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Responsiveness Summary to public comments on the Hathaway Farms draft Permit to Install and draft Permit to Operate

October 1, 2014

On August 22, 2014, the Ohio Department of Agriculture issued a public notice of Hathaway Farms draft Permit to Install (PTI) and a draft Permit to Operate (PTO). 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 Install (PTI) and the draft Permit to Operate (PTO) for the facility called “Hathaway Farms” which is located at 8553 Quaker Rd. Fredericktown, Ohio 43109 in Knox County. Comment period ended at 5:00 p.m. on September 22, 2014.

At the close of the public comment period, only one request for a Public Meeting had been made. Twenty (20) requests are necessary to hold a Public Meeting; therefore this Responsiveness Summary will serve as ODA’s formal response to the written comments received.

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 on behalf of Bruce and Coleen Gregg by Richard T. Ricketts, Esq.

No.	Date Received	Name	Organization, if Any	City, State
1	9/22/2014	Bruce and Colleen Gregg		Fredericktown, OH

Comment 1. Upon information and belief, Hathaway Farms, GP and Hathaway 5 Farms, LLC are entities that are under and/or constitute common ownership as provided for under ORC 903.01 (“Common Ownership”). As such, the existing two facilities of the Applicants need to be considered as being subject to Common Ownership, both as they exist and also in respect of the current request for approval of the additional requested Permits;

Response:

Ohio Revised Code §903.01(B)(2) states in part,

...Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure.

In Order to be considered under “common ownership” the adjoining properties in question must in fact be owned by the same individuals. In this case, while the owners are related by blood, the owners of Hathaway Farms GP and Hathaway 5 Farms, LLC are not the same individuals. The partners of Hathaway Farms GP are Dan L. Hathaway and Kimber L. Hathaway. This is listed in the partnership documents filed with the Ohio Secretary of State’s Office. The members of Hathaway 5 Farms, LLC are: Ryan Hathaway, Tyler Hathaway, Sydney Hathaway, Austin Hathaway, and Dustin Hathaway in equal shares as set forth in the Limited Liability Company Operating Agreement. The real estate was also quit claimed through a Trustees’ Deed from Dan Hathaway, Kim Hathaway, Debra Hathaway, and Melissa Hathaway as trustees to Hathaway 5 Farms, LLC. This document may be found at the Knox County Recorder’s Office at book 1339, pages 887-889.

With these documents ODA-Division of Livestock Environmental Permitting (DLEP) is convinced that the legal ownership in Hathaway Farms GP is different from the owners in Hathaway 5 Farms, LLC. With this application, however, all four barns (2 existing and 2 proposed) will be under a common permit with the approval of this PTO to simplify the permitting process and eliminate the need to maintain separate records and land application areas.

Comment 2. Upon information and belief, the proposal of the Applicants, especially in consideration of the Common Ownership of the Applicants, is not in compliance with the applicable set back requirement from an adjoin residence as required by applicable Ohio Law.

Response: The existing two barns did not require a permit and therefore were constructed under the requirements set forth in the Pollution Abatement regulations administered by Ohio Department of Natural Resources, Division of Soil and Water Resources (ODNR-DSWR). Each of these barns was constructed in accordance to ODNR-DSWR requirements for siting from any adjoining residence.

In addition, since these barns are in existence, ODA's rules do not apply to either structure from the standpoint of siting criteria. Lastly, this public notice is only applicable to the construction covered under the draft PTI, which includes the two new barns, not the existing barns. This comment is not related to the information covered with this public notice and both of the proposed barns planned with this draft PTI exceed 1,000 feet from any neighboring residence.

Comment 3. Upon information and belief, the Applicants did not provide Middlebury Township, Knox County, Ohio with accurate information in respect of the Permits and/or as required by applicable Ohio law.

Response: ODA rule 901:10-1-02 (A)(7) requires the applicant to provide this information to the local officials as a courtesy and if the local officials have questions on the information provided, they work directly with the owner of the facility. To clarify the information provided by Hathaways, DLEP contacted them and they stand behind the numbers provided in the letters, with a few minor clarifications. The information provided by the Hathaways is as follows: for the feed trucks, the empty weight of the trucks is generally between 17-18 tons. Loaded trucks coming into the facility carry approximately 22-23 tons of feed, for a gross weight right around 40 tons. Based on calculations provided by Hathaways, the average weekly trucks delivering feed will be 4.3 loads, which is pretty close to the 4 trucks mentioned in letter. Obviously, this will vary per week depending on the size of pigs. On the pig trucks, the empty weights of the trucks are correct at 15.5 tons per truck. The 23.5 tons "full" is actually the weight of pigs that will be shipped on each truck, for a gross weight of each truck at 39-40 tons on the average. Based on number of pigs to ship per week and the average weight of the finished pigs, the number of pig trucks per week would average 2.1 loads, where the letter sent stated 3.0 per week. Lastly, the manure hauling section incorrectly identified the empty weight of manure hauling equipment. The letter indicated an average empty weight of 15 tons, where it should have been 8.5 tons, which is actually almost half the weight indicated in letter. The actual weight of manure to be hauled with each load is roughly 31.5 tons, or 7,000 gallons. One of the commenters major concerns was the amount of manure to be tanked over the roads was quite less than provided. However, this minor error in empty weight makes a big difference to help address that concern. Also, the last statement of the local notification letter clearly indicates that other methods of manure application will be utilized that will not include tanks or trucking of manure on public roadways.

In summary, it appeared to be a terminology issue between the parties (commenter and applicant) that lead to some of the confusion. In addition, the discrepancies that were found are minor and in some cases the letter actually overestimated the loading on the roads. Lastly, it should be noted that no public official raised concern during the public comment period.

Comment 4. The Greggs requests that the Ohio Department of Agriculture ("ODA") require that the Applicants provide all information necessary to confirm to the ODA that the Applicants requested Permits are fully in compliance with Ohio law as it relates to common ownership and control of both the existing facilities and the proposed additional facilities, and the requirements of applicable Ohio Law, specifically including, but not limited to, the defined terms Animal Feeding Facilities and Animal Feed Operations as defined in ORC 903.01.

Response:

The ownership concerns have been addressed through the documents provided to ODA-DLEP by the applicants. Please see the answer to Comment 1 above.

Comment 5. The Greggs request that ODA confirm that the Applicants have fully and accurately provided information to all governmental bodies as required by applicable Ohio Law, specifically including but not limited to compliance with ORC 903.03 (C) and 903.03 (D).

Response:

ODA-DLEP is satisfied that the applicants have fully complied with ORC 903.03(C) and ORC 903.03(D) in the application and additional documents they provided.

Comment 6. The Greggs request that ODA confirm that the existing swine facilities of the Applicants are fully in compliance with applicable Ohio Law and/or that if combined with the proposed new swine facilities will be fully in compliance with applicable Ohio Law, specifically including but not limited to all applicable setback from an adjoin residence.

Response:

ODA-DLEP is satisfied that the existing facility is in full compliance with applicable Ohio Law pertaining to the operation of a concentrated animal feeding operation. Please see the responses to all of the previous Comments above.

Comment 7. The Greggs requests that the Ohio Department of Agriculture confirm and require the implementation of Best Management Practices and Manure Management Plans at all times on the existing facilities of the Applicants and any proposed additional facilities.

Response: ODA-DLEP has the statutory obligation to ensure that all permitted facilities comply with Chapter 903 and the rules promulgated thereunder. It will ensure that through regular inspections of facilities, operations and records as well as investigations of any complaints received.