

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO.
BETTY D. MONTGOMERY,	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE
Environmental Enforcement Section	:	
30 East Broad Street - 25th Floor	:	
Columbus, Ohio 43215-3428,	:	
	:	
v.	:	
	:	
Plaintiffs,	:	
	:	
BUCKEYE EGG FARM, L.P.	:	CONSENT ORDER FOR
11212 Croton Road	:	PRELIMINARY INJUNCTION
P.O. Box 173	:	
Croton, Ohio 43013	:	
	:	
Defendant.	:	

COURT OF COMMON PLEAS
LICKING COUNTY, OHIO
1999 JUN -7 P 3:17
FILED

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 Defendant Buckeye Egg Farm, L.P. (hereinafter "Buckeye Egg"), pursuant to Ohio Revised Code (hereinafter "RC") Chapters 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 at the Buckeye Egg facility (hereinafter "Croton facilities"), owned by Defendant, in Licking County, Ohio; and Lobdell Creek and its tributaries, all waters of the State as that term is defined in R.C. 6111.01, in Licking County, Ohio;

WHEREAS, Buckeye Egg has 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 Parties and the subject matter of this case. Venue is proper in this Court for the purposes and duration of this COPI.

II. PARTIES

2. The provisions of this COPI shall apply to and be binding upon the Defendant, its 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. Buckeye Egg shall within three (3) days of entry of this COPI empty and immediately land apply and incorporate the wet manure in pullet buildings #18 and #20 at Pullet Complex #4. For purposes of this COPI and Paragraphs 4 and 5 in particular, manure shall be considered "wet" if the manure contains sufficient moisture to present a threat of flowing along a sloped surface. In the event of a disagreement between the parties concerning whether or not manure is considered "wet" for purposes of this COPI, Buckeye Egg agrees to remove manure based upon Ohio EPA's assessment.

5. Buckeye Egg shall as soon as possible but in any event within seven (7) days from the entry of this COPI empty and immediately land apply and incorporate the wet manure in pullet buildings #17, #1, and #2. Buckeye Egg shall within twenty-one (21) days of the entry of this COPI empty and immediately land apply and incorporate the wet manure in pullet buildings #3, #4, #5, #9, #11, #15, #19, and #21. Buckeye Egg shall remove the manure from pullet buildings #3, #4, #5, #19 and #21 first.

6. Buckeye Egg shall construct works at both Pullet Complex #1 and Pullet Complex #4 to contain releases of liquid manure from the Pullet buildings. Buckeye Egg shall consult with OEPA prior to the design and construction of the specific type of containment works at these Pullet Complexes within forty-eight (48) hours of the entry of this COPI. Further, Buckeye Egg shall begin construction of the proposed containment works promptly after receiving written or verbal approval from Ohio EPA and complete construction within seven (7) days unless extended in writing by Ohio EPA.

7. Buckeye Egg shall continue to perform aeration on Lobdell Creek in those areas where it will be most effective in reducing the impacts to the creek from the manure release. Buckeye Egg shall maintain a third water pump in order to replace a failed pump or to initiate aeration at additional locations as needed to address the release of manure. Buckeye Egg shall determine if the impacts from the release of manure have migrated further downstream by inspecting the creek as necessary but including, at a minimum, daily inspections of Lobdell Creek at North Ridge Rd and Mount Road. In the event that Buckeye Egg discovers downstream impacts from the manure spill, Buckeye Egg shall inform Ohio EPA within one (1) hour of such discovery of the location and nature of the impacts. Buckeye Egg shall continue aeration for at least the next fourteen (14) days or

such longer period of time as may be necessary, in the opinion of Ohio EPA, to address the impacts from the release of manure. After fourteen (14) days, or such other shorter period of time as Buckeye Egg believes appropriate, Buckeye Egg may propose to Ohio EPA to cease aeration of Lobdell Creek if the impacts from the release of manure have been mitigated to the maximum extent possible from aeration. Buckeye Egg may discontinue aeration of Lobdell Creek only after it receives verbal or written approval from Ohio EPA to discontinue aeration.

8. Buckeye Egg shall prevent the further unauthorized discharge of sanitary wastes from a pipe located in the northwest corner of Layer Complex #4, as the stormwater tiles exit to the unnamed tributary to Raccoon Creek. Further, Buckeye Egg shall take whatever steps are necessary to prevent unauthorized discharges from all of the wastewater treatment facilities at the four (4) layer complexes to waters of the State.

9. Buckeye Egg shall immediately hire, or assign current staff as, two (2) permanent full time environmental compliance officers. These officers will be responsible for insuring compliance at the Croton facilities with the terms of this COPI, and all applicable provisions of R.C. Chapter 6111, the rules adopted thereunder, the terms and conditions of all permits issued to Buckeye Egg by OEPA pursuant to R.C. Chapter 6111, and the livestock waste management plans. Once the present unauthorized releases and immediate threats at the Croton facilities have been properly addressed and upon the approval of Ohio EPA, the two individuals may be reassigned as necessary to assure environmental compliance at all Buckeye Egg facilities.

10. Buckeye Egg shall immediately turn off the water to any pullet building at the Croton facility that does not have any chickens occupying the pullet building. The

turning off of the water will occur at a point prior to the building's distribution system to the cages.

11. Buckeye Egg shall within fourteen (14) days of the entry of this COPI develop a plan (hereinafter "Removal Plan"), including a timeline, for the removal of dry manure from the following pullet barns: 1, 2, 3, 4, 5, 9, 11, 15, 17, 18, 19, 20, and 21. The Removal Plan shall prioritize the removal sequence of the manure in accordance with the following criteria/performance standards: the wetness (moisture content) of the manure at the lower end of the building, the total amount of manure, the structural condition of the building, and the operational needs of the facility, including vector control issues. The goal of these performance standards is to identify and remove the manure from the buildings that pose the greatest imminent threat of release first on a priority basis. Buckeye Egg may consider any other performance standard that is relevant to achieving this goal. Buckeye Egg shall include with the Removal Plan a detailed building by building assessment of the moisture content of the manure in these buildings and a description of the reason for, if known, any significant increase in the amount of wet manure. Finally, the Removal Plan shall list all reinforcement measures taken at all of the pullet buildings, including, without limitation, the dates when the walls were reinforced.

12. In preparing the Removal Plan identified in Paragraph 11, above, Buckeye Egg shall address the land application and incorporation of the manure. In developing a plan for the land application and incorporation of the manure, Buckeye Egg shall consider the moisture content of the manure, the amount of fly and/or beetle activity associated with the manure and the conditions at the land application site. Buckeye Egg shall take

whatever steps are necessary to avoid and/or minimize all nuisance conditions created by the land application of the manure, including, without limitation, vector attraction/migration problems and odors. Where practicable without creating excessive nuisance conditions, Buckeye Egg may stockpile the manure in accordance with the beetle control and land application plans presently employed at Buckeye Egg's other Ohio facilities. In no event shall manure be stockpiled in any location for longer than fourteen (14) days without the permission of OEPA.

13. Buckeye Egg shall complete the clean-out of the barns in accordance with the Removal Plan on or before August 31, 1999.

14. Buckeye Egg shall immediately implement an inspection program that includes the daily inspection of every pullet building at the Croton facility. This inspection program shall include the twenty-four (24) hour monitoring of pullet buildings #1, #2, #3, #4, #5, #9, #11, #15, #17, #19, and #21 until such time as the wet manure has been removed from these buildings in accordance with Paragraph 5 of this COPI. 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. Buckeye Egg 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. Buckeye Egg shall document the results of such daily inspections, the results of which shall be reviewed by the compliance officers referred to in Paragraph 9, above. Buckeye Egg shall take whatever steps are necessary to address any conditions that pose an immediate threat of a release of manure or other substances to waters of the State.

15. In addition to the daily inspections of the pullet buildings provided for in Paragraph 14, above, Buckeye Egg shall conduct a weekly inspection of all Croton pullet facilities, including the general conditions of the grounds around each building at each complex. The compliance officers referred to in Paragraph 9, above, shall be responsible for conducting and documenting the results of these inspections. Buckeye Egg shall take whatever steps are necessary to address any conditions that pose an immediate threat of a release of manure or other substances to waters of the State.

16. Buckeye Egg shall immediately inspect the doors to each pullet building at the facility and take whatever steps are necessary to repair and/or replace all doors to assure that they are capable of containing all manure within the building. A report detailing the results of the inspection of the doors at the pullet buildings and a proposed schedule for the repair/replacement of the doors shall be submitted by Buckeye Egg to Ohio EPA within fourteen (14) days of the entry of this COPI. Buckeye Egg shall immediately begin to repair/replace the doors based upon a prioritized schedule.

Buckeye Egg shall complete the repair/replacement of the doors at pullet buildings #1, #2, #3, #4, #5, #9, #11, #15, #17, #19, and #21 within twenty-one (21) days of the entry of this COPI. Buckeye Egg shall complete the remainder of the repair/replacement work at the pullet buildings within forty-five (45) days of the entry of this COPI. Buckeye Egg shall provide to Ohio EPA a report describing the repair work within ten (10) days of completing the work.

17. Buckeye Egg shall collect and land apply or otherwise properly dispose of any and all contaminated water accumulating at any location at any pullet complex at the Croton facility, in particular at Pullet #4.

18. Buckeye Egg shall provide to Ohio EPA within seven (7) days of the entry of this COPI documentation on any layer building that has suffered a major water loss since the last clean-out date for that layer building. Within thirty (30) days of the entry of this COPI, Buckeye Egg shall provide Ohio EPA with complete documentation on the water use at all layer buildings at the Croton facility since the last clean-out date for the layer building, a complete list of any and all layer buildings that have had fires or significant water system failures, and the last date manure was removed from each layer building.

19. Buckeye Egg shall to the maximum extent possible assist Ohio EPA in conducting inspections of all the layer buildings at the Croton facilities.

20. Buckeye Egg 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 to report the release.

IV. DOCUMENT SUBMITTAL

21. 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

V. RESERVATION OF RIGHTS

22. 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 Defendant may have as to such further relief.

23. 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.

24. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendant, 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 Defendant may have as to such claims, demands, rights or causes of action.

25. Nothing herein shall be construed to relieve Defendant of its 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 Buckeye Egg that requires a permit to install or other such permit from the OEPA.

VI. MODIFICATION

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

VII. RETENTION OF JURISDICTION

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

VIII. TERMINATION

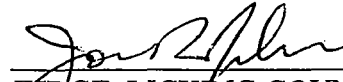
28. This COPI shall terminate upon Order of this Court, upon Joint Motion of the Parties that all activities required or contemplated under this COPI have been completed, or upon entry of final judgment in this action. Nothing herein shall preclude the State of Ohio from seeking further investigatory 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.

IX. SIGNATORIES

28. The undersigned representative of Defendant understands the terms and conditions of this COPI and certifies that he or she is fully authorized to enter into the terms and conditions of this COPI and to execute and legally bind the Defendant to this document.

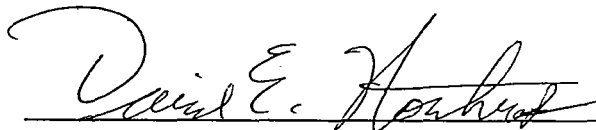
IT IS SO ORDERED:

ENTERED THIS 7th DAY OF June, 1999.



JUDGE, LICKING COUNTY
COURT OF COMMON PLEAS
*Per Rule, w/o objection
from counsel.*

APPROVED:



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