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Responsiveness Summary to public comments on the Napoleon Dairy draft Permit to Operate June 13, 2014

On May 14, 2014, the Ohio Department of Agriculture issued a public notice of Napoleon Dairy draft Permit to Operate. 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) renewal for the facility called “Napoleon Dairy, LLC” located at V 624 County Road 16, Napoleon, OH 43545 in Henry County. Comment period ended at 5:00 p.m. on June 13, 2014.

The Director’s final decision on the draft permit 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 permit and the way in which the draft permit complies 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.



Written public comments submitted:

No.	Date Received	Name	Organization, if Any	City, State
1	6/13/2014	Sandy Bihn	Lake Erie Waterkeeper, Inc.	Toledo, Ohio 43611

Comment 1.A: This permit alleges it is a renewal, but more factually it is an expired permit that was never executed and therefore, this permit should ‘start over’ with a permit application.

Response:

This facility has been in existence for many years as a medium facility that did not require a permit to operate. It has had a Permit to Operate (PTO) and a Permit to Install (PTI) since 2008 for up to 1,900 cows. As a currently permitted facility, it has had up to 874 cows during inspections. A PTO renewal is required to be received 180 days prior to expiration. If the renewal application is received on time, the facility operates under the previously issued PTO until the PTO renewal application is finalized. The PTO renewal application for Napoleon Dairy was received 6 months prior to the expiration date and therefore the facility still maintained coverage under the previously issued PTO.

Comment 1.B: There was no construction and no animals are using the permitted facility.

Response:

While there has been no major construction performed regarding the Permit to Install (PTI) expansion issued for this facility, there have been improvements made in regards to the collection of the silage leachate. Also, the existing barns are currently configured for a design capacity for over 700 dairy cows, which requires a permit. All rules associated with permitted facilities must be followed. The PTI is not part of the public review process and the Director has discretion to extend any PTI at the request of the owner.

Comment 1.C: Technology changes and permit conditions change in five years. Permits should have to be executed – or begin construction in an 18 month period. Five years is way too long.

Response:

The ODA has not made any changes that would affect the design criteria of the original PTI, therefore re-application would not be justified. Rule 901:10-1-02(C) of the Ohio Administrative code regulates the duration of the permit to install at 24 months and allows for renewal of the permit to install at the discretion of the director.

Comment 2: As the Department of Agriculture is aware and is participating in efforts to reduce nutrient runoff to help the economically distressed Lake Erie watershed, adding 900 cows from the original permit and 1000 more for this permit will add 11.6 million gallons of manure from the five year old permit not executed and 15.8 million more gallons from the new permit which adds large volumes of nutrients to an already stressed Lake Erie watershed.

Response:

The original PTI/PTO was issued for an expansion from 690 cows to 1,900 cows. Since the original permit was issued, the facility has housed up to 874 cows in the existing freestall barns and has not constructed the additional freestalls for the expansion to 1,900 cows.

The ODA requires a manure management plan in the permit to operate to assure sufficient land is available and that proper application rates are used to protect the waters of the state for the maximum permitted design capacity, which in this case is 1,900 head.

Comment 3: The Ohio Department of Agriculture needs to do a mass balance of each subwatershed to determine the capacity of the land in the subwatershed to apply manure in the number of months that the manure can be incorporated in the ground at agronomic levels that have been proven acceptable for phosphorus and nitrogen for the Lake Erie watershed.

Response:

ODA does not have the statutory authority to deny a permit based on nutrient mass balances for watersheds that include land that is not under control of the dairy. ODA has to examine each nutrient management plan and determine the crops, yields, soil tests, nutrient needs and manure nutrient availability and application rates for each farm to determine if the nutrient management plan meets the crop requirements, reducing commercial fertilizer purchases, minimizing nutrient movement offsite and can be approved.

Comment 4: Until a mass balance by subwatershed for manure is completed, additional animals/manure should be delayed.

Response:

The ODA does not have the authority to deny a permit based on the stated issue. See response to comment #2 & 3 above.