inspection is to be recorded on the Pit Insect Inspection Report (FEM-5 form). In addition, the Site Production Manager is required to evaluate FEM-5 form, reports, record corrective actions taken on the FEM-5 form, and sign the FEM-5 form.

On June 13, 2005, ODA requested that OFE provide the FEM-5 Pit Inspection Report forms from the Operating Records maintained at the Marseilles facilities from April 1, 2005 to June 14, 2005.

ODA has determined that from at least April 7, 2005 through June 14, 2005, OFE's Compliance Officer and Site Production Manager failed to record the results of the weekly inspections on the Pit Insect Inspection Reports (FEM-5 forms) that are included in and required by OFE's PTO. Further, Jim Pitsenberger is not a Compliance Officer or Site Production Manager but completed the FEM-5 forms.

#### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE's Compliance Officer is required to immediately begin conducting the required weekly inspections. The results of these inspections shall be recorded on the FEM-5 form as contained in the PTO. The FEM-5 forms shall thereafter be maintained in the Operating Record. In addition, the Site Production Manager is required to immediately begin evaluation of the weekly inspection of each manure pit, ensure that the appropriate corrective actions are taken, and sign his name to the form.

#### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 10 weeks, for a total of \$25,000.00 and the potential for escalated enforcement.

## **II. SECOND VIOLATION: FAILURE TO UTILIZE THE BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTION FORMS**

### **A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN) requires that OFE's management team conduct bi-weekly pit inspections of the barns from November through April and monthly inspections from May through October. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

The PTO requires that results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Management Walk-Through Report (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

ODA reviewed the Management Walk-Through Reports (FEM-6) that are required pursuant to the IRCP for the period of April 7, 2005 through June 14, 2005. The records show that pit inspections were conducted by Cale Ayres or by Harry Palmer. None of individuals conducting the pit inspections used FEM-6 on the forms that are included in and required by OFE's PTO.

ODA has determined that from the period of April 7, 2005 through June 14, 2005, OFE failed to record the Management Walk-Through Reports on the forms FEM-6 forms) required by OFE's PTO.

### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections with the FEM-6 form approved in the PTO, and implementing the action items required to correct any deficiency noted on the FEM-6 form.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of

seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 bi-weekly or \$5,000.00 for April 2005 and \$2,500 per month for May and June 2005, for a total of \$10,000.00 and the potential for escalated enforcement.

By September 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$35,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jeff Hohman, Wyandot SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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September 1, 2005

Sheldon Farms  
C/o Kurt Sheldon  
10736 SR 701  
Kenton, Ohio 43326

**Certified Mail Return Receipt Requested**

**Re: Warning Letter**

Ohio EPA Permit #08-006-SW  
Ohio Department of Agriculture Review Compliance Certificate  
#SHEL-0001.RC001-HARD

Mr. Sheldon:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on August 4, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that manure from each of your four barns had not been sampled as is required by Rule 901:10-2-10 of the Ohio Administrative Code.

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.  
“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Our records show that prior to this most recent inspection, you were told at the November 12, 2004 inspection that manure analysis was needed. To avoid a Notice of Deficiencies Resulting in Violation, please follow the instructions of the LEPP Inspector to take

samples from all four barns and place the sample results in your Operating Record before a re-inspection after October 30, 2005. Other improvements are needed for your operation, including your annual water sample, but failure to have the manure samples is a repeat violation. Please assure that at that the re-inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection indicates the continuance of the violation noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Hardin County SWCD  
Cathy Alexander, Ohio EPA



Ohio Department of Agriculture  
State of Ohio

In re: Ohio Fresh Eggs, LLC

**Emergency Order No: 2005-243**  
Croton Layer Site No. 1  
OFL1-0001.PO001.LICK

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

Brian M. Babb, Esq.  
Attorney of Record  
Keating, Muething & Klekamp PLL  
1400 Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 45202

**Emergency Order**

The Ohio Department of Agriculture (ODA) completed a total inspection of Ohio Fresh Eggs, LLC's (OFE) Croton Layer No. 1 facility on August 8, 2005. During this inspection, the inspector physically inspected and observed the conditions in all of the barns currently in operation at Croton Layer No. 1, barns 2, 4, 6, 8, 10, 12, 13A, and 14B. The inspector personally observed and recorded evidence of abundant to extreme levels of flies in and around the barns listed above. Pursuant to ODA's authority under Section 903.18 of the Ohio Revised Code (ORC), the Director has determined that an emergency exists requiring immediate action to protect the public health or safety or the environment. OFE is hereby ordered to comply immediately with this Emergency Order.

## Findings of Fact and Conclusions of Law

1. On August 8, 2005, an ODA inspector for the Livestock Environmental Permitting Program conducted an inspection of Croton Layer Site No.1. The inspector conducted physical inspections of all barns in operation (barns 2, 4, 6, 8, 10, 12, 13A and 14B) and observed conditions within these barns. The inspector also reviewed the Operating Records that are required to be kept according to Ohio Administrative Code (OAC) 901:10-2-16 and made the following findings:
  - a. Water leaks occurred on July 15, 2005 at barns 8 and 12 and were reported on form FEM-3.
  - b. Water leaks occurred on July 18, 2005 at barns 8 and 12 and were reported on form FEM-3. In addition, water loss attributable to leaks occurred at barns 6 (9 gallons) and 10 (3 gallons) on July 18, 2005 for a total of approximately 12 gallons over a twelve-hour period.
  - c. On July 19, 2005, the water loss attributable to leaks occurred at barns 2 (12 gallons), 6 (52 gallons), 8 (26 gallons), 10 (37 gallons), and 12 (6 gallons) at a total of approximately 133 gallons over a twelve-hour period.
  - d. Water leaks occurred on July 20 and 21, 2005 for barns 2, 4, 6, 8, 10, and 12 and were reported on form FEM-3. In addition, on July 20, 2005, water loss attributable to leaks occurred at barns 2 (19 gallons), 4 (45 gallons), 6 (38 gallons), 8 (29 gallons), 10 (31 gallons), and 12 (11 gallons) for a total of approximately 172 gallons over a twelve-hour period.
  - e. Water leaks occurred on July 22, 2005 at barn 10 and were reported on form FEM-3.
2. On August 8, 2005, the ODA inspector personally observed water leaking onto the manure belts at barns 2, 4, 6, and 8.
3. During a February 11, 2005 inspection, OFE informed the inspector that water leaks would be repaired by installing new regulators in the water lines. OFE also indicated that the new regulators were already on-site in the warehouse of OFE.
4. During the inspection on August 8, 2005, the inspector determined that OFE had failed to install the regulators.
5. During the inspection on August 8, 2005, the inspector determined that the most recent records of corrective actions to repair water leaks showed two repairs on December 4, 2004 at barn 13A.
6. OFE has failed to produce any records to demonstrate that any water leaks or water losses have been repaired since December 4, 2004.

7. At OFE Croton Layer Site No. 1, OFE failed to conduct daily inspections in barns 2, 4, 6, 8, 10, 12, 13A and 14B at Croton Layer Site No. 1 to locate, record, and repair water leaks immediately and to report the daily inspections on Form FEM-3.
8. OFE has failed to repair all water leaks immediately as required by the Insect and Rodent Control Plan (IRCP) of the Permit to Operate (PTO or "permit") OFL1-0001.PO001.LICK issued to OFE by ODA.
9. During the inspection on August 8, 2005, the inspector determined that barns 2, 4, 6, 8, 10, 12, 13A and 14B at Croton Layer No. 1 contained wet manure and allowed fly breeding resulting in abundant to extreme levels of flies. As set forth in the PTO, an abundant level of flies means that more than five flies are clustered per square foot. As set forth in the PTO, an extreme level of flies means that flies are dense and clustered in hundreds per square foot.
10. Based on a review of the Manure Management Manifest records submitted to ODA, OFE has failed to treat all manure with insecticides prior to removal from the barns for a period from May 2, 2005 to August 8, 2005, as required by the PTO.
11. OFE has failed to maintain manure at 30% moisture level or less at barns 2, 4, 6, 8, 10, 12, and 14B in order to suppress fly and fly larval development as required in the IRCP. Moisture in manure shall be managed in accordance with an approved IRCP of the PTO in order to minimize the presence and level of pest activity as set forth in OAC 901:10-2-19(B)(3)(a)(iv).
12. Immediate action is necessary to prevent abundant to extreme levels of flies at Croton Layer No. 1 from migrating to nearby residences and to protect public health or safety.

### Orders

1. An emergency exists that requires immediate action to protect the public health or safety or the environment.
2. OFE shall immediately commence corrective actions by means of insecticide controls in order to reduce fly levels at all barns at Croton Layer No. 1 to "few" as that term is defined in the permit and the IRCP of the PTO. **These corrective actions shall utilize the actions set forth in the IRCP for fly levels at 50-74: Two actions shall be performed; either baiting using granular bait, or space sprays, or spray on walls, or spray directly on manure, or spray fungus. The Site Production Manager chooses two actions and must have the actions taken recorded in the Operating Record on Form FEM-4 Pesticide**

**Application Log. These actions shall be complete within 24 hours of the receipt of these Emergency Orders.**

3. OFE shall immediately inspect, identify, and repair all water leaks at barns 2, 4, 6, 8, 10, 12, 13A and 14B at Croton Layer No. 1 and **shall complete repairs within 48 hours of the receipt of these Emergency Orders.**
4. OFE shall immediately commence corrective actions to treat all manure with insecticides prior to removal from the barns and otherwise comply with all terms and conditions of the PTO.
5. For the duration of this Emergency Order, OFE shall control and maintain fly levels at the level of "few" as defined in the IRCP; inspect for water leaks daily and repair leaks immediately; and maintain manure at the 30% moisture level or less or remove manure in exceedance of this limit at all permitted facilities at Croton.
6. OFE shall comply with all terms and conditions contained in the permits, with all terms and conditions in the March 1, 2001 Consent Order, and with all applicable laws and regulations.
7. The Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.
8. OFE shall comply immediately with these Orders.

Effective Date of this Order: Upon journalization.

IT IS SO ORDERED:

  
Fred L. Dailey, Director

10 August, 2005  
Date

CERTIFICATION

STATE OF OHIO,  
COUNTY OF LICKING, SS

:  
:

Order No. 2005-243

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of EMERGENCY ORDER 2005-243, which was entered upon the order journal of the Ohio Department of Agriculture on this 10th day of August 2005.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 10th day of August, 2005.

  
Fred L. Dailey, Director  
Ohio Department of Agriculture



#### NOTICE OF APPEAL RIGHTS

**This EMERGENCY ORDER takes effect immediately.** The EMERGENCY ORDER may be appealed. Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the EMERGENCY ORDERS. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on August 10, 2005.

Please note that if your company is a corporation or a limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent a corporation or a limited liability company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why these Emergency Orders should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Office:  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 1 (OFL1-0001.PO001.LICK) requires that OFE conduct weekly inspections of the barns and that OFE complete operation records documenting the inspections.

Specifically, OFE's IRCP requires that a Compliance Officer inspect each pit once per week. The inspection is to be recorded on the Pit Insect Inspection Report (FEM-5 form). In addition, the Site Production Manager is required to inspect each manure pit weekly and as necessary as indicated by the FEM-5 form.

During an inspection on March 9, 2005, the ODA Livestock Environmental Permitting Program (LEPP) inspector found that the weekly inspections to be conducted and the FEM-5 forms to be completed by the Compliance Officer and the Site Production Manager had not been performed from November 4, 2004 through March 9, 2005.

ODA has determined that from at least November 4, 2004 through March 9, 2005, OFE's Compliance Officer and Site Production Manager failed to conduct the weekly inspections and to complete the Pit Insect Inspection Reports (FEM-5 forms) as required by OFE's PTO.

**B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit and maintain records in the Operating Records.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement.

**II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

## **A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 1 (OFL1-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA listing Mohammed Mousa as the Assistant General Manager, Chris Art as the Production Manager, Allen Hildenbrandt as the Processing Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton, which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) that are required pursuant to the IRCP for the period of November 4, 2004 to March 9, 2005. The records show that pit inspections were conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to ODA), Gavino (last name unavailable to ODA), and Benancio Nolasco-Ramos. None of individuals conducting the pit inspections are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, Compliance Department Manager, or Director of Operations at Croton Layer No. 1.

ODA has determined that from November 4, 2004 through March 9, 2005, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.



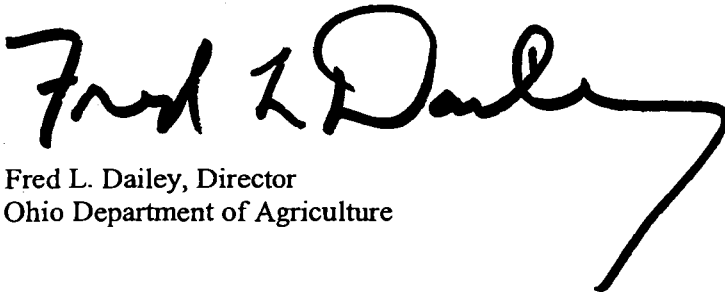
### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement.

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$90,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer No. 2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 2 (OFL2-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Croton Layer No. 2 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Layer No. 2.

**B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA

has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Layer No. 2.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Layer No. 2, which ODA construes as the individuals and titles of persons of the OFE Management Team.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$90,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

August 9, 2005

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Ronald L. Flory  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

Mohamed Mousa Aboughazala  
Ohio Fresh Eggs Manager LLC  
11212 Croton Road  
Croton, Ohio 43013-0173

**Certified Mail**

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer No. 3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

- I. **FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

## **A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 3 (OFL3-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildebrand, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Layer No. 3 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Layer No.3.

## **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators

fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

## **II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Layer No. 3 which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Layer No. 3.

### **B. CORRECTIVE ACTION REQUIRED**

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

### **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has



also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$90,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD

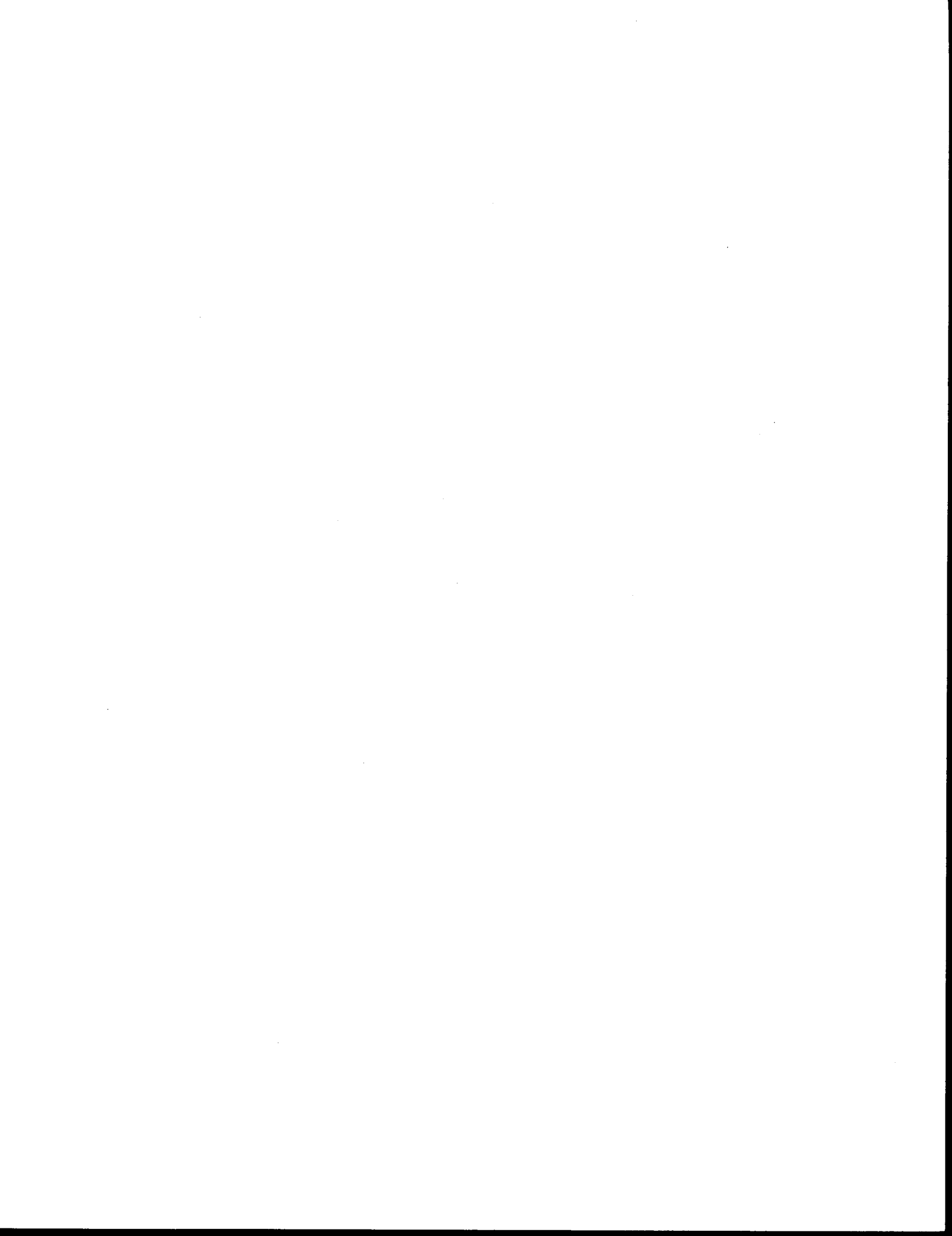
**The Ohio Department of Agriculture and the National Pollutant Discharge  
Elimination System Program – Program Revision under 40 CFR Part 123**

Volume 3  
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Enforcement Documents







**OHIO DEPARTMENT OF AGRICULTURE  
STATE OF OHIO**

In re:

**OHIO FRESH EGGS, LLC**

Order No. 2006- 444

Respondent

**ORDER**

Based on the record before me I find that on September 29, 2005, the Ohio Department of Agriculture ("the Department") issued a Notice of Opportunity for Hearing to Ohio Fresh Eggs, LLC (sometimes referred to as "OFE"). The Notice advised Ohio Fresh Eggs of the Department's proposal to issue an order revoking certain Permits to Install and Permits to Operate held by OFE for failure to comply with sections 903.02(C)(1), 903.03(C)(1), and 903.05 of the Ohio Revised Code and section 901:10-1-02(A) of the Ohio Administrative Code ("OAC"). The specific permits proposed for revocation were:

Croton facility -

OFL 1-0001.PI001.LICK  
OFL 2-0001.PI001.LICK  
OFL 3-0001.PI001.LICK  
OFL 4-0001.PI001.LICK  
OFL 1-0001.PO001.LICK  
OFL 2-0001.PO001.LICK  
OFL 3-0001.PO001.LICK  
OFL 4-0001.PO001.LICK  
OFP 1-0001.PO001.LICK  
OFP 2-0001.PO001.LICK  
OFP 3-0001.PO001.LICK  
OFP 4-0001.PO001.LICK  
OFHB-0001.PO001.LICK

Northern facilities -

OFGO-0001.PO001.HARD  
OFMT-0001.PO001.HARD  
OFMA-0001.PO001.WYAN

Ohio Fresh Eggs submitted a timely request for a hearing before the Department with respect to the proposed revocations.

The hearing was held over a period of eight days before Howard D. Silver, Hearing Officer. The hearing began June 7, 2006 and concluded June 16, 2006. The Department of Agriculture was represented by L. Scott Helkowski and John K. McManus, Assistant Attorneys General. The Respondents were represented by Joseph Reidy and Elizabeth Tulman of Schottenstein Zox & Dunn. On October 31, 2006, the Hearing Officer issued his Report and Recommendation, which was received by Respondents on November 1, 2006.

The State and Respondents filed Objections to the Report and Recommendation on November 13, 2006. Both parties also filed closing argument briefs with the Hearing Officer prior to the issuance of the Report and Recommendation.

State's and Respondents' Objections to the Report and Recommendation, the parties' briefs and relevant portions of the transcript and exhibits were considered by the Department before approving, modifying or disapproving the Report and Recommendation.

After careful consideration, by the authority vested in my office by law, it is hereby ORDERED:

1. That the Findings of Fact and Conclusions of Law contained in the Report and Recommendation attached hereto as Exhibit A, are adopted in part and reversed in part;
  - a. Specifically, I reverse the Hearing Officer's granting of Respondents' Motion in Limine which limited the evidence to Respondents' acts

which occurred prior to ODA's granting of the Permits to Install and Permits to Operate to Respondents as such evidence is relevant to the determination of this revocation action;

- b. The remainder of the Report and Recommendation is adopted as my own;
- 2. That the Recommendation contained in the Report and Recommendation attached hereto as Exhibit A is approved and confirmed;
- 3. That Respondents' Objections, attached as Exhibit B, are overruled;
- 4. That State's Objection, attached as Exhibit C, is adopted;
- 5. That Respondents' Reply to State's Objections, attached as Exhibit D, is overruled;
- 6. That the following permits of Respondent Ohio Fresh Eggs, LLC, are hereby revoked:

Croton facility -

OFL 1-0001.PI001.LICK  
OFL 2-0001.PI001.LICK  
OFL 3-0001.PI001.LICK  
OFL 4-0001.PI001.LICK  
OFL 1-0001.PO001.LICK  
OFL 2-0001.PO001.LICK  
OFL 3-0001.PO001.LICK  
OFL 4-0001.PO001.LICK  
OFP 1-0001.PO001.LICK  
OFP 2-0001.PO001.LICK  
OFP 3-0001.PO001.LICK  
OFP 4-0001.PO001.LICK  
OFHB-0001.PO001.LICK

Northern facilities -

OFGO-0001.PO001.HARD  
OFMT-0001.PO001.HARD  
OFMA-0001.PO001.WYAN

- 7. In order to assure the orderly and environmentally acceptable cessation of operations



at the Respondents' facilities, the Respondents shall proceed as follows:

- a. Respondents shall close a barn every two (2) business days, commencing within twenty (20) business days of the effective date of this ORDER. All barns closed as of the effective date of this ORDER shall be considered closed and shall remain closed.
  
- 1) Respondents shall begin barn closures commencing at the Croton facilities located in Licking County. Respondents shall proceed as follows:
  - a) Close all barns at Croton Layer Site No. 1;
  - b) Close all barns at Croton Layer Site No. 4;
  - c) Close all barns at Croton Pullet sites No. 1 and No. 2, the breeder site, and hatchery;
  - d) Close all barns at the Goshen facility, located in Hardin County
  - e) Close all barns at the Mt. Victory facilities, located in Hardin County;
  - f) Close all barns at the Marseilles facilities, located in Wyandot County;
  - g) Close all barns of the Croton Pullet sites No. 3 and No. 4;
  - h) Close all barns at Croton Layer Site No. 2; and
  - i) Close all barns at Croton Layer Site No. 3.

8. Barn closures include, but are not limited to:

- a. Remove all poultry. In no case may poultry be temporarily moved from one set of closing facilities to another set of facilities scheduled for closure;
- b. Clean, remove or dismantle feed bins and feed conveyor lines;
- c. Drain all water lines and shut off service to all water lines.

9. Concurrent with the sequence of barn closures listed above, Respondents shall commence closure of any manure storage ponds or manure treatment lagoons not authorized

by the National Pollutant Discharge Elimination System (NPDES) permits issued by the Director of Ohio EPA. Closure shall be performed in accordance with paragraph (B) of rule 901:10-2-18 of the Ohio Administrative Code;

10. Barn closures of all of Respondents' facilities shall be completed by July 6, 2007. Manure shall be removed from all barns and manure storage or treatment facilities, and all manure treatment facilities shall be closed no later than November 30, 2007;

11. That upon journalization a certified copy of this Order be sent to the following:

L. Scott Helkowski, Esq.  
John K. McManus, Esq.  
Assistant Attorneys General  
Ohio Attorney General's Office  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215

and

Joseph Reidy, Esq.  
Elizabeth Tulman, Esq.  
Schottenstein Zox & Dunn  
P.O. Box 165020  
Columbus, Ohio 43216



Effective date of this Order: Upon journalization

Howard F. Wise  
Howard F. Wise, Assistant Director

Nov. 30, 2006  
Date

Entered Ohio Department of Agriculture Journal on this 30<sup>th</sup> day of  
November, 2006 by Cornie Lillis

## **NOTICE OF APPEAL RIGHTS**

This ORDER may be appealed within 30 days to the Environmental Review Appeals Commission (ERAC), 309 South Fourth Street, Room 222, Columbus, Ohio 43215, pursuant to Section 903.09 of the Revised Code. The notice of appeal must set forth the ORDER appealed from and the grounds of the party's appeal. A copy of the Notice of Appeal shall also be filed with the Director of Agriculture within three days after filing the appeal with ERAC.

**CERTIFICATION**

STATE OF OHIO,  
COUNTY OF LICKING, SS

:  
:

Order No. 2006-441

I, Howard F. Wise, Assistant Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of ORDER #2006-441, which was entered upon the order journal of the Ohio Department of Agriculture on 30th day of November, 2006.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 30th day of November, 2006.

Howard F. Wise  
Howard F. Wise, Assistant Director  
Ohio Department of Agriculture





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@mail.agri.state.oh.us](mailto:agri@mail.agri.state.oh.us)

November 30, 2006

Mill Creek Dairy  
C/o Andrew Brehm  
15188 US 127  
West Unity, OH 43570

**Certified Mail**

Re: **Warning Letter**  
Permit No. MIL-0001.PO001.WILL

Dear Mr. Brehm:

ODA has determined that Mill Creek Dairy, LLC (Mill Creek or "Facility") has failed to comply with sections 903.02(C)(1), 903.03(C)(1) and 903.05 of the Ohio Revised Code (ORC) and rule 901:10-1-02(A)(4) of the Ohio Administrative Code (OAC). This Warning Letter summarizes our findings of violations and required actions to be taken to return to compliance.

On April 1, 2004, the Director of the Ohio Department of Agriculture ("Director" and "ODA") issued an Order for a Permit to Install and a Permit to Operate (PTO), Order No. 2004-057, as well as PTO MIL-0001.PO001.WILL to Andrew Brehm and Mill Creek Dairy.

As required by OAC 901:10-1-08, Mill Creek informed the Director in November 2005 that it proposed to include Jacob Schot and Arno Schot as operators of Mill Creek. Andrew Brehm would continue to assume responsibilities as the owner of the Facility.

Based on information submitted by Mill Creek as required by 903.05 of the ORC and OAC 901:10-1-08 and based further on additional information regarding compliance history obtained by my staff in the Livestock Environmental Permitting Program (LEPP), we evaluated the compliance history of Jacob Schot and Arno Schot, and concluded that there were substantial issues of noncompliance regarding Jacob Schot and Arno Schot in their operation of New Flevo Dairy, 9717 Forester Road, Adrian, Michigan. A copy of the staff evaluation of Jacob Schot and Arno Schot was transmitted by facsimile copy to Mr. Brehm in November 2005.

In response to this staff evaluation, in January 2006, Mill Creek informed the Director that it proposed to include Klaas [Klaas-Hendrik or "Klaus"] Koopman as operator of Mill Creek with Andrew Brehm as the owner of the Facility.

Based on Section 903.05 of the ORC and OAC 901:10-1-08 and based further on additional information obtained by my staff regarding the compliance history of Klaas Koopman, the Director issued Order No. 2006-073 on February 22, 2006, to modify the permit as PTO MIL-0002.PO001.WILL and authorize Klaas Koopman to be the operator of Mill Creek.

ODA obtained a copy of a lease entered into by Mill Creek Dairy, LLC and New Flevo Dairy beginning December 1, 2005, automatically renewable for successive one (1) year terms until December 31, 2015. Mill Creek is identified as the Landlord and New Flevo Dairy is identified as the Tenant. As noted above, New Flevo Dairy is owned by Jacob Schot and Arno Schot. For purposes of the lease the term "Waste" is defined as all manure as defined in Section 903.01 of the ORC. Pursuant to terms of the lease, Tenants were to use the premises for the operation of a dairy farm or any other use, which Landlord approves in writing. Further, Tenants were financially and environmentally responsible for containing and conveying all waste in designated waste storage facilities. The Landlord--Mill Creek -- was financially and environmentally responsible for pumping, transporting, spreading and containing waste on applied lands, from the waste storage facilities.

During an inspection conducted by the LEPP Inspector on October 26, 2006, the Inspector determined that Mill Creek is actually operated by Unity Dairy, LLC. Thereafter, LEPP confirmed that no background report exists on file for Unity Dairy. Unity Dairy, LLC and New Flevo Dairy are not authorized or approved by the Director to own or operate Mill Creek. In the Articles of Organization that are filed with the State of Ohio, Secretary of State, there are no names of members listed as Unity Dairy, LLC. Only Monique Koopman, 205 Lloyd Road, Statesville, North Carolina, 28625 is listed as an authorized representative of Unity Dairy, LLC. Specifically, Klaas Koopman is not listed as a member of Unity Dairy, LLC. The only person with a background report on file with the Director's approval to serve as operator of Mill Creek is Klaas Koopman. A copy of the Director's Order approving Mr. Koopman as operator was sent to Mill Creek by the LEPP Inspector on November 14, 2006.

By failing to list Arno Schot, Jacob Schot, Monique Koopman, New Flevo Dairy or Unity Dairy, LLC on the permit as required, Mill Creek's permit contains misleading or false information. OAC 901:10-1-03(A)(1) provides that "The Director shall deny, suspend or revoke a permit to operate if: (1) The permit application contains misleading or false information."

Upon receipt of this letter Mill Creek and Andrew Brehm shall correct these deficiencies by providing to the Director, **not later than December 31, 2006**, a true statement

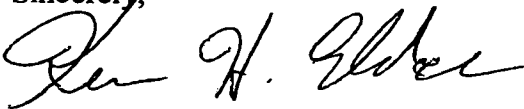
notarized by a person independent of Mill Creek Dairy, LLC, which states all of the following:

1. Andrew Brehm is the sole owner and Klaus Koopman is the sole operator of Mill Creek Dairy, LLC; and
2. Any lease or other agreement for operation of Mill Creek Dairy:
  - between Mill Creek Dairy and New Flevo, or
  - between Mill Creek Dairy and Arno Schot, or
  - between Mill Creek Dairy and Jacob Schot, or
  - between Mill Creek Dairy and Monique Koopman, or
  - between Mill Creek Dairy and Unity Dairy, LLC, is terminated.

If Mill Creek and Andrew Brehm fail to comply with this corrective action, the Director will propose to issue a revocation order in accordance with Section 903.09(F) of the ORC and thereby afford Mill Creek and Andrew Brehm an opportunity for an adjudication hearing under Chapter 119. of the ORC.

Please direct any questions concerning this Warning Letter to legal counsel for this program, Jennifer Tiell or Kristina Erlewine, at 614-387-0470. Please send properly notarized statements with evidence of compliance to my attention. I look forward to your cooperation in this matter.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc: Andrew Ety, LEPP Engineer  
Jennifer Tiell, Legal Counsel, Ohio Dept. of Agriculture  
Kristina Erlewine, Legal Counsel, Ohio Dept. of Agriculture  
Chris Rodabaugh, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Tom Traxler, Williams SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

Certified Mail Return Receipt Requested

November 27, 2006

Assen Dairy, LLC  
C/o Pieter and Johannes  
8500 Yankeetown-Chenoweth Road  
London, Ohio 43140

Re: Director's Notice of an Adjudication Hearing

Dear Mr. Assen:

This document is notice that the Director of the Ohio Department of Agriculture ("Director") ("ODA" or "Department"), under the authority of Ohio Revised Code ("R.C.") 903.16, proposes to issue an order to Assen Dairy, LLC ("Assen Dairy") imposing a civil penalty of \$57,000 because of the ODA's determination that Assen Dairy has failed to comply with Rule 901:10-2-04 of the Ohio Administrative Code (OAC).

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On July 3, 2006, ODA issued a Warning Letter to Assen Dairy, LLC citing results of a partial inspection conducted in response to a discharge noted and observed by Ohio EPA on June 6, 2006. At that time Harry Kallipolitis, Ohio EPA, Division of Surface Water, Storm Water Program, observed a discharge coming from the feed storage and feed preparation area and discharging into an unnamed tributary. The Inspector from the Livestock Environmental Permitting Program (LEPP) visited the facility to confirm the discharge and the containment and corrective actions of the discharge.

In October 2005, ODA reviewed and approved plans for the construction of a storm water/leachate pond for your facility. At the time of the July 3, 2006 Warning Letter, construction of this storage pond had begun but had since stopped. Rule 901:10-2-04 of the Ohio Administrative Code (OAC) requires



facilities to be built to contain and store storm water and leachate. ODA's July 3, 2006 Warning Letter required Assen Dairy, LLC to complete construction of the approved storm water/leachate pond as soon as possible but no later than July 31, 2006.

On August 23, 2006, a LEPP Inspector conducted a partial inspection of your facility and determined that Assen Dairy had failed to comply with the July 3, 2006 Warning Letter. On September 7, 2006, a Director's Notice of Deficiencies Resulting in Noncompliance (NOD) was issued to Assen Dairy, LLC. ODA determined that Assen Dairy, LLC failed to contain storm water and leachate in a pond as required by Ohio Administrative Code Rule 901:10-2-04. Assen Dairy, LLC was required to correct the deficiencies by September 25, 2006 by completing construction of the approved storm water/leachate pond.

On October 6, 2006, a LEPP Inspector conducted another partial inspection of Assen Dairy to determine whether Assen Dairy, LLC had complied with the required corrective actions in the September 7, 2006 NOD. The inspector determined that Assen Dairy still had not completed construction of the storm water/leachate pond.

During a regularly scheduled ODA inspection on November 8, 2006, it was determined that additional excavation had been completed since the October 6, 2006 inspection, but only to approximately two-thirds completion of the excavation. Therefore, the pond was still not complete at this time, since additional excavation and the installation of the clay liner system is still required.

Based on Assen Dairy, LLC's failure to correct the deficiencies by the required date and the failure to return to compliance, the Director is now issuing this Notice of Hearing ("Notice") and proposing the imposition of a \$1000.00 penalty for each day beginning July 31, 2006 and ending September 25, 2006 that Assen Dairy was not in compliance for a total of \$57,000.

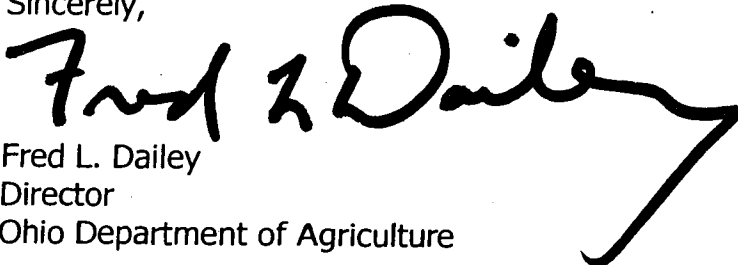
Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on November 27, 2006.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,



Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder - Executive Director, Livestock Environmental Permitting Program  
William J. Hopper - Chief Counsel, ODA  
Anthony L. Seegers - Assistant Attorney General  
Jennifer Tiell - ODA Legal Counsel  
Kristina Erlewine - ODA Legal Counsel  
Cathy Alexander - Ohio EPA  
Jim Young - ODA LEPP Inspector  
Andy Ety - ODA LEPP Engineer  
Madison SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

November 9, 2006

Dull Homestead  
C/o Mr. Pete Dull  
10404 National Road  
Brookville, Ohio 45309

Certified Mail

Re: Warning Letter-Freeboard

Dear Mr. Dull:

A violation of Ohio Department of Agriculture laws and rules was discovered during a routine inspection of Dull Homestead by my staff on October 19, 2006. On that date, the inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program (LEPP) found that the manure depth in finishing barn #1 was less than ½ inch from overflowing through the pit fan opening. During the previous routine inspection on March 23, 2006, the inspector from LEPP found that the manure depths in three barns were within 2-3 inches of the 6 inch freeboard level.

The following rule is at issue:

Rule 901:10-2-08(A)(4)(b) of the Administrative Code requires that the operating level of a fabricated structure must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional six inches of freeboard.

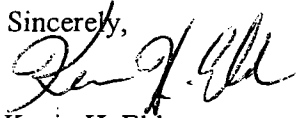
You must take immediate action to lower the manure level in the barns nearing the freeboard limit. Removal of all manure from all barns shall be top priority. The report from the October 19, 2006 routine inspection provides detailed information regarding the maximum operating levels in the pits and approximate amounts of manure needing removed this fall to provide the minimum of 120 days storage. ODA staff will conduct a follow-up inspection in Mid-November to check on your manure hauling progress.

After this inspection, we will periodically check your manure hauling progress. When you are applying manure, you must keep all the required application records in your operating record and make these records available to the LEPP inspector.

Finally, I advise you that these requirements for periodic monitoring and records of liquid manure levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,



Kevin H. Elder

Executive Director, Livestock Environmental Permitting Program

Cc: Christine Pence, LEPP Inspector  
Jennifer Tiell, Legal Council  
Cathy Alexander, Ohio EPA  
Montgomery SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Office  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: (614) 466-2732 • Fax: (614) 466-  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

**Certified Mail Return Receipt Requested**

October 30, 2006

Van Ham Dairy LLC  
C/o Mr. and Mrs. Jan Van Ham  
22177 Road C  
Continental, Ohio 45861

**Re: Director's Notice of an Adjudication Hearing**

Dear Mr. and Mrs. Van Ham:

This document is notice that the Director of the Ohio Department of Agriculture ("Director") ("ODA" or "Department"), under the authority of Ohio Revised Code ("R.C.") 903.16, proposes to issue an order to Van Ham Dairy LLC ("Van Ham Dairy") imposing a civil penalty of \$32,000.00 because of the ODA's determination that Van Ham Dairy has failed to comply with Ohio Administrative Code ("O.A.C.") 901:10-2-01(B)(2).

O.A.C. 901:10-2-01(B)(2) provides, in pertinent part:

"Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted for the permanent record."

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On December 16, 2004, the ODA informed Mr. Jan Van Ham, as owner and operator of Van Ham Dairy, that Van Ham Dairy needed to submit to the ODA a complete set of as-built plans and a notarized letter as required in O.A.C. 901:10-2-01(B)(2) before the ODA could authorize Van Ham Dairy to utilize the manure storage pond. During an inspection on December 21, 2004, an ODA Livestock Environmental Permitting Program ("LEPP") inspector observed that Van Ham Dairy was using the manure storage pond despite its failure to provide the ODA with a copy of the approved as-built plans and notarized letter as required by O.A.C. 901:10-2-01(B)(2).

On February 22, 2005, the ODA issued a Notice of Deficiencies Resulting in Noncompliance ("NOD") to Van Ham Dairy for its failure to comply with O.A.C. 901:10-2-01(B)(2). Van Ham Dairy was required to correct the deficiencies by November 1, 2005 by providing notice to the ODA by telephone and in writing as soon as the manure storage pond was emptied. In the written notification to the ODA, Van Ham Dairy was required to describe its actions to remove the temporary dike and complete the construction of the bottom of the manure storage pond. The corrective actions also required Van Ham Dairy to submit a complete set of as-built plans identifying all of the following:

1. Location of exploratory trench, with approximate location of all tiles encountered and a brief description of how these tiles were plugged and/or rerouted.
2. Documentation of proof-rolling requirements of all final surfaces of the manure storage pond and confirmation that all material in the bottom of this manure storage pond is as identified in the approved plans.
3. Documentation that the bottom 9-inches of the pond was disked and recompacted as described in the approved plans.
4. Documentation that all engineered fill was placed as was described in the approved plans.
5. Location and description of liquid level markers as was described in the approved plans.
6. Verification that scour protection was installed as was described in the approved plans.
7. A final survey of the entire manure storage pond, after dike removal, that shows compliance with the approved set of design plans.

An inspection of Van Ham Dairy was conducted by LEPP on November 9, 2005 to determine whether Van Ham Dairy had complied with the required corrective actions in the February 22, 2005 NOD. The LEPP inspector determined that Van Ham Dairy had failed to make the necessary corrections by November 1, 2005 set forth in the February 22, 2005 NOD. Based on Van Ham Dairy's failure to correct the deficiencies by the required date, and the failure to return to compliance, the Director is now issuing this Notice of Hearing ("Notice") and proposing the imposition of a \$800.00 penalty for each day after the NOD's deadline of November 1, 2005 that Van Ham Dairy was not in compliance for a total of \$32,000.00.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on October 30, 2006.

Please note that if your company is a corporation or limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent your company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style.

Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program

William J. Hopper, Chief Counsel, ODA  
Anthony L. Seegers, Assistant Attorney General  
Jennifer Tiell, ODA Legal Counsel  
Kristina Erlewine, ODA Legal Counsel  
Cathy Alexander, Ohio EPA  
Chris Rodabaugh, LEPP Inspector  
Van Wert SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Office  
8995 East Main Street • Reynoldsburg, Ohio 43068-3301  
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October 18, 2006

The Honorable Jim Petro  
Attorney General of Ohio  
C/o Dale T. Vitale, Senior Deputy for Environmental Enforcement  
State Office Tower  
30 East Broad Street, 17<sup>th</sup> floor  
Columbus, Ohio 43015

**Re: Referral of Monte and Sheila Tuck  
7895 Parker Road  
Bloomville, Ohio 44818**

Dear Mr. Petro:

In accordance with Sections 903.16 of the Ohio Revised Code, I hereby request that your office take appropriate enforcement action against the above-referenced individuals as owners and operators of an animal feeding facility for violations of Chapter 903 of the Ohio Revised Code (ORC) and its associated regulations.

By letter dated August 25, 2005, the Chief of the Ohio Department of Natural Resources (ODNR), Division of Soil and Water Conservation, provided a copy of an order issued under Section 1511.02 of the ORC to the Ohio Department of Agriculture that specified that the animal feeding facility owned and operated by Monte and Sheila Tuck was causing agricultural pollution by failure to comply with standards established under that section. My designated representative, Kevin Elder, Executive Director, Livestock Environmental Permitting Program, Ohio Department of Agriculture (ODA) directed his staff to inspect this facility. ODA inspections commenced on September 18, 2005 and continue to show that Tuck Farms is not a small or medium concentrated animal feeding operation, as defined by the federal Water Pollution Control Act; nevertheless, the facility is not being operated in a manner that protects the waters of the state and must be permitted in accordance with Section 903.082 of the ORC. Since September 19, 2005, Monte and Sheila Tuck have failed to comply with ODA requests to comply with permitting requirements.

On September 7, 2006, I notified Mr. Tuck of my determination that Tuck Farms and Monte and Sheila Tuck are required to be permitted in accordance with Section 903.082 of the ORC. Based upon the results of inspections conducted by ODA, including an inspection on October 5, 2006, I request enforcement action by your office. Specifically,



I request action to prohibit any further stocking of livestock at this facility unless or until the facility returns to compliance.

If there are any questions about this case or matters related to this request, please direct them to either Jennifer Tiell or Kristina Erlewine, of my staff.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail on the "y".

Fred L. Dailey  
Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting  
Program.  
David Hanselmann, Chief, Ohio Dept. of Natural Resources, Division of Soil and  
Water Conservation



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@mail.agri.state.oh.us](mailto:agri@mail.agri.state.oh.us)

October 12, 2006

5C's Farm Inc.  
Bill Cleland Jr.  
06083 Cicero Rd.  
Hicksville, OH 43526

**Certified Mail Return Receipt Requested**

**Re: Warning Letter: 5C's Farm Inc.**  
Permit to Operate (PTO) 5CS-0001.PO001.DEFI.

Dear Mr. Cleland:

Violations were discovered by an inspector for the Livestock Environmental Permitting Program (LEPP) during one of the two inspections conducted each year at the facility. ODA determined that 5C's Farm Inc. failed to comply with Rules 901:10-2-08; 901:10-2-10; 901:10-2-14; and 901:10-2-16 of the Ohio Administrative Code (OAC).

## **I. VIOLATION: WATER WELL ANALYSIS**

ODA has determined that OAC 901:10-2-08 (A)(4)(I)(i); 901:10-2-08(A)(4)(ii); 901:10-2-16 have been violated. The LEPP inspector noted at the September 25, 2006 inspection that you had not conducted annual ground water well analysis with results recorded in the Operating Record.

## **CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by collecting or obtaining the required samples, having the samples tested for total coliform and nitrates. Record the analytical results in the facility's Operating Record. OAC 901:10-2-16(A)(1)(a)(vii).

## **II. VIOLATION: MANURE CHARACTERIZATION**

ODA has determined that OAC 901:10-2-10 has been violated. Specifically, OAC 901:10-2-10(C) requires that "at a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids."

The LEPP inspector noted at the September 25, 2006 inspections that you had not conducted the annual manure analysis as required by the PTO. There are a total of five separate samples due

prior to land application for this facility: the stormwater/leachate pond; both the south and north manure pits, solid manure from bedded barns and mortality compost.

### **CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by collecting or obtaining the required samples; having the samples tested for total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids. Record the analytical results in the facility's Operating Record. OAC 901:10-2-16(A)(1)(b).

### **III. VIOLATION: MANURE STORAGE MONITORING AND INSPECTIONS**

ODA has determined that OAC 901:10-2-08(A)(4)(f), 901:10-2-08(A)(4)(i), and OAC 901:10-2-16 has been violated. Specifically, OAC 901:10-2-8(A)(4) requires "at a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:"

"The liquid manure volume...by the depth marker." OAC 901:10-2-08(A)(4)(f).

"Conduct weekly inspections of storm water or diversion devices...channeling contaminate storm water to the manure storage pond or manure treatment lagoon and note proper operation and maintenance in the operating record." OAC 901:10-2-08(A)(4)(i).

The LEPP inspector noted at the September 25, 2006 inspection that you had not recorded the inspections in the Operating Record of the manure storage structures, which must be inspected on a weekly basis.

### **CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by inspecting all manure storage structures on a weekly basis and placing the results in the facility's Operating Record. OAC 901:10-2-16(A)(1)(a)(iii) and 901:10-2-16(A)(1)(a)(iv).

### **IV. VIOLATION: MANURE APPLICATION RECORDS**

ODA has determined that OAC 901:10-2-14 has been violated by not recording of all manure application: "The land application of manure at each land application site shall be conducted to utilize nutrients at agronomic rates, and to minimize nutrient runoff to waters of the state and shall be recorded in the operating record in accordance with rule 901:10-2-16 of the OAC."

The LEPP inspector noted at the September 25, 2006 inspection that you had not recorded the manure applications.

### **CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by recording all the information required in OAC 901:10-2-16 pertaining to manure application. OAC 901:10-2-16(A)(1)(c).

To avoid a Notice of Deficiencies Resulting in Violation, please follow the instructions of the LEPP inspector and read your Inspection Report carefully. We take these violations very

seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection indicates the continuance of the violation noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Please feel free to direct any questions concerning this Warning Letter to the LEPP inspector. I look forward to your continuing cooperation in this matter.

Sincerely,



Kevin H. Elder  
Executive Director, Livestock Environmental Permitting Program

Cc: Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture  
Chris Rodabaugh, LEPP Inspector  
Defiance SWCD  
Cathy Alexander, Ohio EPA



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio •  
Phone: 614-387-0470 • Fax 614-728

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October 11, 2006

Lochtefeld Enterprises  
C/o Mark and Wilbert Lochtefeld  
1085 Union City Road  
Ft. Recovery, Ohio 45846

**Certified Mail**

**Re: Warning Letter**

Gentlemen:

Violations of Ohio Department of Agriculture rules were discovered during a complaint investigation by the Livestock Environmental Permitting Program (LEPP) staff on August 30, 2006. LEPP responded to a complaint of a possible manure discharge near the headwaters of Fort Creek, on the north side of Darke-Mercer Co. Line Road. The inspector learned that Lochtefeld Enterprises applied manure on August 16 and 17, 2006, with a Knight spreader to 95 acres of wheat stubble, incorporated the same day of application with manure incorporation in two different directions.

The inspector investigated four tiles that may have conveyed contamination to the point of discharge. The inspector found that two of the four tiles are not related to the application field used by Lochtefeld Enterprises. The application field is 728.75 feet from the eventual point of discharge. However, Mr. Lochtefeld demonstrated at the field and in the operating records that a setback of 102 feet had been maintained from the newly constructed waterway in the application field. On August 27 and 28, 2006, the area received 2.37 inches of rain. However, operating records confirmed the dates of manure application on August 16 and 17, 2006, well in advance of any 24-hour forecast of rain that would have prohibited application. Refer to Ohio Administrative Code 901:10-214(C)(6).

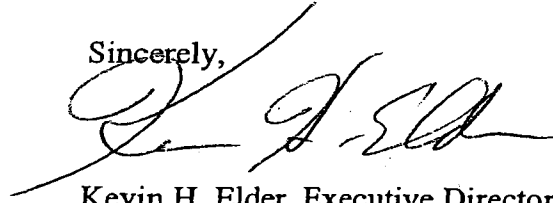
The LEPP inspector found that the manure application rate was exceeded. This is due, in part, to a discrepancy in the total number of acres available for the application, i.e., 88.7 acres or 95 acres. The inspector also found that Lochtefeld Enterprises did not accurately compute the rate of manure application. You are required to take into account nutrient rates and crop cover in order to determine the correct application rates. Enclosed please find a detailed copy of the inspection. Refer to OAC 901:10-2-14 for instructions on

phosphorus and nitrogen nutrient needs and Appendix A to this rule for instructions on how to use all appendices and tables in the rule.

Water samples were collected in the investigation and analyzed. LEPP does not conclude that Lochtefeld was the source of a manure discharge to waters of the state, due to the sample results and due to the length of time from manure application to date of a discovered discharge.

Finally, if you have any questions please contact the LEPP inspector, Gail Rodabaugh or me if you have any questions.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Enclosure

Cc: Gail Rodabaugh, LEPP Inspector  
Mike Nishimura, ODNR-DSWC  
Darke SWCD  
Jerry Knapke, Ft. Recovery Equity  
Cathy Alexander, Ohio EPA-Division of Surface Water w/attachment  
Ryan Garrison, Mercer County Wildlife Officer w/attachment



# Ohio Department of Agriculture

**OHIO**  
PROUD

Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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September 15, 2006

**Certified Mail Return Receipt Requested**

Sheldon Farms  
9612 Twp. Road 64  
Kenton, OH 43326

Kurt Sheldon  
10736 St. Rt. 701  
Kenton, OH 43626

**Re: Warning Letter**

Ohio EPA Permit #08-006-SW  
Ohio Department of Agriculture Review Compliance Certificate  
#SHEL-0001.RC001-HARD

Mr. Sheldon:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on August 28, 2006. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that manure had been applied to field B4A, which has a soil test reading for P<sub>2</sub>O<sub>5</sub> in excess of 150 parts per million Bray P1. This is a violation of Rule 901:10-2-14 (E)(3)(b) of the Ohio Administrative Code.

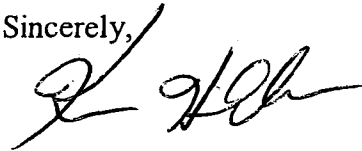
1. Need for annual manure analysis.

Rule 901:10-2-14 (E)(3)(b) of the Ohio Administrative Code (OAC):

“(b) Application of phosphorus shall not occur on land with soil tests over one hundred fifty parts per million Bray P1 or equivalent unless the owner or operator can demonstrate an alternative to the director through the use of the phosphorus index risk assessment procedure contained in appendix E Table 1 of this rule.”

Our records show that prior to this most recent inspection, you were told at the August 4, 2005 and the January 26, 2006 inspections that manure could not be applied to field B4A. Your operating records showed that manure was applied to B4A on November 18, 2005 and April 12, 2006. To avoid a Notice of Deficiencies Resulting in Violation, please follow the instructions of the LEPP Inspector to not apply to field B4A or any other field over 150 parts per million or 300 pounds per acre P2O5. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection indicates the continuance of the violation noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Hardin County SWCD  
Cathy Alexander, Ohio EPA





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
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September 7, 2006

Certified Mail Return Receipt Requested

Pieter Assen  
Johannes Assen  
8500 Yankeetown-Chenoweth Road  
London, Ohio 43140

Permits ASS-0001.PI001.MADI and ASS-0001.PO001.MADI

Re: **Director's Notice of Deficiencies Resulting in Noncompliance**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Assen Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Assen Dairy, LLC has failed to comply with Rules 901:10-2-04 and 901:10-2-08(A)(4)(a) of the Ohio Administrative Code (OAC).

**I. FIRST VIOLATION**

**A. FAILURE TO COMPLETE CONSTRUCTION AND MAINTAIN STORMWATER AND LEACHATE**

ODA has determined that Assen Dairy, LLC failed to build and contain stormwater and leachate in a pond as required by Ohio Administrative Code Rule 901:10-2-04. In 2005, ODA reviewed and approved plans for the construction of a stormwater/leachate pond for your facility. Construction of the storage pond began but construction has since stopped. On June 6, 2006, Harry Kallipolitis, Ohio EPA, Division of Surface Water, Storm Water Program, observed a discharge coming from the feed storage and feed preparation area and discharging into an unnamed tributary. The Inspector from the Livestock Environmental Permitting Program (LEPP) visited the facility on June 19, 2006 and confirmed the discharge and temporary containment and corrective actions of the aforesaid discharge. By letter dated July 3, 2006, ODA required Assen Dairy, LLC to complete construction of the approved stormwater/leachate pond as soon as possible but no later than July 31, 2006. On August 23, 2006, a LEPP Inspector conducted a partial inspection of your facility and determined that Assen Dairy failed to comply.

**B. CORRECTIVE ACTIONS REQUIRED**

You have ten (10) days from the date on this letter within which you must correct these deficiencies by completing construction. On or after September 25, 2006 an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

### **C. PENALTY ASSESSMENT**

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is medium level. The appropriate penalty in this matter will be \$1,000.00 per day beginning July 31, 2006, unless the deficiencies are corrected by the date of re-inspection or September 25, 2006.

## **II. SECOND VIOLATION**

### **A. INSPECTIONS AND RECORDKEEPING**

The LEPP Inspector also determined at the inspection on June 19, 2006 that Assen Dairy was in violation of Rule 901:10-2-08(A)(4) of the OAC. This rule requires the dairy to do all of the following:

- Inspect, monitor, or maintain the operating level of manure storage ponds so that the operating level does not exceed the maximum operating level specified in the permit's Manure Management Plan, plus one foot of freeboard. OAC 901:10-2-08(A)(4)(a) and 901:10-2-08(A)(4)(c);
- Inspect the liquid manure volume weekly and note liquid levels of manure in the Operating Record. OAC 901:10-2-08(A)(4)(f);
- Inspect storm water or diversion devices weekly and note proper operation and maintenance in the operating record. OAC 901:10-2-08(A)(4)(i); and
- Document actions taken to correct any of these deficiencies as a result of the inspections required. Deficiencies are to be corrected as soon as possible by the dairy and listed in the Operating Record. OAC 901:10-2-08(A)(4)(q).

By letter dated July 3, 2006, ODA required Assen Dairy, LLC to comply with these requirements as soon as possible but no later than July 31, 2006. On August 23, 2006, a LEPP Inspector conducted a partial inspection of your facility and determined that Assen Dairy continues to fail to comply with the rules cited

## B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter you must immediately correct these deficiencies by conducting the required inspections and recording the required information in the facility's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

## C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if you fail to comply with the corrective action required herein, the appropriate penalty in this matter will be \$150.00 per day beginning July 31, 2006, unless the deficiencies are corrected by the date of re-inspection or September 25, 2006.

If Assen Dairy fails to comply with any of the corrective actions required herein, Assen Dairy would be subject to the assessment of a civil penalty up to a total of \$69,000 based on a total of \$1,150 per day for 60 days, beginning July 31, 2006 and ending September 25, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Harry Kallipolitis, Ohio EPA-DSW, Central District Office  
Madison County SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@mail.agri.state.oh.us](mailto:agri@mail.agri.state.oh.us)

September 7, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

Certified Mail

Orland Bethel  
Hillandale Farms, Inc.  
3<sup>rd</sup> Street and Crooked Run Road  
North Versailles, PA 15137

Certified Mail

Attention: Harry Palmer

**Re: WARNING LETTER-CROTON LAYER NO. 4**

**Gentleman:**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. Paragraph 18 of the Consent Order requires ventilation fans installed in such a fashion that ventilated air from the building or section of the building housing the chickens will be directed onto the stored manure to enhance further drying.

The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. The IRCP contained in the PTO issued for OFE Layer Site No. 4 requires that OFE use fans to enhance manure drying. On a daily basis, the personnel responsible for water leaks and general insect activity inspections will also note any malfunctioning fans that may interfere with the operation. Fans will be run as long as necessary to control manure moisture levels and reduce insects.

An inspection by ODA of operating records maintained as required by the PTO at OFE Croton Layer No. 4 on June 28, 2006, showed that the odd-numbered barns and Barn No. 55A contained abundant to extreme levels of flies beginning the week of April 11, 2006 and continuing through the date of inspection, June 28, 2006. Fly spec count numbers

ranged from a low of 62 on May 3, 2006 to a high of 343 on May 31, 2006. As required by the PTO, OFE completed one action within 24 hours when fly spec counts were 50 – 74 and two actions when spec counts were greater than 74. These actions were recorded on the Fly Control Log in the facility operating record.

Nevertheless, the inspector also found that pit fans in all of the odd-numbered barns at Croton Layer Site No. 4 were disconnected, sitting on the floor, and/or covered by plastic sheets.

The Consent Order and the PTO authorize a hierarchy of OFE management to comply with the IRCP. The IRCP describes an array of responses to be use by OFE to manage manure moisture, i.e., responses are not limited to only use of insecticides. The fans that are disconnected, covered with plastic, and not in use must be used in the odd-numbered barns at Croton Layer Site No. 4 (with the exception of Barns 55 and 55A) to dry manure. OFE shall fix, repair, clean, reconnect, install, and use the fans to improve airflow and manure drying to less than 30% moisture in the manure. OFE shall develop fan placement configuration for the odd-numbered barns in the same manner as fan placement configurations used in the even numbered belt-battery barns located at Croton Layer No. 4.

Please feel free to direct any questions concerning this matter to either Jim Young or to me. I look forward to your continuing cooperation in this matter.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineering  
Jennifer Tiell, ODA Legal Counsel  
Kristina Erlewine, ODA Legal Counsel  
Anthony L. Seegers, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kiracofe, Licking SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
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## Certified Mail Return Receipt Requested

August 18, 2006

Kurt Lausecker  
Daylay Egg Farm, Inc.  
11177 Twp. Rd. 133  
PO Box 5  
West Mansfield, OH 43358

Frank Zimmerer  
Daylay Egg Farm, Inc.  
11177 Twp. Rd. 133  
PO Box 5  
West Mansfield, OH 43358

Mark Meyer  
Daylay Egg Farm, Inc.  
11177 Twp. Rd. 133  
PO Box 5  
West Mansfield, OH 43358

RCC No.: FAR-0001.RC001-UNIO

### **Re: NOTICE OF DEFICIENCY RESULTING IN NONCOMPLIANCE-FARM 3**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Daylay Egg Farm, Inc. (Daylay) is hereby issued a Notice of Deficiency Resulting in Noncompliance (NOD). Kurt Lausecker and Frank Zimmerer are the owners and Mark Meyer is the operator of Daylay Egg Farm, Farm 3. ODA has determined that Daylay Egg Farm, Farm 3 has failed to comply with Rules 901:10-2-19(C)(2)(d) and 901:10-1-10(G) of the Ohio Administrative Code (OAC).

#### **I. VIOLATION: UNAUTHORIZED MANURE STOCKPILES AND FAILURE TO COVER STOCKPILED MANURE**

ODA has determined that Daylay Egg Farm, Farm 3 has failed to store manure undercover at all times as required by OAC Rule 901:10-2-19(C)(2)(d) and as required by the Insect and Rodent Control Plan (IRCP) of Daylay Farm 3's Review Compliance Certificate (RCC) No. FAR-0001.RC001-UNIO. As a result of a partial inspection conducted by ODA on April 17, 2006, Daylay was required as follows: "The area south of the manure storage barn must be cleaned up by June 1, 2006 to prevent a fly breeding area. It is being recommended to extend the concrete pad for good housekeeping measures in this area. All manure must be stored under roof or with a cover (tarp) within 48 hours of being unloaded at the manure storage barn." Mr. Meyer stated in a phone call placed to him on June 8, 2006 nothing had been done at

the manure storage barn as far as extending the concrete pad or putting stone in the rutted areas. Further partial inspections on July 14, 2006 and August 1, 2006 showed manure stored uncovered at the Farm 3 manure storage barn.

RCC FAR-0001.RC001-UNIO includes a Manure Management Plan (MMP) that authorizes manure storage capacity in a storage building for 131 days. Further, the MMP authorizes continual manure removal from the manure storage building for manure sale or for distribution and utilization. The RCC also includes an IRCP. The IRCP specifies that manure is stored undercover at all times. Daylay Farm 3 has violated OAC Rule 901:10-1-10(G), which states: "No person shall violate the terms and conditions of a review compliance certificate."

## II. CORRECTIVE ACTIONS REQUIRED

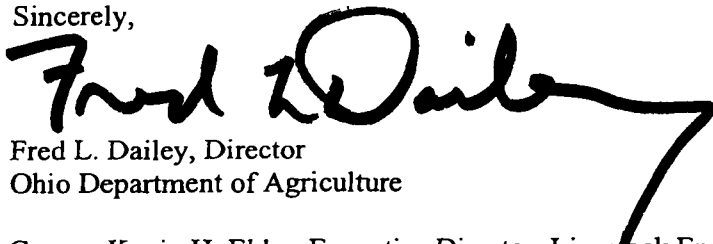
Daylay Farm 3 has 30 days from the date of this letter within which the owners or the operator must correct this deficiency by removing the uncovered manure from the facility, storing the manure undercover in the manure storage barn or by temporarily tarping the manure. If the manure is removed from the facility, records of amounts of manure removed from the facility must be kept. These records must be made available to the ODA Livestock Environmental Permitting Program Inspector.

After the thirty (30) day time period specified in this Notice has elapsed, an inspector will inspect your facility on or about September 19, 2006 to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

## III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:1-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (H) of Rule 901:10-5-04 of the OAC to determine that this is first cited violation of the above identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violation is low. The appropriate penalty in this matter will be \$500.00 per week beginning on April 14, 2006, unless the deficiencies are corrected with thirty (30) days from the date on this letter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Gary Zwolinski, LEPP Engineer  
Jennifer Tiell, Legal Counsel,  
Kristina Erlewine, Legal Counsel  
Anthony L. Seegers, Assistant Attorney General  
Gail Rodabaugh, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Union SWCD



# Ohio Department of Agriculture



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August 17, 2006

Eastwood Dairy, LLC  
Dirk Winkel  
9235 Wildman Road  
South Charleston, Ohio 45368

**Certified Mail Return Receipt Requested**

**Re: Director's Notice of Deficiencies Resulting in Noncompliance: Eastwood Dairy**

Dear Mr. Winkel:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Eastwood Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Eastwood Dairy has violated Permit to Operate (PTO) EAS-0001.PO001.CLAR. ODA has determined that Eastwood Dairy has failed to comply with Rules 901:10-2-08, 901:10-2-10, 901:10-2-15, 901:10-2-16, and 901:10-2-17(A) of the Ohio Administrative Code (O.A.C.).

## **I. FIRST VIOLATION: FREEBOARD/SAND SETTLING BASINS**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(b) requires that "[t]he operating level of fabricated structures must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-2-05(A)(2) and 901:10-2-05(A)(4) of the Administrative Code, plus an additional six inches of freeboard." O.A.C. 901:10-2-08(A) also requires that equipment and manure storage and treatment facilities be inspected, monitored and maintained, and that deficiencies are to be corrected as soon as possible and listed in the operating record.

During inspections on July 13, 17 and July 25, 2006, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) discovered that the two sand settling basins at Eastwood Dairy were within 3 inches from overtopping the walls and spilling out into the stormwater diversion ditches. The fact that manure was nearly overtopping the walls on July 13, 17 and July 25, 2006 demonstrates that Eastwood Dairy failed to maintain adequate storage capacity in the two sand settling basins. The LEPP inspector noted at all three inspections that the pumps in both sand settling basins were not functioning. The underground pipes from the basins to the manure storage ponds were both plugged with sand.

### **B. CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by (1) repairing and restoring to full function, the automated pumping system in each sand settling



basin, and (2) removing all sand/solids from each sand settling basin and land applying the removed sands/soils correctly, so as to restore the function of the sand settling basins and the required amount of freeboard. Record the actions taken to repair the sand settling basins and pumps in your operating record. When the sand/solids are land applied, you must keep all the required application records for the sand/solids in your operating record. You must make these records available to the LEPP inspector.

During the last inspection on July 17, 2006, you indicated to the LEPP inspector that Eastwood Dairy would be hiring an applicator and determining when and how much manure to land apply. Please note that because you have not yet conducted the annual manure sampling required by O.A.C. 901:10-2-10(C), before land applying the sand/soils from the sand settling basins you must first collect a sample from each sand settling basin and have them analyzed for total nitrogen, ammonium nitrogen, organic nitrogen, phosphorus, potassium, and per cent total solids. O.A.C. 901:10-2-10(C) requires "at a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids." There are a total of six separate samples due prior to land application for this facility: the stormwater/leachate pond; manure storage pond (agitated); each of the two sand settling basin solids; compost; and drystack manure.

Also, because you have not conducted any soil testing since 2001, you will also have to complete the soil tests required under O.A.C. 901:10-2-13 for the fields on which you are going to land apply before doing the land application. Specifically, O.A.C. 901:10-2-13(D)(1) requires that a site that receives manure shall be soil tested, at a minimum, once every three years. Soil samples must be representative of the land application site with one composite soil sample representing no more than 25 acres. O.A.C. 901:10-2-13(C). Additionally, O.A.C. 901:10-2-13(E) requires results of the soil sampling events shall be recorded in the operating record in accordance with rule 901:10-2-16 of the O.A.C. and shall include the location of the soil sample collection site, the depth of the sample collected and the analysis.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (July 13, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$28,000.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

## **II. SECOND VIOLATION: WATER WELL ANALYSIS**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08(A)(4)(i) and 901:10-2-08(A)(4)(ii) have been violated. O.A.C. 901:10-2-08(A)(4)(i) requires you to conduct annual sampling and analysis of ground water from the Eastwood Dairy drinking water well, and O.A.C. 901:10-2-08(A)(4)(ii)

and your PTO requires biannual sampling from the ground water monitoring well at Eastwood Dairy. Results of the samples must be recorded in the operating record.

The LEPP inspector noted at the May 3 and July 17, 2006 inspections that you have not collected or had analyzed the required annual drinking water well sample or a biannual ground water monitoring well sample. There have not been any recent samples collected at Eastwood Dairy since a well sample in 2003.

### **B. CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by completing the following: (1) collect one sample from the drinking water well and one sample from the ground water monitoring well at Eastwood Dairy, (2) have the samples analyzed by a laboratory for total coliform and nitrate, and (3) record the analytical results in the facility's Operating Record.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$84,800.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

## **III. THIRD VIOLATION: VEGETATIVE COVER**

### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08 has been violated. Specifically, O.A.C. 901:10-2-08(A)(4)(j) requires you to inspect the protective vegetative cover to determine that cover is maintained on all disturbed areas (lagoon or pond embankments, berms, pipe runs, erosion control areas, etc.) O.A.C. 901:10-2-08(A)(4)(q) states that "[d]eficiencies are to be corrected as soon as possible and listed in the operating record."

The LEPP inspector noted at the May 3, July 17 and July 25, 2006 inspections that the inner and outer banks of the manure storage pond and storm water pond and the sides of the storm water diversion ditches had very little vegetation established. Soil erosion was taking place in these areas. No records of either inspections of the vegetative cover or of any efforts to correct the situation have been maintained.

### **B. CORRECTIVE ACTIONS REQUIRED**

You have thirty days from the date on this letter within which you must correct this deficiency by regrading eroded areas of the site and reestablishing vegetation on the inner and outer banks of

the manure storage pond and storm water pond and the sides of the storm water diversion ditches. You must record all corrective actions in Eastwood Dairy's operating record.

### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as moderate or Category II, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$84,800.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

### **IV. FOURTH VIOLATION: INSPECTIONS/RECORD KEEPING**

#### **A. VIOLATION**

ODA has determined that O.A.C. 901:10-2-08 and O.A.C. 901:10-2-16 have been violated. Specifically, O.A.C. 901:10-2-08(A)(4) provides, in pertinent part, that the operating level of the manure storage and treatment facilities must be inspected, monitored, maintained, and documented in the operating record. Paragraph (A) of O.A.C. 901:10-2-16 provides, in pertinent part, that an owner or operator shall maintain an operating record, and that the operating record shall record and document the following information:

- (a) The manure storage or treatment facility. Records required by O.A.C. 901:10-2-08, including:
  - 1) Measurements of manure volume and the depth of liquid manure in manure storage or treatment facilities by the depth marker;
  - 2) Records of inspections of the structural integrity and vegetative management systems of the manure storage or treatment facility, taken at the interval specified in your manure management plan;
  - 3) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based on inspections taken at the interval specified in your manure management plan;
  - 4) Records of inspections of stormwater conveyances and diversion devices;
  - 5) Records of inspections of the protective vegetative cover that is maintained on all disturbed areas (pond embankments, berms, pipe runs, erosion control areas, etc.);
  - 6) Records of groundwater sampling and analysis. Your permit includes annual well water samples and biannual groundwater monitoring well samples that must be completed;
  - 7) Records required in O.A.C. 901:10-2-19 for the insect and rodent control plan;
  - 8) Records of daily inspections of water lines;

- 9) Records of actions taken to correct any deficiencies found as a result of inspections conducted in the production area;
  - 10) Records of the date, time, and estimated volume of any overflow or discharge from the production area;
- (b) Manure characterization records. Manure characterization data, test methods, results, and other information as required in O.A.C. 901:10-2-10(E).
- (c) Land application site records. Records for each land application site as described on a soil survey map, including:
- 1) Records of land application equipment that Eastwood Dairy has access to;
  - 2) A description of acres of land for land application of manure, or in the alternative, records of a distribution and utilization plan;
  - 3) Land application sites as described on a soil survey map;
  - 4) All soil tests within the last five years;
  - 5) Records of the cropping schedule for each land application site for the past year, and anticipated crops for the current year and for the next two years after the current year;
  - 6) Targeted crop yields for each land application site;
  - 7) Actual yields, if available.

The LEPP inspector noted at the May 3 and July 17, 2006 inspections that you had no records for storage capacity or manure volume, and that you were not keeping an operating record. At the May 3 inspection you were given a binder with all of the required operating records that were tabbed and indexed to make record keeping easier for you. However you had not begun keeping the required records at the time of the July 17, 2006 inspection.

#### **B. CORRECTIVE ACTION REQUIRED**

You have seven days from the date on this letter within which you must correct this deficiency by conducting the required inspections and recording the required information listed in O.A.C. 901:10-2-08(A)(4) and 901:10-2-16 in Eastwood Dairy's Operating Record. This information must be maintained for five years and must be immediately available during any LEPP inspection or investigation.

#### **C. PENALTY ASSESSMENT**

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as minor or Category III, and the gravity of the violation as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Action required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$200.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$21,200.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

**V. FIFTH VIOLATION: EMERGENCY RESPONSE NOTIFICATION (Previous violation)**

**A. VIOLATION**

OAC 901:10-1-10(G) requires Eastwood Dairy to comply with the terms and conditions contained in the permits issued to Eastwood Dairy by ODA. In a previous Notice of Deficiencies letter dated July 7, 2006, Eastwood Dairy was required to follow its Emergency Response Plan by posting signs at the facility by July 17, 2006, advising employees of the following:

- 1) Emergency response and contact information for those that need notified during an emergency;
- 2) Procedures to be followed in the event of a manure spill or discharge to waters of the state;
- 3) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points.

During inspections on July 17 and July 25, 2006, the LEPP inspector noted that no signs had been posted.

**B. CORRECTIVE ACTION REQUIRED**

You have seven days from the date on this letter within which you must correct this deficiency by posting signs, containing the above required information, at Eastwood Dairy.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are second cited violations with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as low. Therefore, if Eastwood Dairy fails to comply with any of the Corrective Action required above, Eastwood Dairy would be subject to the assessment of a civil penalty in the amount of \$400.00 per day for each day from the date of the first inspection (July 17, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$12,400.00. You may also be subject to additional penalties for each day of noncompliance with the deadlines set forth in the Corrective Action, as well as the potential for escalated enforcement.

**VI. SIXTH VIOLATION: MORTALITY COMPOST**

**A. VIOLATION**

OAC 901:10-1-10(G) requires Eastwood Dairy to comply with the terms and conditions contained in the permits issued to Eastwood Dairy by ODA. The Mortality Management Plan contained in the PTO issued to Eastwood Dairy and OAC 901:10-2-15 and 901:10-2-16(A)(1)(f) require Eastwood Dairy to use a licensed rendering service as the method for dead livestock disposal. Eastwood's Mortality Management Plan also indicates that a contract will be negotiated to remove the dead animals in a timely manner as outlined in the Rendering Law for the State of

Ohio. The contract shall be in place prior to the dairy becoming operational. The animals are to be transported from the facility within 24 hours of their death.

On May 3, 2006 during the first of two annual facility inspections, the LEPP inspector noted that Dirk Winkel was having difficulty getting renderers to come to Eastwood Dairy on a timely basis and getting renderers that are nearby. Due to the difficulty with renderer accessibility and reliability, Mr. Winkel began composting the mortality on the sand dewatering pad. It was also noted neither that Dirk Winkel nor any of Eastwood Dairy's employees have a Composting Certificate. Under O.A.C. 901:10-2-15, composting is an acceptable method to dispose of mortality, but the composting must be done in compliance with Ohio Revised Code 1511.022, which requires a Composting Certificate to be obtained before composting. Also, the change from rendering to composting must be noted in the Eastwood Dairy operating record. Mr. Winkel was warned during the May 3, 2006 inspection that a Composting Certificate is required to compost and that there was an opportunity for certification during the CLM training session held June 29-30, 2006 in Auglaize County. On several occasions following the facility inspection, Mr. Winkel was reminded of the upcoming CLM training:

- On May 31, 2006, reminded during a site visit by the LEPP inspector.
- On June 7, 2006, via phone conversation with the LEPP inspector.
- On June 31, 2006, via phone voice mail message left by a second LEPP inspector. At 3:15 p.m., the LEPP inspector received a phone call from Mr. Winkel asking directions to the Compost Training Session held in conjunction with the CLM training in Wapakoneta, which would most likely have been over by the time Winkel arrived late that afternoon.

On July 17, 2006, at a follow-up inspection, Eastwood Dairy was continuing to compost mortality without certification. There were no records at the inspection.

#### **B. CORRECTIVE ACTION REQUIRED**

Within thirty days, Eastwood Dairy is required to comply with the Mortality Management Plan in its PTO and OAC 901:10-2-15. Eastwood Dairy shall do one of the following:

1. Enter into a written contract with a renderer to manage Eastwood's mortality;
2. Dirk Winkel or another Eastwood employee must have his Composting Certificate; or
3. Enter into a written contract with a certified composter to manage Eastwood's mortality.

If Eastwood Dairy wishes to compost livestock mortality, then the following rules apply:

ORC 1511.022 requires that any person who owns or operates an agricultural operation, or owns the animals raised by the owner or operator of an agricultural operation, and who wishes to conduct composting of dead animals resulting from the agricultural operation shall do both of the following:

- (1) Participate in an educational course concerning composting conducted by the Ohio Cooperative Extension Service and obtain a certificate of completion for the course;
- (2) Use the appropriate method, technique, or practice of composting established in rules adopted under division (E)(10) of section 1511.02 of the ORC.

Eastwood Dairy must also note that it is changing its Mortality Management Plan from rendering to composting in its operating record, as an operational change under O.A.C. 901:10-1-09.

#### **C. PENALTY ASSESSMENT**

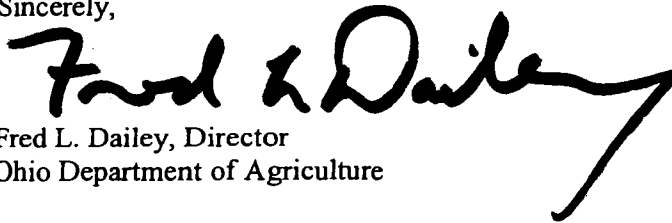
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of

penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as low. Therefore, if Eastwood Dairy fails to comply with the Corrective Actions required above, Eastwood Dairy will be subject to the assessment of a civil penalty in the amount of \$800.00 for each day from the date of the first inspection (May 3, 2006) to the date of this Notice of Deficiencies letter (August 17, 2006), for a total of \$84,800.00. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the Corrective Actions, as well as the potential for escalated enforcement.

By August 30, 2006, and again by September 17, 2006, a LEPP inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules, with the PTO, and with the deadlines of this Notice. If Eastwood Dairy, LLC and Mr. Dirk Winkel fail to comply with any of the corrective actions required herein, you will be subject to the assessment of civil penalties and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Gary Zwolinski, LEPP Engineer  
Christine Pence, LEPP Inspector  
Jennifer Tiell, Kristina Erlewine Legal Counsel  
Anthony L. Seegers, Assistant Attorney General  
George McConkey, Clark SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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## Certified Mail Return Receipt Requested

August 3, 2006

JP Poultry  
C/o Mr. and Mrs. Jim Fleck  
8704 State Route 274  
New Bremen, OH 45869

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE- CONSTRUCTION OF SECOND UNAUTHORIZED STRUCTURE FOR CATTLE FEED BARN

Dear Mr. Fleck:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), JP Poultry is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that JP Poultry has failed to comply with ORC Section 903.04 and Ohio Administrative Code (OAC) rule 901:10-1-09. JP Poultry and Jim and Pam Fleck were issued Review Compliance Certificate (RCC) JPPO-0001.RC001-MERC for an existing "Concentrated Animal Feeding Facility" (CAFF), as defined by ORC Section 903.01(E), on April 9, 2004 by Order 2004-066.

### I. FIRST VIOLATION – ADDING CATTLE HOUSING AND RELATED MANURE STORAGE FACILITY WITHOUT A PERMIT TO INSTALL.

#### A. VIOLATION

ODA has determined that OAC 901:10-1-09 has been violated. Specifically, the existing CAFF was modified without first notifying ODA of the changes and obtaining authorization. OAC 901:10-1-09(A). These changes to the RCC constitute a modification as defined in OAC 901:10-1-01 (FFF) or a major operational change. OAC 901:10-1-09(F). Therefore, changing the facility to include the new cattle feed barn required ODA approval.

While driving by the facility located on SR 274 on June 7, 2006, an inspector with ODA Livestock Environmental Permitting Program (LEPP) discovered a new and additional



barn was being constructed<sup>1</sup>. On June 12, 2006, the LEPP inspector conducted an inspection at JP Poultry during which Mr. Fleck explained that JP Poultry planned to deed ten (10) acres of the CAFF and the new cattle feed barn to Josh Fleck. Thereafter, JP Poultry planned to lease this acreage and the new cattle feed barn from Josh Fleck. In a letter dated June 21, 2006, the LEPP inspector advised as follows:

"Animal feeding facility" means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

"Animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied.

Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure. ORC 903.01(B)

The location of the land upon which the cattle feed barn is constructed is within the production area of the existing CAFF. The proposed operations at the cattle feed barn will be managed as part of the operations of the existing CAFF and managed by the owner or operator of the existing CAFF. Accordingly, ODA finds that the land and the cattle feed barn meet the criteria of ORC 903.01(B) and ORC 903.01 (E).

## **B. CORRECTIVE ACTIONS**

JP Poultry is required to submit an application describing changes to the CAFF within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. LEPP will determine if the proposed changes are either a modification or a major operational change and will notify JP Poultry of its determination. Thereafter, JP Poultry shall have 60 days to respond to the notice from LEPP and to also respond in writing to any technical comments made by LEPP on the application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the application,

---

<sup>1</sup> On June 21, 2006, a Notice of Hearing was issued to JP Poultry for failure to comply with a NOD issued on May 23, 2005 for unauthorized construction of a new manure storage barn. The violations for this NOD are for a second building referred to as the "cattle feed barn."

JP Poultry shall have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary authorization as expeditiously, as possible.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with OAC 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as medium.

Therefore, if JP Poultry and Jim and Pam Fleck fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, JP Poultry and Jim and Pam Fleck will be subject to the assessment of a civil penalty in the amount of \$5,000.00 for each day after the new barn was discovered (June 7, 2006) until the date of this Notice of Deficiencies letter (July 12, 2006) for violation of ORC Section 903.02. JP Poultry and Jim and Pam Fleck may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

## II. SECOND VIOLATION-VIOLATING THE RCC AUTHORIZED CAPACITY

### A. VIOLATION

The RCC issued to JP Poultry authorizes the facility to operate with 200 beef cattle, 410,000 laying hens, and only those manure storage facilities that were in existence at the time ODA issued the RCC JPPO-0001.RC001-MERC. By constructing a new cattle feed barn for approximately 200 additional cattle, JP Poultry and Jim and Pam Fleck have violated the RCC and OAC 901:10-1-10(G).

### B. CORRECTIVE ACTIONS

JP Poultry and Jim and Pam Fleck shall not stock the new cattle feed barn until JP Poultry and Jim and Pam Fleck comply with the **Corrective Actions** specified in **I.B.**, above, and comply with OAC 901:10-2-01(B) (2). Specifically, JP Poultry and Jim and Pam Fleck are prohibited from stocking the cattle feed barn until authorized by the Director or the Director's representative.

Not later than August 31, 2006, a LEPP inspector will re-inspect JP Poultry to determine compliance with these Corrective Actions.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with OAC 901:10-5-04. In determining of the amount of penalty to be assessed for this violation, ODA has also

reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the violation cited herein is the second cited violation with the category of seriousness of the violation as Category I, and the gravity of the violation as minor.

Therefore, if JP Poultry and Jim and Pam Fleck fail to comply with the corrective actions, including failure to follow the schedule required for **Corrective Actions**, above, JP Poultry and Jim and Pam Fleck will be subject to the assessment of a civil penalty in the amount of \$800 for each day after the new barn was discovered (June 7, 2006) until the date of this Notice of Deficiencies letter (July 12, 2006) for violation of ORC Section 903.02. JP Poultry and Jim and Pam Fleck may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

### **III. THIRD VIOLATION- VIOLATING THE RCC MANURE MANAGEMENT PLAN AND INSECT AND RODENT CONTROL PLAN**

#### **A. VIOLATION**

ODA has also determined that ORC Section 903.04 has been violated. JP Poultry and Jim and Pam Fleck are operating a CAFF in violation of the RCC. The RCC merged and became part of the PTI previously issued by the Ohio Environmental Protection Agency (OEPA). ORC Section 903.04(G). A facility that is issued an RCC, must comply with the OEPA issued PTI as amended by the RCC. ORC Section 903.04(I).

The RCC issued to Jim and Pam Fleck and JP Poultry authorized JP Poultry to continue operating based on findings made by the Director that the Facility is "of correct design capacity; that the Facility is in compliance with the PTI issued by the Ohio Environmental Protection Agency; that the Facility's Manure Management Plan, Insect and Rodent Control Plan, and Mortality Management Plan all conform to best management practices; and that the Facility is operated in a manner that protects the waters of the state and minimizes the presence and negative effects on insects and rodents at the facility and in surrounding areas." (See Order 2004-066 at 11)

By constructing the new cattle feed barn without authorization from ODA, the RCC does not contain information that reflects current operating conditions at JP Poultry, including, but not limited to the following:

- 1) The RCC does not have a Manure Management Plan that specifies the frequency of inspections to be conducted at all manure storage and treatment facilities, including the new cattle feed barn at JP Poultry, as required by OAC 901:10-2-08.
- 2) The RCC has not had an Insect and Rodent Control Plan submitted that specifies management controls for all manure and storage and treatment facilities, including the new cattle feed barn, as required by OAC 901:10-2-19.

#### **B. CORRECTIVE ACTIONS**

JP Poultry and Jim and Pam Fleck are required to record operational changes to the operating record as required by OAC 901:10-2-16(A)(1)(a) and (b) to document compliance with OAC 901:10-2-08 and with OAC 901:10-2-19. JP Poultry and Jim and Pam Fleck shall submit a copy of operational changes to demonstrate compliance in order to correct violations of ORC Section 903.04. A copy of operational changes shall be submitted within 60 days of receipt of this Notice, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(D), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with OAC 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed OAC 901:10-5-04(D). Based upon this review, ODA has determined that the violations cited herein are the second cited violations with the category of seriousness of the violations as Category III, and the gravity of the violations as low.

Therefore, if JP Poultry and Jim and Pam Fleck fail to comply with the corrective actions, Jim and Pam Fleck and JP Poultry will be subject to the assessment of a civil penalty in the amount of \$200 for each day after the new barn was discovered (June 7, 2005) until the date of this Notice of Deficiencies letter (July 12, 2006) for violation of ORC Section 903.04. You may also be subject to additional penalties for each day for noncompliance with the deadlines set forth in the **Corrective Actions**, as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Gail Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Kristina Erlewine, Legal Counsel  
Anthony L. Seegers, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Mercer SWCD  
File



# Ohio Department of Agriculture



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Lieutenant Governor Jennette Bradley  
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July 14, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
11212 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

**Re: Director's Notice of Deficiencies Resulting in Noncompliance-Goshen Pullet No. 5-(OFGO-0001.PO001.HARD)**

Gentleman:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Goshen Pullet No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraphs 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

**I. VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(G) and Paragraphs 8, 30.a, 30.c, and 30.d of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Goshen Pullet Site No. 5 (OFGO-0001.PO001.HARD) requires that OFE maintain 30% moisture or less in its manure (as sampled on a quarterly basis) in order to reduce the presence of insects. During complaint investigations beginning on June 2,

2006, ODA determined that from at least June 2, 2006 through July 10, 2006, OFE has exceeded the 30% manure moisture level in Barns Nos. 2, 4, 5, 6 and 8.

OFE's IRCP requires that manure be dried as rapidly as possible and be kept dry in order to suppress fly and fly larval development. Inspections at OFE Goshen Pullet No. 5 on June 2, June 16, June 26 and July 10, 2006 showed that the conditions in these barns were promoting fly breeding and extreme to abundant levels of flies and larvae because the manure was not being dried as rapidly as possible as required by the permit due to the extended period of time that pullets were housed in the barns such that the pullets were mature and laying eggs. Since OFE has no egg gathering and collection equipment at OFE Goshen Pullet No. 5, all eggs produced dropped into manure and slowed the drying of fresh manure and contributed to increased manure moisture.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE Goshen Pullet No. 5 is required to immediately take appropriate measures to control flies in Barn Nos. 2, 4, 5, 6, and 8. Appropriate measures include the following:

- a. Move mature pullets/layers to laying facilities immediately upon receipt of this letter; and
- b. Take measures to dry affected manure, including use of lime and pit fans.

By July 21, 2006, a LEPP Inspector will re-inspect the facilities to determine if the fly levels are reduced to "few" or "none."

## **C. PENALTY ASSESSMENT**

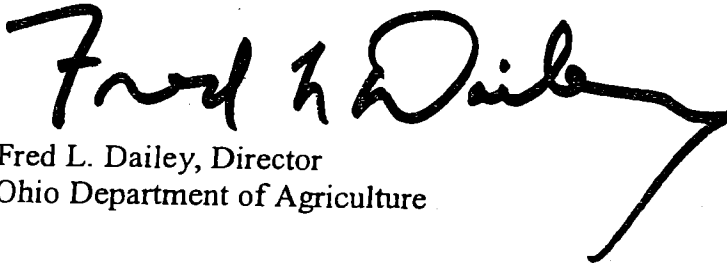
Pursuant to OAC 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first-cited violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of to **\$1,000.00** per week for 49 days or 7 weeks for a total of **\$7,000**. All violations have the potential for escalated enforcement.

By July 21, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty and the potential for escalated enforcement. We take

these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture  
Anthony L. Seegers, Assistant Attorney General  
Chris Rodabaugh, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Howard Lyle, Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

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July 12, 2006

Park Farms, Inc.  
C/o Scott Stephens  
1925 30<sup>th</sup> Street N.E.  
Canton, Ohio 44705

**Certified Mail**

**Re: Warning Letter: Bird numbers at facilities**

Dear Mr. Stephens:

In review of the inspection reports for inspections conducted the end of April, it has been brought to my attention that several of the facilities are stocking birds in exceedance of the allowable number of birds by 10% or more as authorized in the Permits to Operate (PTO). The maximum number of animals allowed in the permits for the ten barn facilities is 170,000 broilers and 135,000 broilers for the five barn facilities. Several of the ten barn facilities showed stocking in exceedance of 187,000 (a 10% exceedance), with actual bird numbers now at 189,000 broilers. Several of the five barn facilities showed stocking in exceedance of 148,500 (a 10% exceedance) with actual bird numbers of 150,000 broilers. The affected facilities are the following:

- o Beeson East Farm, Inc. (189,459),
- o St Peters Church Farm, Inc. (189,251), and
- o General Poultry, Inc. (153,507)

Park Farms is required to submit to ODA a request for a permit modification if Park Farms decides to expand the design capacity to the bird numbers currently in use at these three facilities. At a minimum, an application for proposed permits modification will require Park Farms to accurately state the new flock size in the permits and to modify the Manure Management Plans to show changes made in manure storage by balancing harvest weight differences from the 4.9 lb. birds when the PTOs were issued and the 3.7 lb. birds currently being produced. If a balance of the lowered harvest weight and the reduction in manure output remain within the parameters of the Manure Management Plan of the current PTOs then the formal changes to the PTOs may be minimal.

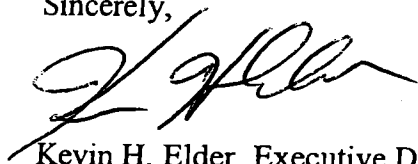
If Park Farms decides to modify its permits for these facilities, nothing in this letter shall be interpreted to prevent the Director from an enforcement action while any action to



change permits is pending. If you have any questions or concerns, please feel free to contact my attorney, Jenny Tiell, at (614) 387-0912.

Should you have any questions feel free to call me at 614-387-0469.

Sincerely,



Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc: Jenny Tiell/Kristina Erlewine – ODA Legal Counsel  
Jim Young- LEPP Inspector  
Andy Ety – ODA Engineer  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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July 12, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
11212 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **Warning Letter: Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN).**

Gentlemen:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on June 26, 2006. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

1. Need to maintain distance of 300 feet as setback between the stockpile location and waters of the state.

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides as follows at Appendix A Table 2:

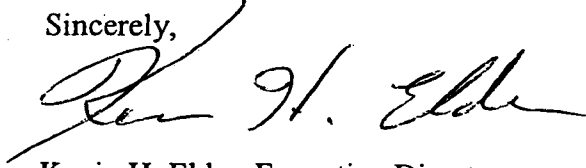
All land applications and setbacks of manure shall comply with restrictions in the appendix.

Waters of the state: Setback for Stockpiles: 300 feet

The investigation showed that manure had been stockpiled in a field located at the south side of Township Highway 67 as of June 26, 2006 at 186 feet from a roadside ditch that conveys water to waters of the state.

Please assure that at that the items noted in this letter are prevented in future manure stockpiles or manure applications. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

CC: Chris Rodabaugh, LEPP Inspector  
✓ Jennifer Tiell/Kristina Erlewine, LEPP Legal Counsel  
Cathy Alexander— Ohio EPA  
Mike Nishimura — ODNR  
Howard Lyle, Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
8995 East Main Street • Reynoldsburg, Ohio 43068-3399  
Phone: (614) 466-2732 • Fax: (614) 466-6124  
ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@odant.agri.state.oh.us](mailto:agri@odant.agri.state.oh.us)

July 7, 2006

Eastwood Dairy, LLC  
Dirk Winkel  
9235 Wildman Road  
South Charleston, Ohio 45368

**Certified Mail Return Receipt Requested**

Re: **Director's Notice of Deficiencies Resulting in Noncompliance:**  
**Eastwood Dairy**

Dear Mr. Winkel:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Eastwood Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Eastwood Dairy has violated Permit to Operate (PTO) EAS-0001.PO001.CLAR. ODA has determined that Eastwood Dairy has failed to comply with Rules 901:10-1-10(G) and 901:10-2-17(A)(4) of the Ohio Administrative Code (OAC).

**I. VIOLATION: EMERGENCY RESPONSE NOTIFICATION**

OAC 901:10-1-10(G) requires Eastwood Dairy to comply with the terms and conditions contained in the permits issued to Eastwood Dairy by ODA. The Emergency Response Plan contained in the PTO issued to Eastwood Dairy and OAC 901:10-2-17 requires that Eastwood Dairy notify ODA of manure spills as soon as possible but in no case more than twenty-four hours following first knowledge of the occurrence of the discharge or manure spill, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge (if any), the circumstances of the discharge or spillage, and the persons with knowledge of and responsibility for cleanup.

On June 1, 2006, the LEPP Engineer found that there had been spillage from the manure sand-settling pit located on the western side of the facility. The manure had spilled into the storm water diversion ditch where it had been contained. In addition, the eastern sand-settling pit was observed to be exceeding the minimum freeboard requirements of six inches plus the operating level approved in the PTO's Manure Management Plan. At no time did Eastwood Dairy notify ODA of the manure spill. By letter dated June 13, 2006, Kevin Elder, Executive Director, Livestock Environmental Permitting Program, required Eastwood Dairy to take corrective actions in order to return to compliance. By June 8, 2006, Eastwood Dairy corrected deficiencies in freeboard maintenance at both the eastern

and the western sand-settling pits located at the facility. However, ODA has not received a manure spill report as required by OAC 901:10-2-17(A)(4).

## **II. CORRECTIVE ACTION REQUIRED**

Eastwood Dairy is required to comply with the Emergency Response Plan in its PTO and OAC 901:10-2-17(A)(4). By July 17, 2006, Eastwood Dairy shall submit a written report to ODA-LEPP, in a letter form, that shall include the following:

- 1) The times at which the spill occurred and was discovered,
- 2) The approximate amount and characteristics of the discharge or spill,
- 3) The waters of the state affected by the discharge or spill (if any),
- 4) The circumstances that created the discharge or spillage,
- 5) The names and telephone numbers of persons having knowledge of the discharge or spill,
- 6) Those steps taken to clean up the discharge or spill,
- 7) The names and telephone numbers of those persons responsible for the cleanup.

In addition, by July 17, 2006, Eastwood Dairy shall post signs advising employees of the following:

- 1) Emergency response and contact information for those that need notified during an emergency;
- 2) Procedures to be followed in the event of a manure spill or discharge to waters of the state;
- 3) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points.

In the future, Eastwood Dairy shall notify ODA of manure spills as soon as possible, but in no case more than twenty-four hours following the first knowledge of the occurrence of the discharge or manure spill.

## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determining the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if Eastwood Dairy fails to comply with any of the corrective actions required herein, Eastwood Dairy would be subject to the assessment of a civil penalty in the amount of \$800 per day and the potential for escalated enforcement.

If Eastwood Dairy fails to comply with any of the corrective actions required herein, Eastwood Dairy would be subject to the assessment of a civil penalty up to a total of \$37,600, based on a total of \$800 per day for 47 days, beginning June 1, 2006 and ending July 17, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Gary Zwolinski, LEPP Engineering  
Jennifer Tiell/Kristina Erlewine, Legal Counsel, Ohio Department of Agriculture  
Anthony L. Seegers, Assistant Attorney General  
Christine Pence, LEPP Inspector  
Harry Kallipolitis, Ohio EPA, DSW, Central District Office  
Cathy Alexander, Ohio EPA  
Clark SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@mail.agri.state.oh.us](mailto:agri@mail.agri.state.oh.us)

July 3, 2006

Pieter Assen  
Johannes Assen  
8500 Yankeetown-Chenoweth Road  
London, Ohio 43140

## Certified Mail Return Receipt Requested

**Re: Warning Letter: Assen Dairy**

Gentlemen:

I am writing to you as a result of a partial inspection conducted by my staff on June 19, 2006. This partial inspection was conducted in response to a discharge noted and observed by Ohio EPA on June 6, 2006. At that time Harry Kallipolitis, Ohio EPA, Division of Surface Water, Storm Water Program, observed a discharge coming from the feed storage and feed preparation area and discharging into an unnamed tributary. The Inspector from the Livestock Environmental Permitting Program (LEPP) visited the facility to confirm the discharge and the containment and corrective actions of the aforesaid discharge.

In 2005, ODA reviewed and approved plans for the construction of a storm water/leachate pond for your facility. Construction of this storage pond has begun but construction has since stopped. You are required to complete construction of the approved storm water/leachate pond as soon as possible but no later than July 31, 2006.

Assen Dairy is in violation of Rule 901:10-2-04 of the Ohio Administrative Code (OAC) that requires facilities to be built to contain and store storm water and leachate. Assen Dairy is also in violation of Rule 901:10-2-08(A)(4) of the OAC. This rule requires the dairy to do the following:

- Inspect, monitor, or maintain the operating level of manure storage ponds so that the operating level does not exceed the maximum operating level specified in the permit's Manure Management Plan, plus one foot of freeboard. OAC 901:10-2-08(A)(4)(a) and 901:10-2-08(A)(4)(c).
- Inspect the liquid manure volume weekly and note liquid levels of manure in the Operating Record. OAC 901:10-2-08(A)(4)(f).

Warning Letter: Assen Dairy  
July 3, 2006  
Page 2

- Inspect storm water or diversion devices weekly and note proper operation and maintenance in the operating record. OAC 901:10-2-08(A)(4)(i).
- Document actions taken to correct any of these deficiencies as a result of the inspections required. Deficiencies are to be corrected as soon as possible by the dairy and listed in the Operating Record. OAC 901:10-2-08(A)(4)(q).

The requirements listed above are also required for compliance with the NPDES Permit for your facility.

Finally, I advise you that these requirements for construction of a storm water/leachate pond for your facility are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read the Inspection Report sent to you and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,



Kevin H. Elder  
Executive Director  
Livestock Environmental Permitting Program

Cc: Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Harry Kallipolitis, Ohio EPA, Central District Office  
Madison SWCD  
File





# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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## Certified Mail Return Receipt Requested

June 21, 2006

JP Poultry  
C/o Mr. Jim Fleck  
8704 State Route 274  
New Bremen, Ohio 45869

### Re: Director's Notice of Hearing

Dear Mr. Fleck:

This document is to serve as a notice that the Ohio Department of Agriculture ("Department"), under the authority of Section 903.16 of the Ohio Revised Code (ORC), proposes to issue an order to Jim Fleck and JP Poultry imposing a total civil penalty of \$98,491.00 because of ODA's determination that Jim Fleck and JP Poultry have failed to comply with ORC Sections 903.02 and 903.04. Specifically, two modifications were made to the existing Concentrated Animal Feeding Facility (CAFF) without first obtaining a Permit to Install (PTI) as required by ORC Section 903.02(A)(2). First, a new manure storage barn was constructed without obtaining a PTI. Second, the Insect and Rodent Control Plan (IRCP) was modified without first obtaining a PTI. For these two violations of ORC Section 903.02, ODA proposes a penalty in the amount of \$49,245.00. Finally, Jim Fleck and JP Poultry made changes to operating requirements in the Review Compliance Certificate (RCC) issued by Order 2004-066 on April 9, 2004 (JPPO-0001.RC001-MERC) without authorization by the Director in violation of ORC Section 903.04. For this violation, ODA proposes a penalty in the amount of \$49,245.00.

The facts in support of the Department's proposed findings of continued noncompliance are as follows:

On May 23, 2005, the Director issued a Notice of Deficiencies Resulting in Noncompliance (NOD) based on failure to comply with the RCC issued for your CAFF. The RCC approved operation with approximately 646,000 cubic feet of manure storage. During an inspection conducted by the ODA Livestock Environmental Permitting Program (LEPP) on February 9, 2005, ODA discovered that a new and additional manure storage barn had been constructed at the facility. The new manure storage barn has a storage capacity of approximately 96,000 cubic feet. The new barn increased manure

storage capacity approximately fifteen per cent from approximately 646,000 cubic feet to approximately 742,000 cubic feet.

Any expansion of manure storage capacity of more than ten per cent is considered to be a modification of the CAFF. OAC 901:10-1-01(FFF).<sup>1</sup> After August 19, 2002, no person shall modify an existing CAFF without first obtaining a Permit to Install (PTI) issued by ODA. ORC Section 903.02(A)(2). Therefore, prior to building the new manure storage barn, JP Poultry and Jim Fleck were obligated to obtain a PTI.

In addition, each RCC is required to contain an IRCP. ORC Section 903.04(E)(2)(d). The IRCP included in the RCC only covers the manure storage facilities that were in existence at the time ODA issued the RCC. Constructing a new manure storage barn required submittal of a new IRCP to ODA that included information related to the new manure storage barn. Any changes to the IRCP must be reviewed and approved by the Director to include the new manure storage barn. OAC 901:10-1-01(FFF)(3). Therefore, changing the IRCP required the submittal of a PTI application. ORC Section 903.02(A)(2).

Jim Fleck and JP Poultry were issued a RCC. (See Order 2004-066, April 9, 2004). The RCC merged and became part of the PTI previously issued by the Ohio Environmental Protection Agency (OEPA). ORC Section 903.04(G). A facility that is issued an RCC must comply with the OEPA-issued PTI as amended by the RCC. ORC Section 903.04(I). ODA has also determined that Jim Fleck and JP Poultry are operating a CAFF in violation of the RCC, a violation of ORC Section 903.04.

The RCC issued to Jim Fleck and JP Poultry authorized JP Poultry to continue operating based on findings made by the Director that the Facility is "of correct design capacity; that the Facility is in compliance with the PTI issued by the Ohio Environmental Protection Agency; that the Facility's Manure Management Plan, Insect and Rodent Control Plan, and Mortality Management Plan all conform to best management practices; and that the Facility is operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas." (See Order 2004-066, April 9, 2004 at 11)

By constructing the new manure storage barn without authorization from OEPA or ODA, the RCC does not contain information that reflects current operating conditions at JP Poultry, including, but not limited to the following:

- 1) The RCC does not have a Manure Management Plan that specifies the frequency of inspections to be conducted at all manure storage and treatment facilities, including the new manure storage barn at JP Poultry, as required by rule 901:10-2-08 of the OAC
- 2) The RCC has not had an Insect and Rodent Control Plan submitted that specifies management controls for all manure storage and treatment facilities,

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<sup>1</sup> The NOD issued by the Director on May 23, 2005 cited OAC 901:10-1-01(VV), which was amended and renumbered effective September 15, 2005 as OAC 901:10-1-01(FFF).

including the new manure storage barn, as required by rule 901:10-2-19 of the OAC

In order to correct violations of ORC Sections 903.02 and 903.04, JP Poultry and Jim Fleck were required to submit applications for a PTI and Permit To Operate in accordance with a schedule set forth by the Director in the NOD, which allowed for at least 180 days to return to compliance. To date, neither JP Poultry nor Jim Fleck has returned to compliance.

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with this proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on June 21, 2006.

Please note that if your company is a corporation, only an attorney at law admitted to practice in the State of Ohio may represent a corporation at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed civil penalty should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.

Be advised that if you fail to request a hearing within thirty (30) days from the mailing of this Notice, the Department may issue a final order without a hearing

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Gail Rodabaugh, LEPP Inspector  
Jennifer Tiell/Kristina Erlewine, Legal Counsel  
Anthony L. Seegers, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Mercer SWCD  
File



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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June 19, 2006

Frisian Hijma Dairy LLC  
12464 Rd. 100  
Kenton, OH 43326

**Certified Mail Return Receipt Requested**

Johannes and Sybolt Hijma  
P. O. Box 11  
Kenton, OH 43326

PTO#: FRI-0001.PO001-HARD

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Messrs. Hijma:

Pursuant to the Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Frisian Hijma Dairy LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Frisian Hijma Dairy LLC has failed to comply with Rule 901:10-2-08(A)(4)(a) of the Ohio Administrative Code (OAC).

## **I. VIOLATION: FAILURE TO MAINTAIN FREEBOARD**

ODA has determined that Frisian Hijma Dairy LLC has failed to maintain adequate freeboard as required by OAC Rule 901:10-2-08(A)(4)(a). At a routine inspection on May 24, 2006 and a limited inspection on June 2, 2006, the required freeboard was not maintained in your stormwater/leachate storage pond. As of June 2, 2006, there were three inches of freeboard available in your stormwater/leachate storage pond. Because the stormwater in this pond contains silage leachate and is contaminated with manure from the barns, it is considered to be "manure" under O.R.C. Section 903.01(O) and must be removed in accordance with your manure management plan.

## **II. CORRECTIVE ACTIONS REQUIRED**

You have ten (10) days from the date on this letter within which you must correct these deficiencies by removing the contaminated stormwater and handling it correctly. You must keep records of the amounts removed and the final application or use of the contaminated stormwater in your operating records. You must make these records available to the ODA Livestock Environmental Permitting Program inspector.

After the ten (10) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

### III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level. The appropriate penalty in this matter will be \$800.00 per day beginning May 24, 2006, unless the deficiencies are corrected within ten (10) days from the date on this letter.

ODA reminds you of the need to comply with the land application rules and your manure management plan if you decide to land apply to reduce the stormwater/leachate level in the pond.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Chris Rodabaugh, LEPP Inspector  
Anthony Seegers, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Hardin County SWCD



# Ohio Department of Agriculture



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Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
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June 13, 2006

Dirk Winkel  
Eastwood Dairy LLC  
9235 Wildman Road  
South Charleston, Ohio 45368

## Certified Mail Return Receipt Requested

### Re: Warning Letter

Mr. Winkel,

I am writing to you as a result of an inspection conducted by my staff on June 1, 2006. The Engineer from the Livestock Environmental Permitting Program (LEPP) found during this inspection that there had been a discharge from the manure sand-settling pit located on the western side of the facility. The manure had discharged into the storm water diversion ditch where it had been contained. In addition to the western sand-settling pit having discharged, the eastern sand-settling pit is within one inch of discharging. You are required to bring both of these structures into minimum freeboard requirements of six inches plus the 24-hour storm event immediately.

Rule 901:10-2-05(A)(4) of the Ohio Administrative Code (OAC) requires you to maintain an operating level that provides, at a minimum, storage to contain a precipitation event plus an additional six inches of freeboard. Other ODA rules require you to monitor the manure liquid volume and levels weekly and to record the levels in your Operating Record. These requirements are in Rules 901:10-2-08(A)(4)(f) and 901:10-2-16(A)(1)(a). Failure to comply with the aforementioned Rules may result in enforcement and penalties of up to \$10,000.00 per day.

In addition to the above rules of the OAC being violated, there are other rules that have been violated as a result of the manure discharge including:

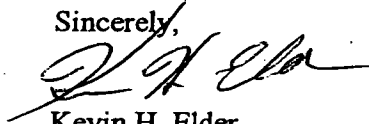
- Rule 901:10-4-05(E): Failure to follow the Emergency Response Plan in Eastwood Dairy LLC's permit;
- Rule 901:10-4-05(E)(4): Failure to report the manure spill. The OAC requires the owner or operator to report the spill as soon as possible, but no more than twenty-four hours following first knowledge of the occurrence of the following:
  - Time at which the discharge occurred or was discovered;
  - Approximate amount and characteristics of the discharge;
  - Receiving waters affected;
  - Circumstances that created the discharge;
  - Names and telephone numbers of persons having knowledge of the discharge;
  - Steps taken to clean up the discharge;
  - Names and telephone numbers of the persons responsible for the cleanup.

- Rule 901:10-4-05(E)(7): Failure to file a written report of the occurrence in letter form within five days following the first knowledge of the occurrence unless waived by the director permitting an extension of time.

Finally, I advise you that these requirements for periodic monitoring, and records of liquid manure levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,



Kevin H. Elder  
Executive Director, Livestock Environmental Permitting Program

Enclosure

Cc: Christine Pence, LEPP Inspector  
Jennifer Tiell, Legal Council

CC without enclosure: Cathy Alexander, Ohio EPA  
Clark SWCD  
Mike Grand



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 43068  
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## *Certified Mail Return Receipt Requested*

May 22, 2006

Todd Hoffman  
Hoffman Farms  
5640 West 950 South  
Silver Lake, IN 46982

### Re: Warning Letter

Dear Mr. Hoffman:

Violation of Ohio Department of Agriculture laws and rules was discovered during a complaint investigation by my staff on May 10, 2006. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found violations of Ohio law surrounding your operations. These violations include the following:

Rule 901:10-2-14 of the Ohio Administrative Code (OAC) provides as follows at paragraph (C)(3) and Appendix A, Table 2:

1. Need to maintain a distance as setback between the manure application area and a private well, with either 100 feet if manure is incorporated within 24 hours or 300 feet if manure is not incorporated.

Rule 901:10-1-06 of the Ohio Administrative Code (OAC) provides that the Director may commence enforcement against a Certified Livestock Manager pursuant to paragraph (C) (1) (b) as follows:

1. Fails to exercise reasonable care, judgment or use of the manager's knowledge and ability in the performance of the duties of a certified livestock manager.

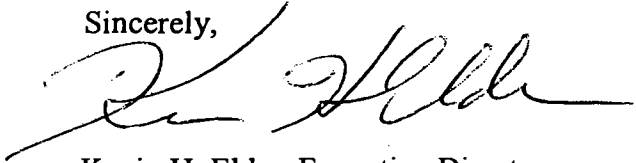
The complaint investigation showed that manure had been applied to a field located south and east of Vissers Dairy, LLC, located at 09711 Breining Road, Mark Center, Ohio. According to the Dairy's operating records, there were applications of sand separated solid manure applied April 10, 2006 and May 7, 2006. There were 9.6 tons per acre applied in April and 4.4 tons per acre applied in May. There were 11,765 gallons per acre of liquid manure from the manure pond applied May 8, 2006. Todd Hoffman,



Hoffman Farms, performed the applications. At least one of these applications was applied within ten feet of the well. The manure was not incorporated within 24 hours. The field cover was bean stubble with some weeds growing.

Please assure that the items noted in this letter are prevented in future applications. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If any follow-up inspection indicates the continuance of the violations noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

CC: Vissers Dairy, LLC  
Cathy Alexander– Ohio EPA  
Mike Nishimura – ODNR  
Defiance SWCD  
Jennifer Tiell – ODA Legal Counsel



# Ohio Department of Agriculture



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April 26, 2006

## Certified Mail Return Receipt Requested

Pork Champs, LLC.  
1136 Coldicott Hill Road  
Lucasville, Ohio 45648

William Ringler  
572 Waldo-Fulton Road  
Waldo, Ohio 43356

Dave Heisler  
3829 Pleasantbrook Drive  
Hilliard, Ohio 43026

### Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Pork Champ, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Pork Champ, LLC has failed to comply with Rule 901:10-2-01(B)(2) of the Ohio Administrative Code (OAC).

#### **I. VIOLATION: FAILURE TO COMPLY WITH PERMIT TO INSTALL PRIOR TO STOCKING WITH ANIMALS**

ODA has determined that OAC 901:10-2-01(B)(2) has been violated. Specifically, facilities constructed in accordance with a Permit to Install (PTI) issued by ODA are required to be inspected by the Director or an authorized representative in a timely manner prior to stocking with animals. OAC 901:10-2-01(B)(2)

On August 22, 2005, the Director of the Ohio Department of Agriculture issued PTI POR-0001.PI001.PIKE to you. The PTI authorized remodeling of three barns and constructing an additional barn. During a construction inspection conducted on April 24, 2006, the ODA inspector discovered that Pork Champ, LLC had expanded the sow numbers at the facility without stocking approval from ODA.

## II. CORRECTIVE ACTIONS REQUIRED

Pork Champ, LLC shall submit a notarized letter certifying that the facilities were constructed in accordance with the design plans to ODA immediately upon receipt of this NOD but no later than May 15, 2006. A copy of the completed and approved as-built plans shall be submitted to ODA immediately upon receipt of this NOD but not later than May 15, 2006 in order to complete the permanent record for PTI POR-0001-PI001-PIKE. Finally, Pork Champ, LLC shall complete final grading/seeding by June 1, 2006.

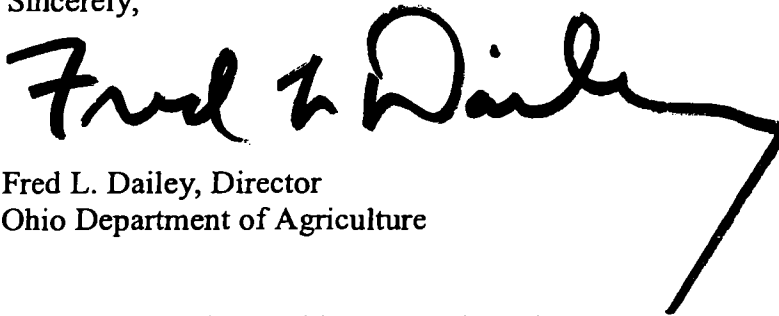
## III. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are the first cited violations with the category of seriousness of the violations as Category Major, and the gravity of the effect of the violations as minor.

Therefore, if you fail to comply with the corrective actions required herein, Pork Champ, LLC will be subject to the assessment of a civil penalty in the amount of \$800 for each day of violation.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Pike SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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April 26, 2006

Vissers Dairy, LLC  
09711 Breiningen Road  
Hicksville, Ohio 43526

Vissers Dairy, LLC  
C/o Petrus (Paul) Visser  
Cornelia (Corina) A.A. Visser-Joosen  
502 West High St. Apt. 8  
Mark Center, OH 43536

**Certified Mail Return Receipt Requested**

Dear Mr. and Mrs. Visser:

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Vissers Dairy is hereby issued a Notice of Deficiencies Resulting in Noncompliance. ODA has determined that Vissers Dairy has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-2-01(B)(2).

**I. VIOLATION**

ODA has determined that O.A.C. 901:10-2-01(B)(2) of the OAC has been violated. Specifically, O.A.C. 901:10-2-01(B)(2) requires, in pertinent part, that: "Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted to demonstrate compliance with paragraph (A) of rule 901:10-2-05 or paragraph (A) of rule 901:10-2-06 of the Administrative Code and shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals."

To date, ODA has not received a copy of the completed and approved as-built plans. During an inspection by ODA on April 20, 2006, the inspector noted that Vissers Dairy is using the sand settling basin and added stock to the dairy, without prior inspection and authorization by the Director or his authorized representative.

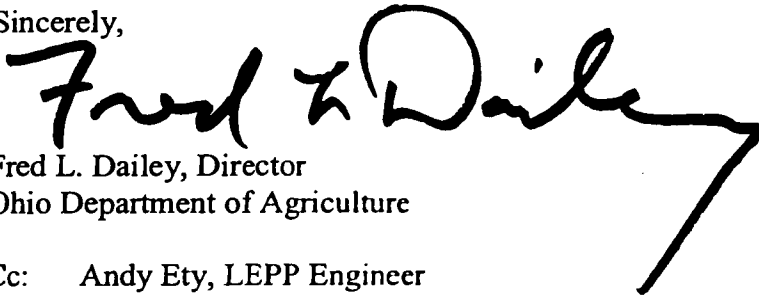
## II. CORRECTIVE ACTIONS REQUIRED

Vissers Dairy shall provide ODA with a copy of completed and approved as-built plans for the sand settling basin as soon as possible but not later than May 10, 2006, including a final survey of the sand settling basin that shows compliance with the approved set of design plans. This shall also include a notarized letter from the owner/operator certifying that the facility was constructed in accordance with the approved permit to install.

## III. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-4-04. In determining of the amount of penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category II, and the gravity of the violation as medium. Therefore, if you fail to comply with the corrective action required herein, you will be subject to the assessment of a civil penalty in the amount of \$800 for each day after the deadline set forth in the corrective action, as well as the potential for escalated enforcement.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Andy Ety, LEPP Engineer  
Chris Rodabaugh, LEPP Inspector  
Jennifer Tiell, Legal Counsel  
Defiance SWCD  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

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April 21, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
11212 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

**Re: Director's Notice of Deficiencies Resulting in Noncompliance-Goshen**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Goshen Pullet No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

**A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8, 30.a, 30.c, and 30.d of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Goshen Pullet Site No. 5 (OFGO-0001.PO001.HARD) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least October 7, 2005 through January 7, 2006, OFE has failed to maintain a 30% manure moisture level in Barns Nos. 1, 4, 5, 6, 7, 9, and 10.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Goshen Pullet No. 5 on March 20, 2006 showed that the conditions in these barns were promoting fly breeding because the manure was not being dried as rapidly as possible as required by the permit due to high levels of manure that can block the pit fans. Further, OFE's daily practice of pushing manure toward the centers of the barns, causing fresh manure to be stacked and piled in the front rows is resulting in high fly spec card counts in the front and rear of three bays of the barns. This stacking of fresh manure has two effects: (1) it slows the drying of fresh manure by decreasing the surface area. (2) it decreases the efficiency of the drying fans by stacking the manure higher than the remainder of the row height, i.e., at the immediate front or immediate rear.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE Goshen Pullet No. 5 is required to immediately take appropriate measures to control flies in Barn Nos. 1, 4, 5, 6, 7, 9 and 10 Appropriate measures include the following:

- a) Manure shall remain where it falls to increase drying efforts.
- b) Increase the number of pit fans. Space these fans 35 feet apart instead of 70 feet apart.
- c) Change insecticides in use, to avoid resistance build up in pests;
- d) Increase turning;
- e) Additional seeding of beneficials (if turning is not done);
- f) Use of parasitic wasps;
- g) Use of fungus.

By April 26, 2006, fly levels shall be reduced to "moderate" and further reduced by May 1, 2006 to "low" or "none" in all barns. By May 15, 2006, a LEPP Inspector will re-inspect the facilities to determine if the fly levels are reduced to "low" or "none."

## **C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first-cited violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of to \$1,000.00 per week for 90 days or 13 weeks for at total of \$13,000.00 for violation of wet manure. All violations have the potential for escalated enforcement.

## **II. FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS**

### **A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Goshen Pullet Site No. 5 (OFGO-0001.PO001.HARD) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations. The Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form).

The IRCP requires the Site Production Manager [Wilfredo Melendez] to sign the FEM-5 Form when actions have been taken and to return the completed forms to the Compliance Officer [Cale Ayres]. During the inspection of the Operating Records conducted on March 20, 2006, the LEPP Inspector found that for a period of 208 days, from August 24, 2005 to March 20, 2006, OFE Goshen Pullet No. 5 failed to complete Form FEM-5 to document corrective actions with the signature of the Site Production Manager and the date that the actions were complete.

### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Site Production Manager is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

### **C. PENALTY ASSESSMENT**

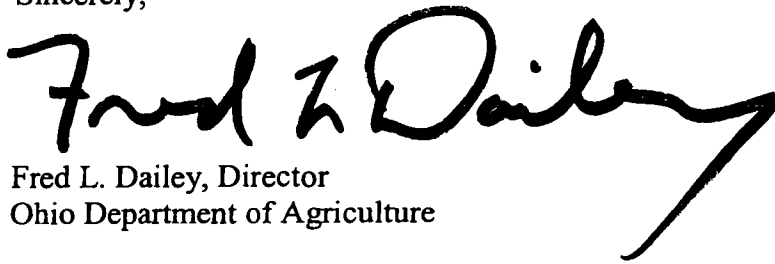
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,000.00 per week for 30 weeks, for a total of \$60,000 and the potential for escalated enforcement.



By May 15, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Howard Lyle, Hardin SWCD



# Ohio Department of Agriculture



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April 5, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
11212 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE- MARSEILLES**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Marseilles Layer Site No. 6. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraphs 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## A. VIOLATION

OAC 901:10-1-10(G) and Paragraphs 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for the Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN). The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Marseilles Layer Site No. 6 requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least October 1, 2005 through December 31, 2005, OFE has failed to maintain a 30% manure moisture level at Barns Nos. 1, 2, 4, 6, 7, 8, 9, 11, 13, 15 and 16. Further, manure in Barns Nos. 7 and 16 exceeded manure moisture levels at 50%. OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development.

An inspection at OFE Marseilles on March 2, 2006 showed that the conditions in these barns were promoting fly breeding and abundant to extreme levels of larvae because the manure was not being dried as rapidly as possible by the use of pit fans, as required by the permit. Specifically, several barns have high and very high rows of manure. The LEPP Inspector determined that OFE has not complied with the manure removal schedule as required by the Consent Order and reflected in the terms of the permit that manure be removed two times per barn, per year, alternating rows removed each year (There are four rows of manure in each barn).

“a. Rows 1 and 3 of manure is removed from each barn each spring (approx. Feb.-May);

“b. Rows 2 and 4 of manure may be removed from each barn each mid-late summer through autumn (approx. June-Dec.)” As a result, these high and very high rows disrupt the airflow of the exhaust or “pit” fans, blocking airflow to all manure, thus decreasing the drying of lower rows of manure.

Finally, the IRCP requires the Site Production Manager [Artemio Alarcon] to sign the FEM-5 Form when actions have been taken and to return the completed form to the Compliance Officer [Cale Ayres]. The LEPP Inspector found that for a period of at least 208 days from August 24, 2005 to March 2, 2006, OFE Marseilles failed to complete Form FEM-5 to document corrective actions with the signature of the Site Production Manager and the date that the actions were complete.

## **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately take appropriate measures to control larvae in Barn Nos. 1, 2, 4, 6, 7, 8, 9, 11, 13, 15 and 16. Appropriate measures include the following:

- a) Increase the number of pit drying fans. Spacing these fans 35 feet apart instead of 70 feet apart;
- b) Change insecticides in use, to avoid resistance build up in pests;
- c) Increase turning;
- d) Additional seeding of beneficials (if turning is not done);
- e) Use of parasitic wasps;
- f) Use of fungus.

In addition, OFE Marseilles shall immediately begin to remove manure from at least two rows of each barn with insecticide treatment prior to removal from the barns. By April 15, 2006, fly and larvae levels shall be reduced to “moderate” and further reduced to “low” or “none” by April 30, 2006 in all barns. During the first week of May 2006, a LEPP Inspector will re-inspect the facilities to: 1) Determine if the fly and larvae levels are reduced to “low” or “none;” 2) Determine whether or not manure will be removed by May 31, 2006; and 2) Inspect the Operating Records for compliance with Form FEM-5.

### C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), (J) and (K). Based upon this review, ODA has determined that violations regarding failure to remove manure as cited herein are first-cited violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. However, failure to complete the FEM-5 Forms is a repeated violation, cited in a NOD issued to OFE Marseilles on September 10, 2005 and failure to maintain manure moisture levels at 30% is a repeated violation, cited in a NOD issued January 10, 2005. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty for the first-cited violations for failure to remove manure and abundant to extreme levels of flies and larvae in the amount of up to **\$2,000.00 per day for 120 days or \$240,000.00**. For the repeated violations, a Category II violation, with a low gravity, OFE Marseilles would be subject to the assessment of a civil penalty in an amount of up to **\$3,000.00 for 208 days or \$624,000.00**. All violations have the potential for escalated enforcement.

During the first week of May 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$864,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

  
Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Wyandot SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Jennette Bradley  
Director Fred L. Dailey

Administrative Offices  
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April 5, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
11212 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE- MT. VICTORY**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Mt. Victory Layer Site No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraphs 8, 30.a, 30.c, and 30.d of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

## **A. VIOLATION**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least October 1, 2005 through December 31, 2005, OFE has failed to maintain a 30% manure moisture level at Barns Nos. 2, 3, 5, 9 and 10. OFE's

IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development.

An inspection at OFE Mt. Victory on March 13, 2006 showed that the conditions in these barns were promoting fly breeding and abundant to extreme levels of larvae because the manure was not being dried as rapidly as possible as required by the permit due to faulty placement and focus of pit fans.

In addition, the IRCP requires the Site Production Manager [Octario Chavez] to sign the FEM-5 Form when actions have been taken and to return the completed forms to the Compliance Officer [Cale Ayres]. The LEPP Inspector found that for a period of at least 217 days from August 24, 2006 to March 13, 2006, OFE Mt. Victory failed to complete Form FEM-5 to document corrective actions with the signature of the Site Production Manager and the date that the actions were complete.

### **B. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE Mt. Victory is required to immediately take appropriate measures to control larvae in Barn Nos. 2, 3, 5, 9 and 10. Appropriate measures include the following:

- a) Increase the number of pit fans. Space these fans 35 feet apart instead of 70 feet apart;
- b) Change insecticides in use, to avoid resistance build up in pests;
- c) Increase turning;
- d) Additional seeding of beneficials (if turning is not done);
- e) Use of parasitic wasps;
- f) Use of fungus.

By April 15, 2006, fly and larvae levels shall be reduced to "moderate" and further reduced to "low" or "none" by April 30, 2006 in all barns. During the first week of May 2006, a LEPP Inspector will re-inspect the facilities to: 1) Determine if the fly and larvae levels are reduced to "low" or "none;" and 2) To inspect the Operating Records for compliance with Form FEM-5.

### **C. PENALTY ASSESSMENT**

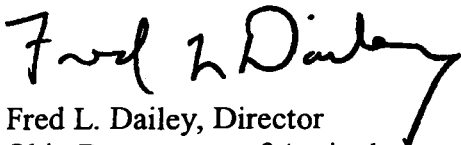
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations for manure moisture exceedances cited herein are violations with the category of seriousness of the violations as major Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with the corrective actions required herein, OFE or its owners and/or operators

would be subject to the assessment of a civil penalty in the amount of to **\$4,000.00 for 120 days or \$480,000** for wet manure. For the repeated violations, also cited in a NOD issued September 2, 2005, regarding records maintained by Form FEM-5, a Category II violation, with a low gravity, OFE Mt. Victory would be subject to the assessment of a civil penalty in the amount of up to **\$3,000.00 for 217 days or \$651,000.00**. All violations have the potential for escalated enforcement.

During the first week of May 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty of \$1,131,000.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Howard Lyle, Hardin SWCD



# Ohio Department of Agriculture



Governor Bob Taft  
Lieutenant Governor Bruce Johnson  
Director Fred L. Dailey

Livestock Environmental Permitting Program  
8995 East Main Street • Reynoldsburg, Ohio 4306  
Phone: 614-387-0470 • Fax 614-728-633

ODA home page: [www.state.oh.us/agr/](http://www.state.oh.us/agr/) • e-mail: [agri@mail.agri.state.oh.us](mailto:agri@mail.agri.state.oh.us)

March 23, 2006

Porky's Swine Farm  
C/o Travis Temple  
6688 SR 219  
Celina, OH 45822

Certified Mail

Re: Warning Letter

Dear Mr. Temple:

Violations of the Ohio Department of Agriculture rules were discovered during a routine inspection of Porky's Swine Farm on March 13, 2005. On that date, the LEPP Inspector noted the facility was lacking operating inspection records for daily water line and weekly liquid manure storage volume. Also, rodent holes in the lagoon banks were not reported in the operating inspection record and had not been repaired to comply with requirements from the inspection of October 31, 2005.

Porky's Swine Farm is required to comply with the contents of the Manure Management Plan that is approved in the facility's Review Compliance Certificate (RCC).

Rule 901:10-2-08(A)(4)(n) states:

Inspect drinking water lines daily, including drinking water or cooling water lines that are allocated above ground, readily visible or accessible for daily inspections, and record in the operating record.

Further, rule 901:10-2-08(A)(4)(f) states:

Inspect liquid manure volume weekly and note in the operating record the level of liquid manure in manure storage or treatment facilities by the depth marker required in paragraph (A)(4)(o) of this rule.

Also, rule 901:10-2-08(A)(4)(e) states:

Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage, cracking, excessive vegetation, or discharge.

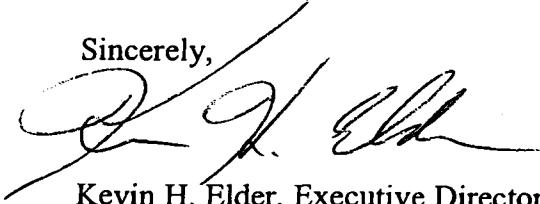


In addition, rule 901:10-2-08(A)(4)(q) states:

Actions to be taken means actions to correct any deficiencies found as a result of the inspections conducted under this rule. Deficiencies are to be corrected as soon as possible and listed in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

On or shortly thereafter the date of May 1, 2006, an inspector will re-inspect your operation to assure the items noted in the letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder", written over a horizontal line.

Kevin H. Elder, Executive Director  
Livestock Environmental Permitting Program

Cc: Gail Rodabaugh, LEPP inspector  
Jennifer Tiell, Legal Counsel  
Cathy Alexander, Ohio EPA  
Mike Nishimura, ODNR-DSWC  
Bill Knapke, Cooper Farms  
Darke SWCD



# Ohio Department of Agriculture



Governor Bob Taft

Deputy Governor Jennette Bradley

Director Fred L. Dailey

Administrative Offices

8995 East Main Street • Reynoldsburg, Ohio 43068-3399

Phone: (614) 466-2732 • Fax: (614) 466-6124

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**Certified Mail return Receipt requested**

March 22, 2006

Henk Arts  
Arts Dairy, LLC  
5624 Elm Sugar Rd.  
Convoy, OH 45832  
419-749-0033

**Re: Director's Notice of Deficiencies Resulting in Noncompliance**

Dear Mr. Arts:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Arts Dairy, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Arts Dairy, LLC has failed to comply with Rules 901:10-1-10(G) and 901:10-3-04(a)(1) of the Ohio Administrative Code (OAC).

**I. VIOLATION: UNAUTHORIZED DISCHARGE TO WATERS OF THE STATE**

ODA has determined that OAC Rule 901:10-3-04(A)(1) has been violated.

Specifically, OAC Rule 901:10-3-04(A)(1) that there must be no discharge of manure into waters of the state from the production area of a facility as defined in OAC Rule 901:10-1-01(II).

ODA has determined that a manure discharge occurred at the production area of the dairy to a road ditch, called Goodwin Ditch, with the discharge starting at Arts Dairy and going east to Ward Road for a distance of 1.2 miles. The manure discharge occurred on or before March 1, 2006.

**II. CORRECTIVE ACTIONS REQUIRED**

You must correct these deficiencies by performing the following:

1. Continue to clean and pump the Goodwin Ditch for the complete distance of manure distance, pumping the deepest areas and digging sumps to permit manure-laden liquid to be collected and pumped
2. Maintain dam in Goodwin Ditch until manure is removed.
3. Continue to clean and pump out the construction ditch, until it is completely cleaned out and all manure-laden water is prevented from flowing to the ditch. You are required to pump the construction ditch after any rainfall exceeding an amount of one-half inch.
4. Maintain tile plugs in place until there is no manure remaining in the tile.
5. Provide the LEPP Inspector with all operating records recording manure levels and manure removal that are required to be maintained in accordance with OAC 901:10-2-08(A)(4)(f) and (g)
6. Drain all surface water south of the construction ditch so that manure-laden water can flow to the construction ditch to be pumped to the manure store pond or otherwise used for field application.
7. Within 10 days of receipt of this Notice of Deficiencies, submit a report to the ODA LEPP Inspector explaining the circumstances that created the discharge, the time when the discharge may have occurred, including the location of the leak or spill, and quantity of discharge. Upon receipt of the report, Arts Dairy may be directed to identify the approximate location of all known subsurface drains within one hundred feet of the manure storage pond.
8. Be advised that manure discharges from the production area of the dairy must be reported in the annual report required by OAC 901:10-2-20 for calendar year 2006.

On or about April 15, 2006, a LEPP Inspector will re-inspect your facility to determine if the corrective actions listed above have been completed.

If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

### III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate since you reported the manure discharge and the gravity of the violations is low level. The appropriate penalty in this matter will be \$200.00 per day beginning March 1, 2006 unless the deficiencies are corrected by April 15, 2006 for 46 days of noncompliance and a total of \$9,200.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Chris Rodabaugh, LEPP Inspector  
Mary Beth Ruttan, Assistant Attorney General  
Cathy Alexander, Ohio EPA  
Van Wert SWCD



# Ohio Department of Agriculture



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Lieutenant Governor Jennette Bradley  
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March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

Certified Mail

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE – CROTON PULLET NO. 4**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY  
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Pullet No. 4 (OFP4-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect

Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Ronald Bishop as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton Pullet No. 4, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 20, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through January 30, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Ronald Bishop conducted pit inspections as members of the Management Team. However, from December 1, 2005 through January 30, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 9, 2006.

ODA has determined that from December 1, 2005 through January 30, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

## **II. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with

the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total of \$22,500 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$22,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is written in a cursive, flowing style with a long, sweeping tail that extends to the right.

Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kiracofe, Licking SWCD



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March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE – CROTON HATCHERY/BREEDER PULLET**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Hatchery/Breeder Pullet. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY  
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Hatchery/Breeder Pullet (OFHB-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect



Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Jose Rashra as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on January 30, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through January 30, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Jose Rashra conducted pit inspections as members of the Management Team. However, from December 1, 2005 through January 30, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 9, 2006.

ODA has determined that from December 1, 2005 through January 30, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

## **II. CORRECTIVE ACTION REQUIRED**

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

## **III. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with

the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total \$22,500.00 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$22,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Cathy Alexander, Ohio EPA  
Jim Kiracofe, Licking SWCD



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March 9, 2006

Donald Hershey  
Ohio Fresh Eggs LLC  
9300 Croton Road  
Croton, Ohio 43013

**Certified Mail**

Orland Bethel  
Hillandale Farms, Inc.  
3rd Street and Crooked Run Road  
North Versailles, PA 15137

**Certified Mail**

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN  
NONCOMPLIANCE – CROTON LAYER SITE NO. 1**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F), 901:10-2-08 and 901:10-2-17 and certain requirements set forth in paragraph 8, 36, and 37 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

I. **FIRST VIOLATION: FAILURE TO CONDUCT DAILY FREEBOARD  
INSPECTIONS AND RECORD IN THE OPERATING RECORD**

A. **VIOLATION**

OAC 901:10-1-10(F) and Paragraph 36 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.1 (OFL1-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds and document the results of these inspections in the operating record in accordance with OAC 901:10-2-08.

ODA has determined that OFE has failed to conduct daily inspections of the storm water pond in order to maintain adequate freeboard as required by OAC 901:10-2-08(A)(4)(h). At a limited inspection on January 19, 2006, the LEPP Inspector observed that there was no freeboard available in storm water pond, measurements taken confirmed a total lack of freeboard, and it was discovered that there were no inspection records documenting daily inspections in the Operating Record.

Specifically, OFE's MMP requires that a Compliance Officer inspect each storm water containment pond daily for freeboard. The inspection is to be recorded on the Croton Checklist form for the operating record.

**B. CORRECTIVE ACTION REQUIRED**

OFE shall conduct the required daily freeboard inspections and record inspection results in the operating record.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$200.00 per day and the potential for escalated enforcement.

**II. SECOND VIOLATION: FAILURE TO MAINTAIN FREEBOARD**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) at 4. Surface Water Protection and Stormwater Controls contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.1 (OFL1-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds to ensure that two feet of freeboard is maintained.

On January 19, 2006, staff of the Ohio EPA Division of Drinking and Groundwater (DDAGW) conducted an inspection at OFE Croton Layer No. 1. The DDAGW staff contacted Harry Kallipolitis, Ohio EPA, Division of Surface Water to report high water problems occurring at OFE Croton Layer No. 1. Mr. Kallipolitis proceeded to contact Jim Young, ODA Livestock Environmental Permitting Program (LEPP) Inspector to request an investigation by ODA.

The LEPP Inspector found that the recently installed, temporary and unauthorized storm water pond was completely full. In addition, the pre-existing storm water pond was also at full capacity, as was an excavated area between the original storm water pond and the egg wash water pond. None of the ponds maintained any freeboard, in violation of OAC 901:10-2-08.

**B. CORRECTIVE ACTION REQUIRED**

OFE shall continue to haul storm water until such time the levels in all ponds correspond with the Manure Management Plan Waste Water/Storm Water Plan for Croton Layer No.1 PTO OFL1-0001.PO001.LICK. By March 31, 2006, ODA will re-inspect the facility to determine if freeboard levels comply with OAC 901:10-2-08.

**C. PENALTY ASSESSMENT**

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$1,600.00 per day and the potential for escalated enforcement.

**III. THIRD VIOLATION: EMERGENCY RESPONSE NOTIFICATION**

**A. VIOLATION**

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Emergency Response Plan contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.1 (OFL1-0001.PO001.LICK) and OAC 901:10-2-17 requires that OFE notify ODA of discharges to waters of the State as soon as possible but in no case more than twenty-four hours following first knowledge of the occurrence of the discharge, the approximate amount and characteristics of the discharge, the waters of the state affected by the discharge, the circumstances of the discharge, and the persons with knowledge of and responsibility for cleanup of the discharge.

On January 19, 2006, the LEPP Inspector found storm water between the odd numbered barns on the north side of the operation discharging from the site through a large culvert that passes under Parsons Road, then flowing into a grassed waterway that carried the discharged storm water north and deposited it into an unnamed tributary of Otter Fork. Further investigations of the site revealed an area along Parsons Road where an excavated area between the original storm water pond and the egg wash water pond was nearly over flowing in a low area. At no time did OFE notify ODA of the discharge and resulting manure spill.

**B. CORRECTIVE ACTION REQUIRED**

OFE is required to comply with the Emergency Response Plan in OFL1-0001.PO001.LICK and OAC 901:10-2-17 (A)(4). OFE shall post signs in each barn at Croton Layer Site No. 1 advising employees of emergency response numbers and procedures in the event of manure spills and discharges to waters of the state. By March 31, 2006, ODA will re-inspect the facility to determine if signs are posted.

**C. PENALTY ASSESSMENT**

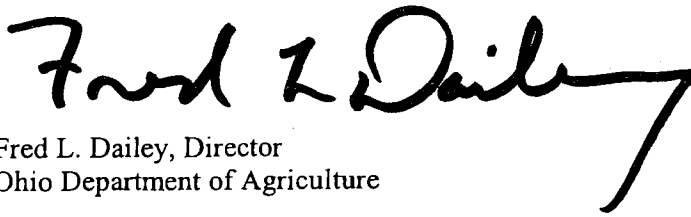
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as high or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject

to the assessment of a civil penalty in the amount of \$3,200.00.00 per day and the potential for escalated enforcement.

If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$ 360,000.00 based on a total of \$ 5,000.00 per day for 72 days, beginning January 19, 2006 and ending March 31, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director  
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program  
Andy Ety, LEPP Engineering  
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture  
Mary Beth Ruttan, Assistant Attorney General  
Jim Young, LEPP Inspector  
Harry Kallipolitis, Ohio EPA  
Cathy Alexander, Ohio EPA  
Jim Kirakofe, Licking SWCD