BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of	:	
	:	
Daylay Egg Farm, Inc.	:	**Director's Final Findings and Orders**
11177 Township Road 133	:	
West Mansfield, Ohio 43358	:	
	:	
Respondent	:	

OHIO E.P.A.
OCT 10 2003
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Daylay Egg Farm, Inc. ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent, or change in ownership or operation of the four egg farms identified below, shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

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:

This document is filed in the records of the Ohio Environmental Protection Agency.
By [signature] Date 10-10-03

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_5 (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_5, 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. On August 14, 2002, Ohio EPA and Respondent entered into negotiated Director's Final Findings and Orders in settlement of the claims that arose from the findings set forth above.

20. The August 14, 2002 Director's Final Findings and Orders required the payment of sixty thousand dollars ($60,000.00) in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance pursuant to ORC 6111., according to a schedule set forth in said Orders. Respondent has paid twenty thousand dollars ($20,000.00), with the remainder to be paid through the funding of two (2) supplemental environmental projects ("SEP").

21. In lieu of payment of forty thousand dollars ($40,000.00), the August 14, 2002 Director's Final Findings and Orders required Respondent to implement the following two pollution prevention SEPs according to the following schedule:

    a. Within three (3) years from the effective date of those Orders, Respondent was to construct at the Mad River Egg Farm, a storm water pond and wetland treatment system, which purpose was 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 ($25,000.00), was to be applied toward the forty thousand dollar ($40,000.00) settlement amount.

b. Within one (1) years from the effective date of those Orders, Respondent was to 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 was to provide improved aquatic habitat by constructing a two stage channel to improve and enhance water quality and stream habitat in that 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 ($15,000.00), shall be applied toward the forty thousand dollar ($40,000.00) settlement amount.

22. Since the issuance of the August 14, 2002 Director's Final Findings and Orders, Respondent has informed Ohio EPA of the status of Respondent's compliance with said Orders, including Order No. 6.b.ii., a SEP regarding the partnering of a Clean Water Act Section 319 grant project ("319 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 drain the Mad River Egg Farm.

23. Respondent informed Ohio EPA that the 319 project deadline was missed.

24. Although the 319 project deadline was missed, Respondent would still like to do a stream restoration project SEP, and has put forth a plan for expenditures in the amount of fifteen thousand dollars ($15,000.00) for a SEP, which, once implemented, will result in attainment of environmental and water quality objectives similar in extent to the those objectives considered in the 319 project. This represents the identical financial commitment that was agreed to under the SEP requirement in the August 14, 2002 Director's Final Findings and Orders.

25. In an effect to provide Respondent with an opportunity to perform a Clean Water Act SEP, the Director wishes to terminate the August 14, 2002 Director's Final Findings and Orders and issue these Orders.

26. These Orders do not modify the NPDES permit or PTIs issued to Respondent.

27. 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.

V. ORDERS

1. The August 14, 2002 Director's Final Findings and Orders are hereby terminated.

2. Respondent shall implement the following guidelines and plans developed pursuant to the August 14, 2002 Director's Final Findings and Orders:

   a. Operational guidelines for maintaining a minimum of three (3) feet of freeboard in the egg wash water lagoons at all times,

   b. 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, and

   c. 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.

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 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. Respondent shall pay to Ohio EPA the amount of forty thousand dollars ($40,000.00) 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. In lieu of payment of forty thousand dollars ($40,000.00), Respondent shall implement the following two pollution prevention SEPs 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 ($25,000.00), shall be applied toward the $40,000.00 settlement amount set forth in Order No. 5.

ii. Respondent shall initiate a stream restoration project on seven hundred (700) linear feet of Powderlick Run, downstream from State Route 739 and immediately upstream from a previous restoration project. Field work on the stream restoration project shall begin no later than thirty (30) days after the effective date of these Orders. Upon receipt of written confirmation that Respondent expended at least fifteen thousand dollars ($15,000.00) toward the stream restoration project, a SEP credit of not to exceed fifteen thousand dollars ($15,000.00) shall be applied to the $40,000.00 settlement amount set forth in Order No. 5.

b. 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 ($25,000.00), or such amount less the moneys expended and approved. Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio."

c. Should Respondent fail to initiate construction of the stream restoration project set forth in Order No. 5.a.ii. within thirty (30) days after the effective date of these Orders, and/or should Respondent fail to provide written confirmation to Ohio EPA of Respondent's expenditures in the amount of at least fifteen thousand dollars ($15,000.00) towards the stream restoration project set forth in Order No. 5.a.ii. within thirty (30) days from the date of the completion of construction, fifteen thousand dollars ($15,000.00) or such amount less the moneys expended and approved, shall be paid to Ohio EPA.. Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio."

d. Payment under Order 5.b and/or 5.c shall be submitted 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, at the address set forth in Order No. 7, below.

6. 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.

7. 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

VI. 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.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principle business function of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the operation of the Facility.

VIII. 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. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. RESERVATION OF RIGHTS

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

XI. 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.

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO AGREED:
Daylay Egg Farm, Inc.

Signature

Sept. 26. 2003
Date

KURT LAUSECKER
Print or Type Name

President
Title

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Christopher Jones
Director

10-10-03
Date