



- b. Bowerbaugh Farm, located on the west side of Washington County Road 32, approximately 1/3 mile north of Washington County Road 102 in Waterford Township, was rented to Respondent, who engaged in swine operations. The Bowerbaugh Farm had a capacity of approximately 300 gilts, breeders, and gestating sows. The manure management structure at the Farm consisted of a sedimentation pit with design overflow of manure laden lot runoff and a covered solid manure storage structure.
    - c. The Home Farm, owned and operated by Respondent, is located adjacent to Aldridge Run on Township Road 202, Wesley Township, Washington County, Ohio. The Home Farm had 300-400 sows, with a capacity of 650 sows. The sows were housed in two types of facilities, closed barns and shed/lot systems. The manure storage included a concrete manure storage pit and two earthen storage lagoons. The concrete manure storage pit had a capacity of approximately 20,000 gallons, the smaller of the two earthen lagoons had a capacity of 350,000 gallons, and the larger lagoon had a capacity of approximately 1 million gallons.
2. The Morgan County Farm, Bowerbaugh Farm, and the Home Farm are referred to as "the Facilities," and the Facilities meet the definition of "animal feeding operation," as defined by 40 CFR § 122.23(b)(1), in that the following conditions are met: (1) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the Facilities.
3. Pursuant to information from Respondent that he was ceasing his operations, on November 10, 2003, a representative of the Director of Ohio EPA performed site inspections at the Facilities and observed the following:
  - a. At the Morgan County Farm, four pigs remained, manure was discharged from the open-sided barn, and manure was stored in the barn pits and manure storage pond.
  - b. At the Bowerbaugh Farm, no pigs were on-site, manure was removed from the pig confinement area and the manure sedimentation pit, and manure was stored in the covered manure storage structures.
  - c. At the Home Farm, a few pigs remained at the Farm, with manure stored in the concrete manure storage structure and the two earthen storage lagoons.

4. On May 19, 2003, representatives of the Director of Ohio EPA performed site inspections at the Facilities and observed the following:
  - a. At the Morgan County Farm, the manure pond was overflowing, with manure laden wastewater entering waters of the state. At the inspection, Respondent and the Farm owner stated that the manure pond had been overflowing for at least a couple of weeks, and that a diversion trench was excavated in an effort to facilitate the discharge of manure to the unnamed tributary along the road.
  - b. At the Bowerbaugh Farm, which had approximately 150 head of swine on-site on the day of the inspection, the filter strip, installed in the late 1980's, was no longer functioning as a "filter strip" and not protecting waters of the state from manure pollutants generated at the Farm. This system for treatment of contaminated runoff had not undergone maintenance or management, and discharged black putrescible material to a railroad ditch, which conveyed runoff approximately 1/3 mile to the south to Haywood Run, which immediately flows into the Muskingum River.
  - c. At the Home Farm, the smaller lagoon was overflowing with hog manure, down an eroded embankment (due to prolonged discharge), and into a small flood plain adjacent to Aldridge Run. A tile that drained the area was discharging a foamy material into Aldridge Run. Respondent indicated that this manure lagoon had been overflowing for a couple weeks, as Respondent did not have an opportunity to haul manure due to wet fields.
5. At the Home Farm, a water and sediment control basin ("basin"), which received manure contaminated wastewater from truck washing activities, outlets to a ditch that runs along Township Road 202. The ditch has a connection to a culvert that crosses under Township Road 202, and outlets to a tributary of Aldridge Run.
6. On January 23, 2002, Ohio EPA conducted a site investigation at the Home Farm and observed a discharge from the basin's outlet pipe to the Township Road 202 ditch, which discharge entered the culvert and then to the tributary of Aldridge Run. The culvert's discharge to the tributary was tea color, with a milky colored substance on top.
7. Samples were collected in Aldridge Run, upstream from the Home Farm, from the culvert outlet prior to the discharge in the tributary, and in Aldridge Run, downstream from the Home Farm. The sample results depict an increase in pollutants from upstream to downstream and elevated ammonia at the culvert outlet.

<i>Water Sample Location</i>	<i>Ammonia (mg/l)</i>
Upstream	<0.050
Culvert Outlet	6.65
Downstream	0.054

8. A notice of violation was sent to Respondent on February 19, 2002, which requested information and required the submission of a National Pollutant Discharge Elimination System ("NPDES") permit application by April 1, 2002. A faxed copy of the NPDES permit application was received by Ohio EPA on April 16, 2002. On April 23, 2002, Ohio EPA informed Respondent to submit an original copy of the NPDES permit application and the requisite processing fee. On June 18, 2002, a letter was sent to Respondent requesting the NPDES permit application and fee. Respondent failed to submit the NPDES permit application and fee to Ohio EPA.
9. The aforementioned discharges by Respondent caused exceedances of the criteria applicable to all waters of the state, as set forth in 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.
10. In May, 2001, the Ohio Department of Natural Resources, Division of Soil and Water Conservation, ("ODNR"), inspected the Home Farm and observed the following:
  - a. Dried manure in a diversion ditch located between the basin and the animal barn; and
  - b. Along Wolf Creek, the application fields were wet, with Respondent indicating that manure was recently applied to the fields. Tire ruts filled with water were common in the fields. Algae growth was prolific. The bottom road ditch on the west side of the road was wet and had a thin, black organic layer covered with algae. Respondent indicated that he did not know the amount of manure applied, as his spreader was not calibrated, nor did he maintain records of the application.

11. ODNR records indicate a history of water pollution incidents at the Home Farm, which include:
  - a. A December, 1986 investigation report verified that animal waste was pumped from a storage facility to the Township Road 202 ditch, which waste then entered Aldridge Run.
  - b. In February, 1993, the Washington County Soil and Water Conservation District ("District") investigated and determined that soil was eroding from open sow lots. The soil and manure flowing from an insufficient capacity facility were washing into the Township Road 202 ditch, to Aldridge Run, then to Wolf Creek.
  - c. In February, 1994, the District investigated and found that liquid manure from Respondent's farrowing/nursery barn flowed to the Township Road 202 ditch, and then entered Aldridge Run. The investigation further noted that school bus drivers reported delays as the bus drivers waited for liquid manure to be lofted across the road from west to east to the sow lot that drains to Aldridge Run.
  - d. In February, 1994, the District's Board of Supervisors determined, among other things, that manure had been excessively pumped to fields adjacent to Aldridge Run.
  - e. In 1994, Respondent completed construction of a confined sow housing building and housed sows in said building for approximately three weeks. Respondent dug a trench from the building to Township Road 202, to remove accumulated manure. The District informed Respondent that the activity was not acceptable.
  - f. In March, 1995, the District received a staff report that indicated that a new animal waste holding lagoon was leaking.
  - g. In May, 1995, the District reported that Respondent's animal waste holding lagoon still leaked and Respondent was only hauling manure to two fields, rather than the 320 acres delineated on the approved operation and management plan.
  - h. In April 1996, the District inspected the Farm and determined that manure had entered waters of the state.
  - i. On September 3, 1996, ODNR, Division of Wildlife, determined that Aldridge Run and Wolf Creek had been polluted by animal waste from the Farm.

- j. In a letter dated February 7, 1997, the District requested that ODNR issue an enforcement order to Respondent. The District stated in the letter that Respondent plead guilty in Marietta Municipal Court to allowing manure runoff to enter a stream and was fined \$545.00.
  - k. In May, 1997, ODNR issued Chief's Orders to Respondent, under which Respondent was to implement an operation and maintenance plan for the Farm, and review the maintenance of cost-share corrective measures regarding the leaking storage lagoon. Respondent has not maintained contact with ODNR regarding the reviews.
12. ORC § 6111.04 prohibits any person who does not hold a valid, unexpired 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 any waters of the state.
  13. The unnamed tributary to Aldridge Run, Aldridge Run, the road ditch at the Morgan County Farm, Haywood Run, the Muskingum River, and Wolf Creek are defined as waters of the state by ORC § 6111.01.
  14. Respondent does not hold a valid unexpired NPDES permit, and caused pollution of the waters of the state and placed sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they caused pollution to waters of the state.
  15. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.
  16. The aforementioned actions by Respondent are violations of ORC §§ 6111.04 and 6111.07.
  17. The Director, has reviewed and considered the following:
    - a. The size of the Facilities, the number of animals, the type of feedlot surfaces and design capacities, and the waste handling/storage system design capacities;
    - b. The location of the Facilities relative to waters of the state;
    - c. The means and nature of conveyance of animal wastes and process wastewater into waters of the state from the Facilities;

- d. The slope of the feedlots and the surrounding land, type of feedlots, drainage controls, storage structures, volume and quantity of runoff and buffers; and
  - e. Land application timing, methods, rates and areas and Respondent's history of compliance or noncompliance with environmental agencies and the Ohio Water Pollution Control laws and the rules promulgated thereunder.
18. The pollutants from the Facilities are discharged into waters of the state through a manmade ditch, flushing or other similar manmade device, or directly into waters of the state which original outside of the Facilities and pass over, across or through the Facilities, or otherwise come into contact with the animals confined therein.
  19. After consideration of the above, the Director has determined that the Facilities are a significant contributor of pollutants to waters of the state and that the Facilities' operations could and should be regulated under the NPDES permit program.
  20. ORC § 6111.03(H)(1) provides that the Director may issue orders to prevent, control, or abate water pollution by such means as prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state.
  21. ORC § 6111.03(O) provides that the Director may exercise all incidental powers necessary to carry out the purposes of ORC Chapter 6111.
  22. The Orders set forth herein are necessary to prevent, control or abate water pollution, as results from the discharge of other waste into the waters of the state by Respondent.
  23. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
  24. 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. The Facilities are hereby designated concentrated animal feeding operations.

2. Respondent shall submit all documents required under these Orders to the following address, unless Respondent is directed otherwise:

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

3. Regarding the Home Farm, Washington County, Respondent shall:
- a. Remove all livestock contributing manure and/or wastewater to the three manure storage structures;
  - b. Properly dispose of swine mortality stored at the Farm;
  - c. Within thirty (30) days of the effective date of these Orders, remove all manure and feed from the confinement and openlot swine barns. The manure and waste feed shall be utilized as per Order No. 5.e. and shall not cause a discharge to waters of the state;
  - d. Initiate closure of the concrete manure storage pit and earthen manure storage ponds. Within thirty (30) days of the effective date of these Orders, Respondent shall submit a closure plan to Ohio EPA, which plan shall include the following:
    - i. A timeline for the closure of Respondent's swine operations at the Home Farm,
    - ii. A copy of the "As Built Plans" for the three structures,
    - iii. A copy of the geological exploration,
    - iv. Removal and utilization of manure solids and liquids as per Order No. 3.f. Liquid and slurry manure shall be agitated and pumped to the extent conventional pumping will allow. Clean water shall be added as necessary to facilitate the agitation and pumping. The manure sludge remaining on the bottom and sides of the manure storage structures shall be removed to the fullest extent possible,

- v. Contaminated soil removal and utilization,
- vi. Method of removal or burial of fabricated structures, liners, covers, and other appurtenances,
- vii. Removal or plugging of all transfer systems. All structures used to convey manure to manure storage structures shall be removed and replaced with compacted earth material or otherwise rendered unable to convey manure,
- viii. The type of material and method of filling the manure storage structures. Manure storage ponds with embankments may be breached so that they will no longer impound water and excavated manure storage ponds may be backfilled so that these areas may be reclaimed for other uses. Manure storage ponds that have water impounded against the embankment are considered embankment structures if the depth of water is three feet or more above natural ground. For embankment impoundment, manure shall be removed from the site before the embankment is breached. The slopes and bottom of the breach shall be stable for the soil material involved, however the side slopes shall be no steeper than three horizontal to one vertical (3:1). For excavated impoundments, the backfill height shall exceed the design finished grade by five percent (5%) to allow for settlement. The finished surface shall be constructed of the most clayey material available and mounded to shed rainfall runoff. Available topsoil shall be incorporated where feasible, to aid establishment of vegetation,
- ix.. The grading plan and erosion control measures. All disturbed areas not returned to crop production shall be vegetated in accordance with seeding specifications in the Ohio Natural Resources Conservation Services ("Ohio NRCS") Field Office Technical Guide, or other suitable measures used to control erosion and restore the esthetic value of the site. Measures shall be taken during construction to minimize site erosion and pollution of downstream surface waters. This may include such items as silt fences, hay bale barriers, temporary vegetation, and mulching,
- x. If the manure storage structures are converted to a use other than manure storage, the plan shall describe how the converted structures will meet the requirements as set forth in Ohio NRCS Conservation Practice Standards for the intended purpose,



5. Regarding the Morgan County Farm, Morgan County, Respondent shall:
- a. Remove all livestock from contributing manure and/or wastewater to the manure storage structures;
  - b. Within thirty (30) days of the effective date of these Orders, remove all manure and feed from the confinement swine barns. The manure and waste feed shall be utilized as per Order No. 5.e;
  - c. Initiate closure of the manure storage structures. Within thirty (30) days of the effective date of these Orders, Respondent shall submit a closure plan to Ohio EPA, which plan shall include the following:
    - i. A timeline for the closure of Respondent's swine operations at the Farm,
    - ii. Removal and utilization of manure solids and liquids as per Order No. 3.f. Liquid and slurry manure shall be agitated and pumped to the extent conventional pumping will allow. Clean water shall be added as necessary to facilitate the agitation and pumping. The manure sludge remaining on the bottom and sides of the manure storage structures shall be removed to the fullest extent possible,
    - iii. If applicable, conversion of the manure storage structures for other purposes. If the manure storage structures are converted to other use other than manure storage, the converted structures shall meet the requirements as set forth in Ohio NRCS Conservation Practice Standards for the intended purpose, and
    - iv. The timing and amount of inspection required. Respondent shall notify Ohio EPA within thirty (30) days of the effective date of these Orders so that Ohio EPA can inspect the closure process;
  - d. Not discharge manure to waters of the state during any process of manure removal or facility closure; and
  - e. At a minimum, follow the following requirements for the land application of manure:
    - i. All manure is to be utilized in a manner that minimizes the opportunity for contamination of surface and ground water supplies,

- ii. For liquid manure, the application rate is to be adjusted to the most limiting factor to avoid ponding, surface runoff, and subsurface drainage discharge. The total application is not to exceed the field capacity of the upper eight (8) inches of soil. Bare/crusted soils may require some tillage to improve infiltration,
- iii. Fields or areas of fields that are subsurface (tile) drained require additional precautions. For liquid manure, Respondent shall not apply manure in application rates that would exceed the lesser of the available water capacity on the upper eight (8) inches or 13,000 gallons/acre per application. Prior to manure application, Respondent shall use a tool (AER-WAY tool or similar tool) that can disrupt/close (using horizontal fracturing) the preferential flow paths (worm holes, cracks, root channels) in the soil, or till the surface of the soil three to five (3-5) inches deep to a condition that will absorb the liquid wastes. Any pre-application tillage shall leave as much residue as possible on the soil surface. For perennial crops (hay or pasture), or continuous no till fields where tillage is not an option, all tile outlets from the application area are to be plugged prior to application. If injection is used, Respondent shall inject only deep enough to cover the manure with soil. Respondent shall till the soil at least three (3) inches below the depth of injection prior to application, or all tile outlets from the application area are to be plugged prior to application; and repair broken tile or blow holes prior to application,
- iv. Manure shall not be applied to frozen or snow covered ground,
- v. Manure shall not be applied to cropland over fifteen percent (15%) slope or to pastures/hayland over twenty percent (20%) slope unless one of the following precautions is taken:
  - (a) Immediate incorporation or injection with operation is done on the contour, unless the field has eighty percent (80%) ground cover;
  - (b) Applications shall occur during periods of lower runoff and/or rainfall;
  - (c) Apply low rates through split applications (separated by rainfall events), and apply no more than ten (10) wet tons/acre for solid manure or 5,000 gallons per acre for liquid manure; or

- (d) The field is established and managed in contour strips with alternate strips in grass or legume,
- vi. For surface application and injection, no manure shall be applied within one hundred (100) feet of stream, ditches, ponds, lakes, surface tile inlets, other conduits to surface waters, and private wells. No manure shall be applied within three hundred (300) feet of public wells, developed springs, sinkholes, and public surface drinking water intakes,
- vii. Land application areas should be inspected during, and after land application for discharges of manure from the application area, and
- viii. Records of manure application shall be maintained of all land application events on the forms provided by Ohio EPA.

#### **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 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.

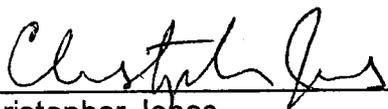
**VIII. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111., or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**IX. EFFECTIVE DATE**

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

**IT IS SO ORDERED**  
**Ohio Environmental Protection Agency**

  
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Christopher Jones  
Director

3-12-04  
Date