BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY 14 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Eight Star Farms, Inc.
6213 Sebastian Road
Celina, OH 45822-9519

Respondent

Director's Final Findings and Orders

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

By: _____ Date: 5-14-10

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Eight Star Farms, Inc. ("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, assigns and successors in interest liable under Ohio law. No change in the composition of Respondent 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 adopted thereunder.

IV. FINDINGS

Background

The Director of Ohio EPA has determined the following findings:

1. Respondent, a corporation for profit in good standing with the Ohio Secretary of State's Office (Charter Number: 1344884), is located at 6213 Sebastian Road, Celina, Mercer County.

2. Eugene Homan ("Homan"), 6213 Sebastian Road, Celina, is the operator of Respondent.

3. Hatfield 7 Dairy ("Hatfield 7") is a dairy located at 6642 Bennington Chapel Rd., Centerburg, Licking County, in the Licking River Watershed.

4. Neither Homan nor Respondent holds a permit from the Director to cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

5. At all times described in these Orders, Homan held Certified Livestock Manager Certificate No. 095, issued by the Ohio Department of Agriculture on January 30, 2007, in accordance with ORC § 903.07 and OAC Rule 901:10-1-06.

6. A tributary of Lake Fork, Lake Fork, (the tributary and Lake Fork are together referred to as "Lake Fork"), and the North Fork Licking River, constitute "waters of the state." The use designations in OAC Rule 3745-1-24 for Lake Fork are:

a.	Aquatic Life Habitat:	Warmwater habitat;
b.	Water Supply:	Agriculture and industrial water supply; and
c.	Recreation:	Primary contact recreation.

April 7, 2008

7. Respondent was hired by Hatfield 7 to remove liquid manure from manure storage pond number 3, the most diluted manure storage pond on site, for surface land application on a 135 acre corn stalk field located east of Drury Road, Licking County.

8. Respondent commenced surface application of the manure at approximately 3:00 p.m. on April 7, 2008, which application was non-stop except for several minor tractor repairs and to change drivers. The line pressure, with use of an inline buster pump, was 1,050 gallons per minute, with an application rate of 13,000 gallons per acre.

April 8, 2008

9. A person notice a manure spill in Lake Fork at 11:00 a.m., which was reported to the Ohio EPA Spill Hotline at 4:27 p.m.

10. At approximately 4:30 p.m., a neighbor contacted Hatfield 7 regarding a possible manure spill into Lake Fork . Hatfield 7 investigated, found manure in Lake Fork, on both sides of Drury Road, and informed Respondent. Respondent's manure application was stopped due to tractor repairs.

11. Representatives of the Ohio Department of Agriculture, Livestock Environmental Permitting Program, ("ODA"); Ohio Department of Natural Resources, Division of Wildlife, ("ODNR"); and Ohio EPA, Division of Emergency and Remedial Response, ("DERR"); (together referred to as "representatives of the state"), arrived onsite to investigate the manure spill.

12. Representatives of the state walked the upstream side of Lake Fork, west of Drury Road, to check for a spill. An eight inch field tile, located approximately 100 yards west of Drury Road was discharging manure into the tributary of Lake Fork, which is a tributary of the North Fork Licking River.

13. The discharging tile was located in the road ditch on the west side of Drury Road, near a road culvert through which Respondent placed the transfer hose to obtain access to the application field. The hose was taken out and when removed from the culvert displayed a hole, the size of a pencil. When the hose was through the culvert, the hole was located out of sight, about six feet inside the western end of the culvert. Attempts to plug the tile were unsuccessful.

14. Homan stated that tractor operators were changed at 3:00 p.m. and at that time manure was not noticed in the roadside ditch. Thick grass hid the manure in the ditch from view.

15. Homan estimated that with the pumping rate and time, roughly 12,000 gallons of manure could have been lost through the hole in the hose.

16. Homan stated that he occasionally inspected the hose for leaks but did not record the inspections.

17. ODNR Officer Bullard reported that he checked Lake Fork and found evidence of manure as far east as the junction of Smoketown and Lake Fork Roads. Field ammonia tests showed Lake Fork to have elevated concentrations of ammonia, though no samples were taken for further analysis.

18. Samples were taken from Lake Fork by ODA Inspector Young, with the analyses and observations set forth below: (A sampling map is provided as Exhibit 1, which is attached hereto, incorporated by reference herewith, as if fully rewritten herein.)

(continued on next page)

Map #	*Location (sample #)*	*Parameter*	*Results (mg/L)*	*Observations*
1	Drury Road (99891)	Ammonia	1.17	Clear with no odor
		Nitrate+nitrite	3.14	
		Total P[1]	0.19	
2	Shipley Road. (99892)	Ammonia	49.3	Dead fish and manure odor
		Nitrate+nitrite	1.34	
		Total P	4.42	
3	Bruce Road (99893)	Ammonia	0.175	Small amount of foam on the water; sample clear and no manure odor
		Nitrate+nitrite	1.15	
		Total P	0.90	
4	Junction Lake Fork Road and Smoketown Road. (99894)	Ammonia	<0.050	Small amount of foam on the water; sample clear and no manure odor
		Nitrate+nitrite	1.17	
		Total P	0.014	

19. Base on the above findings, ODA Inspector Young made the following observations regarding Homan's statements:

    a. For the ammonia levels in Lake Fork to be as high as recorded, it would appear that more than 12,000 gallons of manure were discharged; and

    b. If there was no notice by Respondent of a discharge coming from the hose that passed through the culvert on Drury Road at 3:00 p.m., why did the neighbor notice a spill in Lake Fork at 11:00 a.m?

April 9, 2008

20. Samples were taken from Lake Fork by ODA Inspector Young, with the analyses and observations set forth below:

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[1]Total Phosphorus

Map #	*Location (sample #)*	*Analysis*	*Results (mg/L)*	*Observations*
5	Junction Lake Fork Road and Smoketown Road (99976)	Ammonia	2.82	Slight discoloring in the water; slight manure odor. Foam was observed along Lake Fork's banks.
		Nitrate+nitrite	1.55	
		Total P	0.28	
6	Field Discharge at northwest corner of Van Fossen Road and Lake Fork ~~Road~~ (99972)	Ammonia	27.6	
		Nitrate+nitrite	0.28	
		Total P	3.21	
7	Shipley Road (99973)	Ammonia	4.61	Lake Fork had some discoloring; manure odor. Small amount of foam was observed. Several dead fish observed.
		Nitrate+nitrite	0.84	
		Total P	0.41	
8	Bruce Road (99974)	Ammonia	5.90	Water was discolored; manure odor. Some foam readily observed on the water and along Lake Fork's banks
		Nitrate+nitrite	1.06	
		Total P	0.43	
	Van Fossen Rd.	No samples		Lake Fork was slightly discolored; dead fish observed.
9	SR 657 (Where Lake Fork passes under the road.) (99975)	Ammonia	9.76	This appears to be the center of the manure slug. Lake Fork was dark; manure odor. Foam was readily observed on the water and along Lake Fork's banks.
		Nitrate+nitrite	0.15	
		Total P	0.77	

21. Samples were taken from Lake Fork by ODNR Officers Cochran and Zerkle, with the analyses set forth below:

(continued on next page)

Location	Time	DO	Ammonia	°F
Van Fossen Road	11:00 a.m.	5 ppm	10+ mg/L	54
Shipley Road	11:20 a.m.	3 ppm	8 mg/L	54
SR 657	11:53 a.m.	2 ppm	10+ mg/L	54
SR 661	11:52 a.m.	1 ppm	10+ mg/l	54
Smoketown Road	12:01 p.m.	5 ppm	3 mg/L	55
Reynolds Road	12:31 p.m.	7 ppm	2 mg/L	56
Lake Fork at the mouth below SR 13	Not Available	12+ ppm	3 mg/L	

22. An inspection of the eight inch tile outlet from which the discharge was first observed showed that the tile and Lake Fork were running clear. Proceeding along the east edge of the application field to a small swale in the field, there was a small amount of standing discolored water in a pasture field south of the application field. A sample of the water showed an ammonia level of 10 ppm. In the application field directly north of this area there were rutted tracks filled with manure laden water. Ohio Department of Agriculture setbacks from the swale were not observed by the applicator.

23. Representatives of the state observed the following:

    a. Starting at the eastern fence line of the application field there was a grass waterway which extended northwest from the fence line, which accumulates runoff that drains into a swale from the northern portion of the field.

    b. In the waterway there was standing manure laden water that had run under the fence line and into the beginning of the tributary.

    c. It was evident that during the application process, the manure applicator was not turned off as the applicator made multiple passes on both sides around the head of the waterway. It appeared that this "over surface application" caused the runoff event that discharged into the grass waterway.

Actions Taken by Hatfield 7 to Stop the Discharge

24. Hatfield 7 used a front end loader to push dirt across the waterway to stop further flow.

25. At the pasture field fence line, a earthen dam was placed across the manure laden Lake Fork and an area to allow for the water in Lake Fork to pond, was dug. At the head of Lake Fork there was a clean water inlet from a field that was mixing with the manure laden water. The purpose of the dam and ponding area was to allow the manure laden water to be caught and then as the dam overflowed, the manure laden water would be directed through a grass area before it would return to Lake Fork, allowing for some settling of the manure solids and minimizing the amount of pollutants reaching Lake Fork.

Conclusion of the Ohio Department of Agriculture

26. On May 8, 2008, ODA Inspector Young concluded that Ohio Department of Agriculture manure application setbacks were not observed.

Ohio Department of Agriculture Action

27. The Ohio Department of Agriculture suspended the Certified Livestock Manager Certificate held by Homan.

ODNR

28. ODNR found that the total amount of fish and wild animals killed as a result of the manure spill was 6,172, with a total value to the state of $1,764.12

Ohio EPA

29. Ohio EPA, Division of Surface Water, sent a letter dated May 15, 2008 to Hatfield 7 and Homan. The letter requested manure application records from November 1, 2007 forward, including weather forecasts, application rates, acres applied, and any other information related to land application of manure from Hatfield 7.

30. Ohio EPA received manure application records from Homan on June 23, 2008. Information on soil test values and manure analysis was not complete on the record keeping form and Homan noted this information was not supplied by Hatfield 7. The application records did not document the time and condition of periodic inspections of the application field for signs of runoff/discharge.

31. Standard Best Management Practices for surface application of liquid manure established by USDA-NRCS in *Conservation Practice Standard 633* were not followed, including: adjusting application rates to avoid ponding and surface runoff, setbacks from grassed waterways, and monitoring fields during and after application for runoff or subsurface drainage.

Water Quality Standards

32. In accordance with OAC Rule 3745-1-07, the water quality standards for Lake Fork are:

    a. Ammonia: 13 mg/L (maximum acute toxicity value in OAC Rule 3745-1-07, Table 7-2 since pH and temperature not known)

    b. DO: 4.0 mg/L (outside mixing zone maximum for warmwater habitats in OAC Rule 3745-1-07, Table 7-1)

33. Two of the water quality samples collected of the manure discharge in Lake Fork showed exceedances of the water quality standard for ammonia and three of the water quality samples indicated violations of the dissolved oxygen standard.

34. The following general water quality criteria apply to all surface waters of the state, and to every extent practical and possible, as determined by the director, these waters, in pertinent part, shall be free from:

    a. 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;

    b. Floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation;

    c. 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;

    d. 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; and

    e. Nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae.

35. The findings set forth above show that Respondent violated the general water quality criteria which apply to all surface waters of the state.

Relevant Water Pollution Control Laws

36. ORC § 6111.04 prohibits any person from causing pollution or causing any sewage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with an NPDES permit issued by the Director.

37. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections. Each day of violation represents a separate violation.

Findings of Violation

38. Respondent's actions described above caused pollution or caused sewage, industrial waste or other waste to be placed in a location where they caused pollution to waters of the state, and as such is a violation of ORC §§ 6111.04 and 6111.07.

39. 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 purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall submit to Ohio EPA, in accordance with Section X., for a period of three years, documentation of any training Homan has taken to fulfill the continuing education requirements of the certified livestock manager certification program.

2. Respondent shall pay the amount of one thousand dollars ($1,000.00), in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within ninety (90) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for one thousand dollars ($1,000.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

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 as defined in OAC Rule 3745-33-03 for a municipal, state, or other public facility.

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 activities occurring on or at 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. NOTICE

Unless otherwise specified herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049
Attn: Ag Unit

XI. RESERVATION OF RIGHTS

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

XII. 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 claims specifically covered by these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. The claims covered by these Orders include only (1) the leakage of manure from the hose described in Finding 13, (2) Respondent's manure application on the field described in Finding 7 on April 7-8, 2008, and/or (3) any discharge or runoff of manure from that field. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the covered claims.

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.

XIII. EFFECTIVE DATE

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

XIV. 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 ORDERED AND AGREED:
Ohio Environmental Protection Agency

Chris Korleski
Director

5/12/10
Date

IT IS SO AGREED:
Eight Star Farms Inc.

Mary J. Homan
President

April 27, 2010
Date