

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL -6 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Hendren Farms  
3925 Beech Road  
Johnstown, Ohio 43031

Director's Final Findings  
and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Hendren Farms ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of Respondent or its Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a dairy farm with capacity for approximately 250 mature lactating dairy cattle, located at 3925 Beech Road, Johnstown, Jersey Township, Licking County, Ohio, ("Facility"). The cattle are housed in a free stall barn, with manure stored in a 1.5 million gallon earthen pond ("manure pond").

I certify this to be a true and accurate copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency

By: Michael A. Shapiro 7/6/04

2. On July 24, 2001, Ohio EPA responded to a report of a manure discharge into Blacklick Creek. Respondent was irrigating manure via a traveling gun irrigation system, at an application rate of approximately 15,000 to 20,000 gallons per acre, onto a forty-five acre farm field that had previously been cut for hay. The land application of manure started on July 21, 2001, and continued until July 24, 2001.
3. The above discharge was determined to be the result of an over application of manure, which leached into field tiles and subsequently into Blacklick Creek. Dead fish were observed immediately downstream of the Facility in Blacklick Creek.
4. Samples taken on July 24, 2001, indicated ammonia concentrations downstream of the discharge into Blacklick Creek, which exceeded the acute and chronic water quality standard. The results were as follows: ammonia 20.8 mg/L, nitrate+nitrite <0.10 mg/L, TKN 28.6 mg/L, and total phosphorus 4.28 mg/L.
5. On January 9, 2002, Ohio EPA issued a Notice of Violation to Respondent for the July 2001 discharge described above.
6. On July 22, 2002, Ohio EPA responded to a report of a manure discharge to Blacklick Creek. The discharge was determined to be from at least two field tiles emanating from the Facility and farm fields adjacent to the Facility. The discharge was the result of the application of manure prior to a rainfall event.
7. Samples taken on July 22, 2002, revealed ammonia concentrations in Blacklick Creek and a Beech Road field tile discharge, which exceeded chronic the water quality standard. The results were as follows:
  - a. Upstream Beech Road field tile: ammonia 5.24 mg/L, nitrate+nitrite 1.66 mg/L, TKN 18.2 mg/L, and total phosphorus 2.36 mg/L;
  - b. Beech Road field tile: ammonia 3.98 mg/L, nitrate+nitrite 8.97 mg/L, TKN 19.2 mg/L, and total phosphorus 4.81 mg/L; and
  - c. Downstream Beech Road field tile: ammonia 4.94 mg/L, nitrate+nitrite 4.76 mg/L, TKN 19.7 mg/L, and total phosphorus 3.68 mg/L.
8. On October 2, 2002, Ohio EPA responded to a report of pollution in Blacklick Creek, at the Creek's headwaters near Central College Road, approximately two river miles downstream of the Facility. Ohio EPA noted approximately one hundred dead fish, three dead tadpoles and two dead frogs, in a four hundred yard section of the Creek at the above location. In a meeting with Respondent, Respondent stated that he noticed a leak from the manure pond on September 28, 2002. Respondent did not

notify Ohio EPA of the discharge. The area in question is underlain by a field tile that conveyed the leaked manure to Blacklick Creek. Respondent stated that he pumped manure out of the field tile, and plugged the tile with a football and plastic at another location.

9. Samples taken on October 2, 2002, in Blacklick Creek approximately three river miles downstream of the Facility, revealed elevated ammonia concentration which exceeded the acute and chronic water quality standard. The results were as follows: BOD<sub>5</sub> 17 mg/L, total suspended solids 25 mg/L, nitrite 0.956 mg/L, ammonia 22.2 mg/L, nitrite+nitrate 10.7 mg/L, TKN 28.9 mg/L, and total phosphorus 2.90 mg/L.
10. In the three above manure discharge episodes, the manure entering Blacklick Creek produced a color and odor, so as to create a nuisance.
11. Blacklick Creek is defined as "waters of the state" by ORC § 6111.01.
12. Animal feeding operations that contain over 300 animal units and that meet either one of the following criteria are required to obtain a NPDES permit: (a) pollutants are discharged into waters of the state through a manmade ditch, flushing system or other similar manmade system; or (b) pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals in the operation. Provided, however, that such discharges are in addition to discharges which may occur during a twenty-five year, twenty-four hour storm event. As used herein, manmade means constructed by man and used for the purposes of transporting wastes. 40 CFR Part 122 Appendix B.
13. The Facility's 250 mature lactating dairy cattle equates to 350 animal units.
14. The discharges identified above, entered waters of the state via a manmade system (field tiles) and that such discharges were in addition to discharges which may occur during a twenty-five year, twenty-four hour storm event.
15. ORC § 6111.04 prohibits any person who does not hold a valid, unexpired National Pollutant Discharge Elimination System ("NPDES") permit from causing pollution or placing any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution to the waters of the state.
16. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.

17. Respondent does not hold a valid, unexpired NPDES permit for the aforementioned discharges of manure to waters of the state, which is a violation of ORC §§ 6111.04 and 6111.07.
18. Respondent's above described manure discharge to Blacklick Creek caused exceedances of the criteria applicable to all waters as defined by Ohio Administrative Code ("OAC") Rule 3745-1-04. OAC Rule 3745-1-04(A) states that waters shall be free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life. OAC Rule 3745-1-04(C) states that waters shall be free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance. OAC Rule 3745-1-04(D) states that waters shall be free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
19. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
20. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

#### **V. ORDERS**

1. Within thirty (30) days of the effective date of these Orders, Respondent shall submit to Ohio EPA a complete NPDES permit application.
2. Within sixty (60) days of the effective date of these Orders, Respondent shall purchase and begin using tile plugs during manure applications and/or install permanent tile stops. Within seven (7) days of achieving compliance with this Order, Respondent shall submit written verification to Ohio EPA describing how compliance was achieved.

3. Within twelve (12) months of the effective date of these Orders, Respondent shall prepare and implement a Comprehensive Nutrient Management Plan, which plan shall be acceptable to Ohio EPA, for all acreage under the control of Respondent, upon which manure can be applied. Within seven (7) days of achieving compliance with this Order, Respondent shall submit written verification to Ohio EPA describing how compliance was achieved.
4. Within twelve (12) months of the effective date of these Orders, Respondent shall purchase manure hauling equipment to facilitate the transport of manure from storage to the area of land application. Within seven (7) days of achieving compliance with this Order, Respondent shall submit written verification to Ohio EPA describing how compliance was achieved.
5. Respondent shall pay to Ohio EPA fifteen thousand dollars (\$15,000.00) in settlement of Ohio EPA's claims for civil penalties as set forth in these Orders which may be assessed pursuant to ORC Chapter 6111. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of four thousand four hundred forty-four dollars (\$4,444.00) by tendering an official check made payable to the "Treasurer of State of Ohio," together with a letter identifying the Respondent and the Facility, to the following address:

Office of Fiscal Administration  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, OH 43216-1049
6. In lieu of payment of the remaining ten thousand five hundred fifty-six dollars (\$10,556.00) of the civil penalty amount assessed in Order No. 5, above, Respondent shall implement the following Supplemental Environmental Project. Respondent shall purchase, install and use a land application toolbar with Aeroway implement or similar application, which shall cost at least ten thousand five hundred fifty-six dollars (\$10,556.00), and be acceptable to Ohio EPA.
7. Should Respondent fail to purchase and install an acceptable land application toolbar within twelve (12) months of the effective date of these Orders, Respondent shall pay to Ohio EPA the remaining ten thousand five hundred fifty-six dollars (\$10,556.00) civil penalty in accordance with the procedures set forth in Order No.5 above.

8. Respondent shall submit all documents required under these Orders and photocopy(ies) of the check(s) required in Order No. 5, and Order No. 7 if applicable, to:

Ohio EPA  
Division of Surface Water  
PTI/Agricultural Unit  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Supervisor

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D).

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the operation of the Facility.

### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

### **X. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

### **XI. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**XII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIII. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO AGREED:  
Hendren Farms**

Hendren Farms Fred Hendren  
Signature

6-16-04  
Date

Fred H. Hendren  
Printed or Typed Name

Partner  
Title

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

Christopher Jones  
Christopher Jones  
Director

7-2-04  
Date