OHIO E.P.A.

SEP -9 2013

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Assen Dairy, LLC 8500 Yankeetown-Chenoweth Road London, Ohio 43140 Rising Sun Dairy, LLC 8500 Yankeetown-Chenoweth Road London, Ohio 43140 Respondents	:	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: [signature] Date: 9-9-13

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Assen Dairy, LLC and Rising Sun Dairy, LLC ("Respondents") 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 Respondents and their successors in interest liable under Ohio law.

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 promulgated there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent Rising Sun Dairy, LLC owns and operates a Concentrated Animal Feeding Operation (CAFO) located at 8500 Yankeetown-Chenoweth Road ("Rising Sun Dairy"), London, Ohio 43140. Respondent Assen Dairy, LLC is a member of Rising Sun Dairy, LLC and conducts day to day operation of the CAFO.

2. Respondent Assen Dairy, LLC holds a valid, unexpired, non-major National Pollutant Discharge Elimination System ("NPDES") permit, number 4IK00026*BD for the facility.

3. This document does not modify NPDES Permit No. 4IK00026*BD. The purpose of this document is to correct a condition of noncompliance with NPDES Permit No. 4IK00026*BD and not to alter said permit.

4. Pursuant to ORC Section 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.

5. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

6. The Ohio EPA has sent Respondent Assen Dairy, LLC a Notice of Violation ("NOV") in an effort to address the compliance issues at the CAFO. Respondent Assen Dairy, LLC violated terms and conditions of its NPDES permit. Attachment I is Respondent Assen Dairy, LLC's NOV letter. Attachment I is hereby incorporated into these Findings and Orders as if fully stated herein.

7. Respondents have informed Ohio EPA that Assen Dairy, LLC is selling its membership interest in Rising Sun Dairy, LLC and that Rising Sun Dairy, LLC will be the sole owner and operator of the dairy.

8. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the PTI requirements of Ohio Administrative Code ("OAC") Chapter 3745-42.

9. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.

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 purposes of ORC Chapter 6111.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondents shall maintain compliance with the currently effective NPDES permit (4IK00026*BD) and any successor permit.

2. Respondent Assen Dairy LLC shall pay the amount of five thousand dollars ($5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) 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". The official check shall be submitted to Carol Butler, or her successor, together with a letter identify the Respondent, to:

   Office of Fiscal Administration
   Ohio Environmental Protection Agency
   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, Ohio 43216-1049

VI. TERMINATION

Except for Order No 1, Respondents' obligations under these Orders shall terminate when Respondent Rising Sun Dairy, LLC certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have 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. Order No 1 shall terminate three years after the issuance of these Orders. Order No. 1 shall terminate as to Respondent Assen Dairy, LLC once it ends its ownership interest in and operation of the dairy and has transferred NPDES Permit No. 4IK00026*BD to Rising Sun Dairy, LLC. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents 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 Rising Sun Dairy, LLC 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(F)(1) for a corporation, OAC Rule 3745-33-03(F)(2) for a partnership, OAC Rule 3745-33-03(F)(3) for a sole proprietorship, and OAC Rule 3745-33-03(F)(4) 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 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 Respondents.

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. RESERVATION OF RIGHTS

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

XI. 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, Respondents consent 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 Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XII. EFFECTIVE DATE

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

XIII. 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 Nally
Director

Date 9/5/13

IT IS SO AGREED:

Assen Dairy, LLC

Signature

Date 8-18-13

Pieter Assen
Printed or Typed Name

Managing Member
Title

Rising Sun Dairy, LLC

Signature

Date 8-8-13

HARRY DEWIT
Printed or Typed Name

ATTACHMENT 1

Ohio EPA
40 years and moving forward

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

December 13, 2012

Madison County
4IK00026*BD

CERTIFIED MAIL

Rising Sun Dairy
Pieter Assen
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Re: Notice of Violation, Manure Discharge to Madden-Higgins Ditch

Dear Mr. Assen,

This letter documents the manure discharge associated with a malfunction in a manure flushing system at Rising Sun Dairy. A remedial response and investigation was conducted between November 4, 2012 and November 9, 2012. The manure discharge impacted several miles of Bradford Creek and a tributary to Bradford Creek and also caused a fish kill. The Ohio Department of Natural Resources, Division of Wildlife (ODNR, DOW) determined that several thousand fish and aquatic animals were killed as a result of the manure release.

On November 4, 2012 the Ohio EPA Spill Hotline received a call indicating that there was a large direct discharge of manure to an open ditch. The discharge was suspected to be coming from Rising Sun Dairy. Ohio EPA on-scene coordinator (OSC) Wes Drake arrived in the area on the night of November 4th. OSC Drake observed dead fish in Bradford Creek downstream of the dairy and discovered elevated levels of ammonia in the creek.

OSC Drake met with you at Rising Sun Dairy on the night of November 4th to discuss the spill. You were not aware of the spill at the time. As it was dark, OSC Drake was unable to determine where the spill originated. It was suspected that the manure circulation line which is used for the flush flumes in the free stall barns was contributing to the discharge. OSC Drake had you shut off the manure circulation line. A dam was constructed approximately one mile downstream of the dairy in Madden-Higgins Ditch.

I (Jon Bernstein) arrived at the dairy on the morning of November 5th to assist in the spill response. Upon arrival, I dropped off a blank spill report to Dawn Assen and indicated to her that the report should be filled out and returned to Ohio EPA within 14 days.

50 West Town Street • Suite 700 • P.O. Box 1049 • Columbus, OH 43216-1049
www.epa.ohio.gov • (614) 644-3020 • (614) 644-3184 (fax)

I observed some of the waterways in the area and then met with you and Ohio Department of Agriculture engineer Gary Zwolinski. We observed several of the waterways in the area in order to determine the extent of required manure removal. A dam had already been constructed in Madden-Higgins Ditch in order to contain manure still flowing off the dairy site. As there was a significant amount of water in the creek we decided that removal efforts should be focused upstream of the dam.

Manure traveled into a ditch and subsequently entered a waterway on your property. Additionally, manure entered a sedimentation pond which receives ground water associated with the new manure lagoon. It is likely that the ground water being pumped from the new manure lagoon helped transport manure from the sedimentation pond to the tributary of Bradford Creek. The tile outlet on the sediment pond was closed in order to prevent any more manure from flowing out of the pond. The dairy continued to pump manure impacted water collected behind the dam and land-apply the material throughout the remainder of November 5th.

Water quality samples were collected throughout the day from several locations. The results of the samples are listed in Tables 1-5. Locations sampled include the following:

- Bradford Creek at Moorman Road
- Bradford Creek at Johnston Road
- Tile discharge downstream of containment dam
- Madden-Higgins Ditch at Yankeetown-Chenoweth Road
- Waterway west of Yankeetown-Chenoweth Road

I returned to the dairy on November 6th. Manure cleanup actions continued at the dairy and at the manmade dam. We observed the flush flume located on the south side of the new freestall barn. The flume was installed aboveground for several hundred feet in anticipation of the construction of a future freestall barn. A blockage in the flume just inside the new freestall barn caused manure to back up and discharge outside of the barn. The blockage appeared to be caused by a piece of lumber which may have been left in the flume during construction. A large amount of debris and several large rocks were found behind the piece of lumber which was located in the flume just inside the barn. A solid pipe was being installed in the outside portion of the flume in order to prevent a reoccurrence of any overflows.

I obtained dissolved oxygen (DO) and ammonia test kits from the ODNR personnel who were still in the area conducting a fish kill count. At approximately 1:30 pm I tested ammonia and dissolved oxygen levels at Yankeetown Road and also at the manmade dam. The concentrations of the two parameters had returned to a more satisfactory level. I indicated to you that you should continue to pump from behind the dam for two more hours and to then perform a controlled discharge from the dam.

I returned to the dairy on November 9th. The new pipe for the flush flume was fully installed and it appeared to be operating satisfactorily. A concrete lip was also installed inside the newest freestall barn so that any overflows would be contained within the barn. The sediment

pond still had manure in it but the tile outlet was still closed. Conditions in water bodies downstream of the dairy were observed next. The manmade dam had been entirely removed and the water which was flowing in the ditch was very clear and downstream conditions appeared to be returning to normal.

Table 1. Sample collected in Madden-Higgins Ditch at Yankeetown-Chenoweth Road

Parameter	Result	Units
Ammonia	28.9	mg/L
Nitrate+Nitrite	<0.10	mg/L
Total Kjeldahl Nitrogen	36.2	mg/L
Total Phosphorus	11.4	mg/L

Table 2. Sample collected from waterway west of Yankeetown-Chenoweth Road

Parameter	Result	Units
Ammonia	39.4	mg/L
Nitrate+Nitrite	<0.10	mg/L
Total Kjeldahl Nitrogen	45.2	mg/L
Total Phosphorus	16.3	mg/L

Table 3. Sample collected in Bradford Creek at Moorman Road

Parameter	Result	Units
Ammonia	9.69	mg/L
Nitrate+Nitrite	<0.10	mg/L
Total Kjeldahl Nitrogen	12.9	mg/L
Total Phosphorus	0.962	mg/L

Table 4. Sample collected in Bradford Creek at Johnston Road

Parameter	Result	Units
Ammonia	15.2	mg/L
Nitrate+Nitrite	0.10	mg/L
Total Kjeldahl Nitrogen	18.9	mg/L
Total Phosphorus	2.20	mg/L

Table 5. Sample collected from tile outlet downstream of containment dam

Parameter	Result	Units
Ammonia	26.4	mg/L
Nitrate+Nitrite	<0.10	mg/L
Total Kjeldahl Nitrogen	31.2	mg/L
Total Phosphorus	12.1	mg/L

VIOLATIONS

Due to the unpermitted production area discharge of manure to waters of the State, Rising Sun Dairy has violated the following conditions of its NPDES permit:

Part I,A,1,a. Beginning on the effective date of this permit, there shall be no discharge of manure pollutants from the production area to waters of the State. The production area shall be properly designed, constructed, operated, and maintained to contain manure, direct precipitation, and the runoff from a 100-year, 24-hour storm event and the production area shall be operated in compliance with the additional measures and records required in Part II and Part VII.

Part I,A,1,b. Dry weather discharges of manure are prohibited from production and land application areas.

Part I,A,1,d. If a spill, discharge, or overflow of manure occurs at any time from the production area to waters of the State (a violation of Part I, A,1,a), the permittee shall collect and analyze grab samples from each spill, discharge or overflow for the following list of parameters:

00310 - Biochemical Oxygen Demand, 5 Day (BOD5) - mg/l
00610 - Nitrogen, Ammonia (NH3) - mg/l
00665 - Phosphorus, Total (P) - mg/l
(Note: units of mg/l)

The permittee shall: (a) collect the sample within 30 minutes of the first knowledge of the spill, discharge, or overflow; or (b) if sampling in that period is inappropriate due to dangerous weather conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for delay.

The permittee shall notify Ohio EPA by calling 1-800-282-9378 as soon as possible but no later than 24 hours following the first knowledge of the spill, discharge, or overflow. Immediate notification allows Ohio EPA to assist in clean up and remediation efforts and may reduce magnitude of environmental impact and extent of permit violations.

The permittee shall report the results of the spill, discharge, or overflow sample to Ohio EPA, Central Office, Division of Surface Water, within 14 days of occurrence. The report shall, at a minimum, contain the sample results of the aforementioned parameters, describe the reason for the spill, discharge, or overflow, the location, estimate of quantity and duration of the spill, discharge, or overflow, quantity and duration of the precipitation leading up to the event, as well as any measures taken to clean up and eliminate the spill, discharge, or overflow and prevent reoccurrence of the spill, discharge or overflow. See Part III, 12 and Part VII, Production Area Requirements.

Part II,B. The discharge of manure or other wastes to waters of the State as defined in ORC 6111.01 and which include surface waters, wetlands (not included constructed treatment wetlands), and ditches is prohibited except in compliance with this permit.

Part II,C. Spill prevention and good housekeeping techniques, along with diversion of clean water, shall be used to ensure that uncontained storm water from the production area is not contaminated by manure and to ensure that storm water discharges from the following areas maintain compliance with Ohio Water Quality Standards in the receiving water of the State: immediate access roads and rail lines used or traveled by carriers or raw materials, products, waste material, or by-products used or created by the CAFO; refuse sites; sites used for the storage and maintenance of material handling equipment; and shipping and receiving areas. Storm water that is contaminated by manure or raw material (such as silage) is process wastewater, which is included in the definition of manure in Part I, A,4 and may only be discharged in accordance with Part I, A of this permit.

Part II, H. The permittee shall be responsible for proper operation and maintenance of the manure storage, treatment, or disposal system.

Other violations:

Ohio Revised Code (ORC) 6111.04
(A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) No person shall 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.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Ohio Administrative Code (OAC) 3745-1-04 Criteria applicable to all waters
The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:

(A) 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;

(B) Free from 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) 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;

(D) Free from 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;

Requested Actions

1. Submit the results of the water quality sample for the ground water discharge. This is the discharge associated with dewatering activities for the new manure lagoon.
2. Provide an update on the status of the sedimentation basin (Figure 3). You had indicated during the spill response that you may fill in the pond.
3. Submit an NPDES permit modification request to account for the groundwater discharge associated with dewatering activities.
4. Submit a spill report to Ohio EPA.
5. Add the outside flume area to your regular inspections and document the inspections in your operating records.
6. Clean any areas around the dairy which may contain residual manure from the spill. Some of these areas may require grading.
7. Reseed any areas around the dairy which were disturbed by the spill.

Please complete the above actions within 30 days of receipt of this letter. Reseeding should be accomplished as soon as weather conditions allow but no later than June 15, 2013.

Please remember that you are responsible for complying with your NPDES permit and Ohio's water pollution control laws. You should be making every effort to develop strategies to ensure that incidents such as this do not happen again.

This Notice of Violation does not preclude Ohio EPA or any other state or federal agency from seeking civil penalties or criminal charges against Rising Sun Dairy. If there is any statement in this letter which you believe is in error, please advise me in writing within 14 days. Should you have any questions or concerns, feel free to contact me at 614-728-2397 or at jon.bernstein@epa.state.oh.us.

Sincerely,

Jon Bernstein, P.E.
PTI Compliance Assistance, & CAFO Unit
Division of Surface Water

cc: Kevin Elder, ODA-DLEP
Bill Palmer, Ohio EPA –OSI
Leighland Arehart, ODNR-DOW
Julia Cumming, Madison SWCD

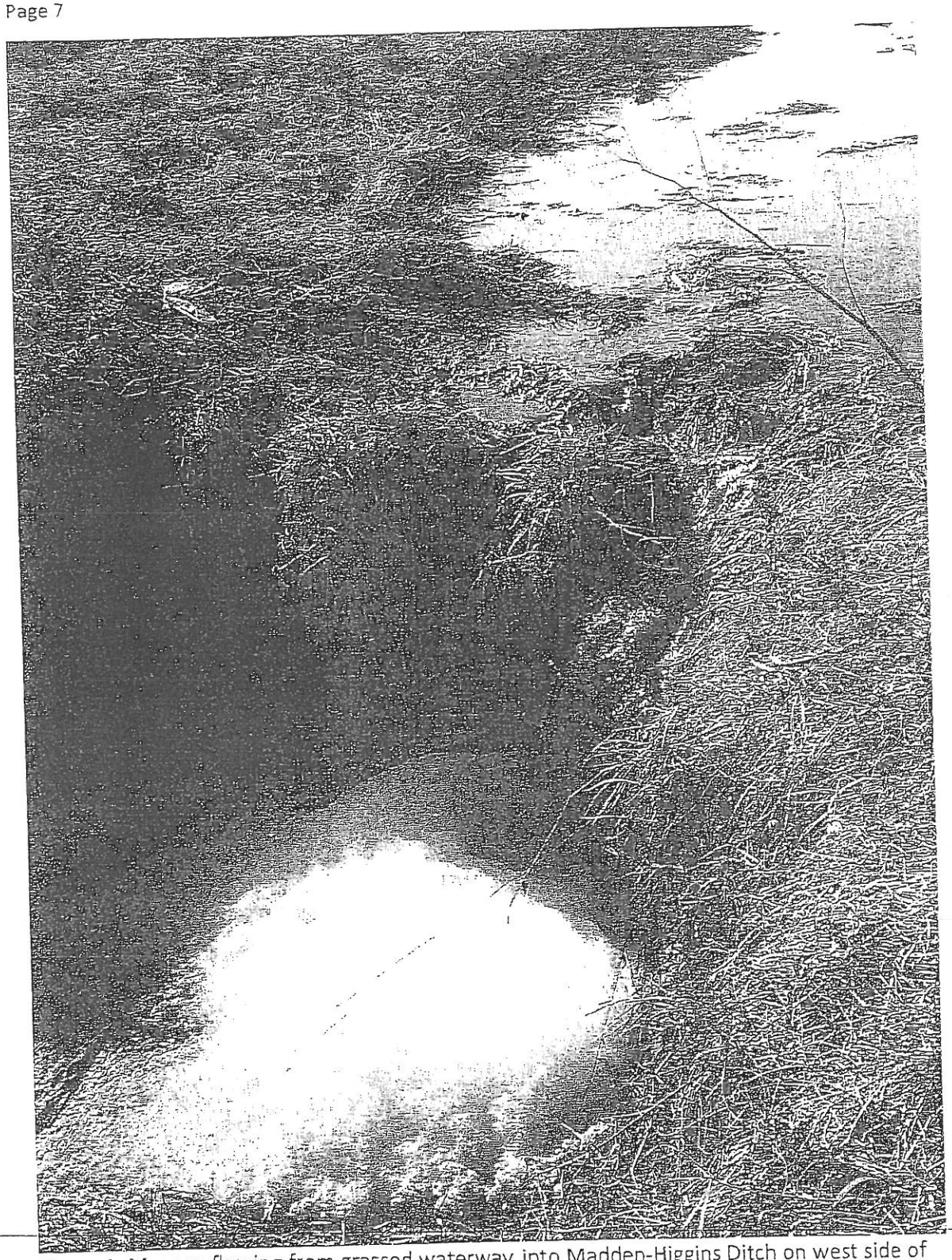

Figure 1. Manure flowing from grassed waterway into Madden-Higgins Ditch on west side of Yankeetown Road. Sample #2 was collected here.

Figure 2. Tile discharging manure-contaminated water to Madden-Higgins Ditch. The tile was located downstream of the dam used for containment. Sample #5 was collected here.

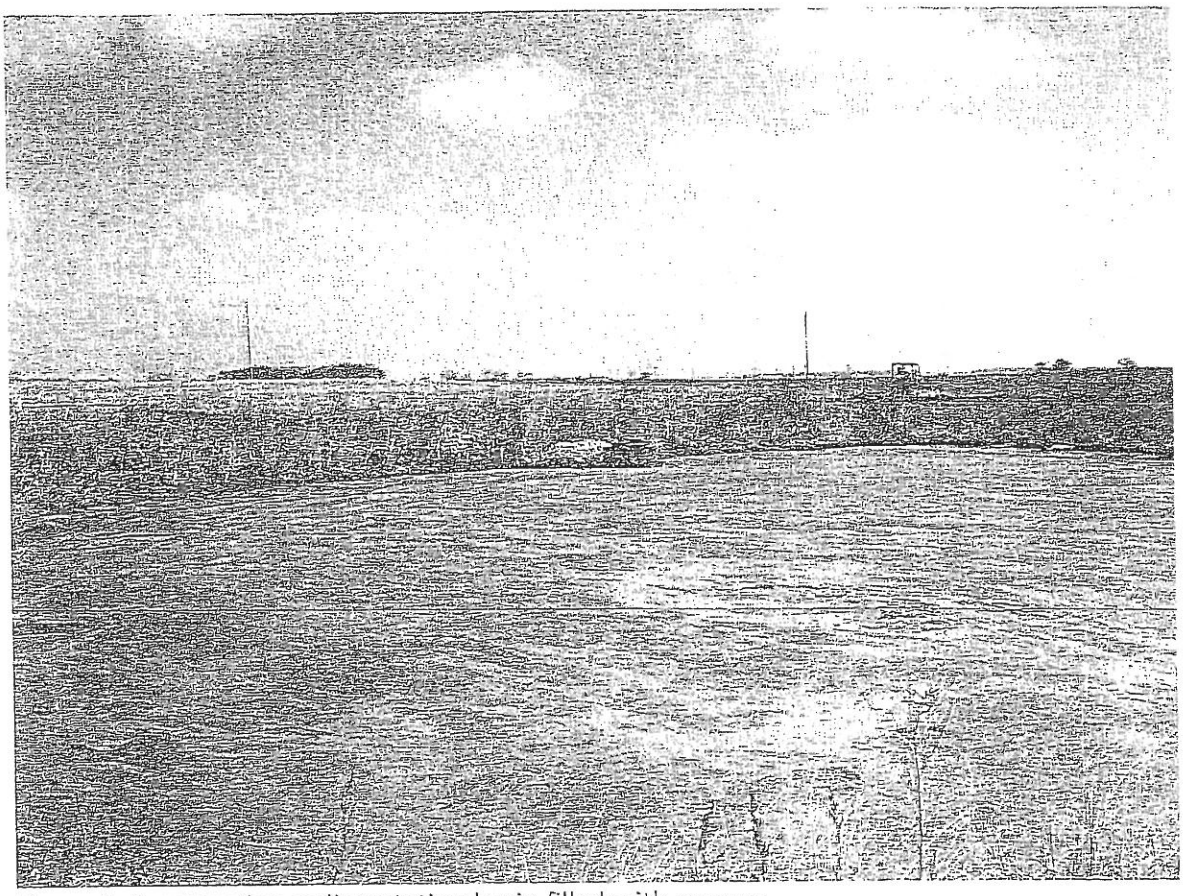

Figure 3. Construction sedimentation basin filled with manure.

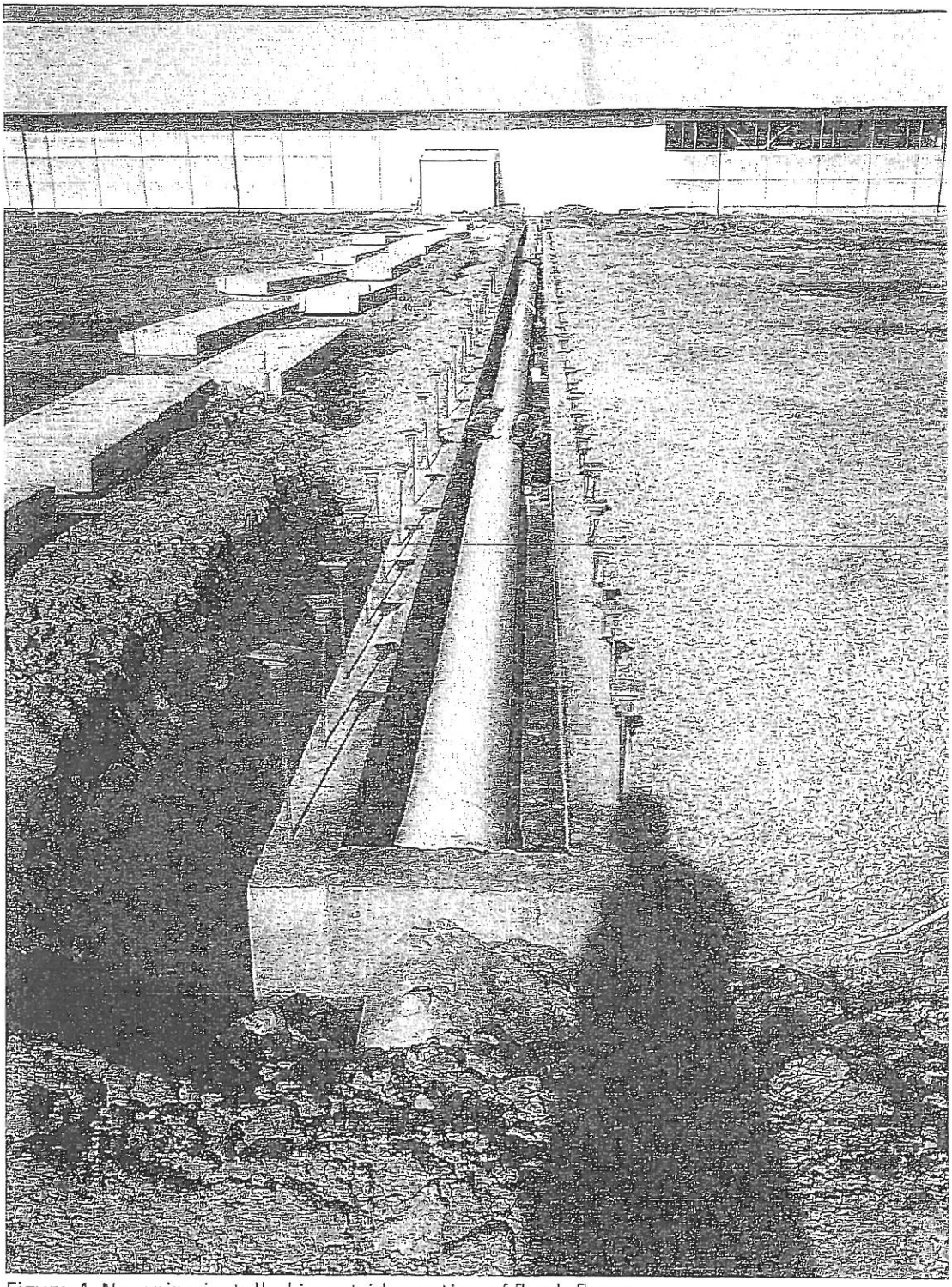

Figure 4. New pipe installed in outside portion of flush flume.