

In The Court Of Common Pleas, Licking County, Ohio

STATE OF OHIO, ex rel
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO,
Plaintiff,

-vs-

Case No. 83 L 76580

HERSHEY EQUIPMENT CO., INC.
et al., Defendants.

HISTORY AND BACKGROUND

Prior to October 1980, Anton Pohlman, a German nationalist, purchased approximately 3000 acres in Hartford Township between the Villages of Croton and Johnstown in Licking County, Ohio. Anton Pohlman in turn leased all of the land to a partnership now known as Croton Egg Farms who now control and operate the farms. Hershey Equipment Co., Inc., constructed the buildings and installed the equipment.

The Croton Egg Farms operation is one of the largest egg producing facilities in the world if not the largest. The size and magnitude of this facility can only be appreciated after one has actually viewed the entire operation.

The Court, at the request of all parties and their legal counsel, did tour the facilities at which time the operation of the facilities was explained in detail. Most of the managerial personnel are college graduates who have been trained in the technical aspects of raising chickens and egg production. There are many local employees of this multi-million dollar operation which produces millions of eggs each day.

An application was made to the Ohio Environmental Protection Agency in October of 1980 for the construction of the major portion of the buildings which have been added to by additional buildings since then.

July 2, 1983, the pressure of wet manure in Layer Site Two became so great that it forced the concrete blocks out of the back of the building. On July 5, 1983, chicken manure poured out of the Layer Building at Site One and flowed

Judge
Neil M. Laughlin
345-5250

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Courthouse
Newark, OH 43055

into a ditch and into Otter Fork of the Licking River allegedly causing a large fish kill. Thereafter, the Attorney General of Ohio, Anthony J. Celebrezze Jr. on behalf of the Ohio EPA filed this action in this Court seeking both a temporary injunction, a permanent injunction and civil penalties for violations of Chapter 6111 of the Ohio Revised Code. A temporary injunction was mutually agreed upon by the parties and became the order of the Court. The case was tried before the Court on November 13 and ended on November 20, 1984.

At the conclusion of the trial, the Court ordered the Plaintiff and the Defendants to file their proposed Findings of Fact and Conclusions of Law.

The State proposed that the Court impose civil penalties for violations of Chapter 6111 of the Ohio Revised Code in the amount of \$976,150.00. The State further proposed that the Court impose civil penalties for violation of the preliminary injunction pursuant to Section 2727.12 of the Ohio Revised Code in the amount of \$54,200.00.

The Defendants proposed that the total penalties for violations of Chapter 6111 of the Ohio Revised Code should not exceed \$36,000.00 with no penalties being imposed for any violations of the preliminary injunction.

FINDINGS OF FACT

1. The Court in review of all of the evidence regardless of which party presented the evidence, finds that the violations as set forth by the Plaintiff did in fact occur.

2. The Court, however, finds that the majority of the violations were in fact technical violations and had no impact upon the environment and in reality would not have been the subject matter of this action had it not been for the manure escaping from Sites One and Two.

3. The serious violations were the failures of the leach beds; the failure to control the egg wash water; the application of the egg wash water and manure to the land, and the most serious of all being the escaping manure into the waters of Otter Creek.

4. The parties by stipulation agreed that this action would not include any damages that the State of Ohio may in the future recover for the alleged fish kill. Defendants all agreed and stipulated that the State of Ohio could at a later date, without prejudice, file an action to recover damages for the alleged fish kill. The Plaintiff sought to amend the original complaint a few days before trial to include damages for the fish kill which the Court denied because the Defendants had not been given an opportunity to prepare for trial as to damages relating to the fish kill.

5. This Court finds that the magnitude of the waste materials produced in this operation which includes human waste, egg wash water, and chicken manure to be comparable to the waste produced on a daily basis by a large city.

6. This Court further finds that it is necessary to protect the environment and the property of others, that there must be compliance with the laws of this State and specifically Chapter 6111 of the Ohio Revised Code.

7. This Court finds that the Ohio EPA does not have sufficient personnel to constantly monitor the operation of the Croton Egg Farms.

8. The Court further finds that at the beginning of the operation that the management was not adequate and did not provide good control over the operation. However, management was changed and since the change in management, the operation of the facility has been greatly improved with a new spirit of cooperation with the State, the community and the Court.

9. Due to the potential dangers that could occur as evidenced by past history and to provide for the protection of the public and to insure that there is compliance with the laws and regulations governing this operation, the Court finds that a court monitor should be appointed for a period of at least six months to assure the Court of compliance with all laws and regulations by the Defendants.

10. This Court further finds that a permanent injunction should issue in that the Defendants must comply with Chapter 6111 of the Ohio Revised Code and all other laws and regulations pertaining to this operation.

CONCLUSIONS OF LAW

1. The Court in accordance with Chapter 6111 of the Ohio Revised Code having found the alleged violations made by the Plaintiff to be true, imposes civil penalties of \$100,000.00 against the Hershey Equipment Co. Inc. and the partnership known as the Croton Egg Farms with each to be held jointly and severally liable for the payment of said penalties. The aforesaid shall pay said penalties by certified check or checks to be made payable to the Treasurer of the State of Ohio for deposit in the general revenue fund within 60 days pursuant to Section 6111.09 of the Ohio Revised Code.

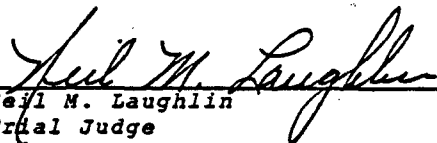
2. The Court for violations of the preliminary injunction imposes civil fines of \$15,000.00 against the partnership known as the Croton Egg Farms and Hershey Equipment Co. Inc., for which they shall be jointly and severally liable, and which shall be paid in the same manner as heretofore set forth as to the penalties paid to the State of Ohio.

3. The Court appoints as Court Monitor, Paul Brown, who formerly was the largest egg producer in Licking County, but now retired. The Court orders counsel for the Plaintiff and the Defendants to jointly present to the Court the proposed

duties of the Court Monitor within 14 days. The expenses of the Court Monitor shall be paid by the partnership known as the Croton Egg Farms upon court order. The Court will consider after six months, upon application by the Defendants, the termination of the use of the Court Monitor.

4. The costs of this proceedings to date is taxed against the Defendants, the partnership known as the Croton Egg Farms and the Hershey Equipment Co. Inc. The future costs, if any, will be taxed against Croton Egg Farms.

5. Counsel for the Plaintiff shall prepare a Judgment Entry in accordance with the Findings of Fact and Conclusions of Law made by the Trial Court, with any party hereto reserving their exceptions.


Neil M. Laughlin
Trial Judge

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