

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

ASSATEAGUE COASTKEEPER, et al., *

Plaintiffs *

v. * Civil Action No.: 1: 10-cv-00487 -WDQ

PERDUE FARMS INC., et al. *

Defendants. *

* * * * *

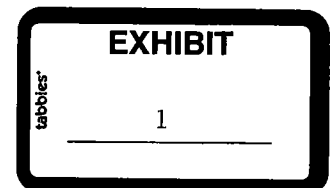
AFFIDAVIT OF ALAN HUDSON

I, Alan Hudson, declare the following:

1. I am more than eighteen years old, am competent to testify, and have personal knowledge of the matters stated in this affidavit.

2. I own Alan and Kristin Hudson Farm (“the Farm”) with my wife Kristin Hudson. The Farm consists of 300 acres of property located at 9178 Old Ocean City Road, Berlin, Maryland 21811. The Farm is where I grew up and it has been in my family for over 100 years. My father and mother, Roger and Mary Alice Hudson, owned the farm before my wife and I. My father and I principally operate the farm now, with occasional help from my wife. Other than seasonal help in the summer, we have no other employees.

3. The Farm’s operations consist of several fields used for growing corn, soybeans and hay, two poultry houses, approximately 40 cows (primarily beef cows), a small number of sheep and two



horses. My wife and I live in house adjacent to the Farm located at 9101 Logtown Road, Berlin, Maryland 21811 with our two young children.

4. On or about December 18, 2009, the Farm received a Notice of Intent to Sue for Violations of the Clean Water Act (“the Notice of Intent”) from the Waterkeeper’s Alliance. The Notice of Intent described a “longstanding manure pile” in the Farm’s production area that “discharges pollutants into a field ditch that drains to the Franklin Branch.” The Notice of Intent further described “discrete conveyances in the form of trenches . . . from the stockpile to the field ditch to facilitate this run off.”

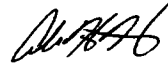
5. The stockpile referred to by the Waterkeeper’s is not, in fact, poultry manure, but rather treated biosolids (“the biosolid pile”) delivered to the Farm by the town of Ocean City, Maryland from its Wastewater Treatment Plant. In an effort to find a use for these biosolids, Ocean City distributes this material at no charge to local farms. The material is used as a substitute for lime to condition the soils in farm fields to assist crop production. The Farm has received deliveries of biosolid material from Ocean City since approximately April 2009, and received the biosolid pile in question in approximately August 2009.

6. On or about December 19, 2009, the day after I received the Notice of Intent, Brian Littlefield of the Maryland Department of the Environment visited the Farm. Under MDE’s instruction, we regraded a different location on the farm selected by Mr. Littlefield, moved the biosolid pile to that location, covered the biosolid pile, and filled in some small channels (described the Notice of Intent as “ditches”) near the pile’s previous location.

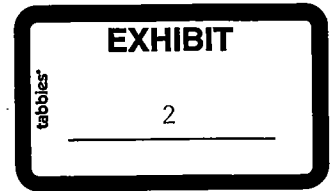
7. Subsequent to December 19, 2010, representatives from MDE visited the farm on several different occasions, including January 7th, January 26th and January 29th, 2010.

8. On January 7, 2010, the Farm received notice from MDE that it had “complied with all the recommendations of the Department” and that “no further action is required on [the Farm’s] part other than to spread the [biosolid pile] in the spring for the next crop growing season.”

I certify under penalty of perjury that the foregoing is true and correct. Executed on March 26, 2010



Alan Hudson



**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

December 17, 2009

Alan and Kristin Hudson Farm
c/o Alan and Kristin Hudson
9178 Old Ocean City Rd.
Berlin, MD 21811

Perdue Farms, Inc.
Registered Agent
31149 Old Ocean Rd.
Salisbury, MD 21804

RE: Notice of Intent to Sue for Violations of the Clean Water Act

To Whom It May Concern:

This letter constitutes the Assateague Coastkeeper's and Waterkeeper Alliance's ("Plaintiffs") notice of intent to sue Alan and Kristin Hudson Farm ("Hudson Farm") and Perdue Farms, Inc. (collectively, "Defendants") pursuant to Section 505 of the federal Clean Water Act ("CWA"), 33 U.S.C. § 1365, for illegal operations/discharges at the Hudson Farm Concentrated Animal Feeding Operation ("CAFO"). Specifically, this letter gives notice of intent to seek redress for the ongoing discharge of pollutants into the Pocomoke River, in violation of the CWA.

The Clean Water Act prohibits the discharge of pollutants from a point source to the waters of the United States except pursuant to and in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The Act defines "pollutant" to include solid waste, biological materials, and agricultural waste discharged into water. 33 U.S.C. § 1362(6). "Point source" is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation ... from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). Regulations promulgated pursuant to the Clean Water Act state that, "[c]oncentrated animal feeding operations are point sources subject to the NPDES permit program." 40 C.F.R., pt. 122.23(a). Therefore, the discharge of pollutants associated with poultry waste into waters of the United States from a concentrated animal feeding operation constitutes a regulated discharge of a pollutant from a point source and is prohibited unless in compliance with an NPDES permit.

CLEAN WATER  STRONG COMMUNITIES

50 S. Buckhout Street, Ste. 302, Irvington, NY 10533 Tel. 914.674.0622 Fax. 914.674.4560 www.waterkeeper.org

Plaintiffs Assateague Coastkeeper and Waterkeeper Alliance are both advocacy member organizations concerned with water quality and maintaining waterways for the use and enjoyment of its members and the general public. Assateague Coastkeeper, Kathy Phillips, files this notice letter in her capacity as Coastkeeper and in her own individual capacity as a person harmed by the discharges of pollutants alleged herein. Defendant Alan and Kristin Hudson Farm is a poultry CAFO located at 9101 Logtown Rd in Berlin, Maryland. With 80,000 birds and longstanding, open storage of manure, this facility is considered a large CAFO under applicable regulations.¹ Defendant Perdue Farms, Inc.² is an "integrator" who, upon information and belief, maintains a contract with Alan and Kristin Hudson Farm under which Hudson Farm raises poultry on behalf of, and for the benefit of, Perdue Farms, Inc.

Hudson Farm is discharging pollutants into navigable waters of the United States on a continuous and ongoing basis without a NPDES permit in violation of the CWA. Although our research indicates that Hudson Farm submitted a Notice of Intent with the Maryland Department of the Environment to be covered under the MD CAFO permit, this permit has not yet come into effect. In the event that the permit is found to be in effect and that the Hudson Farm is deemed to be covered by it, the facility is, alternatively, in violation of a zero discharge permit. The MD CAFO permit prohibits any discharges of pollutants to surface waters of the State from CAFO production areas, unless it results from a storm event greater than the 25-year, 24-hour storm. NPDES Permit No. MDG01 Part B.2.

Our investigation revealed that Hudson Farm stockpiles uncovered poultry manure next to a drainage ditch in its production area. This longstanding manure pile is a continual and ongoing source of pollutants. In particular, during and after each rain event, this manure stockpile discharges pollutants into a field ditch that drains to the Franklin Branch, which in turn flows to the Pocomoke River, a navigable water of the United States. The Pocomoke, in turn, empties into the Chesapeake Bay. Both the Pocomoke River and the Chesapeake Bay are listed as nutrient impaired waters under the CWA. Photographs further reveal that discrete conveyances in the form of trenches exist from the manure stockpile to the field ditch to facilitate this run off. Results from downstream water sampling taken on October 30th, November 11th, 12th, 16th and December 9th, 2009 show high levels of pollutants including, fecal coliform, E. coli, phosphorus, nitrogen,

¹ The United States Environmental Protection Agency and the CAFO regulations define a large poultry CAFO as any animal feeding operation that has a liquid manure handling system and confines 30,000 or more laying hens or broilers for a total of 45 days or more in a 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. 122.23

² Plaintiffs intend to show that Perdue Farms, Inc. exerts substantial operational control over the Hudson Farm CAFO and, therefore, is also responsible and liable for the illegal discharges noted herein.

arsenic and ammonia. Upon information and belief, the direct source of these elevated levels of pollutants is the uncovered manure pile located on Defendant's farm.

These sample results reveal ongoing violations of the CWA. Each day of unpermitted discharges comprises a series of separate violations of the CWA, with a separate violation for each pollutant illegally discharged. Responsible parties are subject to civil penalties of up to \$37,500 for each violation. Further, since these discharges may be "negligent" or "knowing" violations, responsible parties may be subject to criminal penalties and enforcement pursuant to 33 U.S.C. § 1319(c).

The Assateague Coastkeeper and Waterkeeper Alliance believe that this notice of intent to sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period to file a citizen suit in federal court against the Defendants, Alan and Kristin Hudson Farm and Perdue Farms, Inc., under Section 505(a) of the CWA for the violations outlined above.

Please do not hesitate to contact the undersigned if you wish to discuss these matters.

Sincerely,



Scott Edwards
Director of Advocacy
Waterkeeper Alliance
50 S Buckhout St., suite 302
Irvington, NY 10533
914.674.0622 ext. 13

Liane Curtis
Staff Attorney
Waterkeeper Alliance
50 S Buckhout St., suite 302
Irvington, NY 10533
914.674.0622

Jane F. Barrett
Director, Environmental Law Clinic
University of Maryland School of Law
500 West Baltimore Street
Baltimore, Maryland 21201-1786
410.706.8074

cc:

Lisa P. Jackson, Administrator
United States Environmental Protection Agency
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Eric H. Holder, Jr., Attorney General
United States Department of Justice,
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Shawn M. Garvin, Regional Administrator
Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Douglas F. Gansler, Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

Shari Wilson, Secretary
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230



Maryland Department of Environment
Water Management Administration
Compliance Program
1800 Washington Blvd, Baltimore MD 21230
410-901-4020

Field Inspection Report by: Richard Stewart

Permit / Approval Numbers: PAF # 10-4200

Inspection Date: December 18, 2009

Facility Address: 9101 Logtown Road, Berlin, MD 21811

Site Name: PAF # 10-4200 Alan Hudson Farm

Site Status: Active

Inspection Type: NPDES Industrial Discharge

Site Condition: Further Investigation Required

Contact(s):
Dave Mister, MDA
Harry Hunsicker, MDE
Robert Hudson, Father of Property Owner

Recommended Action: Further Investigation Required

Evidence Collected: Visuals Observation, Photos

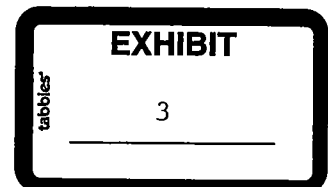
Inspection Reason: Complaint Investigation

INSPECTION FINDINGS

A site inspection was conducted this date at the above mentioned site as a result of a complaint that sewage sludge is being stockpiled on Alan Hudson's Farm and leachate from the stockpile is being discharged to a drainage ditch to the perimeter of the property. Permission to access the property was given by Mr. Robert Hudson who also assisted in answering questions concerning the farm operation. The property owner, Mr. Alan Hudson was not available at the time of inspection.

The inspection reveals several stockpiles of Class A sewage bio-sludge on an open field to the south of property. According to Mr. Hudson, the bio-sludge was transported from the Town of Ocean City Wastewater Treatment Plant. He stated that they have been receiving the bio-solids for about two years now and has applied it to their agricultural fields as a fertilizer source. Mr. Hudson stated that the bio-solid material was applied at a rate of 2 tons per acre last year and is being incorporated in the farm's nutrient management plan. A review of the farm's nutrient management plan was not conducted at the time of inspection since the farm operator was not available. Mr. Hudson stated that the stockpiles have been there since about the end of September.

The stockpiles were located approximately 55 feet from the edge of a drainage ditch that runs from east to west of property. It appears that two trenches were installed to the southeast of the stockpiles to drain accumulated stormwater from the around the stockpiles and discharge to the drainage ditch. This was also evident from the ponding of stormwater and leachate that was observed at the base of stockpiles. The two trenches were recently filled-in, which was evident from the recent soil disturbance and placement of plant debris. Mr. Hudson stated that the trenches were filled-in on Thursday (December 17, 2009) after they were contacted by the local newspaper. Mr. Hudson also stated that Perdue Farms (who contract the Hudsons to grown poultry) has visited the site to collect water samples from the drainage ditch to the perimeter of property to determine if discharge from the stockpiles were polluting waters of the State of Maryland.



Permit / Approval Numbers: PAF # 10-4200 Alan Hudson Farm
Inspection Date: December 18, 2009
Facility Address: 9101 Logtown Road, Berlin, MD 21811

At the request of Dave Mister from MDA, a CAFO inspection was conducted for the poultry operation at the farm to evaluate manure handling practices and potential unauthorized discharges. Two poultry houses were present on the farm along with a poultry waste storage structure and a 2 bin composter. No discharge was observed. Trace amount of poultry manure was observed on heavy use area pads (HUAs) to the north of poultry house 1 and 2. Mr. Hudson was instructed to remove all trace amounts of manure and broom swept HUA pads following use.

The Town of Ocean City Wastewater Treatment Plant was contacted to provide a label of the Class A bio-sludge which documented the storage and handling procedures as well as a loading sheets of all farms that has received the material since January 2009. According to the product label, "any stock piled product may be eroded by heavy rainfall, therefore, it is best to cover stockpiles or locate them in areas that will not promote erosion and runoff. Preferable, stockpiling and offloading areas are away from dwelling, wells, public roads, property lines, streams ditches and any slope that would have a potential for runoff".

This inspector will continue further investigation to determine the necessary corrective actions that should be implemented at the site.

Inspector:


Richard Stewart

Received by: _____



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard, Suite 605 • Baltimore, Maryland 21230-1719
(410) 537-3000 • 1-800-633-6101 • <http://www.mde.state.md.us>

LAND MANAGEMENT ADMINISTRATION

Report of Observations

Type of Inspection/Observations: Sewage Sludge Complaint

Date: 12/21/09

Site/Facility Name: Alan Hudson Farm

Time In: 1115 hrs

Location: 9178 Old Ocean City Road, Berlin, MD 21811

Time Out: 1345 hrs

Remarks:

County: Worcester

Weather: Sunny, 30's

Site conditions: Wet/Frozen

- Upon arrival to the site I met with the property owner, Alan Hudson, who granted access to the property for the purpose of investigating a complaint concerning sewage sludge stockpiled on the property.
- A. Hudson took me to the stockpiled sludge. The stockpiles are located behind several out buildings behind the on-site mobile home. The sewage sludge is a class A treated sewage sludge from the Ocean City WWTP.
- A total of 29 truck loads of cake sewage sludge have been received at the site. The first load of sewage sludge was received in March 2009 and the last load was received in August of 2009. The sludge is intended to be used for either corn or soybeans in the spring of 2010.
- The area that the sewage sludge was being stored is a low area with water pooled around the stockpiles. Two drainage leads that were draining the pooled water around the stockpiles to an on site ditch have been filled in with soil. A. Hudson has placed straw bales in both of the drainage lead areas to filter any surface water that might discharge from the site. This was initiated upon my request while on site today.
- A. Hudson has been advised to relocate the sewage sludge stockpiles to an area across the farm road where the ground is slightly higher and further away from the drainage ditch. The sewage sludge will be consolidated in one stockpile. The stockpile will be configured to discharge water off the pile and away from the storage area. Once the sewage sludge has been moved A. Hudson will sow some annual rye around the stockpile, ring the lower side with straw bales for runoff control and cover the stockpile with a plastic cover.
- The relocation work will be done within the next week providing weather, equipment availability and site conditions allow the work to progress. A. Hudson will spread an annual rye or oat seed in the area where the sewage sludge is moved from to take up any available nutrients in the area.

Observer: _____

R. B. Littlefield, Registered Sanitarian

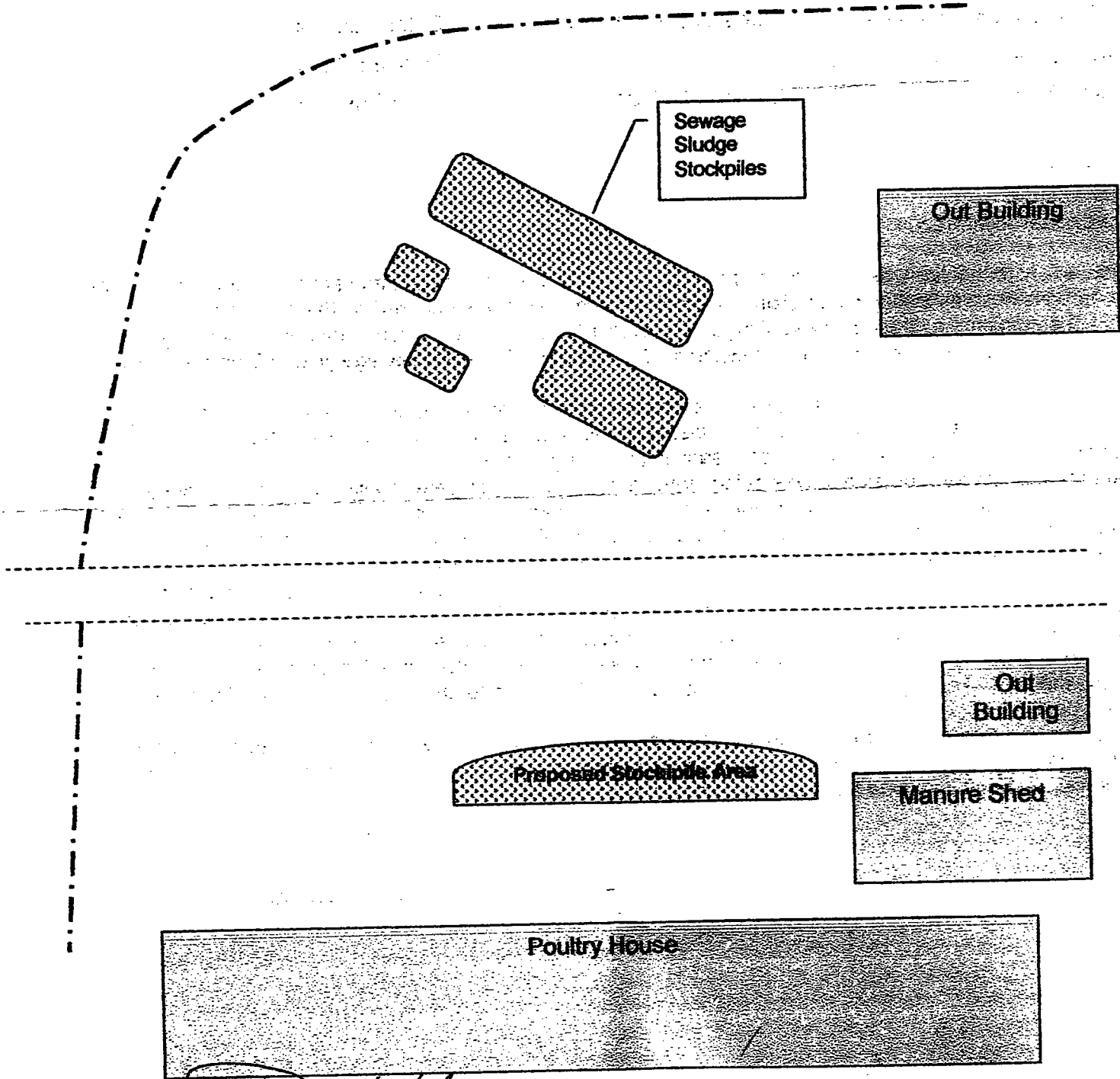
Person Interviewed: _____

MARYLAND DEPARTMENT OF THE ENVIRONMENT

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(410) 537-3000 • 1-800-633-6101 • <http://www.mde.state.md.us>

LAND MANAGEMENT ADMINISTRATION Report of Observations



Observer: *R. B. Littlefield*
R. B. Littlefield / Registered Sanitarian

Person Interviewed: _____



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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(410) 537-3000 • 1-800-633-6101 • [http:// www. mde. state. md. us](http://www.mde.state.md.us)

LAND MANAGEMENT ADMINISTRATION Report of Observations

Type of Inspection/Observations: Sewage Sludge Complaint

Date: 01/07/10

Site/Facility Name: Alan Hudson Farm

Time In: 1015 hrs

Location: 9178 Old Ocean City Road, Berlin, MD 21811

Time Out: 1145 hrs

Remarks:

County: Worcester

Weather: Sunny, 20's

Site conditions: Wet/Frozen

- Upon arrival to the site I met with the property owner, Alan Hudson, who granted access to the property for the purpose of inspecting the site for compliance with the advice given to him on 12/21/09.
- The stockpile of class A treated sewage sludge from the OC WWTP has been moved to the proposed storage area. The sludge has been completely covered with solid plastic. Straw bales have been placed at the west end of the storage area to contain any runoff. Additional straw bales will be placed adjacent to the existing bales to ensure any runoff from the storage area is controlled by the bales.
- The area where the sludge was previously stored has been graded as well as can be expected given the wet site conditions. Straw has been spread over the disturbance and rye seed spread over the same area. Straw bales remain where storm water runoff might be expected during a rain event.
- The volume of stored sludge is ~ 444yds³. The nearest distance to the drainage ditch/stream is now ~155'. The previous stockpiles were within ~50' of the ditch/stream.
- A. Hudson has complied with all the recommendations of the Department. No further action is required on his part other than to spread the sewage sludge in the spring for the next crop growing season.

Observer: R. B. Littlefield
R. B. Littlefield, Registered Sanitarian

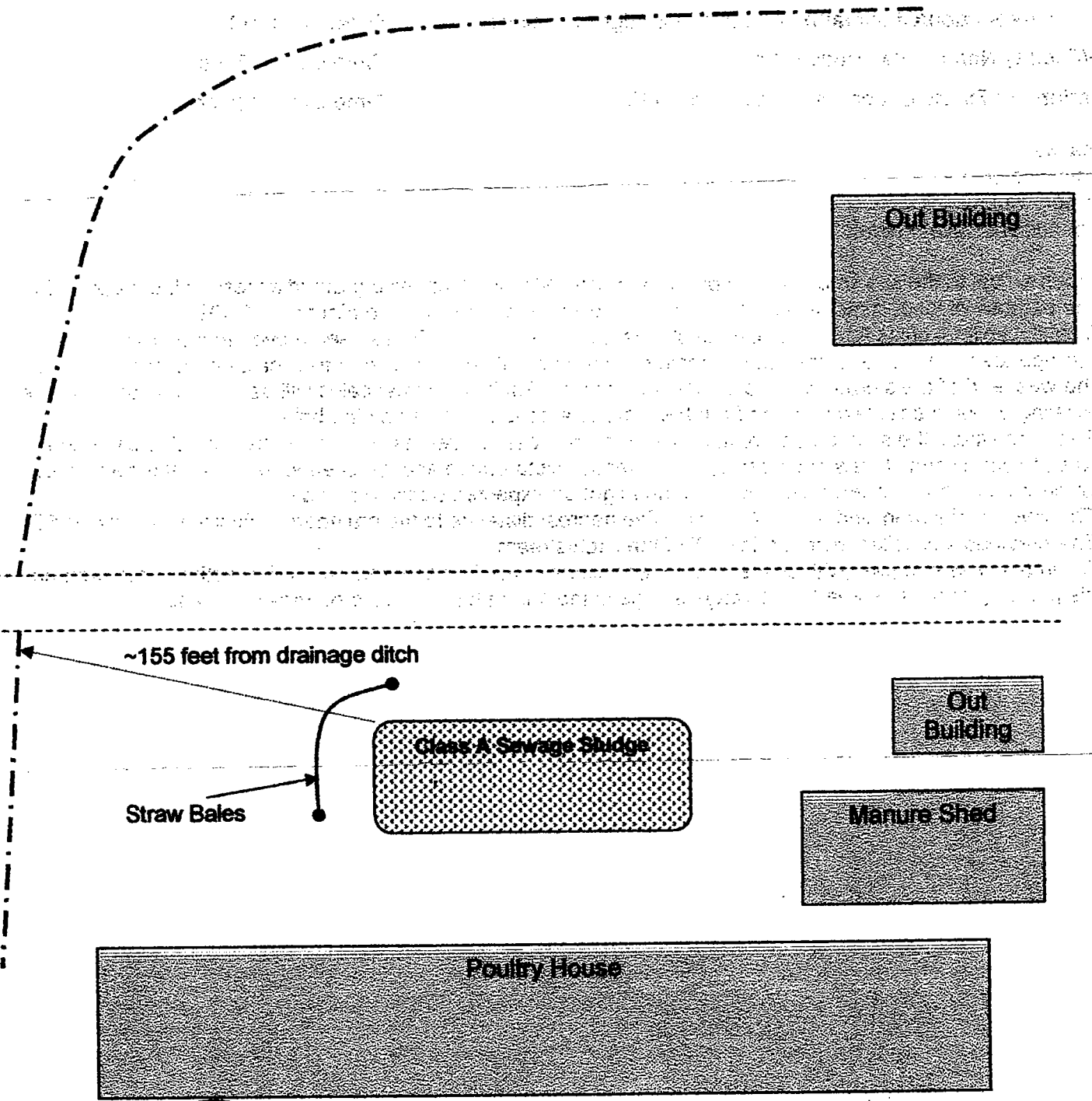
Person Interviewed: _____

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LAND MANAGEMENT ADMINISTRATION Report of Observations



~155 feet from drainage ditch

Straw Bales

Class A Sewage Sludge

Out Building

Out Building

Manure Shed

Poultry House

Observer: R. B. Littlefield, Registered Sanitarian

Person Interviewed: _____