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**Responsiveness Summary to public comments on the
Rising Sun Dairy draft Permit to Install and draft Permit to Operate**
August 31, 2011

On July 14, 2011, the Ohio Department of Agriculture issued a public notice of Rising Sun Dairy draft Permit to Install and draft Permit to Operate. This public notice opened the public comment period on the draft permits and informed the public that a public meeting would be held on August 16, 2011 to accept comments on the draft permits. The comment period ended at 5:00 p.m. on August 23, 2011.

The Director's final decision on the draft permits must be made in accordance with the laws regulating and facts contained in the permits. According to rule 901:10-6-04 of the Ohio Administrative Code, 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 Section 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 permits and the way in which the draft permits comply with the ODA rules. 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.

Similar comments are grouped and summarized.



No.	Date Received	Name	Organization, if any	City, State
1	8/16/11	Jane Beery		Mt. Sterling, OH
2	8/16/11	David Dhume	Madison County Commissioner	London, OH
3	8/16/11	Phil Eades	Paint Township Trustee	London, OH
4	8/16/11	Mike Bergman		Mt. Sterling, OH
5	8/16/11	Matt Furbee	Union Township Trustee	London, OH
6	8/22/11	Dale R. King, President	Darby Creek Matters	London, OH
7	8/22/11	Dave Thomas, Vice Pres.	Darby Creek Matters	London, OH
8	8/23/11	Robert & Lisa Higgins		Mt. Sterling, OH

Received after public comment period had ended.

9	8/25/11	Mike Sullivan, President	Union Township Trustee	London, OH
10	8/25/11	Matt Furbee	Union Township Trustee	London, OH
11	8/25/11	Gary Bogenrife	Union Township Trustee	London, OH

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1. Field Tiles

Is there a policy about how drain tiles should be repaired if they are damaged in an effort to prevent manure from getting into the ditch?

Response:

Field tiles are required to be monitored during manure application. Rule 901:10-2-14 of the Ohio Administrative Code requires the owner or operator to maintain or have access to methods or devices to capture or stop subsurface drain flow if liquid manure reaches subsurface drain outlets. If manure has reached the field tile the first objective is to stop the manure from flowing into the ditch and causing environmental harm. If any damage is done to the field tile during the effort to prevent the manure from entering the ditch then the damaged field tile should be repaired, although there is no specific ODA regulation requiring a manure applicator to repair the tile. At the time the field tile is being repaired it would be recommended to add a water control device to the tile to help prevent any future environmental concerns if the field is to be utilized in the future.

2. Past Manure Spills

There has been three documented manure spills associated with Assen Dairy, once in 2008 and twice in two days in 2010. It is hard to understand how this doesn't show a lack of sufficient reliability, expertise, and competence to operate the facility.

We oppose the expansion because of this farm's past record. There have been multiple spills and violations. They have not acted responsibly in the past and there is no reason to believe they will manage 2500 cows in a responsible way. They do not show concern for the neighboring area, streams, people or the roads.

The Department of Agriculture should be well aware of this farm's past record of violations. There seems to be an unwillingness to comply with State Regulations.

Response:

The commenter refers to two specific incidents involving Assen Dairy. In May 2008, manure from the facility was applied by a hired custom applicator to a field, causing a discharge into waters of the state. Pieter Assen self-reported the discharge to ODA once it was discovered and stopped using the custom applicator and the application method that had caused the discharge. (This is the applicator who had used the trucks noted in comment 5, below.) In April 2010, manure from the facility was applied by a different hired custom applicator onto several fields near the facility. The applications caused discharges to waters of the state, resulting in violations of the facility's NPDES permit and a fish kill. These incidents were also self-reported to ODA by Pieter Assen, even though the facility's former Permit to Operate had expired and the facility was below 700 cows and therefore not regulated by ODA at the time of the discharges. Both instances resulted in Notices of Violation from Ohio EPA, which has regulatory authority to enforce against discharges to waters of the State. In October 2010 Assen Dairy, LLC and Pieter Assen pleaded guilty to water pollution charges related to the May 2008 and April 2010 incidents and agreed to pay a total of \$20,000 in fines and restitution. The custom applicators involved in each incident were also sanctioned separately.



There is no history of noncompliance with respect to Mr. Dewitt and Ohio Milk Partners, LLC, who are also on this permit application. While there have been past instances of noncompliance involving Rising Sun Dairy, LLC, Assen Dairy, LLC and Pieter Assen, all past violations have been resolved, and the companies and Mr. Assen have taken affirmative actions in order to return to compliance and to settle any enforcement proceedings, including self-reporting of the violations, acknowledgment of liability and the payment of penalties. Thus, while there is some history of noncompliance involving some of the applicants, the history does not appear to be one of substantial noncompliance with applicable laws pertaining to environmental protection that would indicate a lack of sufficient reliability, expertise, and competence to operate the facility in substantial compliance with Chapter 903 of the Revised Code and the rules.

3. Not Incorporating the Manure During Application

Due to past manure spills associated with manure getting into the field tiles, they decided to stop knifing the manure in during application and instead just applying the manure on top of the ground where it ponds and runs off. They also apply the manure on top of snow covered ground.

Response:

Surface application of manure is an allowed manure application method. When manure is surface applied versus incorporated within 24 hours or directly injected, the setback requirements for wells and neighboring residences increase significantly from 100 feet to 300 feet.

Rising Sun Dairy will be required to follow ODA rules in regards to any surface application of manure on frozen and/or snow covered ground. See OAC 901:10-2-14(G) and Appendix A, Table 2 of that rule. These requirements include the need for prior ODA authorization for any such applications, which are not allowed by ODA as a routine manure management practice. Surface land application of manure on frozen or snow-covered ground is not absolutely prohibited by ODA rules but is only to be used during emergency situations. A manure management plan must be developed that does not include the winter months as typical manure application periods. As shown in the Manure Management Plan for Rising Sun Dairy in the draft Permit to Operate, all manure application is planned during times of the year (April through November) when frozen or snow-covered conditions are less likely to occur. The manure storage period and manure storage capacity provided at the facility is designed to enable the facility to not have to apply manure on frozen or snow-covered ground. Sufficient manure storage for the winter months is one item the inspectors specifically check in inspections prior to the winter months. The manure storage at the facility must be managed to ensure that the dairy has exhausted all available means to get manure applied during the appropriate times of the year. Any facility that would need to surface apply manure during emergency situations on frozen or snow-covered ground must first contact ODA for approval and be in compliance with the additional land application restrictions imposed by OAC 901:10-2-14(G) and Appendix A, Table 2 for such applications. The amount that they can apply is to be the minimum amount to get them through to better application conditions. Some of these additional restrictions include: a minimum required setback of 200 feet from any surface water feature (streams, grassed waterways, ponds, etc.) that may be further increased due to local conditions; a maximum application rate of 5,000 gallons per acre for liquid manure; a minimum of 90% residue cover; less than 6% slope; and manure cannot be applied on more than 20 contiguous acres without a break of at least 200 feet. Although the plan does not include manure application during the



winter months, manure can still be applied during these months if the ground is not frozen or snow-covered or if the manure can be injected or incorporated and the application meets all the other ODA criteria for land application of manure.

4. Managing Increases in the Amount of Manure Produced

The multiple numbers of spills and documented violations show a lack of responsibility to the local area, streams and ditches. With the number of cows they now have can we really believe they will suddenly be able to manage such an increase in manure while they have been unable to do so in the past with a much smaller number of cows?

Response:

The PTI and PTO will put the facility back under ODA authority, with the facility having to meet the requirements and inspections of a large CAFO. The facility, as explained in the permits, is proposing to expand over a period of time and not all at once.

Under the ODA permits, manure is to be applied using best management practices (BMPs) and in accordance with ODA rules, with the intent to replace more soluble commercial chemical fertilizers that would otherwise be used to provide nutrients on the same cropland. The land application of manure under the control of a concentrated animal feeding facility (CAFF) must also follow setbacks to protect waters of the state. For instance, a setback of 35 feet of vegetative buffer or 100 feet if not vegetated is required for all surface manure application in Appendix A, Table 2 of rule 901:10-2-14 to help protect waters of the state.

ODA requires that soil samples be taken at least every three years for every 25 acres or less of the planned land application areas. The department also requires that the results of manure sample analyses be kept in the operating record and provided to all persons receiving or applying manure. Twice each year, an ODA inspector currently conducts a full inspection of each ODA permitted farm and correlates the Manure Management Plan with the data recorded in the operating record, such as the crop yields, annual manure analysis and new soil samples collected. See Ohio Administrative Code Rule (OAC) 901:10-2-10 for manure and OAC 901:10-2-13 for soils and testing frequency. If manure is distributed to a Certified Livestock Manager, then these records are also reviewed annually and all land application must be in compliance with department rules.

Application rate criteria are set forth in ODA's rules, and all of these criteria are evaluated to determine what the most limiting factor for the field is at the time of application. The application rate criteria include, but are not limited to, the nitrogen needs of the crop being grown, phosphorus levels, and the available water capacity of the soil. See OAC 901:10-2-14. Based on this evaluation, the permitted application rate is determined, and that application rate is used for that period of application.

Generally, the most limiting factors are the nutrients evaluated and, for liquid manure, the Available Water Capacity (AWC) of the soils in the field. The AWC is often the most limiting factor for a single-time liquid manure application because the water holding capacity of the soil may be achieved in a single application before the allowable nutrients are applied. For further analysis of the Available Water Capacity chart, refer to Appendix B of rule 901:10-2-14.



In addition, depending on the time of year, additional nitrogen limitations are evaluated, as provided in ODA rule 901:10-2-14(D). Additional criteria also heavily restrict application on frozen or snow-covered ground, as provided in ODA rule 901:10-2-14(G). See response to comment 3 above.

As described in rule 901:10-2-14(E), the application rate for phosphorus is determined using soil test data, the phosphate requirements for the planned crop or crop rotation, and either the phosphorus index risk assessment procedure in Appendix E, Table 1 or the phosphorus soil test risk assessment procedure in Appendix E, Table 2 of the rule.

Weather must be recorded for a period 24 hours before, during and 24 hours after manure applications to ensure that rainfall will not cause manure to leave the application site. OAC 901:10-2-14(C)(6). For most soil types, land application of manure shall not occur if the forecast contains a greater than 50% chance of precipitation of an amount of one-half inch or more for the period of 24 hours after the start of land application.

By obtaining the Permit to Operate, the facility will become subject to all of the above ODA requirements. Following these BMPs and ODA rules will minimize any potential impact to the watersheds where the manure will be utilized. However, in the event of a discharge, the dairy is required to immediately notify the department of any discharge and begin immediate remediation and corrective measures to stop the discharge and prevent further discharges. Enforcement measures, including fines and penalties, are provided in rules and statute to address violations.

5. Using Old Milk Tankers

When they use old milk tankers to apply manure how can they regulate the amount of manure being applied or spread the manure evenly?

Response:

Rising Sun Dairy has not used old milk tankers for manure application in over 3 years when they discontinued their relationship with the custom applicator who was using the old milk tankers. See response to comment 2 above.

6. Odor

The permit says that manure application should be conducted when wind directions are least likely to affect neighbors but they usually spread manure on four day weekends.

Response:

While this farm formerly had an ODA Permit to Operate, that permit expired in 2009 because the facility had never expanded and was operating with fewer than 700 cows, the level at which an ODA permit becomes necessary. As a result, for the past two years, the facility has not been subject to the odor minimization practices contained in a Permit to Operate and rule 901:10-2-12 of the Ohio Administrative Code. Best management practices to minimize odors are identified in the Manure Management Plan of the draft Permit to Operate and listed in OAC 901:10-2-12. The BMPs identified to be used at Rising Sun Dairy include removal, transfer and application of manure when wind direction is less likely to affect neighboring residences



and injecting and incorporating manure when possible; i.e., not on a growing crop, etc.

Odor is something that will be evaluated during inspections and complaint investigations. Inspectors would determine if the permit was being followed and if the odor was occurring as a result of the producer not following best management practices. If the permits are not followed, the farm could be subject to an enforcement action by ODA.

7. Compost Mortality

The compost pile has caused problems with coyotes with parts of cows sticking out of the pile. The compost pile should have a fence put around it to prevent coyotes from getting into it.

Response:

The ODA has received no complaints about the mortality composting piles and this comment is the first notice the ODA has received about concerns associated with the mortality compost piles at the Rising Sun Dairy. As provided in the draft Permit to Operate and rule 901:10-2-15 of the Ohio Administrative Code, the facility will be required to comply with best management practices for mortality composting. The ODA will make an extra effort to see that Rising Sun Dairy follows the OSU Extension guidelines for mortality composting, which would include fencing to prevent entry of dogs and coyotes if necessary. A failure to comply with mortality composting requirements after a Permit to Operate is issued would be grounds for enforcement against the facility.

Comments That Received No Response

ODA does not have complete control over all aspects of livestock permitting in Ohio. The legislature has not given the Director of Agriculture unlimited power. The areas that the ODA has been given authority over are very limited and are covered under the PTI and PTO. ODA has not been given any statutory authority to regulate many of the areas of concern to communities such as infrastructure, air quality and quality of life but that does not mean the ODA does not recognize that these and many other areas are concerns to communities. Determining the areas that should be regulated for agriculture is a decision of the legislature and not of the ODA.

The subjects in the following list are either not regulated by the Ohio Department of Agriculture or are not specific to the Rising Sun Dairy draft permits:

- Road Issues
- Comments in Favor of the Dairy

