



Governor John R. Kasich
Lieutenant Governor Mary Taylor
Director David T. Daniels

Division of Livestock Environmental Permitting
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**Responsiveness Summary to Public
Comments regarding
MVP Dairy
Draft Permit to Install and
Draft Permit to Operate
August 8, 2017**

On June 30, 2017 the Ohio Department of Agriculture (ODA) issued a public notice in *The Daily Standard* that a draft Permit to Install (PTI) and a draft Permit to Operate (PTO) had been issued to MVP Dairy. A preset date, time and location for the public meeting were included in the draft Public Notice at the request of MVP Dairy. This public notice opened the public comment period on the draft permit on June 30, 2017. On August 8, 2017, an open house began at 6:30 pm, followed by the public meeting at 7:00 pm to accept public comments. The comment period ended at 5:00 p.m. on August 15, 2017.

The Director's final decision on the draft permits must be made in accordance with the laws regulating the relevant permits and facts contained in the permit applications. According to Ohio Administrative Code (OAC) 901:10-6-04, 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 (ORC) 903.09 states that the Director is to hear comments pertinent to the draft permits. The ODA 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 ODA's regulatory control. The Ohio General Assembly has not given the Director of Agriculture unlimited jurisdiction. The permits cover environmental issues pertaining to water pollution control such as siting, geological explorations, facility design, construction, water quality, manure management, containment of storm water 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.



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Public Comments Submitted by:

<i>No.</i>	<i>Date Received</i>	<i>Name</i>	<i>Organization if any</i>	<i>Address, City, State</i>
1	5/22/2017	Melvin Fledderjohann	US Mail	00286 State Rt. 219 St. Marys, Ohio
2	8/8/2017	Melvin Steinbrunner		8270 Rice Rd. Celina, OH 45822
3	8/8/2017	Charles Wurster		7389 Bogart Rd. Celina, OH 45822
4	8/8/2017	Scott Muhlenkamp		7271 Bogart Rd. Celina, OH 45822
5	8/8/2017	Lisa Muhlenkamp		7271 Bogart Rd. Celina, OH 45822
6	8/8/2017	Berry Davis		8267 Davis Rd. Celina, OH 45822
7	8/8/2017	Jeremy Leugers		7320 Bogart Rd. Celina, OH 45822
8	8/8/2017	Tim Townsend		9420 Rice Rd. Celina, OH 45822
9	8/8/2017	John Townsend		9420 Rice Rd. Celina, OH 45822
10	8/8/2017	Maria Suhr		9235 State Rt. 197 Celina, OH 45822
11	8/8/2017	Roger (Short) Wilker		7696 Celina-Mendon Rd. Celina, OH 45822
12	8/8/2017	David Moorman		3958 State Route 29 Celina, OH 45822
13	8/8/2017	Bob McNew		8014 Newcomb Rd. Celina, OH 45822
14	8/8/2017	Frank Snyder		6831 Dibble Rd. Celina, OH 45822
15	8/8/2017	Milt Miller	As read by Dennis Piper	8700 Jackson St. Celina, OH 45822
16	8/8/2017	Gene Yocum	Co-owner 6155 Tama Rd.	102 S. Canal St. Spencerville, OH 45887
17	8/8/2017	Vickie Askins	Ohio Environ. Stewardship Alliance	6355 Solether Rd. Cygnet, OH 43413
18	8/8/2017	Keith Canary	Trustee Hopewell Twp.	3499 Hawk Rd. Rockford, OH 45882



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19	8/8/2017	Patrick McGowan	Mayor of St. Marys	101 E. Spring St. St. Marys, OH 45885
20	8/8/2017	Sandy Bihn	Lake Erie Waterkeeper Foundation	236 Walnut St. Lakeside, OH 43440
21	8/8/2017	Kate Anderson	Guardians of Grand Lake St. Marys	230 Wood Rd. St. Marys, OH
22	8/8/2017	Jim Hepp		15312 Fox Ranch Rd. Wapakoneta, OH 45895
23	8/8/2017	Cecil Stiverson		6649 Hasis Rd. Celina, OH 45822
24	8/8/2017	Ryan Jarrett		9491 Celina Mendon Rd. Celina, OH 45822
25	8/8/2017	Beverly Duff		600 Devonshire Dr. Celina, OH 45822-1301
26	8/8/2017	Theresa Howick	Mercer County SWCD Board Member	7531 State Rt. 197 Celina, OH 45822
27	8/10/2017	Janice Dickerson	Email	
28	8/10/2017	Collette Fortin	Email	
29	8/10/2017	Allen Heindel	Email	7920 US Route 33 Celina, OH 45822
30	8/10/2017	Judith Walter	Email	203 E. Pearl St. Wapakoneta, OH 45859
31	8/11/2017	Peg Rotondo	Email	131 Sandy Beach Way Celina, OH 45822
32	8/11/2017	Mitch Rohlman	Email	309 Harbor Point Dr. Celina, OH 45822
33	8/11/2017	Renny Reep	Email	54106 Club Island Rd. Celina, Oh 45822
34	8/11/2017	Shirley Knox	Email	54106 Club Island Rd. Celina, OH 45822
35	8/12/2017	Linda and Larry Sapp	Email	19914 Mer Aug Line Rd. Mendon, OH 45862
36	8/12/2017	Tammy Hileman	Email	7509 Howick Rd. Celina, OH 45822
37	8/14/2017	Melvin E. Fledderjohann	Email	00286 State Rt. 219 St. Marys, OH 45885
38	8/14/2017	Charles Wurster	Email	7389 Bogart Rd. Celina, Ohio 45822-9322
39	8/15/2017	Lynn Fell	Email	
40	8/15/2017	Barb Hamilton	Email	
41	8/15/2017	Mary Jacobs	Email	
42	8/15/2017	Shawna Tobens	Email	8695 State Rt. 197



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				Celina, OH 45822
43	8/15/2017	Sandy Bihn	Email	
44	8/15/2017	M. Dan McKirnan	Email--- 5:34 PM	120 S. Vine St. Celina, OH 45822
45	8/15/2017	Tim Townsend	Email	9420 Rice Rd. Celina, OH 45822

All similar comments are summarized and grouped.

Index

Category

1. Permit to Install	Page(s)
A. General Comments	4-5
B. Legal	5-8
C. Surface Water Quality	8-10
D. Ground Water Quantity	10-11
E. Ground Water Quality	11-14
F. Manure Storage Structures - Design/Construction	14-15
G. Manure Quantity & Storage Capacity	15-16
H. Siting Criteria	16-18
2. Permit to Operate	
A. Manure Management	18-20
B. Soil Testing of Land Application Fields	20-21
C. Insect & Rodent Concerns	21
D. Odor Concerns	21-22
E. ODA Statutory & Regulatory Authorization	22-24
F. Topics Not Applicable to Draft Permit	24

1. Permit to Install

A. General

a. MVP drawings so that the proposed dairy, on the drawings, indicate a pond that may discharge into a public waterway. Would that not require a NPDES permit?



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Response: All of the manure storage ponds, including the silage runoff pond, are considered containment structures and no discharge is allowed from these ponds. The draft PTI drawings do include a Clean Stormwater Sediment Basin/Pond that will have a designed outlet to an existing waterway. This stormwater pond will be part of a General Construction Stormwater NPDES Permit that would fall under the jurisdiction of Ohio EPA.

B. Legal (Ownership Information/Background Check/Public Notice)

a. Has McCarty Dairy in Kansas have any violations of environmental law?

b. Has McCarty Dairy in Kansas had any violations of environmental law? Are violators allowed to come to Ohio and build CAFOs? Why is the address for Roskop Dairy in Kansas the same as a McCarty Dairy? I did not see that disclosed. Mike McCarty also managed Bird City Dairy in Kansas. Was that disclosed?

I see on the permit no environmental violations were listed for the Vantilburg individuals. Has Vantilburg Excavation or Vantilburg Farms or any other entities associated with them had any violations? Would they be required to have them disclosed?

One half of the MVP LLC has no prior dairy experience and the other half has never operated a dairy of this magnitude. Is prior experience given any consideration?

c. So... we do business at that farm with the Vantilburgs. I wouldn't be concerned over this farm going in. I would be horrified over some of the practices that I have seen by this company. We had him, supposed to be applying manure to some of our fields, one field. The guy that went to go do it didn't even get the right field and the pile of manure was in the right field. If they can't manage the people that they have working for them now, when they get to this big operation, how are they going to do it then?

We buy fertilizer from them- twenty-eight percent nitrogen. Right here is a lab sample (holds up a paper), 27.66. Yeah, not far from it, but, it's still low. How can they end up justifying selling that when they say they are good neighbors?

McCarty's say they are good neighbors. I've seen some of the stuff that Vantilburg Farms has done. A lot of their neighbors' fields have tabors? from the property line of dead crops to growing crops. I've seen their sprayer rigs. I've seen them run around in 15-20 mph winds. That to me is not a good neighbor.



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d. And I think.. and the other thing is I understand that the permit is already issued and the man that's going to run the dairy just bought a home from Joe Bieler not long ago and moved in right at the northeast corner Celina. It's all cut and dry. This here is just to let us vent.

Response: ORC 903.05(A) states that any permit to install or permit to operate application submitted by an applicant that has not owned or operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of that application must include the following: (1) a list of all animal feeding facilities in Ohio that the applicant or any person identified by the applicant owns, has owned, has operated or is operating; (2) a list of all animal feeding facilities located in another state or country that is regulated under the Federal Water Pollution Control Act and that the applicant or any person identified by the applicant owns, has owned, has operated or is operating; and (3) a list of all administrative enforcement orders, civil actions with a liability finding, and all criminal actions with a finding of guilt related to Federal Water Pollution Control Act, Safe Drinking Water Act, or any other applicable state or foreign laws pertaining to environmental protection at an animal feeding facility owned or operated by the applicant or any person identified by the applicant during the five years immediately preceding the submission of the application.

MVP Dairy's permit to install and permit to operate applications list MKL Dairy, LLC, and Elmglyde Farms, LLC, as members. MVP Dairy subsequently lists Mike McCarty, Clay McCarty, David McCarty, and Ken McCarty (collectively "the McCartys") as members of Elmglyde Farms, LLC. The McCartys completed all required Compliance Information forms in accordance with ORC 903.05. The Compliance Information forms executed by the McCartys list four out of state animal feeding facilities that the McCartys currently own or operate or previously owned or operated. Those out of state animal feeding facilities are: (1) Beaver City Dairy, LLC (located in Nebraska); (2) McCarty Dairy, LLC (located in Kansas); (3) Bird City Dairy, LLC (located in Kansas); and (4) Scott City Dairy, LLC (located in Kansas).

Pursuant to ORC 903.05, ODA contacted the relevant regulatory agencies in Nebraska and Kansas regarding the compliance history of these facilities. The Kansas Department of Health and Environment informed ODA that there have been no compliance issues at the Scott City Dairy or Bird City Dairy since the McCartys took over operations. The Kansas Department of Health and Environment also stated that there have been some "extremely minor compliance issues" at McCarty Dairy. However, it was also noted that these issues were corrected "as soon as possible" and that no discharges or formal enforcement actions had taken place at any of the facilities.



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Again, MVP Dairy's permit to install and permit to operate applications list MKL Dairy, LLC, and Elmglyde Farms, LLC, as members. MVP Dairy subsequently lists Luke Vantilburg, Kyle Vantilburg, and Matthew Vantilburg (collectively "the Vantilburgs") as members of MKL Dairy, LLC. The Vantilburgs completed all required Compliance Information forms in accordance with ORC 903.05. No previous violations were listed in those Compliance Information forms nor was any enforcement action found during ODA's subsequent follow up with the Ohio Environmental Protection Agency, ODA Division of Animal Health, or Mercer Soil and Water Conservation District.

ODA may deny a permit to install or permit to operate application if the applicant or any person identified by the applicant have a history of *substantial* noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, or any other applicable state or foreign laws pertaining to environmental protection that would indicate that the applicant or any person identified by the applicant lack a sufficient degree of reliability, expertise, and competence to operate the facility in substantial compliance with ORC Chapter 903 or the rules promulgated thereunder. ORC 903.05(B) (emphasis added). Based on the information received from the Kansas Department of Health and Environment, Nebraska Department of Environmental Quality, Ohio Environmental Protection Agency, Mercer Soil and Water Conservation District, ODA Division of Animal Health, and Kansas Department of Agriculture, no finding of substantial noncompliance was found. Moreover, statements from the Kansas Department of Health and Environment indicate that the McCartys already operate similar facilities in substantial compliance with Kansas law.

To the extent that any permit applicant or any person identified by the applicant own other business interests, those interests need only be disclosed if that business interest exercises control or a sufficient degree of ownership over the operation to exercise control of the applicant. *See*, ORC 903.02(C). Generally, an entity is considered to exercise control over an applicant under ORC Chapter 903 when: (1) the relevant entity holds at least twenty-five percent (25%) equity in a publicly traded applicant or parent entity; (2) the relevant entity holds at least fifty percent (50%) equity in an non-publicly traded applicant or parent entity; or (3) the relevant entity has provided a loan to the applicant or parent entity that allows the relevant entity to control facility management or selection of corporate officers. *See*, OAC 901:10-1-01(NNN). ODA has not found any evidence that any of the businesses or business interests cited by the public have any such control.

Finally, ORC 903.05(B) allows ODA to consider any other pertinent information related to an applicant or person identified by the applicant during the permit to install



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and permit to operate application process. ODA has received public comments related to pesticide applications and fertilizer sales. ODA has reviewed its records and found that a Notice of Warning was issued to Matt Vantilburg on January 30, 2017 related to a pesticide application in June 2016. Because this action related to a business and subject matter unrelated to the proposed facility, ODA has determined that this Notice of Warning is not sufficient to establish a finding of substantial noncompliance with relevant environmental standards.

Similarly, the fertilizer sale issue referenced in another public comment was related to a business and subject matter unrelated to the proposed facility. It must also be noted that the situation described in that comment would not be a violation of Ohio fertilizer law. OAC 901:5-1-06(B)(1) states that fertilizer is only considered mislabeled if the percentage of total nitrogen is more than ten percent (10%) below the percentage guaranteed on the label. The situation described in public comments received by ODA referenced an event where the nitrogen percentage delivered was less than ten percent (10%) below the percentage guaranteed. Therefore, no violation of Ohio fertilizer law occurred.

C. Surface Water Quality

a. We have polluted and killed our own lake and now will help to pollute one of the great lakes. All of us must strive to stop this madness before it destroys our way of life, our health and our future generations.

b. We don't want to see any more lakes ruined.

c. The citizens of that city (Toledo), I am sure, would be very opposed to this new threat from Mercer County had they been informed since we are part of their Lake Erie watershed. But you didn't even consult with the people that would be right next to it let alone everyone downstream.

d. This is also in the Lake Erie watershed. That will be the next lake ruined. Grand Lake here in our county is already unusable and we know why but we continue to ignore the agricultural runoff.

e. So, I find it hard to understand that the same family wants to import 4,500 head of cattle into the County with the most impaired lake and watershed in all of Ohio. What message does that send to our sister Lake Erie and its watershed farmers (?). Lake Erie watershed farmers are under a Great Lakes Restoration Initiative Action



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Plan to lessen their phosphorus output by 40% and the north Mercer County sheds to Lake Erie.

f. And the other question I have to ask you is you have to think about people downstream and down in the watershed, and this has already been stated, down at Decatur, Fort Wayne, Antwerp, down at Toledo and all that

Response: OAC Chapter 901:10 was established to protect both surface water and groundwater from any potential impact from manure application or manure storage from permitted facilities. The draft permits do not allow over-application of nutrients or manure spills that would lead to impairment of surface water quality. ODA rules governing land application of manure nutrients are equally protective of all rivers and streams, regardless of watershed.

Manure would be applied using best management practices (BMPs) and in accordance with ODA rules. OAC 901:10-2-13 requires that soil samples be taken at least every three years for every 25 acres or less of the planned land application area. The most recent results of these samples are documented in the Manure Management Plan (MMP) included as part of the final permit. The land application of manure under the control of a CAFF must also follow setbacks to protect waters of the State. For instance, Appendix A, Table 2 of OAC 901:10-2-14 requires 35' vegetative buffer or 100' setback for all surface manure applications to help protect waters of the State. ODA also requires that the results of manure sample analyses be kept in the operating record and provided to all persons receiving or applying manure. Twice each year, an ODA inspector will conduct a full inspection that correlates the MMP with the data recorded in the Operating Record, such as the crop yields, annual manure analysis, and new soil samples collected. The requirements related to the manure sample analysis and soil testing requirements are set forth in OAC 901:10-2-10 and 901:10-2-13, respectively.

All manure applications must be based on the most limiting factor of rates set forth in OAC 901:10-2-14 at the time of application. These factors include, but are not limited to, the following: (1) the nitrogen needs of the crop being grown; (2) phosphorus; and (3) the available water capacity of the soil. *See*, OAC 901:10-2-14. Based on this evaluation, the permitted application rate is determined, and that application rate is used for that period of application. Generally, the most limiting factors are the nutrients evaluated and, for liquid manure, the Available Water Capacity (AWC) of the soils in the field. Additional criteria also heavily restrict manure application on frozen or snow-covered ground, as provided in OAC 901:10-2-14(G).



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As described in OAC 901:10-2-14(E), either the agronomic rate (based on crop needs) for phosphorus application shall be used or an environmentally protective rate of phosphorus application shall be used, which includes the phosphorus risk assessment procedures listed in the appendices to OAC 901:10-2-14. The two phosphorus risk assessment procedures are the Phosphorus Index (P-Index) Risk Assessment Procedure (described in Appendix E, table 1) or the Phosphorus (P) Soil Test Risk Assessment Procedure (described in Appendix E, table 2).

Weather must be recorded for a period 24 hours before, during and 24 hours after manure applications to ensure that rainfall will not cause manure to leave the application site. Land application of manure shall not occur if the forecast contains a greater than 50% chance of precipitation of an amount of one half inch or more for the period of twenty four hours after the start of land application. *See*, OAC 901:10-2-14(C)(6).

Following these BMPs and standards will minimize any potential impact to the watersheds where the manure will be utilized. However, in the event of a discharge, the Dairy is required to immediately notify ODA of any discharge, immediately begin remediation and corrective measures to stop further discharges, collect samples of discharges and allow ODA to inspect and test. Enforcement measures, including fines and penalties, are set forth in ORC Chapter 903 and the rules promulgated thereunder to address violations.

D. Ground Water Quantity

a. So, I am under the Teays River, that's where I get my water, and I hate like the devil to have to re-drill or do whatever to just get water and have a decent life.

b. My well is an old well of 45 feet deep. How long before it goes dry with over 100,000 gallons being pumped of the ground every day? Who's going to dig my well deeper when it does go dry?

c. I stood right there and watched him a good bit of the time and he went 142 feet and hit a vein of gravel and went another 52 feet and I have an excellent well. It's stayed right at 25 feet from the top of the ground the whole time. But I want to tell you something. The Teays water system is not an exhaustible supply.

d. And if they say that the water table will not be affected, I talked to some farmers today down by Coldwater, it's my business I can talk to farmers. Um... within the last 25 years, down between Coldwater and St. Henry, the one farmer he did mention



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that he had go down maybe 20 more feet with his pipe to get more water from the aquifer. I'm done.

e. So they have to expand someplace else in order to expand their operation. I am guessing, and this is just my thoughts, that they decided that there is this nice juicy reservoir called the Teays River that they could tap off of. Now, I am putting words in somebody's mouth. I haven't had a chance to ask these questions. I should back up here. I ... Luke did give me a call and put a message on the answering machine, if I had any questions to give him a call. And to his credit, I wasn't ignoring you. I just didn't have a chance to call you back. But, there's a lot of questions I have as to why. Now, why here and why now? And I suspect it has a lot to do with the water issue.

Response: ODA does not have the authority to allocate quantities of ground water among all actual or potential users. OAC 901:10-2-08(D)(12)(a) requires an annual groundwater sample to be taken from a well at the facility. This sample is to characterize groundwater quality at the facility and not groundwater withdrawal. This sample must be analyzed for nitrates and total coliform bacteria.

ODA has no regulatory authority over groundwater withdrawal. If a facility has the capacity to use greater than 100,000 gallons of ground water per day, it is required to register with the Ohio Department of Natural Resources ("ODNR"), Division of Water Resources pursuant to ORC 1521.16. MVP Dairy estimates a daily withdrawal rate of approximately 117,000 gallons and therefore will be required to register with ODNR, Division of Water Resources. ODNR's Groundwater Resources Map for Mercer County indicates the principal aquifer in the area of MVP Dairy is the limestone and dolomite, with yields in excess of 400 gallons per minute capable of being developed in the area. In discussions ODA-DLEP had with ODNR, Division of Geological Survey, they did not indicate that water availability at the rate MVP Dairy would require at full capacity would be any problem. If there are additional concerns, local government officials, in cooperation with area residents, can request ODNR's Division of Geological Survey to assist in conducting further studies.

E. Ground Water Quality

a. If I have water, will it be fit to drink?

b. We don't want to have to test our well water every month.

c. Have you studied the report on ground water pollution potential done by the Ohio Department of Natural Resources? Well, I did and it shows Mercer County, Center



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Township is very vulnerable. This report is based on the depth of the water, the recharge rate from the rain, the aquifer media, the soil media, the topography and hydraulic conductivity.

d. Water concern is huge. I live on an old property with a shallow well. Elevated nitrates in drinking water can cause Baby Blue Syndrome and potentially cause a fatal blood disorder. How long until we don't have water or if it will even be safe to drink?

e. Another question I have with the permit can be found on page 160 of the permit. The well listed is not properly dated and well owner long deceased. Not accurate in any modern sense. Is this typical? The well sample shown following mine didn't even have a basic taste test.

Do the well samples listed in the permit have any basis in fact or any bearing on the permit process? Why is the applicant not required to test all nearby well if one of the main purposes of the permit (is) to protect our water supply? How will we know if the CAFO has contaminated our water supply?

f. Every time I look at something like this, I think, you know St. Marys gets its water the Teays River basin and I want to be a guardian of that. And I thank this lady (referring to Kate Anderson) that is further upstream from us for what she's done. I think we should be good stewards to people in our immediate vicinity and also the Teays runs all the way from over into Illinois and comes out of North Carolina and comes right up. It is one of the finest drinking water sources in the world and it needs to be protected. And so we should be good stewards of our water.

Response: ORC Chapter 903 and the rules promulgated thereunder were established to protect groundwater from any potential impact from manure application or manure storage from permitted facilities. Siting criteria for CAFFs set forth in OAC 901:10-2-02 require a minimum separation distance of 15 feet of low permeability material (or the use of additional design criteria) between the bottom of any manure storage structure (waste placement) and the uppermost aquifer. In addition, a minimum of 3 feet of this material must have a hydraulic conductivity of 1×10^{-7} cm/sec or less, and this can be either in-situ or recompacted soil. At the MVP Dairy site, the soil beneath the manure storage structures was found to meet the low permeable requirement with 3 feet of material with less than 1×10^{-7} cm/sec permeability. The in-situ permeability tests performed at the site demonstrate the hydraulic conductivity ranged from 2.9×10^{-8} cm/sec to 7.2×10^{-8} cm/sec. In addition, the geological evaluation demonstrates that manure storage or treatment facilities (depending on bottom elevation or location) will have between 23.5 feet to 28 feet of



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low permeable material between the bottom of any manure storage structure (waste placement) and the uppermost aquifer. Therefore, the proposed facility meets the relevant hydraulic conductivity and siting distance from the uppermost aquifer standards set forth in OAC Chapter 901:10.

These standards, as set forth in OAC Chapter 901:10, were developed, reviewed and recommended by a diverse group of scientific professionals. The participants in this process included, but were not limited to, professionals from the following entities: (1) ODNR Division of Soil and Water Conservation (prior to transfer); (2) ODNR Division of Water Resources; (3) ODNR Division of Geological Survey; (4) United States Geological Survey (USGS); (5) USDA Natural Resources Conservation Service and Agricultural Research Service; (6) the Ohio Environmental Protection Agency (“OEPA”), Division of Surface Water and Division of Drinking Water; and (7) ODNR Division of Ground Waters. The standards developed and recommended by these professionals seek to protect groundwater resources throughout Ohio.

Most relevant to the above comments, OAC 901:10-2-08(D)(12)(a) requires the facility to take an annual groundwater sample from a well at the facility once the wells are developed. The annual groundwater sample must be analyzed for nitrates and total coliform bacteria in an effort to characterize groundwater quality. The annual groundwater sample is taken from a well at the facility because that location would generally be the first location where any potential adverse impact to groundwater quality would be found. Neither state or federal law requires any livestock facility to monitor or sample neighboring wells.

To the extent that public comments reference the ODNR-Groundwater Pollution Potential Map for Mercer County, this map and hydrogeologic setting is actually included in MVP Dairy’s permit applications as Appendix H to the Subsurface Hydrogeologic Exploration and Siting Report. This area has a DRASTIC rating of 130, which is not a rating of concern. In addition, the DRASTIC rating is to provide a regional evaluation of geology in the area, but DLEP rules require a more site-specific geologic exploration. MVP Dairy met this requirement and the results are included in MVP Dairy’s draft PTI within the Hydrogeologic Exploration Report. These on-site borings, evaluation of the soil and the lab testing required on the soil provides detailed information to allow for a design and siting plan that meets DLEP rules for any manure storage or treatment facility.

The well logs provided in the draft PTI are actually provided by the consultant that created the Subsurface Hydrogeologic Exploration and Siting Report, but originate from a database maintained by ODNR-Division of Water Resources. These well logs are submitted by the well driller at the time the well is actually completed.

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Information on these well logs, such as a new owner of the property, is not revised unless some type of modification or closure on the well is performed under the new owner. In those instances, a new well log must be submitted to ODNR. Therefore, the date and information contained on well logs can vary from current information on the residence. Despite these variances in the well logs maintained by the ODNR Division of Water Resources, they still provide a regional perspective of the aquifer formations in the area surrounding a proposed site and the depths at which the relevant aquifer is located. Therefore, the well log information provided is adequate for the intended use in the permit applications.

F. Manure Storage Structures - Design/Construction

a. When the lagoons overflow, and they always do, they pollute the entire aquifer below.

Response: The manure storage and treatment facilities are designed based on annual manure production and the proposed design capacity of the facility, which includes excreted manure, any bedding not separated, parlor washwater, annual contaminated runoff collected, etc. In addition, the manure storage system is designed to be able to safely store any direct rainfall on the structures and runoff from any contaminated areas from the 100-year, 24-hour rainfall event. Lastly, all of the earthen structures are designed to have an additional 1-foot of freeboard to minimize any potential overflows. The manure storage system for MVP Dairy provides for almost 1 year's worth of manure storage. These design criteria have been successfully used by ODA-DLEP to minimize any instance for overflow. *See*, OAC 901:10-2-04 thru OAC 901:10-2-06. In addition, the PTO requires that the facility maintain records of manure levels in all the manure storage or treatment facilities and that a minimum freeboard is maintained within these structures to prevent the possibility of an overflow.

b. Are you aware that the system being used for the proposed dairy has failed in other parts of the Country? I am referring to the Earthmentor systems. I believe they were designed by the same designer that MVP used.

Response: The design of the different components in the draft PTI consist of sand lanes, a solid separator, earthen settling basins, a manure storage pond and a manure treatment lagoon. This type of treatment lagoon is consistent with others designed for swine and egg laying operations, but the anaerobic treatment lagoon described in MVP Dairy's permit applications would be the first on a permitted dairy facility in Ohio. The other components described above are similar in nature to many other components approved and successfully in operation at other permitted facilities.

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c. This manure system that is supposed to be the greatest thing on earth, instead of the cows drinking all this well water why don't they just drink the water that they treated?

Response: Future evaluation of the manure treatment system and how it is functioning from a treatment standpoint will be researched once it would be in operation. With this initial design, treatment to a limit of livestock drinking water is not proposed.

G. Manure Quantity and Storage Capacity

a. You have one dairy cow, its producing more manure than a person, a human, I will put it that way. From the University of Gulf, Ontario, they produced a human verses animals comparison of waste properties. And when you compare the number of typical weights for the various animals that they have, now I am going to concentrate on the dairy cow at this point, 4,500 head of dairy cows would equal a village in just bio-mass itself of 19,000 people, total solids produced, it would take 44 humans to produce what one cow does in a day and that would be equivalent to 198,000 people in terms of what this dairy will be producing. Um... that's a lot of manure folks.

b. Grand Lake St. Marys, we're opposed to this for several reasons. 1. The manure calculations seem to be off quite a bit. They are saying 16,800 tons. From the calculations that I was able to do, it looks more like 65,700 tons. So they've mis-estimated this by probably at least a third, more like two thirds.

Response: MVP Dairy is required to collect, store and land apply all the manure and nutrients that will be produced at the facility. Therefore, attempting to compare livestock manure and domestic waste is flawed. For instance, the Celina Waste Water Treatment Plant is allowed to discharge 3 million gallons of effluent/day into Beaver Creek. They are allowed to discharge 1.4 mg/l of Phosphorus in that effluent. Based on this allowable discharge, approximately 35 pounds of phosphorus/day, or 12,790 pounds of phosphorus per year, could potentially be discharged into Beaver Creek. Obviously it could be assumed that the plant would not be operating at full capacity continuously or the treatment is more efficient than what is allowed in their permit, but it needs to be recognized that these waste streams are hard to compare and have a differing destination after storage or treatment. Additionally that does not include the many tons of bio-solids that are land applied to farmland, under similar requirements of manure. To the extent that the above comments reference the manure production



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estimates contained in MVP Dairy's permit applications, those comments are addressed in greater detail in section 2(A) below.

The 16,800 tons is the amount of actual separated solid manure that will be removed by the mechanical solid separators. The remaining manure (and a majority of the manure) will be removed as either slurry manure (13.6 million gallons/year) from the settling basins or as a treated effluent (32 million gallons/year) from the final stage of system.

H. Siting Criteria

1. Flooding

a. Because I will be down wind, when we have these 3 and 4 inch rains I believe it's going to flood that over there. They tell me that it is all contained, but I don't believe that either.

b. Is the flood plain determined before or after manmade drainage is put in? Are the ODA and OEPA aware that the facility would only be a 100 feet from a manmade ditch dug to reduce flooding? The ditch joins tributaries along the way and flows into the St. Marys River. The start of the manmade drainage ditch for many adjoining parcels of land from the proposed dairy is the next property down the road, at the intersection of Hayes Road and 33. It actually flows under 33.

c. I can't stress enough how much a federal EPA study is needed here. The area has a unique soil, terrain and water resource unlike typical watersheds. Anyone who has grown up in the area can tell you that we are living in what was known as the Great Black Swamp. The soil just a few hundred feet to the west of the proposed dairy is more of a black loam that was part of the swamp when it was permanently flooded. No consideration has been noted on the permit of the rapidly changing environmental conditions to the west of the proposed dairy. Residents know the next road over is flooded in any kind of heavy rain. Are the ODA and EPA aware of that? As mentioned, the area was and is uniquely formed as a swamp. Why do you think the water is stagnant and polluted across the whole area?

Response: OAC 901:10-2-02(G) states that "the production area of a facility shall not be located in a one hundred year floodplain, as those boundaries are shown on the applicable maps prepared under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, without design of additional monitoring or engineered controls or both that are installed and implemented as approved by the

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director....” As demonstrated by Appendix E of the Subsurface Hydrogeologic Exploration and Siting Report, there is not a 100-year floodplain designated within the boundaries of the proposed production area.

As for any runoff from the facility, all contaminated runoff is designed to be collected and stored as manure as described in response to “Manure Storage Structures/Treatment - Design/Construction” above. As for all clean stormwater associated with the proposed development, it will all be addressed through a General Construction Stormwater NPDES Permit administered through Ohio EPA. These systems are designed to ensure that the peak flow from a designed storm event prior to development is not exceeded following development.

2. Geology

a. But, now, one of the things that concerns me, Luke, and this has to do with the underground nature around where we live, I live about a mile away from where this is going to be, and that is what we call sink holes out there. Now when I say sink holes, these are like what you see in the news where a big hole in the ground forms like in Florida, like that car falling in like that, but there are sink holes out there that actually break down through the clay hardpan. Actually, I lived on a place where one of the biggest sink holes was and Jim what was that property there, over there at 9321 Celina- Mendon Road?, I owned that property it was originally owned by Pores (sp?) when I bought it. And behind my place was this pond. And the story is that throughout the years, the Pores tried to farm that and it was so wet they couldn't grow anything there. They said the only thing they could grow there was pickles because it was wet all the time. Russell Pore told me one time that one time he put a stake in the ground and the stake actually sunk down in the ground. Normally, they come out of the ground, but... they said they got tired of tiling it to try to make it farmable so they just dug a pond. But in the process of digging the pond when they got down to the bottom of it, they almost lost a bull dozer because it was so soft down there.

Now my, and I know on my property now in Celina on Hasis Road, I've got a sink hole there. There is one, I believe, is across the road from me and there are a number of these down there in the corner of Oregon and Celina Mendon Road that they filled in. They are trying to fill these things up. The issue is, did you do any core testing to see if there is any sink holes on that property? The other issue is, is there any oil wells down there? Or gas wells that might have been capped off through the years. You are going to be digging down 30 feet or so, down in the ground in order to make these basins and you may be cutting down into some of these sink holes or gas wells. When you do that, all that water, you're not going to be able to seal these things off



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with enough clay. If you find a sink hole in those basins, you are not going to be able to seal these things off. You'll have your manure and stuff going down into the artesian well. The water down there, it will start going up and ironically it will actually get down into the wells on that property first.

Response: Based on the comment above, it is ODA's understanding that the commenter is using the term "sinkhole" to describe a characteristic associated with Karst Areas. As provided in Appendix F of the Subsurface Hydrogeologic Exploration and Siting Report, "Karst is a landform that develops on or in limestone, dolomite or gypsum by dissolution and that is characterized by the presence of characteristic features such as **sinkholes**, underground (or internal) drainage through solution-enlarged fractures (joints) and caves." OAC 901:10-2-02(H) requires that no manure storage or treatment facility be located in a Karst Area unless groundwater monitoring or engineered controls or both are installed and implemented as approved by the director. A Karst Area Map is provided in Appendix F and it demonstrates that no Probable Karst Areas are noted in the area of MVP Dairy. In addition, one characteristic of Karst areas are where limestone is less than 20 feet of the surface. At the location of MVP Dairy, most borings were drilled deeper than 20 feet deep and none of them showed limestone at 20 feet or less.

2. Permit to Operate

A. Manure Management

a. And they say that they are going to put it on 3,100 acres. When you're not going to put it on year round, I hope you're not going to put it on when it is snowing and a few other things. I'm not certain what the rules are outside of the Grand Lake watershed, but you'd better start thinking about what goes down stream and it eventually gets into the St. Marys, Fort Wayne, to the Maumee and we already have problems down there in the western basin of Lake Erie.

There are other comparisons, total nitrogen equal to 126,000 people, total phosphorus, 135,000. This is a lot of manure out their folks. That's all.

b. I'm submitting written comments about this permit, but I would like to tell you about a couple of the worse ones. The MVP total nutrient budget shows 270,286 pounds of P205 for 4,500 cows which equates to 60 pounds of P205 per cow per year. According to the Ohio Administrative Code appendix, which is in the ODA's rules these cows actually produce 762,941 pounds which is 170 pounds of P205 per year. So basically, this permit only includes 35% of the P205, according to the ODA's appendix



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which is supposed to be used for planning purposes. Given that the amount of P205 actually generated by the cows in this manure management plan was grossly underestimated. The number of acres needed to agronomically apply this P205 would be much higher than the 3,750 acres included in this manure management plan. MVP Dairy would actually need more than 12,000 acres. That means the entire Manure Management Plan is based on false and misleading information. That being the case, ODA Director Daniels must deny this permit to comply with Ohio Revised Code 903.02 which states; the Director shall deny a permit if the permit application contains misleading or false information. Thank you.

c. I read the information that Kyle Vantilburg gave me and I read it with an open mind. And I do have to give them credit for one thing. They are going to treat the sewage. They aren't going to just pour it into a creek that is going to go straight out. However, are they going to have a licensed permitted person to run sewage plant and if so is that person going to be somebody there on at least a 16-hour a day basis? I also read the material and they covered 30%, excuse me 70% of the water, but what about the other 30%?

Response: The Manure Management Plan (MMP) has a total of 3,780 acres available for manure application from the MVP Dairy. OAC 901:10-2-14(G) prohibits surface application of manure on frozen or snow-covered ground unless prior approval is granted by the director, such as in a case of an emergency. Even if such approval is granted, additional criteria is required to be met as described in OAC 901:10-2-14(G)(1)(b)-(i).

OAC 901:10-2-04(B) states: “For the purposes of a permit to install, manure shall be quantified and characterized to allow for proper sizing and design of the proposed manure storage or treatment facility. For an existing facility that submits a permit to install application for a similar type of manure storage or treatment facility with no change in treatment technology to what is currently utilized by the facility, the volume of manure and characterization of manure shall be based on manure production records and manure analysis from an actual sample from the facility. If actual manure production records or manure analysis are not available or are deemed not accurate by the department, or if the permit to install application is for a new facility or treatment technology not in use by the existing facility, then the owner or operator shall use the table appended to this rule or use manure production records and manure characterization records from a similar type facility with a similar type of manure storage or treatment facility or treatment technology. If manure data or analysis is used from a similar type facility to characterize manure, the owner or operator shall submit



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this alternative manure data along with the identification of the source of the data.”
(emphasis added).

The manure nutrients in this permit were based on the actual test results from real data from six separate dairy farms. These farms represent many types of manure storage and handling systems and have several years of data used to develop the basis from each facility that was used to calculate the overall nutrient production for MVP Dairy on an average pound of nutrient per cow per day basis. None of the facilities accounted for in the average calculations have anaerobic treatment lagoons, which would likely reduce nutrients further, such as nitrogen volatilization. Therefore, the manure production estimates contained in MVP Dairy’s permit applications are consistent with the requirements set forth in ORC Chapter 903 and the rules promulgated thereunder. Because these estimates are consistent with the relevant statute and rules, they do not constitute false or misleading information. As this system is somewhat unique with the anaerobic treatment lagoon, it will be critical to get actual analysis once in operation so that any necessary adjustments to the manure application plan can be made prior to any manure being land applied.

B. Soil Testing of Land Application Fields

a. Um, I do want to thank the dairy for providing soil tests at 2 ½ acre grids that allows us to kind of look at this permit in a unique way.

b. As you know, this permit is in the St. Marys which flows to Fort Wayne Indiana, into the Maumee and into Lake Erie. We are asking that this permit require the 40 parts per million limit of phosphorus in the soil, the same as for commercial fertilizer. Why should manure be allowed to apply at 150 or more? That’s just wrong. And so a review of the permit shows that of the 66 farms that are in this permit, they’ll provide about 3,700 acres. Ten of those farms, of the 66, have an average phosphorus soil content of under 40 parts per million, only 10. And of the total phosphorus soil tests that were done, about less than half have under 40 parts per million in their 2 ½ acre grid and over half has over 40 part per million. In other words, if you were a commercial fertilizer farmer and depended on that you would not be able to do this. And we are asking the manure has to be the same standard of that soil phosphorus for commercial fertilizers. And so I simply ask that are all the acres that are in this manure application currently using commercial fertilizer? That is a question for the Ohio Department of Ag. Are any of the acres currently being used for manure? Will any of the acres for the manure application permit receive manure from any other manure producing sources? Do the 2015 tests, which is what



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is primarily in this permit, do they now apply to 2017 or have conditions changed in any of the acreage?

Response: As required in OAC 901:10-2-13, each land application field must be represented by soil samples that are not more than three years old and each soil sample can represent not more than 25 acres. Samples must be analyzed by a laboratory in accordance with Publication 221, "Recommended Chemical Soil Test Procedures for the North Central Region; Published by the North Central Regional Committee on Soil Testing and Plant Analysis (NCR-13), North Dakota Agricultural Experiment Station." Copies of current soil test reports are included in the PTO. Any updated soil test reports will be maintained in the facility's operating record.

As described in OAC 901:10-2-14(E), the application rate for phosphorus is determined using soil test data, the phosphate requirements for the planned crops or crop rotations, and either the phosphorus index risk assessment procedure in Appendix E, Table 1 or the phosphorus soil test risk assessment procedure in Appendix E, Table 2 of the rule. Therefore, manure application shown in this Manure Management Plan is consistent with these assessment procedures.

C. Insect and Rodent Concerns

a. Now, they are going to double this and they say there is odor and flies with a 2,600 cow operation. What's it going to be with 4,500?

Response: The Insect and Rodent Control Plan is required in order to minimize the presence and negative effects of insects and rodents at the farm and in surrounding areas, including land on which the solid manure may be stockpiled or applied. The Insect and Rodent Control Plan (IRCP) shall comply with the requirements in OAC 901:10-2-19 and shall be incorporated into the Permit to Operate. The IRCP is developed to minimize areas of insect and rodent habitat, regular housekeeping practices, monitoring and treatment of insect and rodent activity and emergency treatment if activity reaches excessive levels. Regular ODA inspections include noting the effectiveness of the Insect and Rodent Control Plan and ODA will respond to any valid complaints in regards to insect or rodent activity around MVP Dairy.

D. Odor Concerns

a. Because they can tell me all they want to, but when that smell comes up, it is going to be horrendous.



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b. Now, they are going to double this and they say there is odor and flies with a 2,600 cow operation. What's it going to be with 4,500?

c. You don't want to have this odor problem. Forty-five hundred may not be as big as they had, but it's just the beginning.

Response: Odor minimization is required under OAC Chapter 901:10 and the conditions of the PTI and PTO. In the Manure Management Plan of the draft PTO, MVP Dairy has identified specific BMPs listed in OAC 901:10-2-12 to minimize odor. These BMPs include removal and land application of manure when wind direction is less likely to affect neighboring residences and injection or incorporation of manure when at all possible. Odor minimization is also planned by using appropriate pressure and nozzles during irrigation through the center pivots and the utilization of an anaerobic treatment lagoon. Odor is something that will be evaluated during routine ODA inspections and complaint investigations. Inspectors would determine if the permit was being followed and if the odor was occurring as a result of the producer not following Best Management Practices. If the permits are not followed, the farm could be subject to an ODA enforcement action.

E. ODA Statutory and Regulatory Authority

a. Senate Bill 141 language- 903.08 Participating in national pollutant discharge elimination system. The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 1213.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval. On and after the date on which the United States environmental protection agencies approves the state program submitted under (A) (1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under sections 6111.035 of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or from the pollutants from concentrated animal feeding operations is transferred from the director of environmental protection to the director of agriculture. Do you have a signed memorandum from the U.S. EPA? If the 903s are not operating under the law, how can they be used?

From Mike DeWine- Chapter 903 authorizes the Ohio Department of Agriculture to participate in the NPDES program and transfers the authority to issue NPDES permit to CAFOs and AFOs in Ohio from the Ohio EPA to the Ohio Department of Agriculture



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upon approval of the program submission by the United States Environmental Protection Agency. Has the 903 program been approved?

b. Do you believe the Ohio Department of Agriculture is the final authority in Ohio for the permits granted for the CAFFs of CAFOs? The transfer of authority to issue permits was to take place only after being approved by the US EPA.

Attorney Mike DeWine confirmed this in his 2nd attempt in 2015 to have the US EPA sign off as required by law. Where did you get your authority to implement chapter 903? On what date did that occur? Or what year?

By law, it would appear that the ODA is operating with no legal authority to issue permits. How can our government possibly be trusted after such a flagrant disregard for the law? Are you certain the ODA has the legal standing to even issue this permit?

In addition, 901 rules have never been approved by the General Assembly. I believe that's it.

c. So, let's talk about Ohio's CAFO laws and rules. If you access Ohio Revised Code section 903.05 which includes the statutes for applications for a permit to install and a permit to operate, which is what we are doing here tonight, you will see a caveat down at the bottom that states (that) the US EPA approved ODA's program which included the permits to install and the permits to operate and the discharge permits. But, the EPA never approved the ODA's program. So, the ODA has no authority to issue these permits.

Response: MVP Dairy has submitted applications for a permit to install and permit to operate a large concentrated animal feeding facility. ODA has reviewed those applications based on the permit application procedure, facility construction standards and the relevant operational standards codified at ORC Chapter 903 and the rules promulgated thereunder. These rules were passed in accordance with the relevant requirements set forth in ORC Chapter 119.

Public comments received by ODA related to this facility referenced ORC 903.08. ORC 903.08 relates to facilities that apply for permits under the National Pollutant Discharge Elimination System ("NPDES"), as described in 40 CFR 123.21. The application submitted to ODA-DLEP by MVP Dairy is not for a NPDES permit, as that permit is still under the jurisdiction of Ohio EPA.

Similarly, ODA also received a public comment regarding the relationship between ORC 903.05 and the NPDES permit program. That language states that ORC 903.05 will be applicable to NPDES permit applications received by ODA after the United



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States Environmental Protection Agency approves an NPDES program submitted by ODA. Again, MVP Dairy's permit applications are for large concentrated animal feeding facilities regulated under ORC 903.02 and 903.03, rather than NPDES permits under ORC 903.08.

Topics Not Applicable to Draft Permits and not answered in responsiveness summary:

1. Property Values
2. Facilities and concerns in Grand Lake St. Mary's Watershed and other areas of Mercer County
3. Air Quality
4. General concerns of ODA-DLEP.
5. NPDES Applicable to this facility.
6. Broad comments on Harmful Algae Blooms not specific to permit.
7. Noise Pollution
8. Light Pollution
9. All other comments not applicable to the OAC 901:10 or within ODA-DLEP.

END OF RESPONSIVENESS SUMMARY