

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 14 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Gill Dairy, LLC
14997 Charleston-Chillicothe Rd.
South Solon, OH 43153

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 Gill Dairy, LLC ("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 the composition of Respondent shall in any way alter Respondent's obligation 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

The Director of Ohio EPA has determined the following findings:

1. Gill Dairy, LLC ("Respondent") is the owner and operator of a dairy farm located at 14997 Charleston-Chillicothe Road, South Solon, Madison and Fayette Counties ("the Site").

2. On January 5, 2011, a Notice of Violation ("NOV") was issued to Respondent for failing to submit a Concentrated Animal Feeding Operation ("CAFO") National Pollutant Discharge Elimination System ("NPDES") permit renewal application.
3. On January 14, 2011, Ohio EPA received an untimely permit renewal application from Gill Dairy, LLC, including a Manure Management Plan ("MMP"). However, the MMP was deemed deficient as set forth in a February 7, 2011 comment letter from Ohio EPA to Respondent. A response was requested within 30 days, but Respondent failed to respond. The permit expired on May 31, 2011 and Respondent does not hold any current permit to discharge pollutants into waters of the state.
4. On October 6, 2011, state officials were called by Respondent to investigate a dry weather manure discharge into Vallery Ditch from the Site. Respondent had been applying manure to a field north of the Site during the morning hours. Vallery Ditch constitutes "waters of the state" as defined in ORC 6111.01.
5. Upon investigation, it was determined that manure had discharged into a tributary of Vallery Creek through field tiles and by overland flow. Approximately 1,589 fish and aquatic animals died as a result of the manure discharge.
6. On December 1, 2011, an NOV was issued to Gill Dairy, LLC due to violations resulting from the October 6, 2011 discharge. The NOV allowed Respondent fourteen days to respond to the February 7, 2011 MMP comment letter. To date, no response from Respondent has been received by Ohio EPA.
7. 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.
8. 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.
9. Respondent's actions described above caused pollution or caused sewage, industrial waste or other waste to be placed in a location where they cause pollution to waters of the state, and as such is a violation of ORC §§ 6111.04 and 6111.07.
10. 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. Within forty five (45) days after the effective date of these Orders, Respondent shall submit for approval a Manure Management Plan in accordance with Section X of these Orders in order to complete its NPDES permit application for a CAFO NPDES permit.
2. Within thirty (30) days of receiving any comments from Ohio EPA on the Manure Management Plan, Respondent shall submit all corrections (if any) in accordance with Section X of these Orders.
3. Respondent shall pay the amount of eighteen thousand five hundred dollars (\$18,500.00), 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 \$14,800.00 of the total amount. The official check shall be submitted to Akia Smith, 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 photocopy of the check shall be sent to the Ohio EPA, Division of Surface Water, Central Office, in accordance with Section X of these Orders.

4. In lieu of paying the remaining \$3,700.00 of the civil penalty, Respondent shall, within ninety (90) days of the effective date of these Orders, fund a supplemental environmental project ("SEP") by making a contribution in the amount of \$3,700.00 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for that amount. The official check and a cover letter identifying the Respondent shall be submitted to Akia Smith, or her successor at:

Ohio Environmental Protection Agency
Office of Fiscal Administration
P.O. Box 1049
Columbus, OH 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

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 4, Respondent shall immediately pay to Ohio EPA the remaining \$3,700.00 of civil penalty in accordance with the procedures in Order No 3.

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.

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 Site.

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 Environmental Protection Agency
Division of Surface Water
Central Office
P.O. Box 1049
Columbus, OH 43216-1049
(ATTN: Enforcement Supervisor)

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 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.

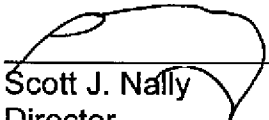
XIII. EFFECTIVE DATE

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**

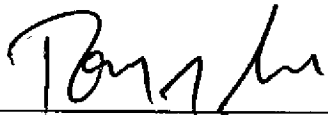


Scott J. Nally
Director

9/13/12

Date

**IT IS SO AGREED:
Gill Dairy, LLC**



Signature

9/11/12

Date

Tony S. Gill

Printed or Typed Name

owner

Title