

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Van Ham Dairy, LLC
7089 Rd. 22
Continental, Ohio 45831**

Respondent

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**Director's Final Findings
and Orders**

OHIO E.P.A.
NOV 15 2004
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 Van Ham Dairy, LLC (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 the Facility (as hereinafter defined) 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 a dairy farm which currently confines approximately 699 mature lactating dairy cattle and is in the initial phase of an Ohio Department of Agriculture (ODA) approved expansion to 2,250 mature lactating dairy cattle, located at 7089 Rd. 22, Continental, Perry Township, Putnam County, Ohio, (Facility). The cattle are housed in a free stall barn, with manure stored in a 4.5 million gallon earthen pond (manure storage pond). A silage leachate collection pond was formerly located at the Facility. The capacity of the manure storage at the Facility will be increased to 7.5 million gallons, and Respondent indicates that an expanded storm water collection pond for the production area has been installed.

2. On May 13, 2002, Ohio EPA received a complaint alleging that Respondent's land application of manure was causing a manure discharge into surface drains connected to an unnamed tributary of the Blanchard River.
3. On May 14, 2002, Ohio EPA conducted an investigation at the Facility; no discharge to the unnamed tributary of the Blanchard River was observed at the time of this investigation.
4. On May 23, 2002, Ohio EPA conducted an investigation at the Facility regarding the May 13, 2002 complaint. During the inspection, Ohio EPA discovered that the Facility's silage leachate collection pond had an unauthorized discharge outlet pipe to a ditch which is connected to an unnamed tributary of the Blanchard River. Ohio EPA observed silage leachate entering the discharge outlet pipe, but did not observe any discharge from the outlet pipe to waters of the state at the time of the investigation.
5. On May 24, 2002, Ohio EPA received a written complaint alleging that an April 26, 2002 manure application by Respondent resulted in a discharge of manure to surface ditches or drains connected to an unnamed tributary of the Blanchard River.
6. On June 5, 2002, Ohio EPA issued a Notice of Violation (NOV) to Respondent regarding the May 23, 2002 inspection discovery of the discharge outlet pipe from the silage leachate collection pond to an unnamed tributary of the Blanchard River. The NOV included numerous recommendations for corrective actions at the Facility.
7. On June 27, 2002, Ohio EPA received correspondence from Respondent indicating that the silage leachate collection pond discharge outlet pipe had been "blocked." Respondent also stated that the Facility was working with the Putnam County Soil and Water Conservation District (PCSWCD) and the Natural Resources Conservation Service on best management farming practices, including a silage leachate collection system and the development of a Comprehensive Nutrient Management Plan (CNMP). Respondent later eliminated the Facility's silage leachate collection pond.
8. On September 26, 2002, Ohio EPA provided Respondent with correspondence requesting an update regarding the actions outlined in Respondent's June 27, 2002 letter.
9. On October 29, 2002, Ohio EPA received electronic mail from Respondent indicating that a silage leachate collection system had been installed and was operating at the Facility.
10. On December 12, 2002, Ohio EPA sent correspondence to Respondent requesting a copy of the Facility's CNMP within 30 days.
11. On December 23, 2002, Ohio EPA received a letter from Menke Consulting, Inc. (Menke) indicating that Respondent was in the process of submitting an application for a permit to

- install (PTI) and permit to operate (PTO) to the ODA Livestock Environmental Permitting Program for a proposed expansion project, and the development of a CNMP would be completed based upon ODA's regulations.
12. On February 13, 2003, Ohio EPA provided Menke with correspondence requesting that Ohio EPA be notified once the CNMP was developed, and indicating that Respondent should apply for a National Pollutant Discharge Elimination System (NPDES) permit from Ohio EPA when Respondent submitted applications to ODA.
 13. In February 2003, Respondent submitted to ODA an application for a PTI which would authorize Respondent to increase its manure storage capacity and implement increased storm water management facilities.
 14. Respondent has indicated that in March 2003, a CNMP was completed and implemented with the help of PCSWCD; however, Ohio EPA has not been provided with a copy of the CNMP and has no evidence that it has been implemented by Respondent.
 15. On March 5, 2003, Ohio EPA received a complaint regarding Respondent's land application of manure to frozen ground that resulted in a discharge to a storm sewer connected to an unnamed tributary to the Blanchard River.
 16. On March 6, 2003, Ohio EPA conducted an investigation at the Facility regarding the March 5, 2003 complaint and performed water quality sampling in the unnamed tributary to the Blanchard River.
 17. On March 14, 2003, Ohio EPA issued a NOV to Respondent regarding the unauthorized discharge of manure to an unnamed tributary to the Blanchard River discovered during the March 6, 2003 inspection. The NOV included numerous recommendations for corrective actions at the Facility and a request for the submission of a NPDES permit to Ohio EPA within 30 days.
 18. Respondent has indicated that manure was land applied to farm fields on or about March 5, 2003, because the manure storage pond had allegedly reached capacity. Respondent further represents that prior to applying the manure, Respondent consulted with PCSWCD on how to apply the manure on frozen ground. After the land application, thawing and a rain event occurred, causing storm water containing manure to enter a road side ditch adjacent to the farm field.
 19. On April 3, 2003, Ohio EPA received correspondence from Respondent containing an invoice from the trucking company that had pumped out manure as well as storm water from the ditch on March 6, 2003.
 20. On April 4, 2003, Ohio EPA received the laboratory results from the March 6, 2003

sampling of the unnamed tributary to the Blanchard River which exceeded only Ohio water quality standards for ammonia. The results were as follows:

- a. Unnamed Tributary East of Downstream Tile: BOD5 970 mg/L, pH 7.81 S.U., Total Suspended Solids 222 mg/L, nitrite 0.430 mg/l, ammonia 63.7 mg/L, nitrate+nitrite 1.42 mg/L, TKN 95.8 mg/L, total phosphorus 3.27 mg/L, and fecal coliform 19,000/100 mL;
 - b. Unnamed Tributary at Twp Road H: BOD5 1100 mg/L, pH 7.95 S.U., Total Suspended Solids 198 mg/L, nitrite 0.422 mg/l, ammonia 75.2 mg/L, nitrate+nitrite 0.78 mg/L, TKN 77.0 mg/L, total phosphorus 4.13 mg/L, and fecal coliform 23,000/100 mL; and
 - c. Unnamed Tributary at Road I-18: BOD5 1200 mg/L, pH 7.94 S.U., Total Suspended Solids 108 mg/L, nitrite 0.310 mg/l, ammonia 59.3 mg/L, nitrate+nitrite 1.55 mg/L, TKN 95.8 mg/L, total phosphorus 4.15 mg/L, and fecal coliform 4,700/100 mL.
21. On April 24, 2003, Ohio EPA received correspondence from Respondent containing an invoice from the company that had handled the land application of the manure from the Facility on March 3, 2003; this invoice provided information regarding land acreage and amount of manure that had been applied. The invoice indicates that the land application rate of liquid manure was 5,000 gallons per acre, which is consistent with NRCS standards.
 22. On April 28, 2003, Ohio EPA received an NPDES permit application from Respondent for the Facility.
 23. On May 15, 2003, Ohio EPA issued a NOV to Respondent regarding the exceedance of Ohio's water quality standards for ammonia evidenced in the laboratory results from the March 6, 2003 water quality sampling of the unnamed tributary to the Blanchard River, and the unauthorized discharge to waters of the state. This NOV relates to the same discharge in Finding No. 17 above. Respondent was also informed that Ohio EPA was in receipt of an administratively complete NPDES permit application for the Facility.
 24. On May 20, 2003, Ohio EPA received a complaint regarding a contaminated, dark colored discharge to waters of the state from a field tile at Respondent's Facility which is connected to an unnamed tributary to the Blanchard River. Ohio EPA conducted an investigation at the Facility on this same date, but no such unauthorized discharge was observed.
 25. On June 10, 2003, Ohio EPA provided Respondent with an investigation report regarding the May 20, 2003 complaint and investigation; this report indicated that no unauthorized discharge to waters of the state had been observed at the Facility.
 26. On July 1, 2003, Ohio EPA again received a complaint regarding a contaminated, dark colored discharge to waters of the state from a field tile at Respondent's Facility connected to

- an unnamed tributary to the Blanchard River. Ohio EPA conducted an investigation at the Facility on this same date, and discovered a dark colored liquid discharging from a field tile connected to an unnamed tributary to the Blanchard River that had been associated with the May 20, 2003 complaint. The discharge from the tile was at a low flow.
27. On July 2, 2003, Ohio EPA conducted further investigation at the Facility regarding the July 1, 2003 complaint, and performed water quality sampling in the unnamed tributary to Blanchard River. Ohio EPA witnessed a continuing discharge from the field tile, though the color of this discharge was not as dark as previously observed. Black sediment, however, was visible in the unnamed tributary to the Blanchard River immediately downstream of the field tile outlet and hyper-eutrophic conditions (i.e. flourishing algal blooms) were documented downstream of the Facility.
 28. Respondent alleges that the July 2003 release occurred after a contractor failed to replace a tile plug.
 29. On July 21, 2003, Ohio EPA received the laboratory results from the July 2, 2003 sampling of the unnamed tributary to Blanchard River which depicted an increase in pollutant levels from upstream to downstream. The results were as follows:
 - a. Upstream of Field Tile: BOD5 <2.0 mg/L, Total Suspended Solids 15 mg/L, nitrite 0.020 mg/l, ammonia <0.050 mg/L, nitrate+nitrite <0.10 mg/L, TKN 0.66 mg/L, total phosphorus 0.148 mg/L;
 - b. Downstream of Field Tile: BOD5 5.6 mg/L, Total Suspended Solids 39 mg/L, nitrite 0.021 mg/l, ammonia 0.455 mg/L, nitrate+nitrite <0.10 mg/L, TKN 1.46 mg/L, and total phosphorus 0.260 mg/L.
 30. On August 5, 2003, Ohio EPA issued a NOV to Respondent regarding the laboratory results from the July 2, 2003 water quality sampling, the violation of Ohio's water quality criteria applicable to all waters, and the unauthorized discharge from the field tile to waters of the state. The NOV included a request for numerous corrective actions at the Facility, including a CNMP.
 31. On November 26, 2003, ODA issued Respondent a PTI and PTO for the Facility's expansion to 2,250 mature lactating dairy cattle. The ODA PTI and PTO authorize Respondent to increase the capacity of the manure storage lagoon and implement additional storm water management controls necessary for the Facility's expansion.
 32. As a result of Respondent's March 2003 and July 2003 unauthorized discharge episodes, manure or other wastewater entering the unnamed tributary of the Blanchard River produced a color and odor, so as to create a nuisance.

33. Pursuant to expansion of Respondent's Facility and the PTI issued by ODA, Respondent has indicated that the manure storage capacity at the Facility has been increased by 3 million gallons and that the storm water collection pond has been installed for the production area.
34. Respondent did take prompt action each time it was notified of alleged violations and Ohio EPA is not currently aware of any surface water violations by Respondent at the Facility since the July 2003 episode.
35. The unnamed tributary to Blanchard River is defined as "waters of the state" by ORC § 6111.01.
36. ORC § 6111.04 prohibits any person who does not hold a valid, unexpired NPDES permit from causing pollution or placing any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution to the waters of the state.
37. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.
38. Respondent did not hold a valid, unexpired NPDES permit for the aforementioned discharges to waters of the state, in violation of ORC §§ 6111.04 and 6111.07. Respondent submitted an NPDES permit application to Ohio EPA on April 28, 2003.
39. Respondent's above described unauthorized discharges to the unnamed tributary to the Blanchard River caused exceedances of the criteria applicable to all waters as defined by Ohio Administrative Code (OAC) Rule 3745-1-04. OAC Rule 3745-1-04(A) states that waters shall be free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life. OAC Rule 3745-1-04(C) states that waters shall be free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance. OAC Rule 3745-1-04(D) states that waters shall be free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
40. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
41. Each day of violation cited above represents a separate violation of ORC §§ 6111.04 and 6111.07.
42. The Director has given consideration to, and based his determination on, evidence relating to

the technical feasibility and economic reasonableness of complying with these Orders and 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 purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall pay to Ohio EPA \$5,000.00 in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. This payment shall be made by tendering an official check payable to the "Treasurer, State of Ohio" for \$5,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

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.

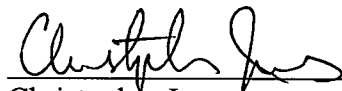
XII. EFFECTIVE DATE

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.

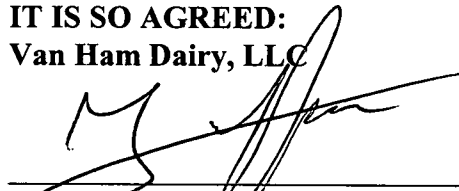
**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Christopher Jones
Director

11-8-04
Date

**IT IS SO AGREED:
Van Ham Dairy, LLC**



Jan Van Ham, Member

10/18/04
Date