

Issuance Date: September 11, 2008

Effective Date: September 11, 2008

Expiration Date: September 11, 2010

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Steve Vonderhaar	:	
4665 Hamilton Eaton Road	:	Director's Final Findings and Orders
Hamilton, Ohio	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Steve Vonderhaar ("Mr. Vonderhaar") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") section 3734.02, and Ohio Administrative Code ("OAC") Rule 3745-27-05(A)(4).

II. PARTIES

These Orders shall apply to and be binding upon the Vonderhaar property, its agents, servants, assigns, and successors in interest, and to Mr. Vonderhaar. No changes in ownership relating to the 4665 Hamilton Eaton Road property will in any way alter the Mr. Vonderhaar's responsibilities under these Orders. Mr. Vonderhaar's obligations under these Orders may only be altered by the written approval of the Director.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC 3734 and the regulations promulgated thereunder. Unless otherwise stated, all citations of the Ohio Administrative Code (OAC) shall refer to regulations currently effective.

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

1. The property located at 4665 Hamilton Eaton Road (designated as field H-15 in the Alternative Waste Management Project Request received at Ohio EPA, Southwest District Office on March 4, 2008) in Butler County is owned and operated by Mr. Vonderhaar.
2. On March 4, 2008, Mark Koch, representing Miller Breweries East Inc., 2525 Wayne Madison Road, in Butler County, Ohio, submitted a request (Request) to the Director on behalf of the property owner, Mr. Vonderhaar, to allow the use of Farm O.N., which is a waste material from the Miller Brewery East waste water treatment plant and drinking water treatment plant, as a soil supplement at 4665 Hamilton Eaton Road (field H-15) owned by Mr. Vonderhaar.
3. Specifically, Mr. Vonderhaar proposes to use up to 468 tons of the waste material known as Farm O.N. as a soil supplement on the 4665 Hamilton Eaton Road property on the field designated as H-15 in the Alternative Waste Management Project Request received at Ohio EPA, Southwest District Office on March 4, 2008.
4. ORC Section 3734.01(E) defines "solid wastes" in pertinent part to mean "...such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations..."
5. ORC Section 3734.01(F) defines "disposal" in pertinent part to mean "...the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid waste...into or on any land or ground or surface water or into the air..."
6. ORC Section 3734.01(N) defines "facility" in pertinent part to mean "...any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes..."
7. The activities described in Findings 2 and 3 and in the Request constitute disposal of solid waste at a facility.
8. ORC Sections 3734.02(C) and 3734.05(A)(1) and (2), and OAC Chapters 3745-27, 3745-29, 3745-30, 3745-31, and 3745-37 require that a permit and license be obtained prior to establishment or modification of a solid waste facility.
9. The activities described in Findings 2 and 3 and in the Request constitute establishment or modification of the Facility and require that a permit and license be obtained prior to initiating such activities.
10. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition, OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided the Director determines that such alternative methods will not

create a nuisance or harm human health or the environment and are capable of complying with other applicable laws.

11. The proposed disposal method, described in the request described in Findings Number 2 and 3, is a method other than sanitary landfilling, incineration, or composting and, therefore, requires authorization of the Director pursuant to OAC Rule 3745-27-05(A).
12. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a disposal fee for each ton of solid waste disposed at the facility.
13. Pursuant to ORC Section 3734.57(B), the solid waste management policy committee of a single or joint solid waste management district (SWMD) is authorized to levy a disposal fee on solid wastes disposed at solid waste disposal facilities located within the SWMD. Butler County SWMD has levied a tiered disposal fee of \$2.00/\$4.00/\$2.00 per ton of solid waste disposed within the district. ORC Section 3734.57(E) further requires the owner or operator of a solid waste disposal facility operating in a SWMD where disposal fees have been ratified to collect and remit to the SWMD the fees on each ton of solid waste disposed at the facility.
14. Pursuant to ORC Section 3734.573(A), the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a fee on each ton of solid waste generated within the district. Butler County SWMD has levied a generation fee of \$2.00 per ton of solid waste generated within the district. Farm O.N. is generated within Butler County SWMD. ORC Section 3734.573(E) requires the owner or operator of the solid waste disposal facility where the solid waste is disposed to collect and remit the fee.
15. Pursuant to ORC Section 3734.02(G), the Director may, by order, exempt any person generating, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734 and any rules adopted thereunder.
16. Issuance of an exemption, pursuant to ORC Section 3734.02(G), from the requirements to obtain a permit and license, as specified in Finding 8, above, as proposed in Findings 2 and 3 and in the Request, is unlikely to adversely affect public health or safety or the environment if performed in accordance with the submitted request and the following Orders.
17. Issuance of an exemption, pursuant to ORC Section 3734.02(G), from the requirements to collect and remit the state disposal fee, the SWMD tiered disposal fee, and the SWMD generation fee, as specified in Findings 12,13, and 14 for the

activities proposed in Findings 2 and 3 and in the Request, is unlikely to adversely affect public health or safety or the environment if performed in accordance with the submitted request and the following Orders.

VI. ORDERS

1. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-05(A)(4), Mr. Vonderhaar is hereby authorized to use Farm O.N. from Miller Breweries East, Inc. at the location specified in Finding 1, as specified in Findings 2 and 3 and in the Request, as an alternative disposal method.
2. Mr. Vonderhaar shall utilize Farm O.N. in accordance with the following placement procedures:
 - a. Farm O.N. shall be applied according to the proposal submitted by Miller Brewing East on March 4, 2008.
 - b. Farm O.N. shall be placed in such a manner as necessary to prevent creation of nuisance caused by odor, and to prevent blowing material, surface water runoff, or any release of contaminants to the environment.
 - c. Farm O.N. placement shall occur during the appropriate weather conditions to minimize blowing waste material, odors, and surface water runoff. This material shall not be applied to frozen or snow covered ground.
 - d. Farm O.N. shall be applied at or below the agronomic rate for both nitrogen and phosphorus.
 - e. If nuisance conditions develop as the result of stockpiling, Mr. Vonderhaar shall take immediate steps to abate the nuisance or cease stockpiling activities. Failure to act promptly may result in the prohibition by Ohio EPA of future stockpiling or application activities at the site in question. Any stockpiling shall occur in accordance with the following:
 - i. As far away as possible from any occupied structure and in no case less than five hundred (500) feet.
 - ii. At least five hundred (500) feet from wells and ponds.
 - iii. At least one hundred (100) feet from surface waters of the state.
 - iv. Stockpiles shall be protected from erosion and ponding at all times.
 - f. The application of Farm O.N. shall not occur in any of the following areas:

- i. Within three hundred (300) feet of a private water source or within one hundred (100) feet of a private water source if the Farm O.N. is injected.
 - ii. Within three hundred (300) feet of an occupied residence.
 - iii. Within thirty-three (33) feet of surface waters of the state.
 - iv. In grassed waterways.
 - v. In any ground water source water assessment and protection area or well head protection area.
3. Pursuant to ORC Section 3734.02(G), Mr. Vonderhaar is hereby exempted from the requirements contained in ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 to obtain a permit and license to establish and operate a solid waste facility for the disposal of Farm O.N. disposed at the location specified in Finding 1 in accordance with the Request and these Orders.
4. Pursuant to ORC Section 3734.02(G), Mr. Vonderhaar is hereby exempted from the requirement of ORC Section 3734.57(A) to collect and remit the state disposal fee levied pursuant to ORC Section 3734.57(B) on those wastes disposed in accordance with the request described in Findings Number 2 and 3 and with these Orders.
5. Pursuant to ORC Section 3734.02(G), Mr. Vonderhaar is hereby exempted from the requirement of ORC Section 3734.57(E) to collect and remit any tiered disposal fees levied pursuant to ORC Section 3734.57(B) on those wastes disposed in accordance with the request described in Findings Number 2 and 3 and with these Orders.
6. Pursuant to ORC Section 3734.02(G), Mr. Vonderhaar is hereby exempted from the requirement of ORC Section 3734.573(E) to collect and remit any generation fees levied pursuant to ORC Section 3734.573(A) on those wastes disposed in accordance with the request described in Findings Number 2 and 3 and with these Orders.
7. If Farm O.N. is not used in the manner described in Findings 2 and 3 and in the Request, the Farm O.N. shall be subject to solid waste disposal requirements and the disposal of the Farm O.N. will not be exempted from payment of the required fees.
8. The exemptions granted in Orders Number 1, 3, 4, 5, and 6 shall apply only to Farm

O.N. from Miller Breweries East located at 2525 Wayne Madison Road, in Butler County, Ohio.

9. Ohio EPA, Southwest District Office, and the Butler County Health District shall be notified not later than five (5) days prior to start of the project so that use of Farm O.N. in the manner proposed in the request can be routinely inspected by Ohio EPA, Southwest District Office and the Butler County Health District.
10. Authorization to conduct the activities authorized in these Orders shall expire twenty-four (24) months after the effective date of this authorization. This authorization is limited to use of Farm O.N. resulting from the Miller Breweries East, Inc. Facility. This authorization shall not be construed as approval for use of other materials or additional waste Farm O.N. resulting from future activities. Use of any such additional materials shall not occur unless Mr. Vonderhaar obtains subsequent approval.
11. The exemptions granted in Orders Number 1, 3, 4, 5, and 6 shall not apply to any other solid waste other than that which was described in Findings 2 and 3.
12. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of any other provision of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release Mr. Vonderhaar from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local 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 Mr. Vonderhaar's operation, implementation, and performance using Farm O.N. as a soil supplement. Ohio EPA reserves all rights and privileges except as specified herein.

VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Mr. Vonderhaar for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Mr. Vonderhaar to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Mr. Vonderhaar to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Mr. Vonderhaar. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations that may occur at 4665 Hamilton Eaton Road (designated as field H-15 in the Integrated Alternative Waste Management Program request received at Ohio EPA, Southwest District Office on March 4, 2008).

IT IS SO ORDERED:

Chris Korleski
Ohio Environmental Protection Agency