



NOW THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against the Defendant under Chapters 903, 3704, 3767, 6109, and 6111 of the Ohio Revised Code, and venue is proper in this Court.

**II. PARTIES BOUND AND NOTICE OF SALE/LEASE**

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and the Defendant's agents, officers, employees, assigns, successors in interest, and any person acting in concert or privity with any of them, including any buyers or lessees of any of Defendant's facilities, or Austin J. DeCoster, as the Optionee as defined by the 2010 Amended and Restated Option to Purchase ("Option to Purchase"), by and between Ohio Fresh Eggs, LLC, Hillandale Farms of PA, Inc. ("Hillandale II"), Austin J. DeCoster, individually and as Trustee of the DeCoster Revocable Trust dated May 19, 2000 (jointly "DeCoster"), Ohio Investments Co., LLC, a Delaware limited liability company (the "Optionee"), Glessner Business Group, LLC, ("GBG") an Iowa limited liability company (that has acquired the interest formerly held by Ohio Ag Investors, LLC), and Hillandale Farms, LLC ("Hillandale") an Ohio limited liability company (collectively GBG and Hillandale are the "Optionors"), or any Assignee of the Option to Purchase. OFE shall immediately provide a copy of this Consent Order to all key officers and/or employees including, but not limited to: any

Director of Operations, any Senior Production Manager, any Site Production Manager, any administrative compliance personnel, or personnel responsible for communication with Ohio Department of Agriculture (“ODA”) or Ohio Environmental Protection Agency (“Ohio EPA”), and any other person(s) serving as environmental compliance officer(s) pursuant to Paragraphs 35 through 38 of this Consent Order. OFE shall submit to the ODA Livestock Environmental Permitting Program (“LEPP”) and the Ohio EPA within seven (7) days after the effective date of this Consent Order a signed Certification of Receipt of Consent Order (See Appendix A to this Consent Order) by each such officer or employee as stated above. Each subsequent key officer of OFE or other key employee hired or employed shall be provided by OFE with a copy of this Consent Order immediately upon commencing their employment or responsibilities. OFE shall within seven (7) days after appointing, hiring, or otherwise employing a new officer or key employee submit to ODA and Ohio EPA notice and a Certification of Receipt of Consent Order by each such officer or employee consistent with Appendix A of this Consent Order. Defendant shall provide a copy of this Consent Order to each contractor employed to perform work itemized herein.

3. No change in ownership or status of the Defendant, including but not limited to any transfer of assets or personal property, shall in any way alter Defendant’s rights or obligations under this Consent Order. Defendant shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of the Defendant’s ownership rights.

### **III. DESCRIPTION OF FACILITIES**

4. The provisions of this Consent Order shall apply to all facilities currently owned and/or in operation by Defendant in the State of Ohio, and any and all additional or renovated poultry or egg production facilities in the State of Ohio built, rebuilt, or renovated by the Defendant or which come into operation by the Defendant without regard to whether such construction or renovation is required under this consent order.

The following is a list of certain of the facilities presently in operation in the State of Ohio subject to this order:

- a. Multiple commercial layer, commercial pullet, breeding and production complexes in Hartford, Monroe, and Bennington Townships in Licking County, Ohio. These facilities, which include four (4) commercial pullet complexes, one of which was formerly referred to as Croton Pullet 3, has been converted to a breeder facility known as Croton Breeder 2 pursuant to the terms and conditions of a Major Operational Change as approved by ODA, four (4) commercial layer complexes, a hatchery, breeder layer, breeder pullet facilities, and the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs, are collectively referenced hereafter as the “Croton Facilities.”
- b. A commercial layer facility located in Marseilles Township, Wyandot County, approximately two (2) miles southeast of Marseilles, Ohio on Township Road 103. This facility which includes the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs will be referenced hereafter as the “Marseilles Layer Farm” or “Marseilles facility.”
- c. A commercial layer facility located in Hale Township, Hardin County, approximately two (2) miles east of Mt. Victory, Ohio on County Road 245. This facility and the necessary support structures for the production of eggs and handling of those eggs and the waste, wastewater, stormwater, and manure storage associated with production and handling of the eggs will be

referenced hereafter as the “Mt. Victory Layer Farm” or “Mt. Victory facility.”

- d. A commercial pullet facility located in Dudley Township, Hardin County, on County Road 255 approximately two (2) miles to the northeast of Hepburn, Ohio. This commercial pullet facility and the necessary support structures for handling of the waste, wastewater, stormwater, and manure storage associated with the facility will be referred to collectively as the “Goshen Pullet Farm #5” or “Goshen facility.”
- e. The Mt. Victory facility, the Marseilles facility and the Goshen facility collectively are hereafter referred to as “the Northwest Facilities.”

#### **IV. DEFINITIONS**

- 5. a. “Manure,” as defined in R.C. 903.01(O), means “wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs, animal excreta, discarded products, bedding, process waste water, process-generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.”
- b. “Process waste water,” as defined in R.C. 903.01(AA) means “any process generated waste water and any precipitation, including rain or snow, that comes into contact with manure, litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products such as milk or eggs.”
- c. “Process generated waste water,” as defined in 903.01(Z), means “water that is directly or indirectly used in the operation of an animal feeding facility for any of the following:
  - (1) Spillage or overflow from animal watering systems;
  - (2) Washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility;
  - (3) Direct contact swimming, washing, or spray cooling of animals; or
  - (4) Dust control.”

- d. Stormwater for construction projects means stormwater runoff, snow melt and surface runoff and drainage.
- e. "Pollution," as defined in R.C. 6111.01(A), means "the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state."
- f. "Sewage," as defined in R.C. 6111.01(B), means "any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities."
- g. "Other Wastes," as defined in R.C. 6111.01(D), means "garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste."
- h. "Pollutant," as defined by 33 U.S.C. §1362(6) of the Federal Water Pollution Control Act, means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

## **V. COMPUTATION OF TIME**

6. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or State of Ohio or federal holiday.

## **VI. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

7. Plaintiff alleges in the Complaint filed in this case and the Eleventh Set of Charges in Contempt filed under Case No. 99-CV-756, that Defendant has operated its

egg production facilities in Licking, Wyandot, and Hardin counties in violation of the permits issued by the Plaintiff for those facilities and numerous provisions of R.C. Chapters 903, 3704, 3767, 6109, and 6111 and the rules promulgated thereunder. Defendant does not admit the allegations of the Complaint or the Eleventh Set of Charges in Contempt. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant for all claims as alleged in the Complaint and Charges in Contempt in addition to any claim against the Defendant or any other person for the manure discharge to waters of the state from the Defendant's manure application at the Marseilles Facility in March 2007 ("March 2007 Discharge"). This Consent Order shall supersede and terminate any previous Consent Orders in Case No. 99 CV 756.

8. Nothing in this Consent Order addresses, resolves, or in any way applies to the issue of whether Defendant is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the State of Ohio for any of Defendant's facilities under federal or state law. Nothing in this Consent Order shall be construed to either release the Defendant from the obligation to apply for and obtain NPDES permits or to impose that obligation upon the Defendant. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to commence an enforcement action against the Defendant, and any other appropriate individuals, for the failure to apply for and obtain NPDES permits for any past, present, or future discharges of sewage, industrial waste or other waste from each of Defendant's facilities in the State of Ohio. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek any appropriate relief from persons other than the Defendant for claims or

conditions alleged in the Complaint, Contempt Charges, or for the March 2007 Discharge. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to bring any legal or equitable action against any person other than Defendant. Nothing in this Consent Order, including the imposition of stipulated penalties, shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which arise, continue, or occur after the filing of the Consent Order, from any person, including the Defendant. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action, against any person, including the Defendant, to eliminate or mitigate conditions that present a threat to the public health, welfare, or the environment. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to enforce this Consent Order through a subsequent contempt action or to otherwise seek relief pursuant to the terms of this Consent Order for violations of the Consent Order. This Consent Order in no way waives any defense afforded to the Defendant by law in any subsequent contempt action brought by the State. Finally, Defendant reserves all rights that they may have under Ohio's Rules of Civil Procedure.

#### **VII. PERMANENT INJUNCTION**

9. Defendant is hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapters 903, 3704, 3767, 6109, and 6111, the rules adopted under these Chapters, all monitoring and reporting requirements, whether imposed by rule, the terms of this Consent Order, or permits issued by Ohio EPA and/or ODA, and the terms and conditions of all permits issued by the Director of Environmental Protection or the Director of ODA to the Defendant or its predecessors for

all of Defendant's operations in Ohio, including, without limitation, all future permits or modifications or renewals issued to Defendant, whether issued by the Director of Environmental Protection or the Director of Agriculture.

## **VIII. INJUNCTIVE RELIEF**

### **A. CESSATION OF EXPANSION OF THE OFE FLOCK**

10. Except as provided in Paragraphs 15 and 16, Defendant is enjoined and hereby ordered to limit the total number of chickens for all of Defendant's facilities at or below 16,684,191 chickens of which no more than 11,552,727 may be layers and no more than 325,000 may be breeders.

11. Of the 11,552,727 layers authorized under Paragraph 10, Defendant is enjoined and hereby ordered to limit the layers to a combined total of no more than 7,205,177 layers at the Croton Facilities and a combined total of no more than 4,347,550 layers at the Mount Victory and Marseilles facilities. Of the 16,684,191 chickens authorized under Paragraph 10, Defendant is also enjoined and hereby ordered to limit the pullets at the Goshen Pullet Farm to a total of no more than 1,976,000 pullets.

12. Defendant is enjoined to immediately obtain a Permit to Operate for all of the facilities referenced in Paragraph 4 which includes but is not limited to the facilities that are not currently stocking birds, in order to maintain compliance with inspections, facility maintenance, and the control of insects and rodents at all facilities. For the purposes of facility maintenance, Defendant shall obtain and comply with any permits or plan approvals including but not limited to any construction stormwater NPDES permit or drinking water plan approvals that may be required.

13. Defendant may apply for and must obtain Permits to Install, Permits to Operate, and NPDES permits from the State of Ohio for Croton Pullet 4 and Croton Layers 1, 3, and 4 on or after January 3, 2011 provided that Defendant complies with the chicken number limits set forth in Paragraphs 10 and 11.

14. Before any expansion or increase of the above current numbers set forth in Paragraphs 10 and 11 can occur, Defendant must demonstrate a minimum of two (2) years of compliance with all environmental laws and rules, the terms and conditions of any State environmental permit, and the terms and conditions of this Consent Order. After a minimum of two (2) years compliance with all environmental laws and rules, the terms and conditions of any State environmental permit, and the terms and conditions of this Consent Order, Defendant may apply for a Permit Install, a Permit to Operate, and a NPDES permit from the State of Ohio to expand any of Defendant's facilities including the Croton Facilities and Northwest Facilities. The compliance period shall not commence before the effective date of this Consent Order.

15. Notwithstanding the terms and conditions provided in Paragraph 14 above, Defendant OFE may apply for a Permit to Install, a Permit to Operate, and a NPDES permit from the State of Ohio for Croton Layer 2 on or after January 1, 2012. However, Defendant OFE must comply with all environmental laws and rules, the terms and conditions of any State environmental permit, and the terms and conditions of this Consent Order for a minimum of two (2) years before Defendant OFE may obtain a Permit to Install, a Permit to Operate, and a NPDES permit from the State of Ohio for Croton Layer 2 and before Defendant OFE may install cages, construct manure storage or

treatment facilities, and stock any additional chickens above the chicken number limits provided in Paragraphs 10 and 11 at Croton Layer 2 as set forth in Paragraph 14 above.

16. Defendant is further enjoined and ordered to limit the number of chickens at the Croton facilities to the flock size and for the time period set forth in Paragraphs 10 through 15 of this Consent Order, regardless of the terms and conditions of any permit to install presently in effect or issued in the future to Defendant until such time as the Defendant obtains specific permission from the State of Ohio, whether through the issuance by Director of the Ohio Department of Agriculture of a permit authorizing a flock expansion at the Croton facilities or other express permit or approval. For emergency purposes and for a temporary time period not to extend beyond August 31, 2011, Defendant OFE is expressly authorized to stock Croton Layer Site #4 at a capacity not to exceed 2,314,386 birds and Croton Layer Site #1 at a capacity not to exceed 2,401,726 birds, so long as Defendant OFE refrains from stocking any birds at Croton Layer Site #3 and Defendant OFE complies with all of the conditions of the existing permits. Defendant OFE shall not install additional cages in any barn at any Croton facilities or Northwest facilities until new permits to install are issued except for Barn 29 and Barn 31 at Croton Layer Site #3. Notwithstanding the limited permission to install cages in Barn 29 and Barn 31 at Croton Layer Site #3, Defendant OFE shall not connect the feed lines to the main feed bins, shall not connect the water lines to the main water service line, and shall not stock birds in Barn 29 and Barn 31 at Croton Layer Site #3 until the Ohio Department of Agriculture grants express approval in accordance with the terms and conditions of this Order.

17. Defendant is further enjoined and ordered to limit the number of chickens at the Northwest Facilities to the flock size and for the time period set forth in Paragraphs 10 through 15 of this Consent Order, regardless of the terms and conditions of any permit to operate presently in effect or issued in the future to Defendant until such time as the Defendant obtains specific permission from the State of Ohio, whether through the issuance by the Director of the Ohio Department of Agriculture of a permit authorizing a flock expansion at the Northwest facilities or other express permit or approval.

**B. STORMWATER CONTROL**

18. Defendant is enjoined and ordered to immediately comply with the terms and conditions of the general storm water control permits issued under the NPDES for construction activities, permit number OHR100000 and any subsequent modifications and/or reissuance of this permit, or any subsequent NPDES permits issued by the ODA, during any and all times when Defendant engages in construction activities at any of Defendant's sites or locations at the Croton facilities, Goshen facility, Mt. Victory facility, or Marseilles facility as required by law.

19. Defendant is enjoined and ordered to undertake immediate measures to control and eliminate the discharge of contaminated stormwater from any of the Croton facilities that have not been authorized by an NPDES permit to discharge the stormwater.

**C. OPERATION AND MAINTENANCE OF WASTEWATER TREATMENT PLANTS AT THE CROTON FACILITIES**

20. Defendant is enjoined and ordered to monitor and maintain the wastewater treatment plants at the four (4) Croton commercial layer complexes in such a condition that they provide secondary treatment. Defendant shall take a grab sample of the wastewater treatment plant twice a year in May and November. Samples taken as

required herein shall be representative of the volume and nature of the monitored flow and the wastewater treatment plant's performance. Test procedures for the analysis of pollutants shall conform to regulation 40 C.F.R. 136, "Test Procedures for The Analysis of Pollutants" unless other test procedures have been specified in any operative permit. The sample results shall not exceed a thirty-day average of 65 mg/L of suspended solids or a daily maximum of 90 mg/L of suspended solids. The sample results shall not exceed a thirty-day average of 25 mg/L of 5 day carbonaceous biochemical oxygen demand or a daily maximum of 40 mg/L of 5 day carbonaceous biochemical oxygen demand.

**D. OPERATING REQUIREMENTS FOR ALL OFE FACILITIES**

21. Defendant is hereby permanently enjoined and immediately ordered to operate all facilities in accordance with the permits issued by ODA for the facilities and the following additional terms and conditions:

- a.) Defendant shall operate the facilities so as to prevent a nuisance as defined by R.C. Chapter 3767. Defendant shall not handle manure, dispose of manure, arrange for the land application of manure, or land apply manure in a manner that causes or creates a nuisance. Defendant shall take such measures as may be necessary to prevent or reduce a nuisance fly outbreak. In the event that additional remedies are required, and Defendant fails to implement those remedies, the State may pursue a contempt action. Defendant shall consult with the State on nuisance prevention measures to be implemented. Nuisance prevention measures to be considered shall include, but are not limited to, the use of pesticides and removal of the manure as soon as possible. If the above remedies fail, the State reserves its right to request the Court to require the Defendant to take additional measures;
- b.) Defendant shall maintain and manage the manure buildings including barn pits and belt-battery manure storage barns to minimize the activity and reduce the presence of insects and rodents;

- c.) Defendant shall maintain a Management Team to carry out the insect and rodent control activities including the Director of Operations, the Site Production Manager, Senior Production Manager, Compliance Officer and the Qualified Professional Entomologist, when the Qualified Professional Entomologist is present;
- d.) Defendant shall require that the Compliance Officer, Site Production Manager, and Senior Production Manager inspect each barn and manure storage barn at least once every two weeks. Defendant shall also require that the Director of Operations and the Qualified Professional Entomologist, when the Qualified Professional Entomologist is present, inspect each barn and manure storage barn at least once per month during one of the Biweekly Management Team Inspections;
- e.) Defendant shall require that the Site Production Manager provide direct oversight of all new Barn Managers the first week as a part of the training or until proficiency is demonstrated, whichever occurs first;
- f.) Defendant shall require that the Site Production Manager of each facility and all other personnel involved with insect and rodent control activities including the Barn Manager shall receive training at the time of the beginning of the employment. The training shall be administered by the compliance officer and Qualified Professional Entomologist and address the following aspects:
  - i.) adult fly rating system and action levels;
  - ii.) larval fly rating system and action levels;
  - iii.) scraper board activation;
  - iv.) belt activation frequency;
  - v.) beneficial insect rating system and action levels;
  - vi.) manure row condition rating system and action levels;
  - vii.) water leak inspections, severity and response time for repairs;
  - viii.) use of monitoring forms;
  - ix.) reporting requirements including time frames;
  - x.) appropriate actions to be taken; and
  - xi.) purpose of program and consequences of program shortcomings;

- g.) Defendant shall require all current employees with insect management responsibilities to receive training from the Compliance Officer, the Qualified Professional Entomologist, and a Certified Livestock Manager on at least an annual basis and whenever the insect control plan is substantially altered, requiring new management techniques;
- h.) Defendant shall require the Site Production Manager to inspect each barn on a daily basis for the presence of insect activity including but not limited to the presence of flies. The Site Production Manager shall record the findings on an inspection form approved by ODA. The presence of adult flies shall be divided into four categories: (1) few-measuring less than one fly per square foot; (2) moderate-measuring two to five flies per square foot; (3) abundant-measuring greater than five flies per square foot; and (4) extreme- measuring dense flies, clustered in hundreds per square foot. Defendant shall assess fly and larvae levels on a form approved by ODA as “few,” “moderate,” “abundant” or “extreme;
- i.) Defendant shall require the Barn Manager to perform the Moving Tape Count fly method as approved by ODA to monitor adult house fly levels and the action level used to trigger fly control at all non-belt-battery barns. The Barn Manager shall perform the Moving Tape Count three days during every week at each non-belt-battery barn at each facility. The Moving Tape Count data shall be provided to the Site Production Manager who will record the data on a form approved by ODA and shall determine if the Action Threshold has been exceeded. Defendant shall require that the action threshold be established by the Qualified Professional Entomologist during the inspection, but at no time shall the action threshold exceed a level of thirty (30). Defendant shall perform an adult house fly treatment the next day after discovery if the count exceeds the applicable Action Threshold on at least one tape;
- j.) The Barn Manager and/or the Site Production Manager shall report the number of flies collected on the Moving Tape Count at least three days a week;
- k.) If a moderate level of flies is present, the Site Production Manager shall complete one corrective action within

twenty-four hours of the first indication of the moderate level of flies;

- l.) If an abundant level of flies is present, the Site Production Manager shall complete two corrective actions within twenty-four hours of the first indication of the abundant level of flies. The Site Production Manager shall promptly inform the Senior Production Manager of any barn with an abundant level of insect or larval activity;
- m.) If an extreme level of flies is present, the Site Production Manager shall complete at least two corrective actions within twenty-four hours of the first indication of the extreme level of flies. Chemical treatment designed to instantly kill insects and larvae shall be implemented on a daily basis for a minimum of seven days or as provided on the chemical treatment product label. The Site Production Manager shall promptly inform the Senior Production Manager of any barn with extreme insect or larval activity. Defendant shall also contact ODA LEPP within twenty-four hours of the first indication of the extreme level of flies so that ODA LEPP may schedule an on-site investigation;
- n.) The required actions shall include, but not be limited to, providing bait for the insects, chemical treatment designed to instantly kill insects and larvae applied to spaces, manure storage barn walls, and/or the manure directly; chemical treatment with residual effects applied to spaces, manure storage barn walls, and/or the manure directly; and spraying fungus to spaces, manure storage barn walls, and/or the manure directly.
- o.) Defendant shall treat manure with an appropriate insecticide prior to removal from the manure storage barns including barn pits. Defendant shall also treat manure with an appropriate insecticide prior to removal from the belt-battery manure storage barns upon the observation of the presence of flies, larvae, pupae and/or beetle or beetle larvae. Defendant shall also treat removed manure after land application if necessary to eliminate beetles or beetle larvae and to eliminate moderate, abundant, or extreme levels of flies and fly larvae;
- p.) Defendant shall monitor and apply insecticide to manure that has moderate, abundant, or extreme insect activity in

the manure storage barn until composting is complete and insect activity has subsided. Before land application of manure, Defendant shall stockpile manure for at least two weeks prior to land application within the parameters set by ODA rules if the manure possesses moderate, abundant, or extreme insect activity after removal;

- q.) Defendant shall incorporate any manure that is too wet to stockpile, such as manure with more than seventy percent moisture, within twenty-four hours from the time of removal, unless prior written authorization is obtained from ODA to not incorporate the manure during a specific land application event (for example, an emergency application to frozen or snow-covered ground);
- r.) Defendant shall be responsible for monitoring manure stockpiles and treating manure stockpiles with insecticide. All manure stockpiles shall be monitored and treated with insecticide by a Certified Livestock Manager (“CLM”), including stockpiles that are monitored and treated by a contractor and stockpiles that are monitored and treated by the Defendant. Defendant shall be responsible for monitoring stockpiles at least twice a week for beetle and fly activity until activity has subsided. Defendant shall be responsible for applying an insecticide if insect populations have not been reduced sufficiently to “few” for imminent land application activities. Defendant shall be responsible for monitoring stockpiles on a regular basis, not to exceed one week between inspections after beetle and/or fly activity has subsided, for pest activity. Defendant shall be responsible for treating stockpiled manure with appropriate insecticides when necessary to eliminate abundant to extreme levels of flies and fly larvae in the stockpiled manure;
- s.) Defendant shall be responsible for land application activities and maintain all records associated with land application of manure generated at the facility. All land application of manure shall be conducted by a CLM, including manure application conducted by a contract applicator and manure application conducted by the Defendant. Defendant shall instruct all CLM contract manure applicators to contact Defendant immediately upon observation of moderate, abundant, or extreme insect activity either during or after land application. In addition, Defendant shall instruct the CLM contract manure

applicators to immediately contact Defendant in the event that manure has not been applied in accordance with best management practices, setback requirements, conditions of this Order, and/or the conditions of any permit issued by ODA or Ohio EPA. Defendant shall oversee and coordinate any necessary response action with the contractor;

- t.) Defendant shall cover with a tarp all transportation vehicles transporting manure prior to leaving the facility;
- u.) Defendant shall provide bait stations and rodent control devices including multiple rodent catch traps to control and eliminate rodents. Defendant shall place bait stations along the outside perimeter of the barns and along the interior walls of the barns no farther than one hundred (100) feet apart from each other. Defendant shall also place rodent control devices including multiple rodent catch traps along the outside perimeter of the barns and along the interior walls of the barns so that each rodent catch trap is positioned one hundred (100) feet from each other. Defendant shall alternate bait stations and rodent control devices including multiple rodent catch traps every fifty (50) feet. Defendant shall inspect the bait stations and rodent control devices including the multiple rodent catch traps on at least a weekly basis. Defendant shall eliminate areas that are conducive to nesting including the storage of unused materials along walls within twenty-four (24) hours of discovery;
- v.) Defendant shall inspect on a daily basis each barn to locate, report, and repair water leaks immediately. Defendant shall document the daily inspections for water leaks in the operating record at each facility;
- w.) Defendant shall require that the Compliance Officer review and complete forms approved by ODA, which record the number of adult flies present in each barn, the level of fly larvae present in each barn, the level of beneficial insects present in each barn, the occurrence of water leaks or other miscellaneous problems, manure row conditions including whether manure was properly removed, whether the proper procedures were followed to establish windrows after removal, and/or the necessity to remove wet manure;
- x.) Defendant shall also require that the Compliance Officer with input from the other participating management team

members list all action items to be completed on a form approved by ODA. Defendant shall require that the Site Production Manager complete the corrective actions within seventy-two hours after the barn or manure storage barn inspection was completed with the exception of water leaks, which shall be repaired immediately. Defendant shall require actions to be completed within twenty-four hours if the Compliance Officer identifies any barn as a priority for insect control, or when the entire barn or twenty-five percent of any aisle are rated moderate or higher for adult flies or fly larvae;

- y.) Defendant shall require a Qualified Professional Entomologist, on at least a monthly basis, to: inspect the barns, evaluate the environmental conditions, evaluate the adult and larval fly populations, and make recommendations for possible control methods. Defendant shall also require a monthly report outlining the evaluation and recommendations to be submitted to the Compliance Officer and the Director of Operations, who shall forward the report to the ODA LEPP. The Qualified Professional Entomologist shall as a part of his report, analyze trends in the quality and effectiveness of manure management, analyze trends in the quality and effectiveness of insect control methods, analyze trends in the quality and effectiveness of rodent control methods, analyze trends regarding controlling microbial contamination, evaluate the compliance status of the barn renovation schedule if applicable, evaluate the compliance status of the pit fans renovation schedule if applicable, evaluate the barns that require control actions, and evaluate what control actions need to be made for the barns;
- z.) Defendant shall require the Compliance Officer to review the daily barn inspections completed by the Barn Manager. This review shall be completed weekly and recorded on a form approved by ODA;
- aa.) Defendant shall require that a Compliance Officer be informed immediately if a daily inspection of the manure storage barn or exiting manure belt has moderate to abundant or extreme fly or larvae activity. The Compliance Officer shall immediately direct the Site Production Manager to complete a corrective action;

- bb.) Defendant shall require the Compliance Officer to direct the Site Production Manager to complete a corrective action if the Management Team during their inspection discover moderate to abundant or extreme fly or larvae levels on a form approved by ODA;
- cc.) In the event that Defendant land applies egg shells, Defendant shall immediately incorporate egg shells into the soil unless prior written authorization for the stockpiling of the egg shells is obtained from ODA;
- dd.) Defendant shall comply with the Emergency Response Plan requirements as set forth in the permits to operate; and
- ee.) Defendant shall remove any pullet from the pullet barns before any pullet attains the age of eighteen (18) weeks. Defendant shall make arrangements to stock the pullets in compliance with the terms and conditions of this Order, PTO requirements, and Ohio laws and rules or dispose of the pullets through an otherwise approved method in accordance with the terms and conditions of any State permit including the PTO, the terms and conditions of this Order, and Ohio laws and rules.

22. Defendant is hereby permanently enjoined and immediately ordered to operate the Croton facilities in accordance with the permits issued by ODA for the facilities and the following additional terms and conditions:

- a.) Defendant shall at a minimum collect and analyze manure moisture samples from each manure storage barn at least once per month and make the manure moisture sample results available to ODA upon inspection. Defendant shall provide ODA with the laboratory analytical manure moisture results at the end of each calendar quarter and an annual manure analysis from the manure storage barns. Defendant shall retain all sampling records for a minimum of five years and the records shall be available for State review upon request. If a representative sample cannot be obtained because manure measures below three feet in height in the manure storage barns, OFE shall inform ODA in their quarterly submittal and inform ODA when the representative sample will be obtained. Defendant shall inspect the condition of the manure including moisture on each belt in each barn on a daily basis and record the results

in the operating record. Defendant shall contact ODA on the same day that Defendant receives notice if manure moisture in the manure storage barns or the physical condition of the manure on the belts shows excess moisture and/or exceeds sixty percent (60%) and provide to ODA possible remedial actions including the remedial action chosen for each incident;

- b.) Defendant shall install, maintain and inspect on a daily basis four (4) manure blower fans in each barn of the Croton Layer facilities and the Croton Pullet facilities except the "A" and "B" barns of the Croton Layer facilities by a vented tubular manifold spanning the length of the barn directly over each manure belt. Each fan shall operate continuously without interruption;
- c.) Defendant shall remove manure by belt transport on a daily basis from the "A" and "B" barns. Defendant shall grind and mix the daily mortality at each facility with the manure from the "A" and "B" barns, which will increase the manure moisture content, unless and until Defendant obtains an approved major operational change that eliminates this method of grinding and mixing mortality from each facility;
- d.) Defendant shall maintain the effective dryness of the manure in the manure storage barns in order to prevent excessive fly breeding and maintain the required moisture of the manure in the manure storage barns to prevent slumping of the manure. The manure that shall be removed from the "A" and "B" barns pursuant to Paragraph 22(c) shall be deposited into the manure storage barns considering the historically high moisture content of the "A" and "B" barns measuring fifty percent (50%) to seventy percent (70%). Defendant shall remove and deposit the drier manure from the remaining barns on the wetter manure in the manure rows in the manure storage barns, to attain an optimal manure moisture level between fifty percent (50%) and sixty percent (60%) moisture and a minimum temperature of 120 degrees Fahrenheit that is required for composting in manure rows over three (3) feet in height;
- e.) In the event that manure moisture levels exceed seventy-five (75%) percent in the manure storage barns, Defendant shall immediately remove the manure from the manure storage barns and land apply the manure according to PTO requirements and the Ohio laws and rules or dispose of the manure through an otherwise approved method in accordance with the terms and conditions of any State

permit including the PTO and Ohio laws and rules;

- f.) For the inspection of the presence of flies, Defendant shall require the Site Production Manager to inspect the back of each non-belt battery barn on a daily basis. The Site production managers shall inspect one pillar and one back bay of each non-belt battery barn every day, rotating between pillars and bays so that each pillar and bay is checked at least once a week. For the belt-battery barns, the Defendant shall require the Site Production Manager to inspect the back of each belt on a daily basis. The Site Production Manager shall record the findings on an inspection form approved by ODA. Defendant shall perform daily visual inspections of the manure storage barns and the existing manure conveyor belts where they deposit manure onto the cross-conveyor belt to assess the presence of flies and larvae. The level of flies and larvae shall be noted during the daily inspection on a form approved by ODA and shall also be noted during the Management Team Inspection by the Compliance Officer on a form approved by ODA. The presence of adult flies shall be divided into four categories: (1) few- measuring less than one fly per square foot; (2) moderate- measuring two to five flies per square foot; (3) abundant- measuring greater than five flies per square foot; and (4) extreme- measuring dense flies, clustered in hundreds per square foot. Defendant shall assess fly and larvae levels on a form approved by ODA as “few,” “moderate,” “abundant” or “extreme;” and
- g.) Defendant shall require the Barn Manager to perform the Fly Card Count method as approved by ODA to monitor adult house fly levels and the action level used to trigger fly control at all belt-battery barns. The Barn Manager shall perform the Fly Card Count method at each belt-battery barn at each facility at least once a week. The Fly Card Count data shall be provided to the Site Production Manager who will record the data on a form approved by ODA and shall determine if the Action Threshold has been exceeded. Defendant shall require that the action threshold be established by the Qualified Professional Entomologist during the inspection, but at no time shall the action threshold exceed a level of fifty (50). Defendant shall perform an adult house fly treatment the next day after discovery if the count exceeds the applicable Action Threshold on at least one card. The Barn Manager and/or

Site Production Manager shall report the number of flies collected on the Fly Card Count at least once a week.

23. Defendant is hereby permanently enjoined and immediately ordered to operate the Northwest facilities in accordance with the permits issued by ODA for the facilities and the following additional terms and conditions:

- a.) Defendant shall maintain fifty-six (56) thirty-six (36) inch manure drying fans throughout the manure pit of each barn at the Mount Victory Facility and Marseilles Facility and shall maintain forty-four (44) thirty-six (36) inch manure drying fans through the manure pit of each barn at Goshen Pullet Farm to reduce moisture and fly breeding potential;
- b.) Defendant shall install, maintain, and inspect pit fans so that they operate continuously without interruption, except for such times when the manure is being removed from the barns;
- c.) Defendant shall operate manure scrapers at least twice each day in each barn;
- d.) Defendant shall promote and maintain in each barn sufficient populations of beneficial insects that are predatory on fly larvae or aid in drying manure. Defendant shall provide that beneficial insects are established in the manure rows after the manure has been removed;
- e.) Defendant shall maintain the effective dryness of manure in order to maintain thirty percent (30%) manure moisture or less. Defendant shall at a minimum collect and analyze manure moisture samples from each barn at least once per quarter per year. Defendant shall provide ODA with the laboratory analytical manure moisture results at the end of each calendar quarter. Defendant shall retain all sampling records for a minimum of five years and the records shall be available for State review upon request. If a representative sample cannot be obtained because manure measures below three feet in height, OFE shall inform ODA in their quarterly submittal and inform ODA when the representative sample will be obtained. Defendant shall contact ODA on the same day that Defendant receives notice if manure moisture in the manure rows exceeds

thirty percent (30%) and provide to ODA possible remedial actions including the remedial action chosen for each row;

- f.) In the event that manure moisture levels exceed thirty percent (30%), Defendant shall complete at least one corrective action as set forth in Paragraph 21(n). In the event that manure moisture levels exceed fifty percent (50%), Defendant shall immediately remove the manure from the barns and land apply the manure according to PTO requirements and the Ohio laws and rules or dispose of the manure through an otherwise approved method in accordance with the terms and conditions of any State permit including the PTO and Ohio laws and rules; and
- g.) For the inspection of the presence of flies, Defendant shall require the Site Production Manager to inspect the back of each barn on a daily basis. The Site Production Manager shall inspect one pillar and one back bay every day, rotating between pillars and bays so that each pillar and bay is checked at least once a week. The Site Production Manager shall record the findings on an inspection form approved by ODA. The presence of adult flies shall be divided into four categories: (1) few- measuring less than one fly per square foot; (2) moderate- measuring two to five flies per square foot; (3) abundant- measuring greater than five flies per square foot; and (4) extreme- measuring dense flies, clustered in hundreds per square foot. Defendant shall assess fly and larvae levels on a form approved by ODA as “few,” “moderate,” “abundant” or “extreme.”

24. Defendant is enjoined and ordered to remove the manure from all barns at the Mt. Victory facility, the Marseilles facility, and the Goshen facility no less frequently than the time frames provided in the approved permits to operate and/or this Order.

25. The Defendant is enjoined and ordered to immediately implement an inspection program that includes daily inspections of the exterior of each commercial layer and commercial pullet barn at all Croton facilities and the Croton Hatchery/Breeder Pullet Site and Croton Breeder 2 (“barns”). If the stocking of birds at a facility is not authorized by any ODA permit and no manure is generated at a facility as a result, then Defendant shall only be required to inspect that facility at a minimum of once a week.

The exterior barn inspection program shall include the following:

- a.) A focus on documenting releases from barns in quantities greater than thirty (30) gallons;
- b.) Assessing conditions that pose a threat of release of manure and other pollution to waters of the state;
- c.) The inspection of the exterior of the barns of each facility shall be accomplished at least once daily;
- d.) The results of such daily inspections shall be documented and shall be reviewed by the Compliance Officers of Defendant. Defendant shall retain all records for a minimum of five (5) years, and such records will be available for State review upon request; and
- e.) Require that Defendant take whatever lawful steps that are necessary to address any releases of manure or conditions that pose a threat of a release of manure or other pollution to waters of the State.

26. Defendant is enjoined and ordered to immediately implement an inspection program that includes daily inspections of all of Defendant's facilities that do not have a NPDES permit where stormwater ponds and controls are installed and in those locations where stormwater ponds and controls are later installed pursuant to this Consent Order. If the stocking of birds at a facility is not authorized by any ODA permit and no manure is generated at a facility as a result, then Defendant shall only be required to inspect that facility at a minimum of once a week. Defendant shall only be required to conduct daily inspections of the perimeter of each facility associated with a stormwater pond and controls. The perimeter inspection program shall include the following:

- a.) A focus on documenting unauthorized releases from stormwater ponds and controls;
- b.) Assessing conditions that pose a threat of release of manure and other pollution to waters of the state;

- c.) The inspection of the perimeter of each facility shall be accomplished at least once a day;
- d.) The results of such daily inspections shall be documented and shall be reviewed by the Compliance Officers of Defendant. Defendant shall retain all records for a minimum of five (5) years, and such records will be available for State review upon request; and
- e.) Require that Defendant take whatever lawful steps that are necessary to address any releases of manure or conditions that pose a threat of release of manure or other pollution to waters of the state and/or to fix and maintain all stormwater ponds and controls.

27. The Defendant shall within one (1) hour of the discovery of any unauthorized release of manure or other pollution from any commercial layer or commercial pullet facility or stormwater ponds or controls of any of Defendant's facilities, report such release to Ohio EPA and ODA. OFE shall immediately report the release to the Ohio EPA spill line at (800) 282-9378 and shall attempt to contact Cathy Alexander at (614) 644-2001 or Erin Sherer at (614) 728-3839 or their successors in order to report the release. OFE shall also immediately report the release to the ODA at (800) 282-1955 and shall attempt to contact Kevin Elder at (614) 387-0469 or his successor in order to report the release.

**E. DRINKING WATER AT ALL OFE FACILITIES WITHIN THE STATE OF OHIO**

28. Defendant is enjoined and ordered to comply with all plan approvals issued for the drinking water systems at all of the Defendant's facilities within the State of Ohio and all monitoring, reporting, and notice requirements established by the Director of Ohio EPA pursuant to R.C. Chapter 6109 and the rules adopted thereunder.

29. Defendant is enjoined to comply with the total coliform bacteria monitoring and maximum contaminant level requirements in accordance with Ohio Adm. Code 3745-81-21 and Ohio Adm. Code 3745-81-14, respectively.

30. Defendant is enjoined to notify the public in accordance with Ohio Adm. Code 3745-81-32 for: acute maximum contaminant level violations, the failure to monitor for volatile organic chemicals, the failure to sample routinely for total coliform, and the failure to monitor routinely for total coliform. Defendant is also enjoined to provide copies of all public notices and verification forms to Ohio EPA as required.

31. Defendant is enjoined to sever any connection from the potable public water systems at Croton Layer 1 and Croton Layer 4 to the pond wells within forty-five (45) days from the issuance of this Order to eliminate any possible cross-connection in accordance with Ohio Adm. Code 3745-95-02.

32. Defendant is enjoined to submit approvable plans to Ohio EPA for the water treatment facility at Croton Layer 3 within ninety (90) days from the issuance of this Order. Construction or use of Layer 3 is prohibited until such time as plans are approved by Ohio EPA.

33. Defendant is enjoined to submit approvable plans to Ohio EPA for the water treatment facility at Croton Layer 2 within ninety (90) days from the issuance of this Order. Construction or use of Layer 2 is prohibited until such time as plans are approved by Ohio EPA.

**F. PROHIBITION AGAINST THE BURIAL OF HATCHERY WASTES**

34. Defendant is enjoined and ordered to comply at all times with the terms and conditions of the permit to operate for the hatchery facility at the Croton facilities.

Defendant shall not at any time or for any reason dispose of hatchery wastes in any other manner than those approved in the hatchery permit to operate.

**G. COMPLIANCE MONITORING PERSONNEL**

35. Defendant is permanently enjoined and immediately ordered to dedicate the necessary number of employees to provide for environmental compliance monitoring and implement compliance with this Consent Order at each of Defendant's facilities within the State of Ohio, on a daily basis. The environmental compliance personnel required by this paragraph shall be exclusively dedicated to environmental compliance activities and shall not be involved in any other activities at the Defendant's facilities. Defendant shall provide to Ohio EPA and ODA within seven (7) days of the effective date of this order a complete list of all environmental compliance officers and their phone numbers. For purposes of this Consent Order, at least one environmental compliance officer shall be dedicated primarily to environmental compliance matters at the Croton facilities and one shall be dedicated primarily to the Northwest facilities.

36. Defendant is enjoined and ordered to provide its environmental compliance personnel with sufficient authority and resources including the funding for the resources to respond to any release or threatened release of manure or any other substance from any location at any and all of Defendant's facilities within the State of Ohio and to take any actions necessary to address any situation at any of Defendant's facilities within the State of Ohio that present a nuisance or present a threat of creating a nuisance.

37. The environmental compliance personnel required by this Consent Order shall be trained and qualified in terms of education and experience to demonstrate sufficient reliability, expertise, and competency to assure compliance with the terms of all permits

issued to Defendant by Ohio EPA and ODA, and all applicable provisions of the Ohio Revised Code, the Ohio Administrative Code, and this Consent Order.

38. Defendant is enjoined and immediately ordered to provide access to any representative of the State of Ohio for inspection, taking of samples or to otherwise perform their job duties at or in any barn, building, structure, or field at any and all of Defendant's facilities within the State of Ohio. Defendant shall provide appropriate safety and biosecurity equipment to allow State of Ohio personnel to inspect all buildings and structures, including OFE's hatchery facilities, at any and all of its facilities within the State of Ohio. Ohio EPA and the Department of Agriculture may utilize any appropriate personnel for any activity related to any of Defendant's facilities within the State of Ohio.

**IX. REVIEW OF SUBMITTALS, NOTICES, AND RESUBMITTALS**

39. Unless otherwise specified in this Consent Order, if Ohio EPA and/or ODA determines that any report, permit to install application, permit to operate application, NPDES application, plan approval application, or other document submitted pursuant to this Consent Order is incomplete or that improvements other than or in addition to those proposed by Defendant are necessary, then Defendant shall resubmit the document to Ohio EPA and/or ODA within fourteen (14) days of a deficiency notification from Ohio EPA and/or ODA, unless Ohio EPA and/or ODA extends the date for resubmittals. The Ohio EPA and/or ODA may accept each such document with additional terms and conditions. Upon Ohio EPA's and/or ODA's final authorization, Defendant shall implement the improvements in accordance with a schedule authorized by Ohio EPA and/or ODA. This schedule for implementing the improvements, when authorized by

Ohio EPA and/or ODA, shall be considered to be incorporated into Section VII of this Consent Order and fully enforceable as a requirement of this Consent Order.

40. All written notifications and correspondence, including reports, permit applications, and plans as required by this Consent Order, shall, unless specifically required to be provided to other entities or individuals, be sent to:

Ohio Department of Agriculture  
Livestock Environmental Permitting Program  
A.B. Graham Building  
8995 East Main Street  
Reynoldsburg, Ohio 43068

For all surface water submittals:

Ohio EPA  
Division of Surface Water  
Lazarus Government Center, 6<sup>th</sup> Floor  
P.O. Box 1049  
Columbus, Ohio 43216  
Attn: Cathy Alexander or her successor

For all drinking water submittals:

Ohio EPA  
Division of Drinking and Ground Water  
Lazarus Government Center, 6<sup>th</sup> Floor  
P.O. Box 1049  
Columbus, Ohio 43216  
*and*  
Ohio EPA  
Central District Office  
Division of Drinking and Groundwater  
P.O. Box 1049  
Columbus, Ohio 43216, Attn: Enforcement Group Leader

#### **X. CIVIL PENALTY**

41. Defendant shall pay to the State of Ohio pursuant to R.C. 903.16, R.C. 6111.09, and R.C. 6109.33 a cash civil penalty of \$625,000. The civil penalty paid pursuant to this paragraph shall be paid according to the following conditions:

- a.) Defendant shall deliver, no later than June 30, 2011, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA – Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.
- b.) Defendant shall deliver, no later than June 30, 2011, a check in the amount of \$25,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "Ohio EPA – Drinking Water Protection Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty payment. If the Attorney General's Office notifies Defendant that the payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.
- c.) Defendant shall deliver, no later than September 30, 2011, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA – Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil

penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.

- d.) Defendant shall deliver, no later than September 30, 2011, a check in the amount of \$20,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "Ohio EPA – Division of Surface Water" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty payment. If the Attorney General's Office notifies Defendant that the payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.
  
- e.) Defendant shall deliver, no later than December 31, 2011, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" and to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA – Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.

- f.) Defendant shall deliver, no later than March 31, 2012, a check in the amount of \$145,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215. "ODA – Livestock Management Fund" shall appear on the face of the check. The Office of the Attorney General may notify Defendant of any late civil penalty installment payment for a calendar quarter. If the Attorney General's Office notifies Defendant that an installment payment is late, then a further penalty shall be paid in the amount of five hundred dollars (\$500) per day for each of the first seven (7) days after receiving the notice, one thousand dollars (\$1,000) per day for each of the next seven (7) days, and one thousand five hundred dollars (\$1500) per day for each day until the installment payment is made.

**XI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

42. In lieu of an additional \$150,000 civil penalty and in furtherance of the mutual objectives of the parties in further reducing potential impacts to public health, welfare, and the environment from Defendant's facilities, preventing impact to waters of the state, reducing odors and fly breeding potential, and for the advancement of scientific technologies designed to promote environmental protection, Defendant agrees to and is hereby ordered to implement supplemental environmental projects according to the following terms and conditions. Defendant is enjoined to expend no less than \$300,000 on supplemental projects within two years of the effective date of this Consent Order. Within one year of the effective date of this Consent Order, Defendant shall spend \$50,000 on permanent, natural windbreaks by planting trees around the Defendant's facilities, and Defendant shall spend the remaining difference by the end of the second year of the effective date of this Consent Order. All supplemental environmental projects

shall be approved by ODA prior to their implementation and prior to Defendant receiving any credit for their value.

43. If Defendant does not spend a total of \$300,000 on supplemental environmental projects within two years of the effective date of this Consent Order, Defendant shall immediately pay the \$150,000 civil penalty identified in paragraph 42, less one-half of any amount expended on supplemental environmental projects, including the planting of trees as natural, permanent windbreaks on Defendant's facilities or any other supplemental environmental projects approved by ODA. Defendant shall deliver a check drawn on an account with sufficient funds in the appropriate amount made payable to "Treasurer, State of Ohio" to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad St., 25<sup>th</sup> Floor, Columbus, Ohio 43215. "ODA – Livestock Management Fund" shall appear on the face of the check.

## **XII. ENFORCEMENT COSTS**

44. Defendant shall pay the enforcement costs of the Ohio Attorney General expended prior to the entry of this Consent Order, by delivering a certified check in the amount of \$10,000 on or before December 31, 2011, made payable to the order of "Treasurer, State of Ohio" to Karen Pierson, or her successor, at the Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. "Ohio Attorney General's Office – Enforcement Costs" shall appear on the face of the check. Any check submitted in compliance with this Section of this Consent Order shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

### **XIII. STIPULATED PENALTY**

45. In the event that Defendant fails to remove manure from the barns at any or all of the Defendant's facilities in accordance with the manure removal interval established in any PTO issued to Defendant by the Department of Agriculture, Defendant shall, be liable for, and shall pay, a stipulated penalty in accordance with the following amounts:

a) for each day of each such failure from day one through day ninety (90), the amount of one hundred dollars (\$100) per day per each barn; b) for each day over ninety-one (91) days until the manure in the barn(s) is completely cleaned out, the amount of five hundred dollars (\$500) per day per each barn.

46. In the event that Defendant fails to meet any requirement of this Consent Order, other than those addressed in Paragraphs 42 and 45 above, including any scheduled milestone requirement and any term or condition of any permit to install, permit to operate, egg wash and wastewater land application plan, or any other permit issued to Defendant by Ohio EPA and/or ODA, Defendant shall, immediately and automatically, be liable for, and shall pay, a stipulated penalty according to the following payment schedule: (a) for each day of each failure to meet a requirement, up to twenty (20) days, two hundred fifty dollars (\$250) per day for each requirement not met; (b) for each day of each failure to meet a requirement from twenty-one (21) to forty (40) days- five hundred dollars (\$500) per day for each requirement not met; (c) for each day of each failure to meet a requirement, from forty-one (41) to sixty (60) days - seven hundred fifty dollars (\$750) per day for each requirement not met; and (d) for each day of each failure to meet a requirement, over sixty-one (61) days - one thousand dollars (\$1,000) per day for each requirement not met.

47. Any payment required to be made under the provisions of Paragraphs 45 or 46 of this Consent Order shall be made by delivering, within forty-five (45) days from the date of failure to meet the requirement of this Consent Order, a check or checks drawn on an account with sufficient funds for the appropriate amounts made payable to “Treasurer, State of Ohio” to Karen Pierson, or her successor, Administrative Assistant, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215. Defendant shall also state in writing the specific violation(s) and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties for specific violations shall not be construed to limit Plaintiff’s authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

#### **XIV. POTENTIAL FORCE MAJEURE**

48. If an event occurs which causes or may cause a delay in Defendant’s compliance with any requirement of this Consent Decree, Defendant shall notify ODA, Ohio EPA, and the Ohio Attorney General’s Office in writing within ten (10) days from when the Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to ODA, Ohio EPA, and the Ohio Attorney General's Office shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

49. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Defendant may raise that they are entitled to a defense that its conduct was

caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such defense exists, it is, however, hereby agreed upon by Defendant and State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Decree is commenced by the State of Ohio. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or a change in Defendant's financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Decree. Failure by Defendant to timely comply with the notice requirements of this Section shall render this Section null and void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's rights to request an extension of its obligations under this Consent Decree based on such incident. An extension of one date based on a particular incident does not mean that the Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Decree without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses they may have under applicable law.

## **XV. MISCELLANEOUS PROVISION**

50. This Consent Order is not and shall not be interpreted to be a permit or a modification of any existing permit or plan approval issued pursuant to R.C. Chapters 903, 6109, and/or 6111. This Consent Order does not authorize the installation or modification or operation of any treatment works or disposal system or public water system. Defendant shall obtain all necessary permits, certificates, plan approvals, or approvals required under state or federal law in order to undertake the work contemplated by this Consent Order and/or any other installation or modification of any facility. The parties acknowledge and agree that issuance, renewal, modification, denial, or revocation of a permit(s), plan approvals and the issuance of orders or other actions of the Director of the Ohio EPA or the Director of ODA are not subject to challenge or dispute before this Court, but rather, shall be subject to challenge under R.C. Chapters 119, 903, or 3745, as appropriate. The parties further acknowledge and agree that issuance, renewal, modification, denial, or revocation of certain permit(s) and/or certificates by the Director of Agriculture pursuant to R.C. Chapter 903 are also “actions of the Director,” and under Chapters 119, 903, and 3745, will only be subject to the original exclusive jurisdiction of the Environmental Review Appeals Commission and not this Court.

## **XVI. TERMINATION OF CONSENT ORDER**

51. After Defendant has paid all civil penalties, costs, enforcement costs to the Ohio Attorney General, and stipulated penalties, if any, that are or may be due, including completion of the supplemental environmental projects or payment of the civil penalty attributed to such projects as set forth in Section XI, and so long as Defendant has complied with the injunctive relief and other terms and conditions contained in Sections

VII, VIII, and IX of this Consent Order until the timely issuance of renewal permits to operate no sooner than 2016, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order, including, without limitation, the injunctive relief set forth in Sections VII and VIII and the Court's retention of jurisdiction set forth in Section XVIII. Plaintiff takes no position with regard to such motion at this time, and reserves its right to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties.

**XVII. AUTHORITY TO ENTER INTO THIS CONSENT ORDER**

52. The signatory for Defendant represents and warrants that he has been duly authorized to sign this document and so binds Defendant to all terms and conditions thereof.

**XVIII. RETENTION OF JURISDICTION**

53. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendant's compliance with the terms and provisions of this Consent Order, and to resolve any disputes arising under this Consent Order. Nothing herein alters the jurisdiction of the Environmental Review Appeals Commission under R.C. Chapter 3745.

**XIX. COURT COSTS, COST RECOVERY, AND COST OF PUBLICATION**

54. Defendant is hereby ordered to pay the court costs of this action.

55. Defendant is hereby ordered to pay the costs incurred by Ohio EPA for the publication of notice of this Consent Order in a newspaper of general circulation in Licking, Wyandot, Marion, and Hardin counties. Defendant shall pay the costs associated

with these publications by delivering a check drawn on an account with sufficient funds payable to "Treasurer, State of Ohio," with a notation of the check that the funds go to "Fund 699," in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Lazarus Government Center, Columbus, Ohio 43216, within thirty (30) days from the date Defendant receives notice of the costs from Ohio EPA.

**XX. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

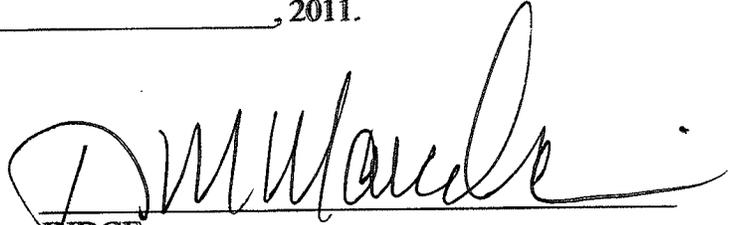
56. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

57. This Consent Order entered into between the parties represents the entire understanding between the parties and supersedes any earlier verbal or written communication regarding the same.

58. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the Consent Order upon the journal, the clerk is directed to serve upon all parties notice of the Consent Order and its effective date upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

**IT IS SO ORDERED**

Effective upon this \_\_\_\_\_ day of \_\_\_\_\_, 2011.



JUDGE  
COURT OF COMMON PLEAS  
LICKING COUNTY, OHIO

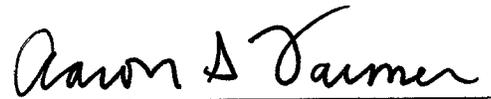
**APPROVED:**

**OHIO FRESH EGGS, LLC**

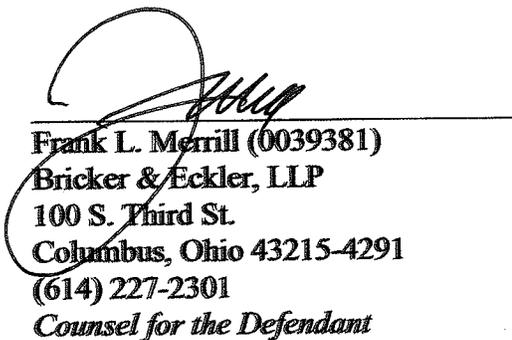


Joe Laffoon, on  
behalf of Ohio Fresh Eggs, LLC

**OHIO ATTORNEY GENERAL  
MICHAEL DEWINE**



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*Counsel for the Defendant*

**APPENDIX A**

**CERTIFICATION OF RECEIPT OF CONSENT ORDER**

I \_\_\_\_\_, do hereby state that on \_\_\_\_\_,  
I did receive from \_\_\_\_\_, on behalf of Ohio Fresh Eggs, LLC, or  
its successor in interest \_\_\_\_\_, a complete copy of the  
Consent Order in State of Ohio, ex. rel. DeWine v. Ohio Fresh Eggs, LLC, Case No.  
\_\_\_\_\_, and I have read the Consent Order and understand its provisions.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME