

ROY COOPER

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S. DANIEL SMITH

Director



NORTH CAROLINA
Environmental Quality

July 15, 2020

CERTIFIED MAIL 7019 0700 0000 3643 0598
RETURN RECEIPT REQUESTED

B&L Farms
Mr. Bryan McLamb
2231 Hollerin Rd.
Dunn NC 28334

Subject: NOTICE OF VIOLATION/NOTICE OF INTENT TO ENFORCE

Administrative Code 15A NCAC 2T .1304
NOV-2020-DV-0303
Incident number 202001964
B&L Farms Facility Number 82-86
Permit AWS820086
Sampson County

Dear Mr. McLamb:

NC Department of Environmental Quality (DEQ) Division of Water Resources (DWR), Water Quality Regional Operations Section (WQROS) staff inspected the B&L Farms and the permitted waste disposal system multiple times, from June 12, 2020 through June 23, 2020 in response to a lagoon breach at this facility.

On June 12, 2020, an animal waste lagoon structural failure, a breach, was reported to the DWR Fayetteville Regional Office. It was estimated by B&L Farms that approximately 3 million gallons of animal waste discharged from the waste lagoon structure. Wastewater and solids/sludge were observed to have coursed overland from the lagoon, into wetlands, and into an unnamed tributary to Starlins Swamp a Class C, Sw waterbody in the Cape Fear River Basin.

DWR's file review, site visits/inspections, and sampling efforts in response to the lagoon breach revealed the following:

Lagoon Breach and Waste Discharge.

On June 12, 2020 at 11:12 am, Mr. Curtis Barwick a Technical Specialist for Bryan McLamb reported to DWR Fayetteville Regional Office (FRO) staff that the waste lagoon at B&L Farms had breached. The failure occurred sometime during the night or early morning of June 12, 2020. Mr. Barwick stated he was told that all the liquid waste and sludge was discharged with some sludge still in the waste lagoon.



North Carolina Department of Environmental Quality | Division of Water Resources
Fayetteville Regional Office | 225 Green Street, Suite 714 | Fayetteville, North Carolina 28301
910.433.3300

It was explained that the breach was discovered by a crew member arriving for a scheduled removal of swine the morning of June 12, 2020 (as a result of this incident, all animals were removed from the facility on June 12, 2020). The loading crew notified the integrator (Smithfield) service person who then called Mr. Bryan McLamb around 9:40AM. After first going to the farm to confirm the breach, Mr. McLamb contacted Mr. Barwick who then reported the breach to DWR.

DWR staff arrived onsite at 12:40pm, June 12, 2020 and documented that the lagoon was breached as reported. Efforts to contain the animal waste and recover waste product were in progress. DWR staff further documented that waste from the breached lagoon coursed along the edge of spray fields at the farm and flowed into an unnamed tributary to Starlins Swamp.

DWR staff walked the lagoon berm. The wastewater elevation in the lagoon had been so high and for such a duration that: 1) Due to being saturated with wastewater, the earthen lagoon berm containment structure was notably soft when walking along the berm; 2) The vegetation was observed dead at the crest of the lagoon berm due to being inundated by the waste; and 3) a concentric ring of waste solids had deposited on the inside of the lagoon clearly depicting the extent and elevation of the waste elevation, prior to failure.

Wastewater and the waste lagoon solids/sludge exited the lagoon through a breach in the lagoon berm. This waste coursed overland into wetlands, and surface waters. This waste was documented in surface waters from visual observations, photographs, and water samples in Starlins Swamp, a Class C Swamp Water, at Christmas Tree Road in Sampson County. This location is approximately 1.35 miles from the lagoon. Also, DWR documented waste and dead fish in the Wagner Pond about 0.5 miles from the lagoon. DWR staff counted/estimated from photographs taken at Wagner Pond a minimum of one thousand dead fish including brim, catfish, bass, an eel, and other panfish. Waste and animal wastes solids were also documented in wetlands.

Lagoon Level

On June 12, 2020, Mr. Bryan McLamb stated to DWR staff that the lagoon level was at 19 inches on June 8, 2020 and that it was at 17 inches on June 11, 2020 when Mr. McLamb left the farm. Mr. McLamb also stated that he recorded 2 inches of rain on June 11, 2020 and, that he did not walk the lagoon bank at any time after the 2-inch rain on June 11, 2020. Mr. McLamb explained he had been working on an irrigation pump, which he could not get primed. Once repaired, Mr. McLamb explained that he irrigated corn crop for an hour to an hour and a half before going home around 9:30 PM or 10:00 PM.

On June 16, 2020, DWR staff surveyed the waste lagoon at B&L Farms and further documented that the waste level in the lagoon had been to the top of the berm, well within structural freeboard, for a prolonged period of time. The survey documented the high water marks and waste deposition at four distinct locations in and around the lagoon (waste/water line on lagoon waste level marker, waste/water line on suction pipe support post, dead grass line where waste has been for a period of time causing the grass to die, and sludge on top of the discharge pipe). This information clearly illustrates that waste levels were less than one inch from the lowest point on

what remains of the lagoon embankment. The waste levels had been at that elevation long enough to destroy the vegetation on the inside of the lagoon embankment. This indicates that these lagoon conditions occurred for longer than 24 hours.

The survey also documented that the lagoon marker was not set correctly; the top of the lagoon marker (zero freeboard) was actually 5.04 inches higher than to the lowest point on the remaining lagoon berm. The lagoon marker had no visible markers other than the 19 inch, 31 inch, and stop pump level.

The permitted compliance level for this lagoon is 19 inches based on the Certified Animal Waste Management Plan (CAWMP). On June 23, 2020, Mr. McLamb stated to DWR staff that prior to the night of June 11, 2020, the lagoon freeboard had not been less than 19 inches since Hurricane Florence. However, the survey and photographic evidence show that the freeboard had been less than 19 inches for a period of time of more than 24 hours prior to June 11, 2020. After reviewing the Division files we have confirmed that we have no record of having received a notification as required by the permit prior to June 12, 2020, for any freeboard level that exceeded the permitted level of 19" (including on June 11, 2020 when the freeboard level was noted by Mr. McLamb to be 17"). This is despite the evidence that shows the liquid level had been above the permitted level for a period of time that was long enough to kill vegetation on the inside face of the lagoon, allow for deposition of solids around the lagoon perimeter, support structures and discharge pipe, and the accumulation of dead vegetation and a water mark on the freeboard marker at or near the elevation of the top of the lagoon dike wall at its lowest point that is still observable.

Lagoon Records.

When DWR staff asked for records to review during the investigation on June 12, 2020, Mr. McLamb said that Mr. Curtis Barwick (Technical Specialists) had the records at his office (located off site) for the purpose of completing the annual report. The only records Mr. McLamb could provide were notations on a 2020 calendar for the months of April, May, and June of 2020. DWR staff took pictures of these three months.

On June 16, 2020, DWR staff asked Mr. McLamb to see records for the months of January, February, and March of 2020. Record for these months had no notations of pumping events. Mr. McLamb said that Mr. Barwick had the information for 2019 and the first months of 2020, which included Mr. McLamb's calendars.

DWR Staff contacted Mr. Barwick and found that he was out of town on vacation. Mr. Barwick offered to come home and provide the records because his employees did not have access to them. DWR scheduled to meet with Mr. Barwick on June 19, 2020 when he was scheduled to be at work.

During this meeting with Mr. Barwick, he provided all of records up to April 11, 2020. DWR staff asked Mr. Barwick for the original handwritten information; he did provide IRR-1 forms he said Mr. McLamb completed for 2019 and 2020 up to April 11, 2020.

Mr. Barwick was unable to produce any calendars, or legal pad sheets from previous years where Mr. McLamb transferred pumping information from the calendar(s). Mr. Barwick stated that he discarded all information given to him except what was on an IRR-1 form after he transferred the information to the combined IRR2 forms. IRR-1 forms from July 27, 2010 through April 11, 2020 were available for review.

Records availability.

During the investigation of this incident on June 12, 2020, DWR staff asked to see Mr. McLamb's records. Mr. McLamb was only able to provide a calendar in which he had written down information related to irrigation events on April 18, May 2, May 30, and June 6, 2020. The only information documented were hydrant numbers and total hours pumped.

Mr. McLamb failed to document the start and stop time of each event, the weather code, and any 120-minute inspections. He also showed previous calendars and stated that this is how he had always kept records. He stated that prior to 2019, he would transfer this information to a legal pad and then send it to Curtis.

In 2019, he started transferring this information to an IRR 1 form and continued to put down start and stop times from memory. His Technical Specialist, Curtis Barwick, would then take this information and transfer it to a combined IRR-2 Form for use at routine inspection.

Mr. Barwick stated on June 19, 2020 that he discarded handwritten records after he processed them into the IRR-2.

Farm compliance records were not available until June 19, 2020 because Mr. Curtis Barwick, Technical Specialist for Mr. McLamb, had the records and he was out of town. During the June 19, 2020 inspection, DWR documented that facility records show lagoon levels were not below 27 inches from August 1, 2019 through April 8, 2020.

From October 7, 2019 through June 8, 2020 the lagoon level was never below 25 inches. These records show a consistent pattern of managing the lagoon level within 6-8 inches, or less, of the permitted limit. (Note: When factoring in the error in the lagoon marker elevation, the waste levels were actually maintained within 1-3 inches, or less, of the permitted limit.)

The site visits, inspections and sampling results confirm permit condition violations of General Permit AWG100000 (Certificate of Coverage number AWS820086) and violations of North Carolina Administrative Codes 15A NCAC 02B .0211 and 15A NCAC 02B .0231 which state the following:

General Permit AWG100000 (Certificate of Coverage number AWS820086) Permit

Condition I.1 Failure to prevent discharge of waste to surface waters or wetlands.

Waste shall not reach surface waters or wetlands by runoff, drift, manmade conveyance, direct application, direct discharge or through ditches, terraces, or grassed waterways not otherwise classified as state waters. (*Permit Condition I.1*)

Permit Condition V.2: Failure to maintain the maximum waste level in lagoons/storage ponds that shall not exceed that specified in the facility's CAWMP.

At a minimum, maximum waste level for lagoons/storage ponds must not exceed the level that provides adequate storage to contain the 25-year, 24-hour storm event plus an additional one (1) foot of structural freeboard except that there shall be no violation of this condition if:

- a. there is a storm event more severe than a 25-year, 24-hour event;
- b. the Permittee is in compliance with its CAWMP and
- c. there is at least one (1) foot of structural freeboard. – [15A NCAC 02T .1304(b)].

(*Permit Condition V.2*)

(Permit Condition III.17.e): Failure to report non-complaint freeboard levels.

The Permittee shall report by telephone to the appropriate Division Regional Office as soon as possible, but in no case more than twenty-four (24) hours following first knowledge of the occurrence of any of the following events.

- e. Failure to maintain storage capacity in a lagoon/storage pond greater than or equal to that required in Condition V.2. of this General Permit. (*Permit Condition III.17.e*).

Permit Condition III.17.f: Failure to report high freeboard levels in the structural zone

The Permittee shall report by telephone to the appropriate Division Regional Office as soon as possible, but in no case more than twenty-four (24) hours following first knowledge of the occurrence of any of the following events:

- f. Failure to maintain storage capacity in a lagoon/storage pond below that of the designed structural freeboard (twelve (12) inches from top of dam or as specified in lagoon/storage pond design). Note that this notification is in addition to the report required by Condition III.17.e above. (*Permit Condition III.17.f*)

Permit Condition II.12 Violation 6: Failure to maintain protective vegetative cover on lagoon embankment.

A protective vegetative cover shall be established and maintained on all earthen lagoon/storage pond embankments (outside toe of embankment to maximum operating level/compliance level on embankment interior), berms, pipe runs, and storm water diversions with the goal of preventing erosion. Trees, shrubs, and other woody vegetation shall not be allowed to grow on the lagoon/storage pond embankments. All trees shall be removed in accordance with good engineering practices. Lagoon/storage pond areas shall be accessible, and vegetation shall be kept mowed. (*Permit Condition II.12*)

Permit Condition III.1: Failure to inspect waste collection, treatment and storage system following storm event greater than one-inch rain

An inspection of the waste collection, treatment, and storage structures, and runoff control measures shall be conducted and documented at a frequency to insure proper operation but at least monthly and after all storm events of greater than one (1) inch in 24 hours. For example, lagoons/storage ponds, and other structures should be inspected for evidence of erosion, leakage, damage by animals or discharge. Inspection shall also include visual observation of subsurface drain outlets, ditches, and drainage ways for any discharge of waste. (*Permit Condition III.1*)

Permit Condition III.6 and Permit Condition II.17: Failure to record all irrigation and land application events

The Permittee shall record all irrigation and land application event(s) including hydraulic loading rates, nutrient loading rates and cropping information. The Permittee shall also record removal of solids and document nutrient loading rates if disposed of on-site or record the off-site location(s). These records must be on forms supplied by, or approved by, the Division. (*Permit Condition III.6*)

The OIC, a designated Back-up OIC of a Type A Animal Waste Management System, or a person under the supervision of an OIC or designated Back-up OIC shall inspect the land application site as often as necessary to ensure that the animal waste is land applied in accordance with the CAWMP. In no case shall the time between inspections be more than 120 minutes during the application of waste. A record of each inspection shall be recorded on forms supplied by, or approved by, the Division and shall include the date, time, land application area used, and name of the operator for each inspection. If neither the OIC or designated Back-up OIC was present during land application, then the OIC or designated Back-up OIC shall inspect the land application area within twenty-four (24) hours. (*Permit Condition II.17*)

Permit Condition III.15: Failure to maintain records and make readily available

A copy of this General Permit, the facility's COC, certification forms, lessee and landowner agreements, the CAWMP and copies of all records required by this General Permit and the

facility's CAWMP shall be maintained by the Permittee in chronological and legible form for five (5) years. Records include but are not limited to: soil and waste analyses, rain gauge readings, freeboard levels, irrigation and land application event(s), past inspection reports and operational reviews, animal stocking records, records of additional nutrient sources applied (including but not limited to sludges, unused feedstuff leachate, milk waste, septage and commercial fertilizer), cropping information, waste application equipment testing and calibration, and records of removal of solids to off-site location(s). These records shall be maintained on forms provided or approved by the Division and shall be readily available at the facility (stored at places such as the farm residence, office, outbuildings, etc.) where animal waste management activities are being conducted.

Note: For facilities whose permitted records retention requirement prior to coverage under this General Permit was three (3) years, the increased record retention will be phased in during the first two years of coverage.

(Permit Condition III.15)

North Carolina Administrative Codes: Standard Violations

15A NCAC 02B .0211 - FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS

15A NCAC 02B .0211 (2). The conditions of waters shall be such that waters are suitable for all best uses specified in this Rule. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be deemed to violate a water quality standard;

15A NCAC 02B .0211 (6) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with an instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves, or backwaters, and lake bottom waters may have lower values if caused by natural conditions;

15A NCAC 02B .0231 - Wetland Standards

(c) The following standards shall be used to assure the maintenance or enhancement of the existing uses of wetlands identified in Paragraph (b) of this Rule:

- (1) Liquids, fill or other solids, or dissolved gases shall not be present in amounts that may cause adverse impacts on existing wetland uses;
- (2) Floating or submerged debris, oil, deleterious substances, or other material shall not be present in amounts that may cause adverse impacts on existing wetland uses;
- (3) Materials producing color or odor shall not be present in amounts that may cause adverse impacts on existing wetland uses;
- (4) Materials that adversely affect the palatability of fish or aesthetic quality of the wetland shall not be present in amounts that may cause adverse impacts on existing wetland uses;

(5) Concentrations or combinations of substances that are toxic or harmful to human, animal, or plant life shall not be present in amounts which individually or cumulatively may cause adverse impacts on existing wetland uses;

(6) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent detrimental impacts on:

- (A) Water currents, erosion or sedimentation patterns;
- (B) Natural water temperature variations;
- (C) The chemical, nutrient, and dissolved oxygen regime of the wetland;
- (D) The movement of aquatic fauna;
- (E) The pH of the wetland; and
- (F) Water levels or elevations.

Please respond to this letter in writing within 20 days of receipt. Your written response should address each of the below listed items (Items 1 - 12) Please submit the following items within 20 days of receipt of this letter:

1. Provide DWR a Plan of Action (POA) with detailed drawings and specifications, signed and sealed by a licensed Professional Engineer, for the repair or replacement of the lagoon embankment or proper closure of the lagoon. **Additionally, provide a description of your plans to manage the existing wastewater and sludge in the lagoon, as well as the accumulation of additional water in the lagoon associated with precipitation events, to ensure the lagoon wall does not breach again.** Specifically, provide this item within 20 days from receipt of this letter.

The breach repair must meet applicable NRCS engineering standards to prohibit further discharge of lagoon effluent into the environment. The design must be submitted to DWR for review and approval prior to making the repair/replacement.

2. Efforts must continue to recover wastes/waste solids discharged from the lagoon. Within 20 days, please provide a detail account of actions taken as of the date of this letter to recover wastes including estimated volumes, dates, locations, etc. The report must indicate areas where you were unable to recover waste; please include a map indicating location and volume estimates. The report must also provide a summary of PAN balance available for waste application and which fields are still available for waste application.
3. Provide an explanation in writing from the OIC for this farm regarding how each of the above noted violations occurred.
4. Within 20 day of receipt of this letter, please submit copies of **all rainfall and freeboard records for the past five years to present.** These records shall include copies of all handwritten (calendars, notepads, record forms, etc.) and electronic records.

5. Within 20 day of receipt of this letter, please provide all copies of all **waste application records**, calendar pages, pumping records on legal pad or any other format sent to Mr. Barwick, IRR-1 forms, IRR-2 forms, freeboard levels, rainfall and lagoon inspections for the last 5 years.
6. The June 16, 2020 DWR survey of the waste lagoon at B&L Farms revealed waste level has been less than one inch from the lowest point of what remains of the lagoon embankment. The waste levels had been that high long enough to destroy the vegetation on the inside of the lagoon embankment; an indication that this has occurred for longer than 24 hours. DWR has no record of receiving a high freeboard 24-hour notification prior to June 12, 2020. Please explain why high freeboard levels were not reported.
7. In addition to the repair of the breach and lagoon as referenced in item 1 above, include an account of how you plan to provide additions of soil that is suitable for establishment and maintenance of a vegetative cover on the lagoon berm structure. The repair design shall include steps for establishment of proper vegetative cover.
8. Provide an explanation of why you did not record all required information at the time the spray events were conducted and how you determined the start and stop time for each spray event. Provide in your response how you intend to record and maintain information in accordance with your permit.
9. Provide a list from the OIC detailing what the steps will be taken to prevent these violations from occurring in the future.
10. Provide a copy of press release related to the waste discharge and a list of news media to which it was distributed.
11. Provide a copy of all public notices related to the waste discharge, proof of publication, and, a list of news media to which it was distributed.
12. Provide DWR with calculation to demonstrate estimation of volume of waste discharge.

These violations and a future violations of permit conditions and North Carolina Administrative Codes are subject to a civil penalty assessment of not more that twenty-five thousand (\$25,000) per day.

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Mr. Bryan McLamb
July 15, 2020

This office is considering forwarding an enforcement action recommendation to the Director of the Division of Water Resources regarding these matters. Please send your written response to the attention of Trent Allen, Fayetteville Regional Office Supervisor at:

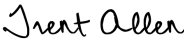
**225 Green Street
Suite 714
Fayetteville, NC 28301**

within twenty (20) days following receipt of this letter. Your written response should address items 1-12 listed above. This response will be reviewed and considered as a part of any enforcement recommendation that may be developed.

Failure to comply with the North Carolina Administrative Codes and permit conditions, in the manner and time specified, may result in the assessment of additional civil penalties and/or the use of other enforcement mechanisms available to the State.

If you have any questions concerning this Notice, please do not hesitate to contact Steve Guyton 910-303-0151 or me at (910) 433-3336.

Sincerely,

DocuSigned by:

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J. Trent Allen
Regional Supervisor
Water Quality Regional Operations Section
Division of Water Resources

cc: Animal Feeding Operations Program – Central Office
FRO Compliance Animal Files-Laserfiche