

OHIO E.P.A.

DEC - 3 2001

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of :
Mr. Stanley Kaldor : Director's Final Findings
61280 Ray Ramsey Road : and Orders
Jacobsburg, Ohio 43933 :

PREAMBLE

Pursuant to Ohio Revised Code ("ORC") Sections 6111.03 and 3745.01, the Director of the Ohio Environmental Protection Agency ("Ohio EPA") hereby makes the following Findings and issues the following Orders to Mr. Stanley Kaldor ("Respondent").

PARTIES BOUND

These Orders shall apply to and be binding upon Respondent, his assigns and successors in interest. No change in ownership of Respondent's dairy farm/ facility will in any way alter Respondent's responsibilities under these Orders. Respondent's obligations under these Orders may be altered only by written approval of the Director of the Ohio EPA ("Director").

FINDINGS

1. Respondent owns and operates a dairy farm ("Facility") located at 61280 Ray Ramsey Road in Belmont County, Mead Township, Jacobsburg, Ohio.
2. On May 5, 1997, Belmont County Soil and Water Conservation District ("SWCD") received a complaint of animal manure in Wegee Creek. An inspection of the Creek on May 6, 1997, by Jim Forshey of United States Department of Agriculture's ("USDA") Natural Resources Conservation Service ("NRCS") confirmed that Respondent's Facilities had discharged animal manure into Wegee Creek.
3. In a letter dated June 16, 1997, Belmont County SWCD recommended corrective actions and invited Respondent to attend a future Belmont County SWCD board meeting to discuss related issues. Respondent attended the July 14, 1997 Belmont County SWCD board meeting.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

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4. On January 8, 1998, Belmont County SWCD received a complaint of animal manure in Wegee Creek. An investigation on January 15, 1998 of the complaint by Jim Forshey and Len Snedeker of Belmont County SWCD, and Ryszard Lecznar of Ohio EPA - Division of Surface Water ("DSW") Southeast District ("SEDO") revealed that Respondent's Facility had discharged animal manure into tributaries to Wegee Creek.
5. In a letter dated January 16, 1998, Belmont County SWCD informed Respondent of the January 8, 1998 complaint and the January 15, 1998 follow-up investigation. This letter additionally stated that Respondent's manure dumping violated the farm's conservation plan, the Agricultural Pollution Abatement Act, and the Clean Water Act.
6. On October 19, 1999, an overflow of a manure storage facility owned and operated by Respondent resulted in a manure discharge to Wegee Creek. Ryszard Lecznar (DSW-SEDO) and Len Snedeker (Belmont County-SWCD) met with Respondent on that same date to discuss the violation and necessary corrective actions.
7. In a letter dated January 13, 2000, ODNR - Division of Soil and Water informed Respondent that a revised operation and management plan was required to be submitted.
8. On June 26, 2000, Belmont County SWCD received a complaint about animal manure in Wegee Creek. An investigation of the complaint on June 27, 2000 by Jim Forshey (USDA-NRCS), and on June 28, 2000 by Len Snedeker (Belmont County-SWCD) and Ryszard Lecznar (Ohio EPA-SEDO) revealed that an overflow of a manure storage facility owned and operated by Respondent had resulted in a manure discharge to a storm sewer.
9. On August 1, 2000, Len Snedeker (Belmont County SWCD) investigated a complaint regarding manure in Wegee Creek. Respondent's Facility discharged approximately 40,000 gallons of animal manure to an unnamed tributary to Wegee Creek. The manure discharge resulted in a fish kill. ODNR-Division of Soil and Water (Tammie Brown), Belmont County SWCD (Len Snedeker), and Ohio EPA (Patrick Fellrath, DSW-Central Office and Ryszard Lecznar, DSW-SEDO) met with Respondent on August 8, 2000, to discuss violations and correction actions.
10. Wegee Creek and its tributaries are defined as "waters of the state" by ORC Section 6111.01.

11. ORC Section 6111.04 prohibits any person who does not hold a valid, unexpired National Pollutant Discharge Elimination System ("NPDES") permit from causing pollution or placing any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution to waters of the state.
12. ORC Section 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC Sections 6111.01 to 6111.08.
13. Respondent does not hold a valid, unexpired NPDES permit for the aforementioned discharges of manure to waters of the state, which is a violation of ORC Sections 6111.04 and 6111.07.
14. Additionally, the manure discharges to Wegee Creek and its tributaries have caused exceedances of the criteria applicable to all waters as defined by Ohio Administrative Code ("OAC") Rule 3745-1-04. OAC Rule 3745-1-04 (A) and (D) state that waters shall be free from suspended solids or other substances that will settle to form putrescent or otherwise objectionable sludge deposits or that will adversely affect aquatic life, and that waters shall be free from substances in concentrations that are toxic or harmful to human, animal or aquatic life.
15. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
16. The Director has given consideration to, and based his determination upon, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders, evidence relating to conditions expected to result from compliance with these Orders, and its relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapters 6111. and 3745.

ORDERS

1. Respondent shall immediately cease all discharges of manure and/or wastewater to waters of the state. Future discharges from Respondent's Facility to waters of the state are prohibited without a valid, unexpired NPDES permit.
2. Respondent shall pay to Ohio EPA the amount of five thousand dollars (\$5,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be

assessed pursuant to ORC Chapter 6111. This payment shall be made by tendering a certified check made payable to "Treasurer, State of Ohio", for the full amount within thirty (30) days after the effective date of these Orders to the attention of Vicki Galilei at following address:

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

3. In lieu of paying Ohio EPA an additional twenty-eight thousand dollars (\$28,000) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6111., Respondent shall complete a supplemental environmental project (SEP), as detailed in Orders No. 4 and 5.
4. Composting facilities shall be provided for the current amount of animal manure and wastewater generated at the farm in accordance with OAC Rule 3745-27-40. An approvable Comprehensive Nutrient Management Plan (CNMP), Detailed Engineering Plans, and an Operations and Management (O & M) Plan for the composting facilities shall be submitted within one hundred and eighty (180) days of the effective date of these Orders to the following address:

Ohio Department of Natural Resources
Division of Soil and Water Conservation
1939 Fountain Square Court, Bldg. E-2
Columbus, Ohio 43224

A copy of each of these plans shall also be provided to Cathy Alexander of Ohio EPA's PTI/ Agricultural Unit at the following address:

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

The following information shall be included in the Detailed Engineering Plans and O & M Plan:

- design information related to the storage of raw materials (sawdust or other amendments), compost piles, and curing piles such as location, storage, and drainage requirements;
 - design calculations, and material specifications of pads;
 - information related to the composting method (if windrow composting is proposed, protocols for turning/aerating compost piles, monitoring temperature and/or moisture of piles, and determining completion of composting process); and
 - information related to material handling, such as number and type of equipment, labor requirements, and anticipated end-use of compost.
5. Respondent shall begin composting all animal manure and wastewater generated at the farm no later than thirty (30) days after the CNMP, Detailed Engineering Plans, and O & M Plans required by Order No. 4 are approved by ODNR.
 6. Should Respondent fail to complete the requirements of the SEP, as outlined in Orders Nos. 4 and 5, Respondent shall submit a payment of twenty-eight thousand dollars (\$28,000.00) to Ohio EPA within thirty (30) days of notification by Ohio EPA.
 7. If the requirements of these Orders are not completed within the required time frames, Respondent shall apply for a NPDES permit within thirty (30) days of notification by Ohio EPA.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondent and the operation of his Facility.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with

these Orders or for violations identified in these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111. or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. Respondent must obtain all permits, approvals, and authorizations as required by law. Ohio EPA reserves all rights, privileges, and causes of action except as specifically provided herein.

TERMINATION

Respondent's obligations under these Orders shall be satisfied and terminate when Respondent demonstrates in writing and certifies to the satisfaction of Ohio EPA that he has satisfied all obligations under these Orders, and the Chief of Ohio EPA's DSW acknowledges in writing the termination of these Orders.

This certification shall be submitted by Respondent to the Central Office (Attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and that the times provided for compliance herein are

reasonable. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the rights to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights he may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

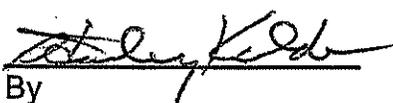
IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Christopher Jones
Director

11-30-01
Date

IT IS SO AGREED:
Mr. Stanley Kaldor



By

11/15/01
Date

Owner
Title