

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Pitstick Pork Farm, Inc.  
1146 Herr Road  
Fairborn, Ohio 45324

Director's Final Findings  
and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Pitstick Pork Farm, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of the Respondent or of its Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a swine production farm ("Facility") located at 1146 Herr Road in Fairborn, Bath and Miami Townships, Greene County, Ohio.
2. On April 19, 2001, Ohio EPA, DERR inspector investigated a complaint regarding

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.

By Danya Jackson DATE 4-13-04

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a fish kill in Hebble Creek, downstream of the Facility. As a result of the inspection, the source of the fish kill was determined to be a discharge of manure from the Respondent's Facility. The discharge was determined to have occurred on April 17, 2001 when manure overflowed from a swine barn and discharged into Hebble Creek due to a failure to close valves after transfer of manure from one barn to another.

3. Ohio Department of Natural Resources, Division of Wildlife determined that 9,463 fish and other aquatic animals were killed as a result of the manure discharge. The discharge impacted approximately 6 to 7 miles of Hebble Creek.
4. Hebble Creek and its tributaries are defined as "waters of the state" by ORC Section 6111.01.
5. ORC 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 the any waters of the state.
6. ORC 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC Sections 6111.01 to 6111.08.
7. 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.
8. Additionally, the contaminated discharges to Hebble Creek caused exceedances of the criteria applicable to all waters as defined by OAC Rule 3745-1-04. OAC Rule 3745-1-04(A) states that waters shall be free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life. OAC Rule 3475-1-04(D) states that waters shall be free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
9. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
10. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated 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 Chapter 6111.

#### V. ORDERS

1. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a plan indicating preventative actions that will be taken and/or installed at the Facility to prevent a similar spill from occurring in the future from manure transfer. These actions could include the development of a Operational Procedure for Manure Transfers that details the required steps in the manure transfer process and includes documentation that each step is completed by the individual performing the transfer and/or the installation of backflow prevention valves to prevent manure from flowing back into the barn from where the manure was transferred.
2. Within four (4) months of the effective date of these Orders, Respondent shall submit verification that an approved Comprehensive Nutrient Management Plan (CNMP) has been developed for the Facility. Respondent shall immediately begin implementing the final CNMP upon completion.
3. Within one year of the approval date of the final CNMP, Respondent shall submit an annual report to the Ohio EPA. The annual report must include, at a minimum, total volume of manure applied, total number of acres applied to, average manure application rates, results of manure analysis, and results of soil analysis.
4. Respondent shall submit all documents required under these orders to the following address unless the Respondent is directed otherwise:

Cathy Alexander (or Successor)  
Ohio EPA  
Division of Surface Water  
PTI/Agricultural Unit  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1) for a corporation.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the Facility.

#### **VIII. 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. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive,

compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent 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 if 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 shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

## XII. EFFECTIVE DATE

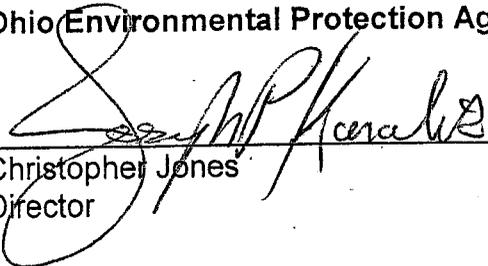
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIII. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Christopher Jones  
Director

9/6/04  
Date

**IT IS SO AGREED:**

Pitstick Pork Farm, Inc.

  
\_\_\_\_\_  
Signature

3/15/04  
Date

TOM PITSTICK  
\_\_\_\_\_  
Printed or Typed Name

PRES.  
\_\_\_\_\_  
Title