

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT -3 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of

The Dannon Company, Inc.
216 Southgate Drive
Minster, Ohio 45865

Respondent.

**Director's Final Findings
and Orders**

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

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 10-3-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Dannon Company, 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 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 made the following findings:

1. Respondent is the owner and operator of a food processing plant located at 216 Southgate Drive, Minster, Auglaize County, Ohio ("the Facility.")
2. Respondent holds a National Pollutant Discharge Elimination System ("NPDES") Indirect Discharge Permit ("IDP"), number 2DP00017*CP, for the discharge of wastewater into the publicly owned treatment works ("POTW") of the Village of Minster, located at 155 West First Street, Minster, Auglaize County, Ohio. The

Village of Minster POTW discharges final effluent to the Miami and Erie Canal. The Miami and Erie Canal constitutes "waters of the state" as defined by ORC §6111.01.

3. On March 17, 2004, Respondent reported that an overflow occurred from the Facility's treatment plant flow splitter box to storm drains that lead to the Miami and Erie Canal. It was estimated that approximately 1,200 gallons of sludge from the Facility's treatment plant was discharged to the canal.
4. Due to a power failure which occurred on February 13, 2005, a spill of approximately ten to fifteen thousand gallons of water and milk solids were released from Respondent's pump station to a storm sewer which led to the Miami and Erie Canal. The spill was reported and eventually cleaned up, with approximately 32,000 gallons of storm water/milk waste removed from the storm sewers and Miami and Erie Canal.
5. On or about September 12, 2005, Respondent discharged approximately one thousand eight hundred (1,800) gallons of sodium hydroxide (caustic) solution and several hundred thousand gallons of insufficiently treated wastewater to the Minster POTW. That discharge event inhibited and disrupted the POTW's treatment processes and was a cause of violations of the POTW's NPDES permit. The release traveled through the Minster POTW, destroying the effectiveness of the POTW, and causing pollutants to be released into the Miami and Erie Canal. As a result of the spill, 33,310 fish and other aquatic life forms were determined to have been killed.
6. By letter dated September 23, 2005, Respondent was notified that it had violated Part III, Section 2, Item B4 of its NPDES permit, by introducing pollutants into a POTW discharged at a flow rate and/or pollutant concentration as to cause interference in the POTW. Ohio Administrative Code Rule 3745-3-04 (A) further states that pollutants introduced into a POTW by an industrial user shall not pass through the POTW or interfere with the operation or performance of the POTW.
7. Additionally, the September 23, 2005 letter to Respondent indicated that it had violated Part III, Section 10 of its NPDES permit, for failing to notify the POTW, Village of Minster, and Ohio EPA immediately of any discharges that could cause problems to the POTW, including any slug loading, as required by Ohio Administrative Code Rule 3745-3-05 (A)(2).
8. On June 9, 2006, a wastewater discharge consisting of mostly raw milk, fruit, and water inadvertently backed up through the facility's sanitary sewer and overflowed a manhole into the facility's parking lot where it made its way to a stormwater catch basin and storm sewer. The storm sewer emptied into the Miami and Erie Canal, resulting in a discharge of an unknown amount of wastewater being discharged to

the Miami and Erie Canal, waters of the State in Auglaize County, Ohio. By letters of June 23, 2006, and June 30, 2006, Respondent was notified that these unpermitted discharges into waters of the State constituted a violation of ORC Chapter 6111.

9. By letter of October 31, 2006, Respondent was notified that on October 17, 2006, and October 26, 2006, the Village of Minster violated its NPDES permit limitations as the result of loadings of contaminants sent to the Village's wastewater treatment plant from the facility. Respondent was notified that these two events violated Part 3, Section 2 – General Effluent of the facility's indirect discharge permit.
10. Additionally, the October 31, 2006, letter to Respondent also notified Respondent of a violation of the facility's indirect discharge permit resulting from an August 12, 2006, spill and the result of a failure to report sampling data associated with a spill from the facility which was reported to have discharged to the Miami and Erie Canal.
11. On or about January 9, 2007, a wastewater discharge consisting of mixed liquor suspended solids from the aeration tank overflowed to the storm water outfall. The storm water outfall emptied into the Miami and Erie Canal, resulting in a discharge of an unknown amount of wastewater being discharged to the Miami and Erie Canal.
12. On January 25, 2007, Respondent discharged several hundred thousand gallons of insufficiently treated wastewater to the Minster POTW. That discharge event inhibited and disrupted the POTW's treatment processes and was a cause of violations of the POTW's NPDES permit. The release traveled through the Minster POTW, destroying the effectiveness of the POTW, and causing pollutants to be released into the Miami and Erie Canal.
13. On February 5, 2007, a wastewater discharge consisting of butter fat and milk wash-downs inadvertently overflowed through the facility's wastewater treatment system to the ground and eventually the storm drain. The storm drain emptied into the storm sewer and eventually the Miami and Erie Canal, resulting in a discharge of an unknown amount of wastewater being discharged to the Miami and Erie Canal.
14. Respondent submitted to Ohio EPA a Notice of Intent ("NOI") for the Site. On April 5, 2007, the Director granted Respondent coverage under NPDES General Permit for Storm Water Discharges Associated with Construction Activity ("Construction Storm Water General Permit") No. 2GC01674*AG.
15. On April 18, 2007, Ohio EPA inspected the Site and observed the following violations: In violation of Part III.C.2. of the Construction Storm Water General

Permit Respondent failed to retain onsite a copy of the Storm Water Pollution Prevention Plan and NOI. In violation of Part III.G.2., Respondent failed to implement and maintain storm water controls on or around a soil stockpile onsite to prevent the runoff of sediment.

16. Pursuant to OAC Rule 3745-1-04(A) all surface waters of the state 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.
17. Pursuant to OAC Rule 3745-1-04(C) 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.
18. ORC § 6111.04(A)(1) provides that no person shall cause pollution or place or caused to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.
19. ORC § 6111.04(C) provides that no person to whom a permit has been issued shall place or discharge, or cause to be placed, or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the Director to do so.
20. Pursuant to ORC § 6111.07(A), 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 of Ohio EPA pursuant to those sections. Each day of violation constitutes a separate offense.
21. 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 ninety (90) days after the effective date of these Orders, Respondent shall submit to Ohio EPA Northwest District Office for approval, and in accordance with Section X of these Orders, a spill plan that includes the actions to be taken in the event of a spill or slug load and the names and phone numbers of all agencies/entities that are to be contacted when a spill occurs. The spill plan shall also include a regularly scheduled training program for all plant personnel with the

- potential to be involved in a spill and/or slug load, on spill response procedures and notifications.
2. Within ninety (90) days after the effective date of these Orders, Respondent shall install the following systems and equipment:
 - a. An Automated Control System. Respondent shall implement an automated control system for its on-site wastewater treatment facility, which automated control system will be equipped with automated alarms that will trigger upon readings from a dissolved oxygen meter and will be equipped with an automated system that will phone appropriate Dannon operator and maintenance personnel in the event of an occurrence of a defined alarm condition.
 - b. Installation of a Continuous Flow pH meter. Respondent shall install three continuous flow pH meters which shall be incorporated into and coordinated with the automated control system described above to provide automated communications to Dannon operators and maintenance personnel of the incidence of defined alarm conditions.
 - c. Automated Pump Shutoff. Respondent shall install an automated pump shut off system which, upon notification from the automated control system, will provide for the automatic shut off of the pumps which move water through the Respondent's facility and ultimately to the publicly-owned wastewater treatment system.
 3. Within ten (10) days of the effective date of these Orders, Respondent will provide for and keep records of daily inspections of the Facility's wastewater treatment system, including the systems and equipment installed pursuant to these Orders, to assure the proper operation of the wastewater treatment system. Respondent shall staff the wastewater treatment system with a certified operator for at least an eight (8) hour shift daily, Monday through Friday. At all other times that the wastewater treatment system is in operation, Respondent shall verify the proper operation of its wastewater treatment system by having trained employees inspect the system on an hourly basis and keep a log of such inspections. These requirements shall continue for six (6) months from the date the new plant becomes operational.
 4. Within one (1) month of the effective date of these Orders, and every month thereafter until September 15, 2008, Respondent shall report on the 15th day of the following month the daily volume (gallons) of wastewater and sludge hauled, removed, and/or disposed from the wastewater treatment system.

5. Respondent shall pay the amount of seventy one thousand three hundred fifty dollars (\$71,350.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA Northwest District Office in accordance with Section X of these Orders.

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 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 activities occurring on or at 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 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. NOTICE

All documents required to be submitted by Respondent shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office/Division of Surface Water
Attention: Enforcement Supervisor
347 N. Dunbridge Road
Bowling Green, Ohio 43402

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII 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 or 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:

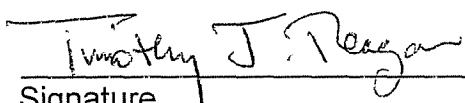
Ohio Environmental Protection Agency


Chris Korleski
Director

10/2/07
Date

IT IS SO AGREED:

The Dannon Company, Inc.


Signature

August 8, 2007
Date

Timothy J. Reagan
Printed or Typed Name

VP of Manufacturing
Title