

<p><i>IN THE MATTER OF:</i></p> <p>Meijer Dairy Purple Cow Creamery 4200 South County Road 25A Tipp City, Ohio 45371, Respondent.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>City of Tipp City, Ohio Water & Sewer Department, Permitting Authority, and</p> <p>Tri-Cities North Regional Wastewater Authority, Control Authority</p> <p>Consent Order</p>
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The City of Tipp City, Ohio (hereinafter “Tipp City” or “the Permitting Authority”), Tri-Cities North Regional Wastewater Authority (hereinafter “TCA” or “the Control Authority”), and Meijer Dairy Purple Cow Creamery (hereinafter “Meijer” or “the Company”), hereby enter into this Consent Order, to be effective as of the last date signed below, in order to (1) to resolve alleged violations of Industrial User (IU) Wastewater Discharge Permit No. TI-005 (hereinafter “the IU Permit”) and Tipp City’s Sewer Use Ordinance (hereinafter “the Ordinance”), and (2) establish an enforceable schedule for Meijer to take certain steps designed to reduce odors and wastewater BOD₅ loadings from the Company’s above-captioned facility (hereinafter “the Facility”), thus enabling it to consistently comply with the terms and conditions of the IU Permit and the Ordinance.

WHEREAS, under the IU Permit, Meijer is authorized to discharge industrial wastewaters from the Facility to Tipp City’s sewer collection system in accordance with the terms and conditions set forth in the IU Permit, and in compliance with the Ordinance;

WHEREAS, by letter dated July 30, 2020, Tipp City informed Meijer of alleged ongoing violations of the IU Permit and the Ordinance, as well as the alleged failure to achieve objectives set forth in a November 19, 2018, Consent Order between the Company, Tipp City and TCA, all relating primarily to Meijer’s discharge of BOD₅ loadings in excess of 1,500 pounds per day from the Facility;

WHEREAS, the July 30, 2020, letter requested that Meijer contact Tipp City to discuss what steps were being taken to address the alleged violations;

WHEREAS, no response having been received from Meijer for several weeks after sending the July 30, 2020, letter, Tipp City began assessing penalties from the Company of \$1,000 per each violation of the daily BOD₅ loading limit, for which Meijer has, to date, paid more than \$56,000 collectively for ongoing loading violations;

WHEREAS, no response having been received from Meijer as of September 4, 2020, Tipp City and TCA, as Permitting and Control Authorities, respectively, determined under the delegation of pretreatment enforcement authority from Ohio EPA, which is set forth in TCA’s Ohio EPA NPDES Permit No. IPD00020*LD, that Tipp City and TCA were required to commence the next step in their Ohio EPA-approved Enforcement Response Plan (*i.e.*, judicial action) to address the alleged ongoing violations;

WHEREAS, outside counsel to Tipp City and TCA sent a letter dated September 10, 2020, to Meijer, notifying the Company of the intent of Tipp City and TCA to commence a joint judicial enforcement action to address the alleged violations unless an agreement was reached expeditiously to address them, which letter precipitated a meeting in Tipp City on September 21, 2020, attended by representatives for Meijer, Tipp City, TCA, and Ohio EPA;

WHEREAS, at the September 21, 2020, meeting, (1) the alleged violations were discussed, along with a series of odor complaints filed with Tipp City and the Regional Air Pollution Control Authority (RAPCA) relating to the wastewater treatment process at the Facility, and (2) representatives for Meijer outlined an informal plan designed to reduce BOD₅ loadings and control odors from the treatment process; and

WHEREAS, following the meeting, on September 25, 2020, Meijer submitted a formal written plan to Tipp City and TCA designed to achieve the above objectives, the terms of which by agreement of the parties are incorporated herein.

NOW, THEREFORE, without admission of any issue of law or fact relating to the alleged violations, the parties hereto agree as follows:

1. Unless otherwise stated in this Consent Order, compliance therewith does not relieve Meijer of its obligation to comply with all terms and conditions in its IU Permit and the Ordinance, including any applicable pretreatment regulations, standards, or requirements under local, state, and federal laws that become effective during the term of the IU Permit.

2. Technical Committee Meetings.

a. Beginning on the date of the next scheduled meeting of the technical committee for the Permitting Authority and Control Authority, and during each subsequent meeting thereafter until this Consent Order is terminated, the General Manager for the Facility (a position currently held by Brent Sherman) and/or the Lead Engineer for the Facility (a position currently held by Larry Dubbs) shall meet with representatives of the technical committee to discuss (a) the status of Meijer's compliance with the requirements of this Consent Order, (b) the operations at the Facility that are regulated under the IU Permit, (c) the current daily BOD₅ loadings from the Facility, (d) any odor complaints levied since the last technical meeting, and (e) the reasons for any delay in compliance with the requirements of this Consent Order, the expected duration of the delay, and the steps being taken to minimize the delay.

b. Technical committee meetings are held the second Wednesday of each month, starting at 1:30 pm. If for any reason Meijer does not attend a scheduled technical meeting, the Company shall provide the information in ¶ 2.a. in writing or email to Tipp City and TCA no later than ten (10) days after the date of the technical meeting.

3. Compliance Schedule for Meijer to Reduce BOD₅ Loadings.

a. No later than October 12, 2020, Meijer shall implement the following enhanced

process controls:

i. Program the Facility's Clean in Place (CIP) procedures to automatically suspend operations that are sending CIP rinsewaters to EQ Tank T3001 anytime the level EQ Tank T3001 reaches or exceeds 80% (20 ft.). Once the 80% level is reached in EQ Tank T3001, CIP procedures shall not resume until the level falls below 68% (17 ft.). In addition, the overflow capacity available in the Facility's second EQ Tank [insert tank #] shall be limited to 57% (17 ft.).

ii. Limit the flow through capacity of the Facility's dissolved air floatation (DAF) system to no more than 260 gpm unless overridden by the Plant Manager with prior notice and explanation provided to Tipp City and TCA.

iii. Reduce the Facility's weekly operating levels by an amount equivalent to 70,000 gallons of raw milk.

iv. Begin daily transportation of wastewater from the Facility to an alternative off-site location for treatment and/or disposal. Meijer shall disclose the location to Tipp City and TCA, but the Company is solely responsible for all approvals necessary for such transportation and disposal. The amount thereof shall be left to the informed discretion of Meijer based on, among other things, production levels and the adequacy of the aforementioned EQ Tanks, CIP, and DAF controls, but is currently contemplated to be approximately 40,000 gpd.

b. No later than February 28, 2021, Meijer shall cease production at the Facility of the following cultured products: cottage cheese, sour cream, dips and yogurt ("the Cultured Products Diversion"). Meijer shall not recommence production of these products at the Facility without prior approval from Tipp City and TCA.

c. Meijer shall immediately begin measuring daily the success of the enhanced process controls outlined in ¶¶ 3.a.i.-3.a.iv. in reducing BOD₅ loadings. The Company shall continue the enhanced controls until such time as it demonstrates Consistent Compliance, as defined in ¶ 6.a., with the 1,500 lb./day BOD₅ loading limit in the IU Permit. If Meijer has not achieved at least thirty (30) days of continuous compliance with the BOD₅ loading limit by January 31, 2021, the Company shall implement a combination of the following additional steps to reduce BOD₅ loadings further:

- i. Diverting additional wastewater flow to the Facility's EQ Tanks;
- ii. Implementing additional controls on the Facility's CIP process;
- iii. Reducing further the flow through capacity of the Facility's (DAF) system;
- iv. Reducing further the Facility's weekly operating levels by additional gallons of raw milk; and/or

v. Increasing the volume of wastewater transported offsite.

d. If a combination of implementing enhanced process controls outlined above and completing the agreed Cultured Products Diversion has not enabled Meijer to achieve Consistent Compliance with the 1,500 lb./day BOD₅ loading limit by February 28, 2021, the Company shall submit a plan within ten (10) days thereafter to Tipp City and TCA describing what additional steps will be taken to achieve Consistent Compliance.

4. Compliance Schedule for Meijer to Eliminate Odor Complaints.

a. On or before fifteen (15) days after the effective date of this Consent Order, Meijer shall begin to add sodium permanganate to the inlet to its DAF unit in sufficient quantities to oxidize hydrogen sulfide and eliminate the odor complaints filed with Tipp City and RAPCA (the “oxidant addition program”). The addition must be sufficient to address odors associated with all parts of the wastewater treatment process, including sludge/milk solids handling, as well as potential odors generated in Tipp City’s sewer system after the point of discharge. If Meijer decides at any point prior to termination of this Consent Order to use a different chemical oxidant, the Company shall document to Tipp City and TCA the reasons for, and the oxidizing potential of, the proposed alternative chemical before making the switch, and may not switch oxidants until the three parties have an opportunity to discuss the basis for the proposed switch in chemical.

b. Meijer shall keep daily records of the amount of oxidant added to the wastewater process, and the records shall be provided to Tipp City and TCA as part of the quarterly monitoring report submitted under Part 8 of the IU Permit.

c. Meijer shall continue to haul DAF float from the sludge storage tank for off-site disposal until the Company achieves “Odor Elimination” as defined in ¶ 6.b., and the Company agrees to maintain the oxidant addition program (or, if applicable, maintain the capital improvements installed under ¶ 4.e.).

d. Meijer shall continue its agreement not to use its dewatering sludge press equipment, and the Company shall keep the equipment disconnected from its operations until such time as (i) it achieves Odor Elimination, (ii) it agrees to continue to maintain the oxidant addition program (or, if applicable, maintain the capital improvements installed under ¶ 4.e.), and (iii) it obtains any necessary permit to install required by Ohio EPA.

e. If at any time before this Consent Order is terminated Meijer decides to achieve Odor Elimination through capital improvements rather than the oxidant addition program, in whole or in part, the Company shall submit (i) a proposal to Tipp City and TCA for their approval that explains the basis for the proposed switch, and demonstrates how the capital improvements will allow the Company to achieve Odor Elimination, and (ii) a permit to install application to Ohio EPA. Tipp City and TCA reserve their right to oppose Ohio EPA’s issuance of a permit to install approval for the capital improvements if they are not convinced that the capital improvements will be sufficient to enable Meijer to achieve Odor Elimination.

5. Chemical Usage at the Facility.

a. Beginning October 12, 2020, and continuing each month thereafter, Meijer shall include in the Facility's monitoring report submitted under Part 8 of the IU Permit a listing of the chemicals and applicable volumes used in the Facility's wastewater treatment process for the previous calendar month, and at least thirty (30) days prior to using any new chemical in the process, submit written or email notice thereof to Tipp City and TCA, along with (a) a copy of the applicable MSDS sheet, (b) a summary of the purpose of the chemical, and (c) an estimate of the proposed volume or rate to be used in the process. If Tipp City or TCA fails to approve or disapprove the use of a new chemical within thirty (30) days after Meijer submits the notice, the use thereof shall be deemed approved at the volume or rate proposed.

6. Definition of "Consistent Compliance" and "Odor Elimination."

a. For purposes of this Consent Order, the term "Consistent Compliance" means at least three (3) consecutive months with the daily effluent BOD₅ loading (or, if approved, an equivalent COD loading) being less than or equal to the 1,500 lb./day limit in the IU Permit. Compliance shall be determined by dividing the total of all individual BOD₅ sample results (mg/l) for a day by the number of BOD₅ samples taken that day, and the quotient then multiplied by the total wastewater flow that day (mgd) and then by 8.345. If multiple BOD₅ samples are taken in the same day, the samples shall be taken at times that are representative of the wastewater discharge for the entire day. Records of the date, time, and results of each BOD₅ test, as well as total daily discharge flow, shall be included in each quarterly monitoring report submitted to Tipp City and TCA.

b. For purposes of this Consent Order, the term "Odor Elimination" means at least three (3) consecutive months without Tipp City or RAPCA receiving an odor complaint related to Meijer's operations. An odor complaint for which the Company presents objective evidence to demonstrate that the source is not fairly attributed to Meijer's operations shall not count toward the obligation to achieve Odor Elimination.

7. Revised Slug Discharge Control Plan (SDCP).

a. As part of Meijer's requirement under Part 9 of the IU Permit to submit a draft revised SDCP, the draft plan shall include steps designed to control the discharge of slug loads of high-strength wastewater, including untreated or raw milk. The steps in the SDCP shall include the enhanced process and odor controls required in this Consent Order, along with any other steps, including controlled discharge rates, that Meijer reasonably determines can effectively achieve this objective.

b. Tipp City and TCA shall comment on the draft revised SDCP no later than two (2) weeks after receipt, and Meijer shall incorporate the comments it concurs with into a final, revised SDCP submitted to Tipp City and TCA no later than one (1) week after receiving the comments.

c. Starting the next calendar month after the final, revised SDCP is prepared, and

continuing thereafter, Meijer shall include in the quarterly monitoring report submitted under Part 8 of the IU Permit a statement indicating that the SDCP continues to be followed, and identifying any new or revised steps identified by the Company that will assist further in achieving the objective of the SDCP.

8. Status Reports and Submittals.

a. In addition to all other submittals required by Meijer under this Consent Order, until such time as this Consent Order is terminated, each quarterly monitoring report submitted under Part 8 of the IU Permit shall include a summary of the Company's compliance status with all requirements of this Consent Order, a statement whether the BOD₅ loading limit in the IU Permit is being met, and, if the limit is not being met, any steps to be taken in the following calendar month designed to achieve compliance with the limit.

9. Force Majeure.

a. If an event occurs that causes, or may cause, a delay of any requirement of this Consent Order, Meijer shall notify Tipp City and TCA in writing no later than the earlier of fourteen (14) days after learning of the event, or learning of facts that, in the exercise of due diligence, should have prompted notification. The notice shall describe in detail the anticipated length of the delay, the cause or causes of the delay, the date when Meijer learned of the cause or causes of the delay, the measures taken and to be taken by Meijer to prevent or minimize the delay, and the revised timetable by which the applicable requirement will be achieved. Meijer shall adopt all reasonable measures to avoid or minimize any such delay.

b. In any action taken by Tipp City and TCA to enforce any provision of this Consent Order, Meijer may assert that it is entitled to a defense that its conduct was caused by acts or omissions beyond its reasonable control, such as, by way of example and not limitation, acts of God, strikes, acts of war, or civil disturbances. If such action is commenced, Meijer shall bear the burden of proving that any delay was caused by acts or omissions beyond its reasonable control. Failure by Meijer to comply with the notice requirements hereunder shall render such defense void and of no force and effect as to the particular incident involved. An extension of a deadline based on a particular incident does not mean that Meijer qualifies for an extension of a subsequent date or deadline. Meijer must make an individual showing of proof regarding each incremental step or deadline for which an extension is sought.

10. Stipulated Penalties.

a. Because Meijer's previous proposed plan to achieve compliance with the BOD₅ loading limit (as memorialized in the November 19, 2018, Consent Order) did not result in compliance with the BOD₅ loading limit, Meijer shall pay the following stipulated penalties if its commitments under this Consent Order do not lead to Consistent Compliance with the 1,500 lb./day BOD₅ loading limit:

i. Starting January 31, 2021, if Meijer has not achieved at least thirty (30) days of continuous compliance with the BOD₅ loading limit, three thousand dollars (\$3,000) for

each violation of the daily BOD₅ loading limit; and

ii. Starting the earlier of March 31, 2021, or thirty (30) days after Meijer completes the Cultured Products Diversion if completed before February 28, 2021, five thousand dollars (\$5,000) per each day that Consistent Compliance with the BOD₅ loading limit has not been achieved.

b. TCA will invoice Meijer on a monthly basis for any stipulated penalties due under ¶ 11. Payment of stipulated penalties shall be in the same manner as payment of Company's sewer charges, but shall be by separate check with the following notation: "Stipulated Penalties – Consent Order." Stipulated penalties shall be paid monthly along with Meijer's monthly utility bill, but submitted directly to TCA.

11. Reservation of Rights.

a. Compliance by Meijer with the terms and conditions of this Consent Order shall not preclude Tipp City and TCA from issuing notices of violation and assessing civil penalties up to \$1,000 per each violation of the daily BOD₅ loading limit that occurs between the effective date of this Consent Order and January 31, 2021.

b. Tipp City and TCA reserve their respective enforcement authorities to address future odor complaints if the implementation of the odor controls under ¶ 4 do not result in Meijer achieving Odor Elimination on or before January 31, 2021.

c. Compliance with this Consent Order shall not be construed to relieve Meijer of its obligation to comply with all terms and conditions of the IU Permit not otherwise suspended or altered by this Consent Order.

d. Nothing in this Consent Order shall be construed as an agreement by Tipp City or TCA to any future modification of the IU Permit issued to the Facility.

e. Nothing in this Consent Order shall limit the authority of Tipp City and TCA to take all steps necessary to protect Tipp City's sewer system or TCA's POTW, or to protect public health, welfare, or the environment.

12. Judicial Enforcement.

a. Nothing in this Consent Order, including Meijer's payment of stipulated penalties, shall be construed as a limitation on the right of Tipp City and TCA to enforce this Consent Order, if necessary, in the Court of Common Pleas for Miami County, Ohio. If judicial enforcement is necessary, Meijer agrees not to contest the jurisdiction and venue of said Court over said action, and Meijer agrees to waive formal service of process and accept process via certified mail delivered to Facility, to the attention of the Brent Sherman, Plant Manager, or his successor, with a copy mailed by regular U.S. mail to Allen Shelden, Managing Counsel, or his successor, at Meijer, Inc., 2929 Walker Avenue, NW, Grand Rapids, MI 49544.

13. Termination of this Consent Order.

a. Meijer may request to terminate this Consent Order once the Company has fulfilled all requirements; achieved Consistent Compliance with its BOD₅ loading limit; achieved Odor Elimination; and paid all civil and stipulated penalties due and owing hereunder.


b. A request for termination shall be in the form of a written notice from Meijer to Tipp City and TCA demonstrating the conditions required for termination. Tipp City and TCA shall respond within ten (10) days to the notice, indicating in a final order whether they concur or disagree with Meijer, which order the Company may appeal under Part 12.B. of its IU Permit.

14. Authority to Enter in this Consent Order.

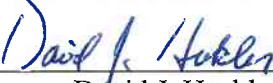
a. The undersigned signatories hereby represent and warrant that they have been duly authorized to sign this Consent Order and thereby bind their respective party to the terms and conditions of the Consent Order.

SO AGREED:

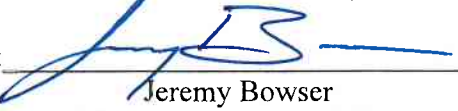
CITY OF TIPP CITY, OHIO (Permitting Authority)

By: 
Kevin Price
Title: WATER / WASTEWATER SUPT.
Date: 11/5/2020

TRI-CITIES NORTH REGIONAL WASTEWATER AUTHORITY (Control Authority)

By: 
David J. Heckler
Title: GENERAL MANAGER
Date: 11/5/2020

VEOLIA NORTH AMERICA (Control Authority Agent)

By: 
Jeremy Bowser
Title: PROJECT MANAGER
Date: 11/5/2020

MEIJER DAIRY PURPLE COW CREAMERY (Subsidiary of Meijer, Inc.)

By: Brent Sherman
Brent Sherman
Title: Plant Manager
Date: 11/2/2020

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