

**REPORT: OHIO DEPARTMENT OF AGRICULTURE MUST REVERSE LAX POLLUTION OVERSIGHT OF FACTORY FARMS BEFORE U.S. EPA CAN GIVE IT FULL CLEAN WATER ACT AUTHORITY**

*Is ODA Too Cozy With Factory Farms to Handle the Job of Policing Them?; Weak Track Record on Oversight, Fines Seen at ODA; Necessary Corrective Steps Outlined.*

**COLUMBUS, OH. AND WASHINGTON, D.C.///October 24, 2006///**The extent of “factory farming” and related animal waste pollution in Ohio is growing at an alarming rate and there are valid concerns about giving the Ohio Department of Agriculture (ODA) primary oversight of such operations because of ODA’s poor track record in enforcing its current rules, according to a major new report released today by the nonprofit Environmental Integrity Project, Ohio Environmental Council and Wood County Citizens Opposed to Factory Farms.

Oversight of water pollution from concentrated animal feeding operations (CAFO) in Ohio is currently in the hands of the Ohio Environmental Protection Agency (OEPA). ODA is seeking U.S. EPA permission to take over the job of monitoring and policing CAFO water pollution in the state – which would mark the first time in U.S. history that a state agriculture agency is entrusted with such a responsibility.

Entitled “Giving Away the Farm,” the EIP report documents ODA’s lackluster track record when it comes to overseeing pollution by the factory farms to which it may be too close to get the job done properly. As the report notes: **“... it is questionable whether any state department of agriculture should have environmental regulatory oversight of CAFOS. This question is underscored by the ODA’s mission to protect producers and agribusiness and educate the public about the industry ... there are so few instances of actual penalties being levied (today by ODA) – only three final orders with penalties in four years – that facilities are far likelier to opt for the economic benefits of either long-delayed compliance or outright noncompliance.”**

The EIP report cites several problems with the ODA’s handling of pollution from CAFOs, including the fact that: **“ODA does not deter noncompliance through effective enforcement. ODA’s enforcement relies on warning letters and notices of deficiencies with limited escalation, even with repeat violators. In fact, ODA has only assessed three penalties in four years – two in the negligible amounts of \$200 and \$700—while over a similar time period, OEPA assessed double the number of penalties and in amounts averaging \$16,786. One particularly egregious example of ODA’s lax enforcement policy is Buckeye Egg Farm, which had numerous pollution incidents. In 2003, ODA allowed Ohio Fresh Eggs to purchase Buckeye Egg Farm and it has since amassed 36 ODA notices of deficiencies without a single fine being levied against it.”**

Karla Raettig, report co-author and counsel, Environmental Integrity Project said: **“As things stand today, the Ohio Department of Agriculture is far from being ready to assume the Clean Water Act program. If it is to effectively police factory farm pollution in Ohio, the ODA has to start making its top priority the health and interests of the Ohio public and not agribusiness in the state.”**

Trent Dougherty, Staff Attorney, Ohio Environmental Council, said: **“Because of the environmental and public health impacts of these facilities, effective regulatory oversight of factor farms is critical for our state. In Ohio, CAFOs generate approximately 10,545,271 tons of manure per year, with some individual facilities creating more waste than medium-sized cities. For instance, the manure production at Van Deurzen Dairy, a 4,500-head facility in Hardin County, Ohio approved by the Ohio Department of Agriculture in 2005 will be approximately equivalent to human waste production from 95,000 people, exceeding the population of the state’s seventh largest city of Youngstown.”**

Jane Phillips, president, Wood County Citizens Opposed to Factory Farms and a resident of Custar, Ohio, said: **“CAFOs are squeezing out the family farm and they are ruining the air and water in Ohio for everyone else. Unfortunately, Ohio has undergone a tremendous shift toward industrialized livestock production in all sectors, including hogs, poultry, and dairy. During the 1990s, the number of large industrialized livestock production facilities known as Concentrated Animal Feeding Operations in the state more than tripled.”**

### **OTHER KEY REPORT FINDINGS**

- ***Huge surge in CAFOs.*** According to the U.S. Department of Agriculture’s (USDA) farm census, while the number of hog farms in Ohio fell from 20,062 to 4,976 from 1974 to 2002 (75.2 percent decrease), the number of hogs sold rose from 3,165,535 to 4,609,153 (45.6 percent increase). Overall, the concentration of confined animals at Ohio farms almost doubled between 1982 and 1997, and the trend appears to be accelerating.
- ***ODA has reduced permit coverage and reporting requirements.*** When ODA assumed the state operating permit program, up to 35 facilities – or a quarter (24.3 percent) of original OEPA-permitted factory farms – fell off the regulatory radar with the transfer of state permitting authority.
- ***ODA fails to effectively regulate manure transfer from permitted farms.*** If a state permitted facility applies manure to fields under its control, it is liable for resulting environmental harm. Increasingly, Ohio facilities circumvent this liability by transferring manure for land application elsewhere, with little sunshine on what happens after the permitted facility makes the hand off.
- ***ODA places inadequate restrictions on winter manure applications.*** Because of the manure transfer loophole, ODA’s attempt to restrict winter land application onto frozen ground is essentially nullified.

Ron Wyss, president, Citizens for Respectful Agricultural Environmental Policies and a resident of Hardin County, said: **“CAFOs are industrial-sized businesses producing industrial sizes waste and they should be regulated accordingly. Unfortunately, Ohio has stripped away local control over factory farms and state agencies, such as ODA, have not stepped up to the plate to protect public health and the environment.”**

The EIP report also outlines the steps that the ODA needs to start becoming credible in its oversight of CAFO pollution. Among the recommendations are the following:

- ***Accelerate, streamline, and toughen up enforcement.*** The record of enforcement against recalcitrant polluters shows an unacceptable lag of time between violations and compliance. ODA should eliminate warning letters and off-the-record notices as steps in the enforcement process.
- ***Close the existing manure transfer loophole by establishing producer-based liability.*** For transferred manure, ODA should adopt a policy presumption that clearly assigns liability for discharges and spills to manure producers. For example, Wisconsin holds producers liable for all manure discharges and spills, including spills of manure land applied by a third party. In order for a producer to transfer liability, they must obtain written approval from the state, and only may do so in enumerated circumstances.
- ***Require annual reports for ALL facilities.*** The annual reporting requirement should extend to all permitted facilities and all certified manure brokers. When a other state agency receives a location-based report of a manure discharge, an investigator should have immediate access to a map that identifies any nearby fields that receive manure, the brokers who apply it, and/or and the facilities that produce it. At the very least, OEPA's three-year reporting requirement for new facilities should be re-implemented. More reports will also create more information on appropriate design standards and changes to future rules.
- ***Restrict wintertime manure transfers.*** Restrictions on wintertime application of manure must by definition extend to wintertime distribution and utilization of manure. Distribution and utilization is a code phrase for land application at fields not under a permitted facility's control. It is a self-defeating exercise for ODA to place restrictions on manure application to frozen or snow-covered ground while placing no restrictions on the amount of manure that facilities can transfer during winter months.
- ***Report to citizens.*** The unavailability of this basic enforcement and compliance information has broad implications. Public access is critical because it allows citizens to make informed decisions regarding environmental issues that affect their communities. Citizens also need compliance data in order to assist U.S. EPA and the states in ensuring that environmental violations are resolved. Moreover, the public's direct access to compliance information provides incentives for regulated entities to comply with the law. ODA should post key enforcement information on its Web sites. Finally, all state agencies should post their CAFO databases related to discharges and fish kills on their websites.

To read the full EIP report, go to <http://www.environmentalintegrity.org> on the Web.

## **BACKGROUND**

Over the last several decades, U.S. agriculture has changed dramatically. Small farms are being replaced by industrial-like facilities that confine thousands, tens of thousands -- or even hundreds of thousands -- of animals in small areas. As a result, factory farms produce an estimated 500

million tons of manure every year – three times the amount of waste the human population of the U.S. produces. Unlike human waste, however, livestock waste is not treated. Dumped into pits and onto the land, manure emits health-threatening quantities of toxic gases into the air as it decomposes. Spills and runoff of manure from factory farms can destroy rivers and contaminate downstream communities' drinking water supplies.

### **ABOUT EIP**

The Environmental Integrity Project (<http://www.environmentalintegrity.org>) is a nonpartisan, nonprofit organization established in March of 2002 to advocate for more effective enforcement of environmental laws. EIP was founded by Eric Schaeffer, who was director of the U.S. Environmental Protection Agency's Office of Regulatory Enforcement. He resigned in 2002 after publicly expressing his frustration with efforts of the Bush Administration to weaken enforcement of the Clean Air Act and other laws.

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**EDITOR'S NOTE:** A streaming audio recording of a related news event will be available on the Web as of 6 p.m. ET on October 24, 2006 at <http://www.environmentalintegrity.org>.