

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 3:03-CV-07681
)	
Plaintiff,)	JUDGE:
)	
v.)	
)	
BUCKEYE EGG FARM, L.P., CROTON)	MODIFICATION OF CONSENT DECREE
FARM, LLC, AND ANTON POHLMANN,)	AS TO OHIO FRESH EGGS, LLC.
)	
Defendants.)	

WHEREAS, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint on November 19, 2003 and an Amended Complaint on February 23, 2004 in this action, alleging violations of Sections 113, 114, 165, 502 and 503 of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413, 7414, 7475, 7661a, & 7661b, including violations of 40 C.F.R. Part 52, Subpart A, Section 52.21, and the Ohio State Implementation Plan (“Ohio SIP”), codified at 40 C.F.R. Part 52, Subpart KK (40 C.F.R. §§ 52.1870-52.1919 at three commercial egg production plants in Ohio owned at the time by Buckeye Egg Farm, L.P., Croton Farm, LLC, and Anton Pohlmann (“Defendants” or “Original Defendants”), located specifically, (i) the Croton plant, located in Licking County, Croton, Ohio, (ii) the Marseilles plant, located in Wyandot County, Harpster, Ohio, and (iii) the Mt. Victory plants, located in Hardin County, LaRue, Ohio (collectively, “the Locations”).

WHEREAS, the United States and Defendants reached an agreement in 2004 embodied in a consent decree (the “Consent Decree”), which resolved the claims alleged by the United States against the Defendants in the Amended Complaint under the Clean Air Act; and required

the Defendants to implement certain compliance measures at their three Locations and pay civil penalties for alleged past violations;

WHEREAS, this Court entered the Consent Decree on July 6, 2004, and has retained jurisdiction over implementation and enforcement of the Consent Decree;

WHEREAS, Ohio Fresh Eggs, LLC (“OFE”) is a limited liability corporation organized in Pennsylvania that acquired ownership of the three Locations from Buckeye, Croton Farm, and Anton Pohlmann in 2004, legally conditioning the transfer of ownership of each Location on OFE’s assumption of obligations required by the Consent Decree entered in 2004, including the requirements relating to the three Locations;

WHEREAS, Section II (Parties Bound and Notice of Transfer) of the Consent Decree provided that OFE would succeed to Buckeye’s obligations in the Consent Decree as part of the then-recent and pending sales of the Buckeye Locations to OFE, enforceable by the United States;

WHEREAS, under the terms of the Consent Decree, Defendants, and subsequently OFE, were collectively required to submit to EPA for review and approval a particulate matter (“PM”) control design and implementation plan for a PM emissions reduction control device to be installed and operated at each barn at the three Locations;

WHEREAS, on August 2, 2006, EPA approved the installation and operation of a particulate impact system to be installed and operated in each of the barns at each of the three Locations;

WHEREAS, under the terms of the Consent Decree, Defendants, and subsequently OFE, were also required to submit to EPA for review and approval an ammonia emissions reduction plan;

WHEREAS, on March 2, 2007, EPA approved OFE's Revised Ammonia Control Plan which included, among other things, five specified best management practices and dietary feed restrictions;

WHEREAS, on December 5, 2007, EPA approved OFE's request to suspend use of dietary feed restrictions, and continue to implement five specified best management practices as part of OFE's Revised Ammonia Emissions Control Design and Implementation Plan to reduce ammonia emissions;

WHEREAS, following EPA's review and approval of Defendants' proposed PM and ammonia emissions reductions requirements, the United States alleges that OFE without notice to EPA ceased installing and/or operating the approved PM and ammonia emissions controls;

WHEREAS, on May 12, 2017, Trillium Farm Holdings, LLC ("Trillium") advised EPA that it was the current operator of the Locations under a lease with OFE, and requested EPA to acknowledge completion of the work required by the Consent Decree so that Trillium could request termination of the Consent Decree;

WHEREAS, on October 23, 2017, EPA conducted a site visit at the Croton and Marseilles Facilities, and discovered that OFE was not complying with the Consent Decree, which required OFE to reduce PM and ammonia emissions. Specifically, the United States alleges that OFE was not operating control equipment, had failed to provide multiple

notifications to EPA, and had reopened additional barns without first installing required control equipment as required by the Consent Decree;

WHEREAS, OFE subsequently notified EPA that it had significantly reduced the number of birds at each Location to comply with Ohio Department of Agriculture (“ODA”) Permits to Operate (“PTO”). The ODA PTOs also required limitations on particulate and dust emissions in accordance with good housekeeping and terms at the three Locations. OFE asked EPA for permission to conduct testing of its emissions for EPA’s consideration to demonstrate that the PM and ammonia controls required by the Consent Decree may no longer be required;

WHEREAS, upon EPA’s approval in 2021, OFE contracted with Purdue University to conduct PM emissions testing, and upon completion of testing, on January 31, 2022, Purdue University completed the testing and data review, and submitted a report to EPA;

WHEREAS, EPA completed its review of the PM emissions testing, and concluded that, so long as OFE limits the number of birds at each Location to a number below the maximum number of birds allowed by the ODA PTOs, additional PM and ammonia emissions controls would not be necessary;

WHEREAS, Paragraph 76 of the Consent Decree allows the Decree to be modified or amended by written agreement of the United States and the Defendants;

WHEREAS, this Modification to the Consent Decree (the “Modification”) applies only to the obligations of OFE assumed under the Consent Decree and does not affect the obligations of the Original Defendants under the Consent Decree;

WHEREAS, the United States and OFE (collectively the “Modification Parties”) have agreed to this Modification to the Consent Decree to substitute bird limitations in lieu of the

installation of physical controls to limit PM and ammonia emissions as set forth in Section V and Attachment A of the Consent Decree;

WHEREAS, the Modification Parties agree that this Modification is a material modification of the Consent Decree and thus requires approval of the Court;

WHEREAS, the Modification Parties agree, and the Court by entering this Modification of the Consent Decree finds, that the modifications to the Consent Decree as to OFE's obligations set forth herein are fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that the Consent Decree is modified as follows:

1. This Modification shall apply to, and be binding upon, the Modification Parties as a modification to the Consent Decree pursuant to Paragraph 76 of the Consent Decree.
2. For the purposes of the Modification, OFE consents to the Court's jurisdiction and consents to venue in this judicial district.
3. This Modification shall not be construed to alter, affect or amend the Consent Decree in any way other than as provided herein as to the obligations of OFE only. It is the purpose of the Modification Parties in entering into this Modification to further the objectives of the Consent Decree without altering any obligations of the Original Defendants.
4. Paragraphs 1 through 15 of the Consent Decree remain unchanged, and references to "Consent Decree" are deemed to include this Modification, and references to "Defendants" include OFE.
5. Paragraph 16 of Section V (Performance of Work) of the Consent Decree shall be modified as follows:

“16. Upon lodging of this Modification, in order to achieve air emissions controls consistent with the requirements of the Original Consent Decree, Attachment A of the Consent Decree in its entirety shall be replaced with the following requirements: OFE shall comply with the following limitations on the number of birds that can be present at any time at the Croton, Marseilles and Mt. Victory Facilities:

a. Croton Layers 1-4: 9,523,450 birds maximum per Day, as follows:

A. Layer 1: 2,401,727

B. Layer 2: 2,317,126

C. Layer 3: 2,489,066

D. Layer 4: 2,315,531;

b. Marseilles (Layer 6): 2,342,683 per Day birds maximum; and

c. Mt. Victory (Layer 5): 2,989,856 per Day birds maximum;

6. Paragraphs 17 through 22 of the Consent Decree remain unchanged, and references to “Consent Decree” are deemed to include this Modification, and references to “Defendants” include OFE.

7. The first sentence of Paragraph 23 of the Consent Decree shall be replaced with the following:

23. Commencing on January 31, 2025, OFE shall submit quarterly reports to EPA no later than thirty (30) days after the end of each quarter (quarters shall end on March 31, June 30, September 30 and December 31 of each year). Each quarterly report shall state the maximum number of birds in each barn at each Location during the quarter and

certifying that the number of birds did not exceed the permitted number at any Location during the quarter.

Paragraphs 23.a and 23.b remain unchanged.

8. Paragraphs 24 through 25 and paragraphs 30 through 34 of the Consent Decree remain unchanged, and references to “Consent Decree” are deemed to include this Modification, and references to “Defendants” include OFE. Paragraphs 26 through 29 of the Consent Decree shall be omitted in their entirety.

9. Section XI (Civil Penalty) of the Consent Decree shall be modified as follows:

“XI. CIVIL PENALTY FOR VIOLATIONS OF THE CONSENT DECREE

35.a. Within five (5) working days of OFE’s receipt of notice of the lodging of this Modification, OFE shall establish an interest-bearing escrow account meeting the requirements of this Paragraph in a federally-insured bank duly chartered in the State of Ohio, and shall remit to the escrow account funds in the amount of \$5,816,250. Such monies shall remain in escrow until entry of the Modification. If the Modification is not entered by the District Court, and the time for any appeal of that decision has run, or if the District Court’s denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to OFE. If the Modification is entered by the District Court, OFE, within 15 Days thereof, shall cause the monies (including all accrued interest) in the Escrow Account to be released and disbursed to the United States in payment of the Civil Penalty for Violations of the Consent Decree under this Modification.

b. Within the same time frame, OFE shall send to the United States, by electronic mail to the addresses specified in Section XVIII (Notices) of the Amended Consent Decree, as modified

herein, copies of the documents establishing and funding the escrow account, together with information containing the identities of the bank and of the escrow agent, the bank account under which the escrow account is established, and a bank statement or deposit slip showing the initial balance of the escrow account. The correspondence shall also reference the civil action number of this case, and the Department of Justice (“DOJ”) case number (90-11-2-06089).

c. All funds paid into the escrow account by OFE shall remain in escrow and may not be withdrawn by any person except to make the payment required by Paragraph 35.a. of the Consent Decree, as modified herein, unless the Court determines that entry of this Modification is not in the public interest and declines to enter it as an order.

d. Within ten (10) working days of OFE’s receipt of notice of entry of the Modification by the Court, OFE shall pay the Civil Penalty for Violations of the Consent Decree due to the United States by Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the Northern District of Ohio, Western Division, referencing the DOJ Number 90-11-2-06089, and the U.S.A.O. file number. Payment shall be made in accordance with written instructions to be provided to OFE following lodging of this Modification by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Ohio, Western Division. The payment instructions provided by the FLU will include a Consolidated Debt Collection (“CDCS”) number, which OFE shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to: Patsy Larson, 220 N Main, Clarion, Iowa, 50525, 515-851-0831, plarson@wrightcountyegg.com. OFE may change the individual to receive payment instructions

on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVIII (Notices).

e. At the time of payment, OFE shall send notice that payment has been made (i) to EPA via email at cinwd_acctsreceivable@epa.gov; (ii) to the United States via email or regular mail in accordance with Section XVIII; and (iii) to EPA in accordance with Section XVIII. Such notice shall state that the payment is for the Civil Penalty for Violations of the Consent Decree owed pursuant to this Modification and shall reference the case name and civil action number, CDCS Number and DOJ case number (90-11-2-06089).”

10. Paragraphs 36-38 of Section XI (Civil Penalty) of the Consent Decree remain unchanged and references to “Consent Decree” are deemed to include this Modification, and references to “Defendants” include OFE.

11. Section XII (Stipulated Penalties) of the Consent Decree (Paragraphs 39-50) shall remain in effect, except that Paragraph 41 shall be modified as follows:.

41. Bird limits. The following Stipulated Penalties shall accrue for violations of the requirement to meet the bird limits in Paragraph 5 of this Modification:

<u>Penalty Per Layer House/Per Quarter</u>	<u>Level of non-compliance</u>
\$500	one bird to 5% above the limit
\$1500	5% to up to 10% above the limit
\$3,000	10% or more above the limit

12. Paragraphs 51 through 65 of the Consent Decree remain unchanged, and references to “Consent Decree” are deemed to include this Modification, and references to “Defendants” include OFE.

13. Paragraph 66 of Section XVI (Effect of Settlement/Reservation of Rights) of the Consent Decree shall be modified as follows:

“66. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Amended Complaint filed in this action through the date of lodging of the Consent Decree. Provided that Defendants comply with this Consent Decree from the date of lodging of the Consent Decree through its Effective Date, these claims shall also be resolved through the Effective Date of this Consent Decree. The Modification of the Consent Decree as to OFE also resolves the civil claims of the United States against OFE for stipulated penalties under the Consent Decree for violations of the requirements of the Consent Decree alleged by the United States through the Effective Date of this Modification. Upon EPA’s issuance of an Acknowledgment of Completion pursuant to Paragraph 29 of the Consent Decree, the claims alleged in the Amended Complaint and for stipulated penalties as against OFE shall be finally resolved. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified herein.”

14. Paragraphs 67-71 of Section XVI (Effect of Settlement/Reservation of Rights) and Section XVII (Costs) of the Consent Decree remain unchanged, and references to “Consent Decree” are deemed to include this Modification, and references to “Defendants” include OFE.

15. Paragraph 72 of Section XVIII (Notices) of the Consent Decree shall be modified as follows:

“72. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Amended Consent Decree, as modified herein, they shall be made in writing and addressed as follows:

To the United States:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DOJ No. 90-11-2-06089

and

R5AirEnforcement@epa.gov
topinka.natalie@epa.gov

To OFE

Ohio Fresh Eggs, LLC
PO Box 609
Turner, ME 04282

16. Paragraphs 73-77 of the Consent Decree remain unchanged, and references to “Consent Decree” are deemed to include this Modification, and references to “Defendants” include OFE.

17. Section XXI of the Consent Decree shall be modified as follows:

“XXI. EFFECTIVE AND TERMINATION DATES

78. The Effective Date of this Modification shall be the date upon which this Modification is entered by the Court. OFE shall not submit a termination request to the United States until it submits a minimum of three (3) years of quarterly reports under Section VII (Reporting Requirements) of the Consent Decree, demonstrating its compliance with the bird limitations for each Location as set forth in Paragraph 5 of this Modification. Provided that all penalties are paid pursuant to Sections XI (Civil Penalty) and XII (Stipulated Penalties) of the Consent Decree as modified for OFE in this Modification, the Modification may be terminated as follows:

a. Following OFE's certification of compliance with the bird number limitations in Paragraph 16 for a period of three (3) years, OFE (or any agent, successor, or assign of OFE as may be authorized by OFE in writing and with notice to the United States) may request that the United States move to terminate the Consent Decree, including this Modification, based on OFE's representations that all its requirements have been satisfied, and the Court may order such termination after conducting such inquiry as it deems appropriate."

b. If the United States does not move to terminate the Consent Decree, including this Modification, within ninety (90) days of a request by OFE or its designated agent including all supporting documentation, then OFE may invoke Dispute Resolution under Section XIV, and subsequent judicial review under Paragraph 59 of this Decree.

16. Paragraphs 79 through 87 of the Consent Decree remain unchanged, and references to "Consent Decree" are deemed to include this Modification, and references to "Defendants" include OFE.

17. Section XXIII (26 U.S.C. Section 162(f)(2)(A)(ii) Identification is added to the Consent Decree with respect to OFE as follows:

“XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

92. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the requirements of Paragraph 16 is restitution, remediation, or required to come into compliance with law.”

ORDER

Before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Modification Parties, it is:

ORDERED, ADJUDGED and DECREED that the foregoing Modification to the Consent Decree is hereby approved and entered as a final order of this Court.

UNITED STATES DISTRICT JUDGE
Northern District of Ohio

The undersigned parties hereby consent to this Modification of the Consent Decree in the matter of *United States v. Buckeye Egg Farm, et al.*, No. 3:03-CV-07681(N.D. Ohio) as to the obligations of Ohio Fresh Eggs, LLC.

FOR THE UNITED STATES OF AMERICA

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U.S. Department of Justice

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FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

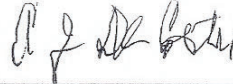
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Robert

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ROBERT A. KAPLAN
Regional Counsel
U.S. Environmental Protection Agency,
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FOR OHIO FRESH EGGS, LLC

A handwritten signature in dark ink, appearing to read 'Austin J. Decoster', is written above a horizontal line.

Austin J. Decoster