

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

DEC 27 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Midwest Poultry Services, L.P.  
9951 St. Rt. 25, W  
Mentone, IN 46539  
dba Sunny Side Farms

Respondent

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Director's Final Findings  
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Midwest Poultry Services, L.P., ("Respondent"), doing business in Ohio as Sunny Side Farms, 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 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 6111.03 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 or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent, incorporated in the State of Indiana as a limited partnership, and doing business in Ohio as Sunny Side Farms, owns and operates an egg production farm ("Facility"), with capacity for approximately 480,000 laying hens, located at 374 New Weston - Ft. Loramie Road in Ft. Recovery, Mississinawa Township, Darke County, Ohio. The layers are housed in four shallow pit barns,

with the manure from the barns scraped and transported to the manure storage building pending land application. Egg wash water generated at the Facility is stored in two earthen storage lagoons until land applied.

2. Permit to Install No. 05-6602 ("PTI"), issued to Respondent on April 7, 1994, required that all manure and wastewaters must be managed and disposed in accordance with the Livestock Waste Management Plan ("Plan") submitted as a part of the PTI application.
3. The Plan required that:

In case an emergency situation where some waste material has entered the intermittent stream [drainage way] located to the north end of the ... site should occur, Sunnyside Farms will construct a small dam of reinforced concrete and wooden boards at the edge of the property so that the waste material is contained onsite.

In the event an emergency should arise, Sunnyside employees would insert wooden dam boards into the slots set in the concrete base of the dam. This activity will trap the waste material and hold it in place. The ditch [drainage way] would then be pumped/dredged clean and the boards removed to allow free movement of the drainage water through the property....

4. The Plan also provided for the following freeboard in the two egg wash water storage lagoons:

Freeboard height:	2.0ft
Extra height for precipitation:	0.40ft (25 year only)

5. On March 20, 2001, Ohio EPA investigated a complaint against Respondent regarding a contaminated discharge to Henry Ditch. The source of the contaminated discharge originated from the Facility and was determined to be a concentrated flow of: (1) manure laden runoff from outdoor manure stockpiles and the manure loading area storm drain, and (2) egg wash water storage lagoons overflow.
6. On March 20, 2001, a water sample taken in the drainage way revealed an ammonia concentration of 17.0 mg/L, which exceeded the water quality standard. The drainage way flows north and discharges effluent into Henry Ditch, so as to provide for the free movement of the drainage water through the property. Because of said discharge and the intended purpose of free

movement of drainage water through the property, the drainage way is not a containment structure and is not authorized to receive manure and/or process wastewater.

7. As regards the March 2001 discharge event, there is no evidence that the required freeboard height was maintained or that wooden dam boards were inserted into the slots set in the concrete base of the dam, so as to trap the waste material and hold it in place.
8. On September 3, 2003, Ohio EPA received a complaint regarding the overflow of egg wash water from the egg wash water storage lagoons. The complaint alleged that the overflow was the result of an intentional discharge of egg wash water from the storage lagoons, an allegation which was not substantiated.

During an inspection on September 4, 2003, Respondent stated that the lagoons started to overflow on September 1, 2003, with sand brought on September 2, 2003 to build up the berm. The Ohio EPA inspectors observed that while there are two egg wash water storage lagoons, comprising a first and second stage, the lagoons were at such a capacity that the berm between the two lagoons was undistinguishable.

9. Respondent had been hauling egg wash water and land applying it on two fields at the Facility. Tire ruts observed on the day of the inspection evidenced that the fields were saturated. The application of egg wash water on saturated ground is not a proper management practice.
10. Water standing in the drainage way that receives runoff from the Facility, including from the manure storage building, was discolored. Contaminated runoff from inside the manure storage building was discharging to the drainage way. Wooden dam boards were not inserted into the slots set in the concrete base of the dam, so as to trap the waste material and hold it in place.
11. Water quality samples, set forth below, were collected in the drainage way and Henry Ditch on the day of the inspection.

<i>Location</i>	<i>Ammonia</i>
	<i>(mg/L)</i>
Henry Ditch ~ upstream of drainage way	0.204
Drainage way near egg wash water storage lagoons	10.700

Drainage way ~ downstream of stop gate	1.840
Henry Ditch ~ downstream Sunny Side at State Line Road	0.322

12. According to OAC Rules 3745-1-07(A)(4)(a) and (b), water quality criteria for warmwater habitats apply to Henry Ditch and the drainage way.
13. OAC Rule 3745-1-04(C) provides that all surface waters of the State 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. The discoloration of the flow in the drainage way is a violation of this rule.
14. A rainfall greater than a 25-year, 24-hour event does not per se authorize a permissible overflow. If a facility does not have a properly designed storage structure, or if such storage structure or facility were not properly operated and maintain during such event, the overflow is not permissible. In the September, 2003 event, the designed freeboard was not documented to have been maintained, with records documenting the liquid levels in the lagoons not kept.
15. During the September, 2003 event, the wooden dam boards were not inserted in the slots in the concrete base of the dam to trap the waste material and hold same in place.
16. The drainage way that flows into Henry Ditch, which flows into Simison Creek, and thereupon into the Wabash River, are defined as "waters of the state" by ORC § 6111.01.
17. ORC § 6111.04 prohibits any person who does not hold a valid, unexpired National Pollutant Discharge Elimination System ("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.
18. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director pursuant to those sections. Each day of violation is a separate offense.

19. Respondent does not hold a valid, unexpired NPDES permit for the aforementioned discharges to waters of the state, which is a violation of ORC §§ 6111.04 and 6111.07.
20. On January 2, 2003, Respondent applied for a NPDES permit, which application is pending.
21. Respondent has not complied with the conditions of the PTI, which is a violation of ORC § 6111.07.
22. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
23. 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. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a timeline detailing necessary modifications and/or upgrades to the Facility in order to meet the no discharge requirement of the NPDES permit along with the expected dates of completion. This timeline will be incorporated into the NPDES permit Schedule of Compliance. The timeline starts with the Ohio Department of Agriculture's approval.
2. Respondent shall maintain daily records of the flow volume of all wastewaters into the egg wash water lagoons.
3. Respondent shall start recording the information set forth in this Order on the effective date of these Orders, and within four (4) months of the effective date of these Orders and quarterly thereafter, Respondent shall submit the following records to Ohio EPA: copies of the daily records of flow into the egg wash water lagoons, copies of weekly recording of egg wash water lagoon freeboard, and copies of egg wash water removal/application records. This requirement will be included in the pending NPDES permit. Upon sufficient demonstration of proper operation and maintenance of the egg wash water lagoons, this requirement may be modified in the NPDES permit.

4. Respondent shall pay to Ohio EPA five thousand seven hundred fifteen dollars (\$5,715.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. This payment shall be made by tendering an official check payable to the "**Treasurer, State of Ohio**" for the full amount, within thirty (30) days of the effective date of these Orders, together with a letter identifying Respondent and the Facility to the following address:

Ohio Environmental Protection Agency  
Office of Fiscal Administration  
Post Office Box 1049  
Columbus, OH 43216-1049

5. Respondent shall submit a photocopy of the above check and letter, and all documents required under these orders, unless Respondent is otherwise directed, to the following address:

Ohio Environmental Protection Agency  
Division of Surface Water  
Chief, PTI, Compliance Assistance, & CAFO Unit  
122 South 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 the Chief of 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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D).

#### **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.

#### **IX. RESERVATION OF RIGHTS**

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

#### **XII. 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.

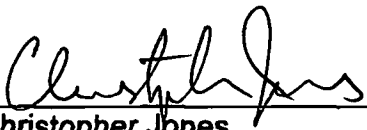
**XIII. EFFECTIVE DATE**

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

**XIV. SIGNATORY AUTHORITY**

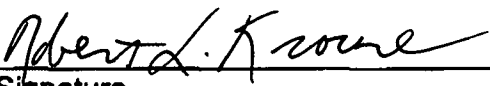
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

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

  
\_\_\_\_\_  
Christopher Jones  
Director

12-22-04  
\_\_\_\_\_  
Date

**IT IS SO AGREED:  
Midwest Poultry Services, L.P.**

  
\_\_\_\_\_  
Signature  
Robert L. Krouse  
\_\_\_\_\_  
Printed or Typed Name  
chief Executive officer  
\_\_\_\_\_  
Title

12/15/04  
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Date



**Midwest Poultry Services, L.P.  
Director's Final Findings and Orders  
Page 9 of 9**

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