Integrated Nutrient Management Program Work Group
Minutes July 24, 2003

Attending: Martin Culik, Mike Hoffmann, Dean Norton, Pete Wright, Quirine Ketterings, Elaine Dalrymple, Mike Walter, Ed Staehr, Shawn Bossard, Jeff Teneyck, Karl Czymmek, Caroline Rasmussen, Greg Albrecht, Harold VanEs, Danny Fox, Dan Olmstead, Jean Bonhotal, Ellen Harrison, Lee Telega, Deb Grantham, Tibor Horvath, William Elder, Belinda Thompson, Susan Wade, Jim Curatolo, Keith Porter, Hussni Mohammed, Paul Cerosaletti.

NYS Attorney General public nuisance action against Offhaus Farms. Presented by Martin Culik.

Introduced by Keith Porter.

- There are outstanding questions about the scientific basis of the lawsuit.
- Research into case details are on hold pending possible out of court settlement.
- Case is of critical importance to AEM. There is a need for us (INM PWT) to be prepared to mobilize science to provide support for these types of cases in the future. Scientific support for this case provided by researchers from Oregon State Univ.


Issue: Offhaus Farms, Inc. is a well run, 900 cow, CAFO dairy in Genesee County. Genesee County is traditionally the New York State county ranking 1st, 2nd or 3rd in total agricultural receipts and number one in vegetable production. Offhaus Farms is adjacent to a subdivision (Bennett Heights) consisting of 49 houses on ½ acre lots with individual wells and septic systems built on fractured bedrock ranging from one to nine feet in depth. In January, 2001, Offhaus applied liquid manure at a rate of 4,200 gallons/acre on a 60 acre field, approximately 1,200 feet from the subdivision. Due to complaints to the Health Department about human sickness in the subdivision, the DEC asked Offhaus to stop manure application to the adjacent fields. No citations or violations were issued by DEC against Offhaus. E. coli was found in 40% of the wells. In November 2001, ten months after the complaint, municipal water was provided to the homes in the Bennett Heights subdivision; this was paid for through a grant from USDA’s Rural Development Agency. Home owners only had to pay for individual hookup costs ($500-$1,000 per home). In May, 2002, eight months after the municipal water was installed, the New York State Attorney General filed a suit against Offhaus Farms charging public nuisances. The impetus for the suit is primarily from the AG’s Buffalo office. After visiting the farm in May 2003, and considering the political ramifications, the State Attorney General would like to settle the suit and is asking the Offhaus Farm to “make a contribution to the community.” The Buffalo AG office is asking for fines, retribution charges, and expert witness costs. Martin Culik, executive director of Cornell Cooperative Extension of Genesee County, was asked by the state AG to facilitate a settlement and has been involved in the on-going negotiations.

County Extension in crossfire.

- According to the state AG’s office, they have conclusive evidence that the wells in the Bennett Heights subdivision were contaminated by the manure from Offhaus Farms.
• Cornell Cooperative Extension of Genesee County proposed that research be conducted to investigate the source of the well water contamination to differentiate whether the contamination came from the manure or from the subdivision’s septic systems, or a combination. The research would be a thorough examination of the county health department records from the date that the Bennett Heights subdivision was proposed to the current date to assemble all pertinent data, including previous well water contamination incidences.
• Genesee County’s attorney has prohibited all county departments from participating in research concerning the case while it is being litigated.
• The county legislature is very interested in the outcome of the case because of the potential impact of the case on the agriculture industry.

What are policy repercussions?
• Out of court settlement makes it look like the farm is guilty. Limited protection from citizen lawsuit within AEM – CAFO compliance has been interpreted by people (farmers) as total protection.
• “..if this goes forward, it blows AEM out of the water.”
• In this case, discharge to “waters of the state” includes groundwater.
• Harold Van Es: Recommending manure applications on shallow soils over limestone rock is not a good plan – yet we are not recommending against this. We, along with their planner, may be liable.
• We need to be able to link hydrology to contamination risk. We need to refine recommendations. Suggest a permanent buffer around homes. Offhaus has 3,000 acres with extremely variable soils. Is it feasible to know where water goes under each field? Any farmer – anyone with a septic system - may be guilty of “adding contaminants to water.”

Why is this important?
• 30% of wells rural wells are contaminated. How do we deal with the issue of responsibility and clean-up?
• Will this case be used as precedence in the future?
• How can we refine our recommendations and best management practices to address these issues? We are advocating spending millions of $ to go from daily spread to store and spread in concentrated doses – is this always the best practice?
• If scientific recommendations were available before the case, could it have been prevented?
• We need a SWAT team to act on groundwater contamination before situation is a crisis.
• Can legal side be pursued? New York State tax payers are footing bill for suit against farm. What are protections provided by CAFO compliance? Are farmers adequately informed about their liability?

PWT Actions:
• Include in fall meeting agenda: Groundwater SWAT team;
• Include in fall meeting agenda: Meeting to discuss pathogens including species identification, and variables associated with persistence and movement.