

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
AUG 14 2002  
ENTERED DIRECTOR'S JOURNAL

In the Matter of

Daylay Egg Farm, Inc.  
11177 Township Road 133  
West Mansfield, Ohio 43358

Director's Final Findings  
and Orders

Respondent

JURISDICTION

Pursuant to Ohio Revised Code ("ORC") Chapter 6111. and § 3745.01, the Director of the Ohio Environmental Protection Agency ("Ohio EPA") hereby makes the following Findings and issues the following Orders.

Parties Bound

These Director's Final Findings and Orders ("Orders") shall apply to and be binding upon Daylay Egg Farm, Inc. ("Respondent") and successors in interest liable under Ohio law. No change in ownership or operation of the egg farms described below shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the Director of Ohio EPA.

FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC Chapter 6111. and § 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law and fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates four egg farms in Union County collectively housing over 3 million chickens.
2. Respondent was issued permits to install ("PTI") Nos. 01-307, 01-304, 01-308 and 01-629 for Daylay Farms 1, 2 and 3 and the Mad River Egg Farm, respectively, for the disposal of chicken manure. The PTIs specify that:

I certify this to be a true and accurate copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency

By Donna Jackson Date 8/14/02

- a. Manure shall not be applied to cropland within 200 feet of occupied buildings, within 500 feet of wells or within 50 feet of surface streams or grass waterways.
  - b. Manure shall be incorporated into the soil at all times immediately after application.
3. Respondent generates egg wash water at Daylay Farm No. 3 and the Mad River Egg Farm. Daylay Farm No. 3 was issued an effective NPDES permit for the discharge of treated egg wash water and sanitary wastewater to Powderlick Run. Egg wash water generated at the Mad River Egg Farm is disposed of through land application following treatment in a three cell facultative lagoon system. Mad River Egg Farm does not hold an effective NPDES permit for the discharge of egg wash water to waters of the state.
4. On October 25, 1995, Ohio EPA conducted a complaint investigation in response to alleged improper land application of manure at the Mad River Egg Farm. During the investigation, it was observed that manure had been land applied to within 30 feet of the property line and a well serving the residence at 25299 Storms Road. In addition, unincorporated manure had been land applied to within 80 feet of a residence located at 22666 Davis Road.
5. On October 30, 1995, Respondent was issued a Notice of Violation ("NOV") for the improper land application of manure in violation of PTI Nos. 01-304, 01-307, 01-308 and 01-629. On November 8, 1995, Respondent informed Ohio EPA that the violation occurred because the PTI conditions for land application were not properly communicated to the subcontractor hired to haul and land apply the manure.
6. On May 14, 1996, Ohio EPA conducted inspections of Respondent's wastewater treatment facilities. During the inspection of the Mad River Egg Farm, an overflow was observed from a lagoon used to treat and store egg wash water and filter backwash water from the facility. The overflow occurred at the north end of the first storage pond. Water from the overflow migrated off of the property and was pooled in a field adjacent to the facility. A follow-up inspection on May 29, 1996, revealed that the overflow situation was essentially unchanged; the pond was full and overflowing, pink liquid was pooled in a ditch adjacent to the pond and in a nearby farm field.

7. On June 6, 1996, Respondent was sent a NOV for failure to comply with the terms and conditions set forth in PTI No. 01-4896, issued to the Mad River Egg Farm on August 1, 1994. The PTI specified that egg wash water and filter backwash waters are to be land applied through the use of spray irrigation equipment, in accordance with the operational guidelines in the PTI. The NOV further raised concerns that there was insufficient detention time in the lagoons as a result of the recent consolidation of the egg washing practices, and the potential for increased flows of filter backwash water following the expansion of the facility. On June 14, 1996, Respondent responded to the NOV, attributing the overflow and lack of storage capacity to the farms limited ability to spray irrigate during the wet spring and winter.
8. On August 13, 1997, Ohio EPA conducted a complaint investigation in response to alleged improper land application of manure at the Mad River Egg Farm. During the investigation, it was observed that manure had been land applied to within 75 feet of a residence located at 25027 Yearsley Road, to within 100 feet of a residence located at 19350 Barnett Road and to within 20 feet of a grass waterway on the north side of Barnett Road.
9. On August 14, 1997, Respondent was sent a NOV that the land application of manure in close proximity to residences, wells and a waterway was in violation of PTI No. 01-308, issued to Respondent on April 22, 1980. On August 21, 1997, Respondent sent a response which attributed the violation to negligence on the part of an individual farmer receiving the manure and stated that the land application practice would be modified to prevent future violations. Respondent has initiated the practice of sending an employee to the field prior to application, to examine the proposed fields and flag all set back areas in order to facilitate the observance of isolation distances by private farmers and contract haulers.
10. On May 4, 1998, Ohio EPA received a verified complaint from Dr. John Yarrington alleging violations of Special Condition No. 6, in PTI No. 01-629, issued to the Mad River Egg Farm on September 21, 1983. Specifically, the complaint alleged that Respondent stopped submitting surface water and ground water monitoring data in November 1991, and that the monitoring program was discontinued in May 1994, in violation of the PTI.

11. PTI No. 01-629 requires Respondent to implement a surface water and ground water monitoring program. Surface water monitoring is required at five surface water locations four times per year, two times in May and two times in November. The groundwater portion of the PTI requires Respondent to sample six ground water well locations once a year during the month of May. The PTI requires the surface and ground water monitoring data to be reported to Ohio EPA no later than the 15th day of the following month.
12. Investigation of the complaint revealed that Respondent conducted surface water and ground water monitoring from May 1986 to May 1994. Monitoring stopped in May, 1994. Sampling data from May 1989 - May 1994, which was previously not submitted to Ohio EPA, was submitted on January 6, 1998.
13. On January 27, 1998, a NOV was sent to Respondent for failure to comply with the terms and conditions of PTI No. 01-629. The NOV requested a detailed schedule for reestablishment of the surface water and ground water monitoring program.
14. In a letter dated January 30, 1998, Respondent explained that the surface water and ground water monitoring program was terminated in May 1994. due to the annual expense of several thousand dollars, and the assumption that Ohio EPA was not interested in receiving the data.
15. On August 5, 1998, Ohio EPA received a complaint that a pinkish pollution was observed in Powderlick Run, downstream of the Mad River Egg Farm. A site investigation confirmed the presence of pink water in Powderlick Run, however, visual inspection of the egg wash water lagoons did not reveal any obvious overflows or discharges that could be attributed to the condition observed in Powderlick Run. A follow-up inspection conducted on August 6, 1998, confirmed that Powderlick Run was pink in color at the two locations inspected; at the bridge under Powderlick Road and at a 15-inch drainage tile located approximately 2000 feet southeast of the Mad River Egg Farm. During the inspection of the egg wash water lagoons, an overflow of pink water was observed along the west bank of the first primary lagoon. The pink water flowed south through a grass waterway for approximately 200 feet before entering a drainage tile. Water quality samples collected at the bridge under Powderlick Road and at the 15-inch drainage tile evidenced the following violations:

Parameter	Bridge at PowderLick Road	15-inch Drainage tile
BOD <sub>5</sub> (mg/l)	68	164
Total Dissolved Solids (mg/l)	1540	1920
Total Suspended Solids (mg/l)	101	266
Fecal Coliform(#/100ml)	>60,000	>60,000
Fecal Streptococcus (#/100ml)	>100,000	>100,000
Chloride (mg/l)	511	658
Ammonia (mg/l)	13	23.2
Nitrate + Nitrite Nitrogen (mg/l)	1.55	0.38
Nitrite (mg/l)	0.55	0.31
Sulfate (mg/l)	172	224
TKN (mg/l)	22.3	54.2
Total Phosphorus (mg/l)	7.1	13.6
pH (S.U.)	7.13	7.21
Conductivity (umho/cm)	2,341	3,112
Temperature(°C)	17.74	20.14
Dissolved Oxygen (mg/l)	2.95	0.80

16. At a meeting with Respondent following the investigation, Ohio EPA recommended that the primary lagoon be diked to stop the discharge and that hauling or land application of the wastewater be initiated immediately in order to create freeboard in the lagoons. Respondent notified Ohio EPA that the unauthorized discharge was stopped at approximately 3:00 PM on August 6, 1998. A follow-up site visit by Ohio EPA on August 7, 1998, confirmed that the unauthorized discharge had been terminated and that land application of the wastewater initiated.
  
17. On August 13, 1998, Respondent was sent a NOV for the unauthorized discharge of egg wash water and filter backwash water to Powderlick Run. In addition, sampling results revealed violations of water quality standards for the following parameters: total dissolved solids, BOD<sub>5</sub>, fecal coliform bacteria, ammonia and dissolved oxygen.

18. On July 12-13, 2000, Respondent spread non-composted manure on an 86-acre wheat field off Perkins Road, adjacent to Mill Creek. The non-composted manure had a moisture content of 50% and was spread at a rate of 6 dry tons/acre. The manure was incorporated within 24 hours after application with the proper setbacks and isolation distances in accordance with the approved Livestock Waste Management Plan. On the evening of July 13, 2000, following a rain event, manure laden water was discharged to Mill Creek through a drainage swale on the west side of the property, and through several field tile outlets on the south side of the property adjacent to Mill Creek. Respondent was notified of the release and took corrective measures to contain additional discharges from the drainage swale and field tile outlets. As a result of the manure release, a fish kill occurred in Mill Creek, which extended for a distance of 15 miles downstream from the land application site. Respondent paid an Ohio Department of Natural Resources assessed penalty of \$5,300.
19. Respondent has informed Ohio EPA that it will agree to sign these Orders in settlement of the claims that arise from the findings set forth above.
20. These Orders do not modify the NPDES permit or PTIs issued to Respondent.
21. The Director has given consideration to and based his determination on evidence relating to the technical feasibility and the economic reasonableness of complying with these Orders, to evidence relating to conditions calculated to result from compliance with these Orders and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

### ORDERS

1. No later than thirty (30) days from the effective date of these Orders, Respondent shall:
  - a. Develop and implement operational guidelines for maintaining a minimum of three (3) feet of freeboard in the egg wash water lagoons at all times.

- b. Develop and implement a contingency plan for the disposal of egg wash water and filter backwash water during those periods when weather conditions preclude land application, and when three feet of minimum freeboard in the egg wash water lagoons can not be maintained.
    - c. Develop and implement a plan for monitoring application rates and field tile discharges from the application fields, to ensure that untreated egg wash water is not being conveyed through the field tile system.
2. No later than thirty (30) days from the effective date of these Orders, Respondent shall develop and implement a comprehensive wastewater management plan as required in PTI No.08-058-CD. A copy of the plan shall be sent to Ohio EPA, Division of Surface Water, Central Office, at the address set forth in these Orders. The comprehensive wastewater management plan shall, at a minimum, include:
  - a. A map showing all field tile outlets and/or potential surface runoff concentration areas where land applied egg wash water could be released to waters of the state;
  - b. An evaluation of the actual flows to be treated and land applied;
  - c. A demonstration of the calculations and variables used in determining application rates with the center pivot irrigation system;
  - d. The maintenance of detailed land application reports which shall include, at a minimum, the date, time, location, weather conditions, soil moisture/runoff conditions and amount of egg wash water applied to a particular field; and
  - e. A plan for the installation and maintenance of permanent devices for measuring static water level in the lagoons, including a schedule for completion and installation.

3. Respondent shall convert the remaining deep pit houses at the Mad River Egg Farm to belt battery systems or best available technology when the functional life of the deep pit/high rise equipment expires. Until such time as the deep pit houses are eliminated or replaced, Respondent shall evaluate and implement modifications to the current insect management plan. These modifications shall include, but not be limited to, the use of biological fly controls and improved house maintenance (leak detection, spraying, mortality management and broken egg management).
4. Respondent shall immediately resume and maintain surface water and ground water monitoring in accordance with Special Condition No. 23, set forth in PTI No. 08-022-CD, issued on September 21, 1999. Respondent shall submit the results of the surface water and ground water sampling to Ohio EPA, Division of Surface Water, Central Office, at the address set forth in these Orders, no later than the 30th day of the month following the month of collection.
5. No later than one hundred eighty (180) days from the effective date of these Orders, Respondent shall submit an individual NPDES permit application for Daylay Farm 3, located at 27400 Coder-Holloway Road.
6. Respondent shall pay to Ohio EPA the amount of sixty thousand dollars (\$60,000) in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance pursuant to ORC Chapter 6111., pursuant to the following schedule:
  - a. Respondent shall pay to Ohio EPA the amount of twenty thousand dollars (\$20,000) pursuant to the schedule set forth below. Four (4) payments of \$5,000 each shall be paid to and received by Ohio EPA on or before the following dates: September 30, 2002; December 31, 2002; March 31, 2003; and June 30, 2003. Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio," to:

Ohio Environmental Protection Agency  
Office of Fiscal Administration  
Lazarus Government Center  
P. O. Box 1049  
Columbus, Ohio 43216-1049

A copy of this check shall be submitted to the Ohio EPA, Division of Surface Water, Central Office, at the address set forth in these Orders.

- b. In lieu of payment of forty thousand dollars (\$40,000), Respondent shall implement the following two pollution prevention supplemental environmental projects ("SEP") according to the following schedule:
- i. Within three (3) years from the effective date of these Orders, Respondent shall construct at the Mad River Egg Farm, a storm water pond and wetland treatment system, which purpose is to retain and treat storm water runoff from the facility. Upon timely and satisfactorily completion of the project, a SEP credit for the amount expended for the wetland portion, up to and not to exceed twenty-five thousand dollars (\$25,000), shall be applied toward the \$40,000 settlement amount set forth in Order No. 6.b.
  - ii. Within one (1) years from the effective date of these Orders, Respondent shall partner on a Clean Water Act Section 319 grant project, applied for by the Union County Soil and Water Conservation District Office, for a stream reconstruction project on the unnamed tributary to Powderlick Run, that drains the Mad River Egg Farm. The purpose of said project shall be to provide improved aquatic habitat by constructing a two stage channel to improve and enhance water quality and stream habitat in this area. Upon the issuance of the grant by Ohio EPA, a SEP credit for the amount of matching funds provided by Respondent toward the project, up to and not to exceed, fifteen thousand dollars (\$15,000), shall be applied toward the \$40,000 settlement amount set forth in Order No. 6.b.

- c. Should such storm water pond and wetland treatment system not be completed in the time period stated above, to the satisfaction of the Director, Respondent shall pay to Ohio EPA, within thirty (30) days after the end of the three (3) year time period allowed for the SEP by these Orders, twenty-five thousand dollars (\$25,000). Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio."
- d. Should the Clean Water Act Section 319 Grant application not be approved by the Director, Respondent shall pay to Ohio EPA, within thirty (30) days of the one (1) year time period allowed for said SEP by these Orders, fifteen thousand dollars (\$15,000). Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio."
- e. Payment under Order 6.c and/or 6.d shall be to:

Ohio Environmental Protection Agency  
Office of Fiscal Administration  
Lazarus Government Center  
P. O. Box 1049  
Columbus, Ohio 43216-1049

A copy of this check(s) shall be submitted to the Ohio EPA, Central District Office, at the address set forth in these Orders.

- 7. Until the Respondent has fully complied with the requirements of these Orders, Respondent shall report its progress on a quarterly basis, in writing, to the Ohio EPA, Division of Surface Water, Central Office, commencing on the fourth quarter of 2002. Each quarterly report shall include an itemized summary of the money expended in the quarter to accomplish any portion of the two SEPs described above. When the Respondent completes this project, Respondent shall notify Ohio EPA and provide a final itemized summary of the money expended.

8. Unless otherwise provided, all material, documents, and information required to be submitted to the Ohio EPA pursuant to these Orders shall be sent to the following address:

Ohio EPA  
Division of Surface Water  
Attn: PTI and Ag. Unit Supervisor  
Lazarus Government Center  
122 S. Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### Other Applicable Laws

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and the operation of Respondent's egg farms.

#### Reservation of Rights

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Waiver Section of these Orders.

#### Termination

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

This certification shall be submitted by Respondent to the Ohio EPA, Central District Office, and shall be signed by a responsible official of Respondent. A responsible official is as defined in OAC rule 3745-33-03(D)(1) for a corporation, OAC rule 3745-33-03(D)(2) for a partnership, OAC 3745-33-03(D)(3) rule for a sole proprietorship, and OAC 3745-33-03(D)(4) rule for a municipal, state, or other public facility. The certification shall contain the following certification:

I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

#### Waiver

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

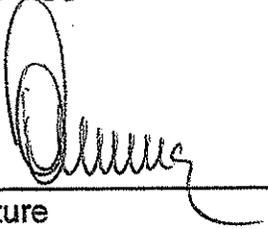
Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**SIGNATORY AUTHORITY**

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

**IT IS SO AGREED:**

**Daylay Egg Farm, Inc.**



Signature

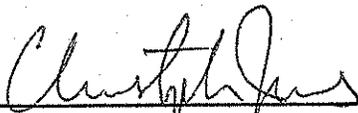
Date: Aug. 9. 2002

President

Title

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**



Christopher Jones  
Director

Date: 8-13-02