

OHIO E.P.A.

JAN 17 2008

BEFORE THE

ENTERED DIRECTOR'S JOURNAL OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

United Dairy, Inc.
300 North Fifth Street
Martins Ferry, Ohio 43935

Respondent

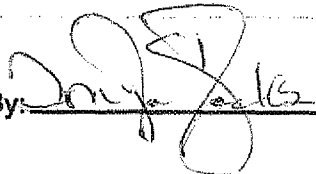
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Director's Final Findings
and Orders

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:  Date: 1-17-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to United Dairy, 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 the Facility described in Finding No. 1 of these Orders 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 beverage packaging plant located at 300 North Fifth Street, Martins Ferry, Belmont County, Ohio (hereinafter referred to as the "Facility"). Respondent generates waste waters from cleaning of process equipment, floors, coolers, milk tanker truck interiors and exteriors, and plastic cases, and from storm water from loading dock areas.

2. Respondent holds an Indirect Discharge Permit ("IDP"), number ODP00026*EP, effective July 1, 2007, for the discharge of wastewater into the City of Martins Ferry's combined sewer system which flows to the publicly owned treatment works ("POTW") of the Eastern Ohio Regional Wastewater Authority ("EORWA") located at 6000 North Guernsey Street, Bellaire, Belmont County, Ohio. The EORWA POTW discharges final effluent to the Ohio River in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. The Ohio River constitutes "waters of the state" as defined by ORC § 6111.01.
3. Respondent's previous IDP, number ODP00026*CP, effective May 1, 2002, contained a minimum pH effluent limitation of 5.0 S.U., and a maximum pH effluent limitation of 9.0 S.U.
4. Respondent's current IDP is a renewal of IDP number ODP00026*CP, and contains the same pH effluent limitations and other terms and conditions which are discussed in these findings. Therefore, "Respondent's IDP" in these Orders means both IDPs.
5. Part III.2.B.4. of Respondent's IDP prohibits the discharge of any pollutant at a flow rate and/or concentration which causes interference in the POTW.
6. High pH waste waters discharged by Respondent to the POTW have resulted in toxicity to activated sludge and favored the growth of undesirable organisms which hinder performance of the secondary clarifiers at the EORWA POTW. These problems have contributed to violations of effluent limitations in EORWA's NPDES permit for the POTW discharge.
7. On or about July 10, 2004, Respondent discharged approximately two thousand (2,000) gallons of sodium hydroxide and sodium gluconate solution to the POTW. That discharge event inhibited and disrupted the POTW's treatment processes and was a cause of violations of the POTW's NPDES permit.
8. Part III.1. of Respondent's IDP defines "slug loading" to mean "any pollutant, including oxygen demanding pollutants, released in a discharge at a flow rate and/or pollutant concentration as to cause interference in the POTW." The discharge described in Finding no. 6, above, meets the definition of slug loading.
9. Part II.3. of Respondent's IDP requires any slug loading to be reported to the EORWA POTW by telephone within one hour of discovery, and in writing within five business days of when the slug loading occurred, in accordance with Part

- III.10. of Respondent's IDP. Respondent failed to report the July 10, 2004 discharge described in Finding no. 6, above, either by telephone or in writing as required by Respondent's IDP.
10. The slug loading and Respondent's failure to report it resulted in EORWA incurring costs of approximately two thousand five hundred dollars (\$2,500.00) for investigation of the source of the slug loading and additional operating costs at the POTW.
 11. By letter from Ohio EPA dated September 23, 2004, Respondent was notified that the introduction of pollutants into a POTW discharged at a flow rate and/or pollutant concentration as to cause pass-through or interference in the POTW is prohibited by Ohio Administrative Code ("OAC") Rule 3745-3-04(A), that the introduction of substances with pH lower than 5.0 is prohibited by OAC Rule 3745-3-04(B)(2), and that Respondent is required by its IDP to notify the EORWA POTW and Ohio EPA immediately of any discharges that could cause problems to the POTW, including any slug loading.
 12. Respondent's IDP was modified, effective December 1, 2004, to include a compliance schedule for installation of a neutralization system to enable Respondent to achieve compliance with the pH effluent limitations in the permit.
 13. The compliance schedule contained in Respondent's modified IDP, number ODP00026*CP, required Respondent to submit a complete permit to install ("PTI") application for neutralization facilities to meet final effluent limitations to Ohio EPA by June 1, 2005. Respondent failed to submit a PTI application to Ohio EPA until December 22, 2005, in violation of ORC § 6111.07(A).
 14. Respondent was notified by letter dated September 12, 2005, from Ohio EPA that it was in violation of two milestones in the compliance schedule in Respondent's modified IDP, number OD00026*CP, specifically the June 1, 2005 date for submitting a complete PTI application, and the September 1, 2005 date for commencing construction of the neutralization system.
 15. The compliance schedule contained within Respondent's IDP, number ODP00026*CP, required Respondent to achieve compliance with pH effluent limitations by December 1, 2005.
 16. Respondent commenced construction of a pH neutralization system without first obtaining a PTI or plan approval from Ohio EPA, in violation of ORC § 6111.45 and OAC Rule 3745-42-02(A)(1).

17. PTI application number 540103 (formerly PTI No. 06-08041), together with detailed plans for the installation of this pH neutralization system, were received at Ohio EPA Southeast District Office on December 22, 2005, after construction of the pH neutralization system had been partially completed.
18. Respondent was notified by letters from Ohio EPA dated January 20, 2006 and March 29, 2006 of the deficiencies in PTI application number 540103.
19. The pH neutralization system proposed in PTI application number 540103 is a "disposal system," as such term is defined in ORC § 6111.01(G).
20. ORC § 6111.45 and OAC Rule 3745-42-02(A)(1) provide that no person may cause, permit, or allow installation of a new disposal system without first obtaining a PTI or plan approval from the Director.
21. 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 any permit issued or adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02. Each day of violation is a separate offense.
22. PTI application number 540103 for a pH neutralization system was approved by the Director on May 23, 2007.
23. Respondent completed installation of the pH neutralization system and brought the system into full operation on or about October 28, 2007.
24. Respondent continuously exceeded the final effluent limitations in its IDP from at least March 2003 through at least October 2007. Respondent's failure to comply with the final effluent limitations in its IDP is a violation of the permit and ORC §§ 6111.04 and 6111.07.
25. Respondent was notified by letter from Ohio EPA dated June 16, 2006, of its violations of the final effluent limitations in its IDP and of its violations of three milestones in the compliance schedule in its IDP.
26. On or about October 17, 2006 and February 7, 2007, Respondent discharged slug loads to the POTW. The October 17, 2006 slug load was not reported as required by Respondent's IDP. Respondent did report the February 7, 2007 slug

load as required. Respondent's failure to report the October 17, 2006 slug load was a violation of its IDP.

27. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
28. 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 not cause, permit or allow the installation or modification of a disposal system at any location in Ohio without first receiving a permit to install or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.45.
2. Respondent shall maintain consistent compliance with federal, state and local pH limits for all discharges from the Facility to the sewer system.
3. Slug Discharge Control Plan
 - A. Within ninety (90) days after the effective date of these Orders, Respondent shall submit to the Southeast District Office of Ohio EPA for approval, in accordance with Section X. of these Orders, a Slug Discharge Control Plan that identifies measures to protect public health and the environment. This Plan shall include but not be limited to:
 2. Facility layout and flow diagrams;
 3. Materials inventory and hazardous materials data;
 4. Spill prevention equipment and procedures, including installation of new engineering controls to reduce the probability of slug loading;

5. Emergency response equipment and procedures;
 6. Slug load reporting procedures;
 7. Personnel training program
 8. Certification by a qualified professional of the adequacy of the measures described in the Plan.
 9. Procedures for modification of the Plan in response to changes or slug loads.
- B. Respondent shall fully respond to any comments received from Ohio EPA on the documents submitted pursuant to this section within thirty (30) days of receiving the comments (or such longer period as agreed upon by the parties), including modification of the Plan as necessary.
- C. Respondent shall implement the Slug Discharge Control Plan immediately after Ohio EPA approval of the Plan.
4. Respondent shall pay the amount of sixty thousand dollars (\$60,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Thirty-six thousand dollars (\$36,000.00) of the penalty shall be paid by tendering official checks made payable to "Treasurer, State of Ohio" in accordance with the schedule below. The official checks shall be submitted to Brenda Case, or her successor, together with letters identifying the Respondent and the Facility, to:

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

- a) Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of nine thousand dollars (\$9,000.00).
- b) Within one hundred fifty (150) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of nine thousand dollars (\$9,000.00).

- c) Within two hundred forty (240) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of nine thousand dollars (\$9,000.00).
 - d) Within three hundred sixty (360) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of nine thousand dollars (\$9,000.00).
5. In lieu of paying twelve thousand fifty-four dollars and thirty cents (\$12,054.30) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of twelve thousand fifty-four dollars and thirty cents (\$12,054.30) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for this 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

6. In lieu of paying the remaining eleven thousand nine hundred forty-five dollars and seventy cents (\$11,945.70) of the civil penalty, Respondent shall fund a second Supplemental Environmental Project (SEP) by making a contribution in the amount of eleven thousand nine hundred forty-five dollars and seventy cents (\$11,945.70) for the Eastern Ohio Regional Wastewater Authority's (EORWA's) purchase of the following equipment from Advance Instruments Inc.:

- 2 doppler flow meters
- 1 service agreement for flow meters
- 1 portable sampler and accessories
- 1 rain gage with logger and cable
- 1 portable pH meter

Within fourteen (14) days of the receipt of an invoice for EORWA's purchase of the listed equipment from Advance Instruments Inc., Respondent shall send a check to Advance Instruments Inc. for the amount of the invoice, made payable to the party specified on the invoice. If the amount invoiced is less than eleven thousand nine hundred forty-five dollars and seventy cents (\$11,945.70), Respondent shall, within fourteen (14) days of receipt of the invoice, make a

contribution to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD) by submitting an official check made payable to "Treasurer, state of Ohio" in the amount of the difference between eleven thousand nine hundred forty-five dollars and seventy cents (\$11,945.70) and the amount of the invoice, to Brenda Case, or her successor, together with a letter identifying the Respondent and the Facility, to:

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

7. Respondent shall send a copy of the invoice from Advance Instruments Inc. and a copy of the check for EORWA's equipment purchase to Ohio EPA's Southeast District Office in accordance with Section X. of these Orders, and to:

David I. Thomas
Executive Director
Eastern Ohio Regional Wastewater Authority
P.O. Box 508
Bridgeport, Ohio 43912

A photocopy of each check shall be sent to Ohio EPA Southeast District Office in accordance with Section X of these Orders, and to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

8. Should Respondent fail to fund either SEP within the required time frames set forth in Orders Nos. 5 and 6, Respondent shall immediately pay to Ohio EPA the remaining twelve thousand fifty-four dollars and thirty cents (\$12,054.30) of the civil penalty for the SEP described in Order No. 5, or the remaining eleven thousand nine hundred forty-five dollars and seventy cents (\$11,945.70) for the SEP described in Order No. 6 for which the payment deadline is missed by immediately submitting an official check made payable to "Treasurer, State of Ohio" for either twelve thousand fifty-four dollars and thirty cents (\$12,054.70),

eleven thousand nine hundred forty-five dollars and thirty cents, or twenty-four thousand dollars (\$24,000.00), whichever is applicable, to Brenda Case, or her successor, together with a letter identifying the Respondent and the Facility 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 Southeast District Office in accordance with Section X. of these Orders, and to Mark Mann at the address in Order No. 7.

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.

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 pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office/Division of Surface Water
Attention: Enforcement Supervisor
2195 Front Street
Logan, Ohio 43138

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

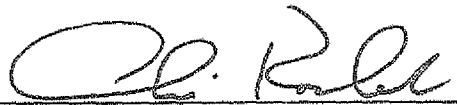
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

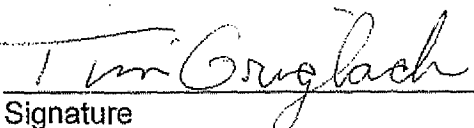


Chris Korleski
Director

1/14/08
Date

IT IS SO AGREED:

United Dairy, Inc.



Signature

12-14-07
Date

Tim Griglach

Printed or Typed Name

Director of All Operations

Title