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**Responsiveness Summary to public comments on the
John Fleck & Sons, Inc.
Draft Permit to Operate**

September 28, 2016

On August 10, 2016 the Ohio Department of Agriculture issued a public notice of the John Fleck & Sons, Inc. draft Permit to Operate (PTO). This public notice opened the public comment period on the draft permit and informed the public that the Ohio Department of Agriculture (ODA) was accepting public comments on a draft Permit to Operate (PTO) for the facility called “John Fleck & Sons, Inc.” John Fleck & Sons, Inc. is located at 3381 Harrison Rd. Celina, Ohio 45822 in Mercer County, Franklin Township, in the Upper Wabash Watershed. The public comment period ended at 5:00 p.m. on September 9, 2016.

The Director’s final decision on the draft permit must be made in accordance with the laws regulating and facts contained in the permits. Ohio Administrative Code (“OAC”) 901:10-6-04 states that persons, including applicants, who believe any condition of a draft permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public meeting). Ohio Revised Code (“ORC”) 903.09 states that the Director is to hear comments pertinent to the draft permits. The Ohio Department of Agriculture considers pertinent comments to be comments relating to the draft permit and the way in which the draft permit complies with ORC Chapter 903 or the rules promulgated thereunder. Public comments also need to relate to issues under the regulatory control of the Director of Agriculture. The Ohio General Assembly has not given the Director of Agriculture unlimited control. The permits cover environmental issues pertaining to water pollution control such as siting, geological explorations, facility design, construction, water quality and quantity, manure management, containment of stormwater runoff, insect and rodent control, mortality, and emergency response.

Comments about large-scale farming in Ohio, about other farms in Ohio, or other permits will not be considered as comments that pertain to these draft permits. Comments about roads, taxes, property values, and air quality are not under the regulatory control of the Director of Agriculture and will not be considered as comments that pertain to these draft permits.



Written Public Comments Submitted by

No.	Date Received	Name	Organization, if Any	City, State
1	9/9/2016	Vickie Askins		Cygnets, OH
2	9/9/2016	Kate Anderson	Guardians of Grand Lake St. Marys	Columbus, OH

All similar comments are summarized and grouped.

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1. COMMENT: Compliance Information

901:10-1-03 – (A) (1) - The permit application contains misleading or false information

Ohio Revised Code Section 903.05 - Application for a permit to install or permit to operate - states the following under (3) A listing of all administrative enforcement orders issued to the applicant or any person identified by the applicant under division (C)(1) of section **903.02** or **903.03** of the Revised Code, all civil actions in which the applicant or any such person 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 applicant or any such person 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 animal feeding facility that the applicant or any such person owns, has owned, 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 animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating outside the United States.

The lists of animal feeding facilities owned or operated by the applicant or any person identified by the applicant under division (C)(1) of section **903.02** or **903.03** of the Revised Code within or outside this state or outside the United States shall include, respectively, all such facilities owned or operated by the applicant or any such person during the five-year period immediately preceding the submission of the application.

1. I could find no Compliance Histories in this permit. Please explain why they were omitted or furnish the Compliance Histories for all the applicants/owners/operators of the seven John Fleck & Sons, Inc. facilities.
2. If any of these owners/operators was subject to any violations as described in ORC 903.05, please explain if the Director will deny this application or why he would not do so.

Ohio Revised Code Section 903.05 - Application for a permit to install or permit to operate - states the following under (3) A listing of all administrative enforcement orders issued to the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code, all civil actions in which the applicant or any such person 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 applicant or any such person 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 animal feeding facility that the applicant or any such person owns, has owned, 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 animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating outside the United States.

Response:

ODA has received public comments regarding a list of all administrative enforcement orders issued to the applicant or any person identified by the applicant pursuant to ORC 903.05(A)(3). ORC 903.05(A) contains three requirements regarding the submission of such information for any applicant that has not owned or operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the permit to install or permit to operate application(s). (emphasis added). As noted in the permit, Paul Fleck, Mark Fleck and Johnny Fleck are members of John Fleck & Sons, Inc. and are associated with the existing concentrated animal feeding facility FNW Enterprises, LLC. Specifically, Paul, Mark, and Johnny Fleck are members of Fleck Brothers Farm Partnership. Fleck Brothers Farm Partnership owns FNW Enterprises, LLC. FNW Enterprises, LLC, has been a permitted concentrated animal feeding facility since 2009. Paul Fleck, Mark Fleck, and Johnny Fleck have owned FNW Enterprises, LLC, since 2009. Because Paul Fleck, Mark Fleck and Johnny Fleck owned a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the permit to operate application, the requirement cited in the above public comments is not applicable to Paul Fleck, Mark Fleck and Johnny Fleck.

ODA did conduct a background check in accordance with ORC 903.05(A) for applicant John Fleck & Sons, Inc. The results of that background check are included in the permit to operate contained on pages 33-36.

As set forth in ORC 903.05, if any applicant or person identified by the applicant has been involved in or cited for any violation of the Federal Water Pollution Control Act, the "Safe Drinking Water Act," or any other applicable state, federal or foreign laws pertaining to environmental protection, it would be up to the director's discretion whether or not to approve the permit.

2. COMMENT: Manure Management

Ohio Revised Code Section 903.01 - Concentrated animal feeding facility definitions - states under (b)(2): 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.

1. It appears from the addresses that these facilities do not adjoin each other. Please explain.
2. It appears from the Manure Management Plan that these facilities do not use a common area for the disposal of manure. Please explain.
3. Many of the soil tests in this MMP show egregious levels of phosphorus. Please explain why ODA allowed these fields to be included for additional manure application in this MMP.

Response:

John Fleck & Sons, Inc. has determined that nutrients would better be distributed and utilized if they shared land application areas for the manure from their different animal feeding operations. Facilities need not adjoin each other to be part of the same concentrated animal feeding facility. In this instance, John Fleck & Sons had decided to combine multiple animal feeding facilities that are under common

ownership, because it will use common areas for the manure application. Facilities that use common areas for manure application meet the definition of a Concentrated Animal Feeding Facility and the requirement for a Permit to Operate.

John Fleck & Sons has 3,450 acres of crop land that they control. Only 1,774 acres are represented in the permit because those were the only acres that had soil tests less than 3 years old. The remaining 1,676 acres could be added when the soil tests become available.

Of the 1,774 acres that had soil tests in the permit, 16.6 acres were unavailable to receive manure and 311.5 acres are available to receive manure at a limited rate (not to exceed annual crop removal of Phosphorus). On the acres in the Manure Management Plan (MMP), the facility was able to demonstrate that more Phosphorus is removed (103,600 lbs.) versus the amount of Phosphorus generated or land applied (91,226 lbs.). Therefore, the facility is able to demonstrate a balance of Phosphorus over the 5 year life of the PTO.

3. COMMENT: Permit Approval

Ohio Revised Code Section 903.03 - Program for issuance of permits to operate - states under (D) The director shall issue permits to operate in accordance with section **903.09** of the Revised Code. The director shall deny a permit to operate if either of the following applies: - (1) The permit application contains misleading or false information.

6. ORC 903.03 requires that the director shall deny a permit if it contains misleading or false information. Please explain why the Director allowed this Permit to be public noticed since it does not comply with Ohio's laws.

The GOGLSM is very concerned about this application because of the incompleteness of the PTO permit application by John Fleck & Sons, Inc. We are also concerned by the improper bundling of farms in this application and the Dept. of Agriculture unwillingness to force applicants to meet requirements of the Ohio Revised Code.

Response:

After review by the Division of Livestock Environmental Permitting and as discussed in greater detail above, there is no reasonable basis for a determination that John Fleck & Sons provided any false or misleading information in its PTO application.

4. COMMENT: Flies

There should be a fly trapping program to establish a baseline for the average number of flies present prior to the start-up of the MCAFF to establish if a fly nuisance problem exists in the area prior and after the construction and management of the MCAFF. Neighboring properties within a ten-mile radius should be thoroughly compensated for any nuisance created by flies.

Response:

This facility and other facilities owned by the members of John Fleck & Sons, Inc. have been in existence for years. ODA-DLEP is not aware of any fly complaints at these facilities. John Fleck & Sons, Inc. is required to operate this facility in accordance to the Insect and Rodent Control Plan that is part of it PTO. ODA-DLEP conducts inspections to verify compliance with the Insect and Rodent Control Plan. ODA-DLEP also investigates complaints submitted regarding possible violations of the same.

The comments received characterize this facility as an "MCAFF" or major concentrated animal feeding facility. It should be noted that this facility is a large concentrated animal feeding facility, not an MCAFF.

5. COMMENTS: Topics Not Applicable to Draft Permits

GOGLSM recommends that there be a moratorium on any additional livestock coming into the watershed on family farms, AFOs, CAFOs or MCAFFs until the pollution problem is permanently resolved. The watershed for Grand Lake St. Marys (GLSM) is the only distressed watershed in Ohio. With the growing pollution of Lake Erie and other bodies of water, GLSM remains the best location to solve the pollution problem.

We also ask that all farms with livestock be permitted regardless of size. The size of a farm should not matter when it comes to permitting. We believe this is important since GLSM is a distressed watershed.

Health

With all CAFOs, insect and rodent populations escalate and present a health hazard to the general public. This application discusses their manure management plan describe aerial and land application of manure. This manure will be washed directly into Grand Lake St. Marys because the watershed is nearly fully saturated with phosphorous. The Dept. of Agriculture should not be permitting any additional farms until the waterways are protected from agricultural run-off and preventing more phosphorous from entering the lake. With microcystins reaching over 170ppb in 2016, all permits should be denied until a proper solution for cleaning up Grand Lake St. Marys is in place.

Decline in Real Property Values

The potential for real property valuation loss is possible. A recent study by the Greenfield Advisers who did a literature search and evaluation of the likely impacts of the nearby real estate John Fleck & Sons, Inc. Below is the summary of their findings.

There should be a real property assessment by an independent party of the properties in a ten-mile radius of the proposed facility to determine current values and to establish a benchmark. Every year another assessment should be conducted to determine any loss of real property value and all losses should be paid to the property owner by the owners of John Fleck & Sons, Inc. for each year they are given a permit to operate.

Summary of CAO Empirical Findings

“The establishment of a CAO results in value diminution to other nearby properties both through a negative externality as well as through indirect economic impacts. The amount of the value loss is an inverse function of distance (closer properties diminish more), a function of property type (newer, nicer residences lose more) and a function of property use (farms will lose due to diminished productivity and comparative marketability to other farm lands while residential use will no longer be a highest-and-best use). While the appraisal profession has only begun to quantify the loss attributable to CAOs, it is clear from the broad array of empirical studies and case studies that for homes which are adjacent to the facility. Negative impacts are noted at distances exceeding 3 miles, and in the case of a flood or other weather event, waste from the facility can be spread over far greater areas.

Since the initial review of CAOs affect on proximate property values, multiple new trends have been identified. First, the increased use of GIS in local governments has provided researchers with the ability to conduct investigations that are more thorough. Providing researchers with more data, in abundance and in detail, allows them to better locate which factors and to what degree are having an effect. Second, in conjunction with more data and use of GIS an improvement in the hedonic analyses performed. The Berks County study noted that previous studies such as the, University of Minnesota study and the North Carolina studies were conducted on less than 300 sales transactions each, but that the Berks County study and the Iowa State studies reviewed 8,090 and 1,145 transactions respectively. While more data does not imply more significant results it does allow researchers to be more discriminating when compiling their datasets.

GOGLESM Recommendations

- 1. Due to the potential loss of real property value near the John Fleck & Sons, Inc. PTO application should be denied. GOGLESM recommends that the owners and operators in this draft permit application be required to pay for an independent real property assessment within a ten-mile radius of the proposed facility to establish current values as a benchmark.*
- 2. We also recommend that another independent real property assessment be conducted every year for the five years of this permits with any loss in real property values in the ten-mile radius be paid to the real property owners for their loss.*

There are several issues GOGLESM has with the John Fleck & Sons, Inc. PTO Permit Application and based on the errors and the incompleteness of the permit application and according to Ohio Revised Code 901:10-1-03 – “Criteria for decision-making” by the Director, GOGLESM has the following concerns and accordingly should be denied:

Response:

These comments relate to topics not under ODA’s jurisdiction or regulatory authority. Therefore, these comments are determined to not be applicable to the permit application as required by ORC 903.09 and OAC Chapter 901:10-6.