

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

FILED
1999 DEC 21 P 1:55

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

BUCKEYE EGG FARM, L.P., et al.

Defendants.

CASE NO. 99 CV 756

JUDGE FROST

CONSENT ORDER FOR PRELIMINARY INJUNCTION

WHEREAS, the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff" or "State of Ohio") has filed its Complaint in the above-captioned case against Defendants pursuant to Ohio Revised Code (hereinafter "RC") Chapters 3704, 3734, 6109, 6111 and 3767, the regulations promulgated thereunder and other laws;

WHEREAS, the State of Ohio's Complaint seeks, among other things, injunctive relief, civil penalties, and remedies to investigate and abate alleged water pollution violations at the Buckeye Egg facility, owned and/or operated by the Defendants, in Licking County, Ohio (hereinafter "Croton facilities");

WHEREAS, the Defendants have agreed to enter into this Consent Order for Preliminary Injunction (hereinafter "COPI") with the State of Ohio;

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, and upon consent of the Parties hereto, it is hereby ORDERED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Defendants and the subject matter of this case. Venue is proper in this Court.

II. PARTIES

2. The provisions of this COPI shall apply to and be binding upon the Defendants, their agents, officers, employees, assigns, successors in interest, and any person acting in concert or privity with any of them and those receiving actual notice of the COPI whether by personal service or otherwise.

3. Defendants shall provide a copy of this COPI to each general contractor, subcontractor, consultant, agent, employee and person hired by or who will provide work or services on behalf of Defendant related to this COPI.

III. PRELIMINARY INJUNCTION

4. The Defendants are hereby enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111 and the rules adopted under that Chapter at the Croton facilities, as the term "Croton facilities" is defined in the Complaint filed in this matter on December 1, 1999. The Defendants are not authorized to discharge pollution to waters of the State from any location within the State of Ohio except in accordance with permits issued by the Director of the Ohio Environmental Protection Agency (hereinafter "Director" or "Ohio EPA").

5. The Defendants are enjoined and ordered to install and maintain at each of the layer and pullet sites at the Croton facilities such temporary improvements as are necessary to: (1) prevent the release of manure and/or manure contaminated water and/or sewage, industrial wastes or other wastes, containing ammonia in excess of 2 parts per

million (hereinafter "ppm") between October 1 and May 31 or 1.5 ppm between June 1 and September 30 of each year from the site; and (2) allow the Defendants to undertake all of the activities required by this COPI.

IV. PRELIMINARY INJUNCTION – STORM WATER CONTROL

6. The Defendants are ordered and enjoined to contain all water, sewage, industrial wastes or other wastes associated with storm water originating at any of the layer or pullet sites at the Croton facilities that contains more than 2 ppm ammonia between October 1 and May 31 or 1.5 ppm between June 1 and September 30 of each year. To assure containment at the layer and pullet sites, the Defendants shall:

a. Maintain sufficient equipment to provide for the removal of all water, sewage, industrial wastes or other wastes associated with storm water originating at any of the layer or pullet sites at the Croton facilities that contains more than 2 ppm ammonia between October 1 and May 31 or 1.5 ppm between June 1 and September 30 of each year. This equipment shall include, but is not limited to, sufficient pumps, discharge hose and parts to assure the availability of a functioning pump and appropriate length of hose to effectively implement the requirements of this COPI. The failure of the Defendants to have appropriate and functioning equipment to implement the requirements of this COPI shall not constitute a defense to Defendant's non-compliance with the COPI;

b. In the event the Defendants pump or transport any water, sewage, industrial wastes or other wastes associated with storm water originating at any of the layer or pullet sites at the Croton facilities to any egg wash wastewater lagoon at the

Croton facilities, the Defendants shall maintain at least two (2) feet of freeboard in the lagoon; and

c. In the event that contaminated storm water or egg wash wastewater volumes in any cell of any storage lagoon exceed the freeboard limitation established in this COPI and the Defendants are unable to properly land apply the wastewater, the Defendants shall immediately remove excess wastewater in the cell by either transporting the excess wastewater to another cell of another egg wash wastewater lagoon at the Croton facilities or transporting the excess wastewater in a vehicle approved for the transport of wastewater to a wastewater treatment facility approved to receive the wastewater.

7. In the event the Defendants have pumped and/or transported any water, sewage, industrial waste or other waste associated with storm water at any layer or pullet site at the Croton facilities to an egg wash wastewater lagoon, the Defendants may land apply wastewater stored in the egg wash wastewater lagoons in accordance with the terms of the applicable permits to install and subject to the following requirements:

a. The Defendants shall conduct daily visual and volumetric monitoring of wastewater entering the egg wash wastewater lagoons from all sources. This monitoring shall include the calculation of the volume of sewage, industrial wastes or other wastes pumped and/or transported to the egg wash wastewater lagoon ;

b. The Defendants shall conduct sampling and monitoring of the effluent from the egg wash wastewater lagoons during any period of land application in accordance with the following schedule:

INFLUENT/EFFLUENT CHARACTERISTIC

MONITORING

<u>Units</u>	<u>Parameter</u>	<u>Frequency*</u>	<u>Sample Type</u>
mg/L	Total Suspended Solids	weekly	Grab
mg/L	Nitrogen, Ammonia (NH ₃)	weekly	Grab
mg/L	Nitrite	weekly	Grab
mg/L	Nitrate	weekly	Grab
mg/L	BOD5	weekly	Grab
mg/L	Phosphorus, Total (P)	weekly	Grab
inches	Static Water Level in Lagoon Cell 1	daily	Obser
inches	Static Water Level in Lagoon Cell 2	daily	Obser
gpd	Effluent Flow Rate	Daily	Total/24 hrs.

Sampling and monitoring required by this paragraph may be discontinued three (3) months after the last introduction into any lagoon of water, sewage, industrial waste or other waste associated with storm water or after the lagoon is pumped dry, whichever occurs first.

* *Only applies during periods of land application.*

c. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of wastewater in the lagoon. All sampling methods, preservation of samples, holding time and laboratory analysis shall conform to regulation 40 CFR 136, "Test Procedures for the Analysis of Pollutants;"

d. Monitoring results shall be reported to Ohio EPA on the appropriate Ohio EPA report from (EPA 4500). Individual reports for each sampling station for the month are to be received by Ohio EPA no later than the 15th day of the following month;

e. The report form must be signed by a responsible corporate officer or an environmental compliance officer of Buckeye Egg; and,

f. Samples and measurements taken herein shall be representative of the wastewater in the lagoons and the effluents during any period where land application of the egg wash wastewater occurs. All sampling methods, preservation of samples,

holding time and laboratory analysis shall conform to regulation 40 CFR 136, "Test Procedures for the Analysis of Pollutants."

8. The Defendants are ordered and enjoined to prepare and maintain records of the amount and destination of all water, sewage, industrial wastes or other wastes transported to a waste water treatment facility or other appropriate facility under this COPI.

9. The Defendants are ordered and enjoined to submit all records required by paragraph 8 of this COPI to the Ohio EPA within seven (7) days of the transport of the water, sewage, industrial waste or other waste to a waste water treatment facility or other appropriate facility.

10. The Defendants shall within one (1) hour of determining that the two (2) foot freeboard limit has been reached in any cell report such condition to Ohio EPA. Defendants shall report the amount of wastewater in the lagoons at the time the Defendants cease pumping and/or delivering wastewater to the storage lagoons and the Defendants' proposed activities to reduce the amount of wastewater in the cell to Mike Gallaway at the Central District Office at (614) 728-3843 or John Kessler at the Central Office at (614) 644-2020 or their successors.

V. PRELIMINARY INJUNCTION - MANURE REMOVAL

11. The Defendants are immediately enjoined and ordered to remove manure from all buildings at the Croton facilities that have either released manure or pose a threat of release of manure. As soon as practicable but no later than May 31, 2000, Defendants are enjoined and ordered to complete the removal of the manure from all such buildings at the Croton facilities. In order to achieve the complete removal of the manure from all

such buildings by May 31, 2000, the Defendants shall prioritize the removal of all manure from all buildings that have released or pose an imminent threat of release of manure to occur as soon as possible, however, in no event shall the Defendants fail to complete the removal of manure from at least the following number of buildings by the date specified:

February 1, 2000 4 buildings

March 1, 2000 8 buildings

April 1, 2000 12 buildings

May 1, 2000 18 buildings

June 1, 2000 all buildings

12. The Defendants are enjoined and ordered to land apply all manure removed from any building pursuant to this COPI in accordance with all applicable permits to install, including, without limitation, PTI No. 01-039IW, issued by the Ohio EPA and the following additional requirements:

a. The Defendants shall immediately incorporate all manure removed and land applied pursuant to this COPI;

b. The Defendants shall not handle, dispose or land apply manure in a manner that causes or creates a nuisance as prohibited by R.C. 3767.13;

c. On or before January 17, 2000, Defendants shall prepare and submit to Ohio EPA for review and comment a contingency plan for the emergency clean-up and proper disposal of manure and/or manure contaminated water; and

d. In the event the Defendants are unable to complete the removal of manure within the time set forth in paragraph 11 above due to weather conditions that

prevent the land application and immediate incorporation of the manure or in the event of an emergency, the Defendants shall notify Ohio EPA of that fact. Defendants shall contact and discuss with Ohio EPA a schedule by which the removal and land application or disposal will be completed in accordance with the contingency plan and shall complete the land application and/or disposal in accordance with the agreed-to schedule.

13. The Defendants shall immediately implement an inspection program that includes the daily inspection of every layer and pullet building at the Croton facility.

This inspection program shall include the following:

a. the twenty-four (24) hour monitoring of all buildings that have released manure or pose a threat of release of manure until such time as all manure has been removed from these buildings in accordance with this COPI;

b. the daily inspection of all buildings at the Croton facilities. These inspections should focus on the quantity of manure, the moisture content of the manure, the condition of the watering system (e.g. leaks) and the structural condition of the building. The Defendants may use whatever appropriate personnel are available for such inspections, provided such personnel have received proper instruction regarding the nature, scope, purpose and documentation of such inspections;

c. the inspection of the grounds of each layer and pullet site at the Croton facilities at least once a shift (three times daily); and

d. the Defendants shall document the results of such daily inspections, the results of which shall be reviewed by the compliance officers of Buckeye Egg Farm, L.P.

14. The Defendants shall take whatever lawful steps are necessary to address any releases of manure or conditions that pose an immediate threat of a release of manure.

15. The Defendants shall prepare and submit a written progress report to the Ohio EPA by the 10th day of every month following the entry of this COPI. At a minimum, each progress report shall set forth the current prioritization of buildings for manure removal, describe the status of work and actions taken towards achieving compliance with this COPI in the preceding month, and any activities that are planned for the next month. The progress report shall also include a description of any difficulties encountered during the proceeding month, any actions taken to correct any deficiencies, any actions planned for the next month, any changes to key personnel, a list of actual completion and target dates for manure removal from each building, and an explanation of any changes to the manure removal schedule proposed in any previous month's progress report.

16. The Defendants shall within one (1) hour of the discovery of any release of manure from any building at the Croton facilities, regardless of whether or not the release reaches waters of the State, report such release to Ohio EPA. Buckeye Egg shall immediately report the release to the Ohio EPA spill line at (800) 282-9378 and shall attempt to contact Mike Gallaway at the Central District Office at (614) 728-3843 or John Kessler at the Central Office at (614) 644-2020 or their successors to report the release.

VI. DOCUMENT SUBMITTAL

17. Unless otherwise provided in this COPI, all documents required to be submitted pursuant to this COPI shall be sent to the following address:

Ohio Environmental Protection Agency
Central District Office
3232 Alum Creek Drive
Columbus, Ohio 43207

ATTN: Mike Gallaway and Jan Rice
Division of Surface Water

VII. RESERVATION OF RIGHTS

18. The State of Ohio reserves the right to seek further relief from this or any other Court, including, but not limited to, further preliminary and/or permanent injunctive relief and civil penalties. This COPI in no way waives any defenses which Defendants may have as to such further relief.

19. The State of Ohio expressly reserves, and this COPI shall be without prejudice to, any and all claims, demands, rights or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint. This COPI in no way waives any defenses which Defendants may have as to such claims, demands, rights or causes of action.

20. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendants, to eliminate or control conditions which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action. This COPI in no way waives any defenses which Defendants may have as to such claims, demands, rights or causes of action.

21. Nothing herein shall be construed to relieve Defendants of their obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements. Further, nothing in this order shall be

construed to authorize any action by Defendants that requires a permit to install or other such permit from the Ohio EPA.

VIII. MODIFICATION

22. No modification shall be made to this COPI without the written agreement of the Parties and the Court.

IX. RETENTION OF JURISDICTION

23. The Court shall retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with this COPI, and for the purpose of resolving disputes arising under this COPI between the parties.

X. TERMINATION

24. This COPI shall terminate upon Order of this Court, upon Joint Motion of the Parties that all activities required or contemplated under this COPI have been completed, or upon entry of final judgment in this action. Nothing herein shall preclude the State of Ohio from seeking further investigatory work in connection with implementation of this COPI or to address an imminent threat of harm to the public health or the environment. This Section, as well as the Section of this COPI on Reservation of Rights, shall survive this termination provision.

XI. SIGNATORIES

25. The undersigned representatives of the Defendants understand the terms and conditions of this COPI and certify that they are fully authorized to enter into the terms and conditions of this COPI and to execute and legally bind the Defendants to this document.

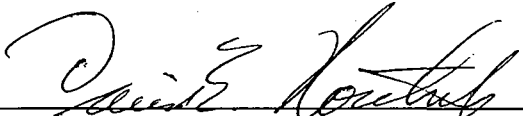
IT IS SO ORDERED:

ENTERED THIS ____ DAY OF DECEMBER, 1999.



JUDGE GREGORY L. FROST
LICKING COUNTY
COURT OF COMMON PLEAS

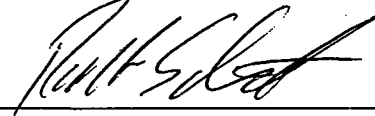
APPROVED:



David E. Northrop, Esq. (0001804)
Samuels & Northrop Co., LPA
180 East Broad Street
Suite 816
Columbus, Ohio 43215
(614) 464-3232


Counsel for Defendants

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

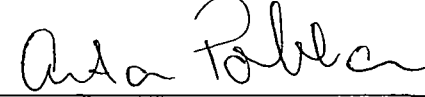


Robert J. Karl (0042292)
Margaret A. Malone (0021770)
Robert J. Schmidt (0062261)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Counsel for Plaintiff, State of Ohio



Elliot Jones, Vice President
Buckeye Egg Farm, L.P.
11212 Croton Road
P.O. Box 173
Croton, Ohio 43013



Anton Pohlmann
12568 Croton Road
Croton, Ohio 43013