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BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN - 7 2009

In the Matter of: :
: :
Middlefield Original Cheese Cooperative :
16942 Kinsman Road :
Middlefield, OH 44062 :
: :
Respondent :

ENTERED DIRECTOR'S JOURNAL

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: 1-7-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Middlefield Original Cheese Cooperative ("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 the composition of Respondent or the ownership or operation of the treatment system 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, a for-profit corporation in good standing with the Ohio Secretary of State's Office, is a farmer-owned cooperative with approximately 91 members and is located at 16942 Kinsman Road, Middlefield Township, Geauga County, Ohio, ("facility").
2. Respondent makes a variety of cheese from milk, with retail and wholesale sales. Typical daily production values are 52,000 pounds of milk and 5,200 pounds of cheese. Whey is sold and transported as a by-product to another dairy.

3. Wash water and sanitary wastewater are treated by an aerobic treatment system ("treatment system"), owned by Respondent, which consists of aeration clarification, sand filters, ultraviolet disinfection and a constructed polishing wetland, prior to discharge pursuant to Ohio National Pollution Discharge Elimination System ("NPDES") Permit No. 3IH00076*AD, to an unnamed tributary of Phelps Creek, a water of the state.
4. The treatment system has a design flow value of 10,350 gallons per day at 1800 mg/L CBOD₅, and an average flow value of 7,700 gallons per day.
5. The NPDES permit expired on June 30, 2006, with a renewal application received on October 2, 2006.
6. Ohio Administrative Code ("OAC") Rule 3745-33-04(C)(1) provides that an NPDES permit holder who wishes to continue to discharge after the expiration date of its permit must file for permit reissuance at least one hundred eighty days prior to the permit's expiration.
7. OAC Rule 3745-33-04(C)(2) provides that an NPDES permit shall not be renewed unless the Director determines that the permittee is making satisfactory progress toward the achievement of all applicable limitations and has complied with the terms and conditions of the existing permit.
8. Respondent did not make a timely application for a renewal of the NPDES permit and is discharging pollutants to waters of the state without a valid, unexpired permit, in violation of ORC §§ 6111.04 and 6111.07.
9. Respondent commenced and completed construction of an aerated sludge holding tank, flow control box and discharge control box (together "sludge holding tank") prior to the submittal of a permit to install application and detail plans, and the approval thereof.
10. In March, 2001, a permit to install application, with detail plans, was submitted to Ohio EPA for the sludge holding tank. On May 4, 2001, Ohio EPA requested that Respondent provide an engineering report which evaluated the basis of the volume design for the sludge holding tank, as the tank's volume must be justified by calculations showing the number of days of storage provided.
11. To date the requested information has not been received by Ohio EPA.
12. During an Ohio EPA May 25, 2000 inspection of the facility, it was observed that the treatment system, including the constructed wetland, was in poor operating condition, activated sludge was not separating from liquid in the clarifier, and a portable pump was installed in the dosing chamber with a flexible discharge line

directed into the wetland, bypassing the sand filters and the ultraviolet disinfection unit. A flexible hose with the ability to discharge into the wetland was also observed at the sludge holding tank. The wetland was full of anaerobic sludge that had killed most of the wetland plant life. It appeared that the unauthorized bypass of the treatment system had been occurring for a significant period of time. The effluent from the wetland was grey and had killed the vegetation around the outlet pipe, with sludge deposits forming beyond the wetland at the discharge point.

13. In a letter dated January 2, 2007, Ohio EPA informed Respondent, in pertinent part, of the following effluent limitations violations since August 15, 2005:

Parameter	Number of Violations
Total Suspended Solids (concentration)	10
Flow rate	2
Sludge Weight	1
Dissolved Oxygen	5
Water Temperature	3
Oil and Grease	2
Residue, Total Dissolved	2

14. In the January 2, 2007 letter, Ohio EPA further informed Respondent that the treatment system's constructed wetland had become a barren pond devoid of typical wetland vegetation. As a result, beneficial treatment was not accomplished in the wetland prior to discharge. The results of a November 1, 2006 sampling event showed that the wetland actually increased the concentration of ammonia from 1.91 to 13.2 mg/L and TKN (Total Kjeldahl Nitrogen) from 3.63 to 15.8 mg/L, with the effluent from the wetland at 24.3 mg/L.
15. OAC Chapter 3745-40 and the Ohio NPDES permit set forth requirements for the administration of sludge generated by the treatment system and require the annual reporting thereof.
16. Respondent has not submitted annual sludge disposal reports for years 2001 through 2006, inclusive.
17. Respondent has not achieved compliance with its Ohio NPDES permit nor ORC Chapter 6111. and the rules adopted thereunder.

18. ORC § 6111.04 prohibits any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with an Ohio NPDES permit issued by the Director.
19. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections. Each day of violation represents a separate violation.
20. Respondent submitted an ability to pay demonstration which was considered by the Director.
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 purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall within ninety (90) days of the effective date of these Orders:
 - a. Conduct and submit to Ohio EPA a thorough engineering study of the treatment system, including wetland, to determine how to restore the system to full operation, capable to achieve interim effluent limits which are set forth in Attachment I, which is attached hereto and incorporated by reference herein as if fully written herewith.
 - b. Evaluate the wetland and submit to Ohio EPA a determination as to whether the wetland would require dewatering, dredging and replanting in order to achieve its intended use in pollutant reduction; and
 - c. Submit to Ohio EPA a complete and approvable permit to install application consistent with the engineering study referenced in paragraph a, with detail "as built" plans for the sludge holding tank.
2. Within two hundred seventy (270) days of the effective date of these Orders, Respondent shall complete construction of the necessary improvements to the wastewater treatment system identified in the study and engineering report, to achieve compliance with the active NPDES permit.

3. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to Ohio EPA annual sludge disposal reports for years 2001 through 2006, inclusive.
4. Commencing with the effective date of these Orders and lasting until the date set forth in a modification or renewal or new NPDES permit issued to Respondent, Respondent shall comply with the Interim Effluent Limitations and Monitoring Requirements at internal monitoring station 601 set forth in Attachment I. This paragraph does not constitute a modification or renewal of Respondent's current NPDES permit.
5. a. In settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 6111., Respondent shall pay the amount of nine thousand dollars (\$9,000.00) and satisfy the civil penalty in accordance with the following schedule:
 - i. On or before May 31, 2009, Respondent shall make payment to Ohio EPA by submittal of an official check payable to "Treasurer, State of Ohio," in the amount of two thousand two hundred fifty dollars (\$2,250.00);
 - ii. On or before July 31, 2009, Respondent shall make payment to Ohio EPA by submittal of an official check payable to "Treasurer, State of Ohio," in the amount of two thousand two hundred fifty dollars (\$2,250.00);
 - iii. On or before September 31, 2009, Respondent shall make payment to Ohio EPA by submittal of an official check payable to "Treasurer, State of Ohio," in the amount of two thousand two hundred fifty dollars (\$2,250.00); and
 - iv. On or before December 31, 2009, Respondent shall make payment to Ohio EPA by submittal of an official check payable to "Treasurer, State of Ohio," in the amount of two thousand two hundred fifty dollars (\$2,250.00).
- b. All checks shall be submitted to Brenda Case, or her successor, together with a letter identifying 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, Northeast District Office, in accordance with Section X of these Orders.

- c. It is hereby provided and understood that twenty percent (20%) of the total payment shall be placed in Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD), for expenditure in accordance with such fund.

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 as defined in OAC Rule 3745-33-03(E).

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 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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Enforcement Supervisor, Division of Surface Water

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.

Middlefield Original Cheese Cooperative
Director's Final Findings and Orders
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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**

Laura H. Powell
Laura H. Powell
Assistant Director

1/5/09
Date

**IT IS SO AGREED:
Middlefield Original Cheese Cooperative**

Eli D. Miller - Pres.
Signature
Nevin R. Byler Vice Pres.
Eli D. Miller Nevin R. Byler
Printed or Typed Name

1-2-09
Date

President Vice President
Title