

# IN THE COMMON PLEAS COURT OF LICKING COUNTY, OHIO

STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY, et al.,

PLAINTIFFS,

vs.

CASE NO. 99-CV-756

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

DEFENDANTS.

JUDGMENT ENTRY

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This matter came on for a hearing this 10th day of October, 2001 upon the motion for contempt filed by the plaintiffs on August 6, 2001 and upon the memorandum contra filed by the defendants on October 4, 2001.

The seventh set of written charges in contempt were filed by the plaintiffs alleging three separate violations of this Court's order of July 21, 2000 and March 1, 2001. In support of its first and second counts, the Court established by testimony that egg wash water was discovered in an unnamed tributary to Raccoon Creek on August 5, 2001. The egg wash water which causes the stream waters to be pink or purple in color was traced back to Layer Site 2 where it was found to have migrated through a subsurface field tile from the waste water irrigation field. It apparently discharged into a swale area which ultimately forms the tributary to Raccoon Creek. The egg wash water flowed from that tributary to a location just north of a bridge over Woodhaven Road where it joined the flow of two other tributaries and continued down stream to a point below the bridge. After the discovery, the Ohio EPA requested that the defendants place a pump to remove the flow from the streambed and discharge it by land application onto a site selected by the Ohio EPA. That pump remained in

Judge

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operation until it was determined that no further damage might occur. The pump was shut off in the early morning of August 7, 2001. At that time the stream flow showed no signs of the presence of pink egg wash water. According to the testimony, the last visual sighting of "pink water" in the stream was on August 6, 2001.

In support of its third count, the plaintiffs established that, due to an extremely heavy rain on July 25, 2001, storm water collected in an area south of Parsons Road adjacent to site 1 and flowed over Parsons Road into a drainage channel that leads to Otter Fork to the north. The defendants operated three 3-inch pumps to pump the water into Layer Site 1's stormwater pond but the pumps lacked sufficient capacity to prevent an overflow. Despite the efforts of the defendants, a discharge of storm water occurred on July 25, 2001.

Based upon the testimony provided, this Court finds that egg wash water and other waste entered into an unnamed tributary of Raccoon Creek and other waters of the State of Ohio which increased the amount of ammonia and other substances that are harmful and/or toxic to aquatic life and that produced color, odor, and other conditions in such a degree as to create a nuisance in the unnamed tributary of Raccoon Creek and other waters of the State of Ohio. The placement of the egg wash water and other waste into the unnamed tributary of Raccoon Creek was a violation of this Court's July 21, 2000 consent order and the March 1, 2001 consent order.

Additionally, this Court finds that the management plan for the land application of egg wash water and other waste water from the Croton facility requires the defendants to manage and dispose of any waste water in accordance with the approved management plan and the special conditions imposed by the permit to install. The approved management plan established requirements for land application at a rate that "would not cause ponding, run off,

or any mechanism of direct discharge from the site." From the evidence presented, the Court finds that on or about August 5, 2001 the defendants applied waste water in a manner that violated the terms of the approved waste water management plan and this Court's March 1, 2001 consent order.

Finally, this Court finds that on or about July 25, 2001 storm water from a stormwater containment pond surrounding layer one in Croton, Ohio discharged stormwater to the waters of the State of Ohio and that the defendants failed to capture, control, and store the stormwater run off. This is a violation of the July, 2001 consent order and the March 1, 2001 consent order.


With regard to sanctions, the Court imposes a fine of \$20,000.00 for the violations which occurred on August 5-7, 2001 and as alleged in the first and second counts of the motion. The Court issues a \$5,000.00 fine for the violation which occurred on July 25, 2001 and as alleged in the third count of the motion.

Post-hearing briefs were filed by the parties concerning the issue of whether Anton Polhmann should be incarcerated as a result of the violations of the consent orders. Although many private citizens and apparently the media would welcome such a sanction, this Court must follow the law- not public opinion. Ohio law is clear. An owner of a corporation cannot be held personally liable for the conduct of the corporation unless it is shown that the owner personally directed the corporate conduct in a manner so as to violate this Court's previous orders. No testimony was adduced to prove that Anton Pohlmann personally directed or ordered the corporation to act in a contemptuous manner. To the contrary, the evidence presented convinces this Court that when the matters were brought to his attention, Anton Pohlmann instructed employees to act in a responsible and cooperative manner. This Court

reiterates its position as stated in the August 6, 2001 judgment entry which provided, "It is insufficient that Anton Pohlmann may have had the authority to direct the activities of Buckeye Egg Farm, L.P. or Croton Farm L.L.C. in an unlawful fashion....The question is whether the individuals did, in fact, direct the corporation to commit the alleged activities." Because the sanction of incarceration is severe, the law requires such a finding and the Court cannot so find from the testimony presented.

The total fine of \$25,000.00 shall be paid within sixty (60) days of the date of the filing of this order.

The court costs of this action are assessed to the defendant, Buckeye Egg Farm, L.P.

  
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Gregory L. Frost, Judge

Copies of this Judgment Entry were mailed by Ordinary U.S. Mail to all persons listed below on the date of filing.

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