BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kohler Farms
7860 Parsons Road
Croton, Ohio 43023

Respondent

Director's Final Findings
and Orders

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director’s Final Findings and Orders (“Orders”) are issued to Kohler Farms. (“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 successors in interest liable under Ohio law. No change in the composition of Respondent 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 Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. Respondent leases a portion of the property (“the Site”) located in the southwest corner of the intersection of Harlem Road and Smothers Road in Galena, Ohio. Respondent leases the Site from Columbus Southern Power and is listed as a Class III Compost Facility.
2. The Site discharges storm water to an unnamed tributary to Hoover Reservoir which is considered to be "waters of the state," as defined in ORC § 6111.01(H).

3. ORC Section 6111.04(A) prohibits any person from causing pollution or causing any sewage, industrial waste, or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired NPDES permit issued by the Director or if an application for renewal of such permit is pending.

4. Ohio Administrative Code (OAC) Rule 3745-38-02 provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio National Pollutant Discharge Elimination System ("NPDES") individual permit in accordance with requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.

5. On February 21, 2018, Ohio EPA conducted an inspection of the site as a result of a complaint of no permit and no best management practices (BMPs) or controls for leachate. During the complaint inspection, Ohio EPA observed several piles of manure in various stages of compost. Ohio EPA also noted that a Multi-Sector Industrial Storm Water General Permit (MSGP) had not been issued to the site.

6. On March 2, 2018, Ohio EPA issued a Notice of Violation (NOV) to the Respondent for having composting operations on site without obtaining an MSGP.

7. On March 14, 2018, Respondent sent an email correspondence to Ohio EPA in response to the March 2, 2018 NOV. In the response, Respondent asked what forms needed to be filled out and stated that he had said in a phone conversation that the site had not been used in last two (2) years. Ohio EPA sent an email correspondence to Respondent on March 15, 2018 with a weblink and instructions on where to find the permit application.

8. On April 5, 2018, Respondent sent an email correspondence to Ohio EPA requesting assistance on submitting the permit application. Ohio EPA responded via email on April 6, 2018 with instructions on how to submit the permit application and recommended obtaining a consultant to assist them.

9. On April 11, 2018, Ohio EPA conducted a second inspection of the site. During the inspection, Ohio EPA observed additional piles of manure.
10. On April 17, 2018, Ohio EPA issued an NOV to the Respondent for having composting operations on site without obtaining an MSGP. No response has been received by the Respondent.

11. Ohio EPA attempted to contact the Respondent two additional times, on May 22, 2018 and then again on June 6, 2018. There was no answer on both attempts.

12. On July 11, 2018, Ohio EPA conducted a third inspection of the site. During the inspection, Ohio EPA again observed piles of manure.

13. On July 16, 2018, Ohio EPA issued an NOV to the Respondent for having composting operations on site without obtaining an MSGP. No response to the NOV has been received by the Respondent.

14. On August 27, 2018, Ohio EPA met with Respondent on site. During the site visit, it was agreed upon by the Respondent and Ohio EPA that the Respondent would inform the Ohio EPA by August 30, 2018 whether Respondent wanted the site to remain a Class III Composting facility.

15. On September 18, 2018, Respondent submitted notification that composting operations on-site would be ceasing.

16. 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 purpose of ORC Chapter 6111.

V. ORDERS

1. Within thirty (60) days after the effective date of these orders, all compost piles located on the site shall be removed (Weather Permitting).

2. Respondent shall pay the amount of one-thousand dollars ($1,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment to Ohio EPA shall be made in four, equal installments, in accordance with the schedule below, each by official checks made payable to “Treasurer, State of Ohio”. Each official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:
A copy of the check shall be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43215-1049

Payment of the one-thousand dollars ($1,000) civil penalty shall be made in four, equal installments within a three hundred (300) day period, pursuant to the following schedule:

- The first payment of two-hundred fifty dollars ($250) shall be due within thirty (30) days after the effective date of these Orders.
- The second payment of two-hundred fifty dollars ($250) shall be within one hundred twenty (120) days after the effective date of these Orders.
- The third payment of two-hundred fifty dollars ($250) shall be within two hundred ten (210) days after the effective date of these Orders.
- The fourth payment of two-hundred fifty dollars ($250) shall be within three hundred (300) days after the effective date of these Orders.

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(F).

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 site.

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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Central District Office  
Division of Surface Water  
ATTN: DSW Enforcement Unit Supervisor  
50 W. Town Street, Suite 700  
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.
XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

IX. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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

Craig W. Butler, Director

December 19, 2019
Date

IT IS SO AGREED:

Kohler Farms

Signature

DAVID KOHLER

Printed or Typed Name

OWNER

Date

11.27.18