

March 11, 2021

Brausch Farms, LLC 1715 Gum Grove Road Clarksville, Ohio 45113 Re: Brausch Farms, LLC
Director's Final Findings and Orders (DFFO)
DFFOs
Composting
Warren County
CM010518

David & Stephanie Brausch 1715 Gum Grove Road Clarksville, Ohio 45113

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter regarding **Brausch Farms, LLC.** 

If you have any questions, please contact Teri Finfrock at (614) 644-3037.

Sincerely,

# Jeri Main

Jeri Main, Administrative Professional Unit Division of Materials & Waste Management

#### Enclosure

ec: Bruce McCoy, DMWM, CO
Carl Mussenden, DMWM, CO
Richard Miller, DMWM, SWDO
Maria Lammers, DMWM, SWDO
Michelle Ackenhausen, DMWM, SWDO
Teri Finfrock, Legal
Jack VanKley, jvankley@vankleywalker.com

# BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Brausch Farms, LLC : <u>Director's Interim</u>
1715 Gum Grove Road : <u>Findings and Orders</u>

Clarksville, Ohio 45113

David & Stephanie Brausch 1715 Gum Grove Road Clarksville, Ohio 45113

Respondents

# I. JURISDICTION

These Director's Interim Findings and Orders ("Interim Orders") are issued to Brausch Farms, LLC and David and Stephanie Brausch ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, and 3745.01. A set of Director's Final Findings and Orders will be issued later to require Respondents to take additional action.

# **II. PARTIES BOUND**

These Interim Orders shall apply to and be binding upon the Respondents and successors in interest liable under Ohio law. No change in ownership of the Facility as hereinafter defined shall in any way alter Respondents' obligations under these Interim Orders.

# **III. DEFINITIONS**

Unless otherwise stated, all terms used in these Interim Orders shall have the same meaning as defined in ORC Chapter 3734 and the rules promulgated thereunder.

## IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent Brausch Farms LLC ("Brausch Farms") operates a Class II Composting Facility ("Facility") located at 1715 Gum Grove Road, Clarksville, Ohio, which is located on land identified as parcel number 1416300020 by the Warren County Auditor (the "Property").

- 2. Respondents David and Stephanie Brausch are each an "owner" of the Property as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-500-02(O)(8).
- 3. Respondent Brausch Farms LLC is the "operator" of the Facility as that term is defined in OAC Rule 3745-500-02(O)(7).
- 4. The Facility is a "composting facility" as that term is defined under OAC Rule 3745-500-02(C)(1).
- 5. Brausch Farms operates as a "Class II solid waste composting facility" as that term is defined under OAC Rule 3745-560-02(C)(2).
- 6. Respondents are each a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-500-02(P)(4).
- 7. Annually since 2009, Respondents have been issued a Class II solid waste composting facility license.
- 8. In 2016, Respondents submitted an amended registration for the Facility that was acknowledged by Ohio EPA by letter dated November 30, 2016 ("2016 registration"). Respondents' 2016 registration set forth a maximum capacity of 40,833 cubic yards of material that could be maintained in the Facility's materials placement area. The Facility's "materials placement area" as that term is defined in OAC Rule 3745-560-200 (M)(1) is delineated on the 2016 registration with the label" Limits of Composting" (Attachment 1). In 2016, Respondents provided a closure cost estimate of one hundred two thousand eighty-three dollars and 33 cents (\$102,083.33) for the 40,833 cubic yards of material in the materials placement area. In 2016, Respondents purchased \$135,000 in financial assurance to cover closure costs for 54,000 cubic yards of material.
- 9. Currently, Respondents' materials placement area contains a crescent shaped compost pile consisting of a mixture of bulking agents (sawdust, animal bedding, and shredded currency), alternative bulking agents (spent bleaching earth and diatomaceous earth) and feedstocks (animal waste and agricultural plant materials, as well as animal carcasses and food waste which Respondent claims have not been accepted at the Facility since 2014). Respondents place the mixture of the bulking agents, alternative bulking agents and feedstock along the south side of the crescent shaped compost pile. This mixture is eventually transitioned to the western side of the crescent shaped compost pile. The north side of the crescent shaped compost pile is designated for screened compost that is awaiting testing results for final disposition.
- 10. Ohio EPA conducts quarterly inspections of the Facility to determine its compliance with ORC Chapter 3734. and the rules promulgated thereunder. Routinely, Ohio

EPA has provided Respondents with compliance assistance to address ongoing compliance issues.

- 11. Between 2015 to 2019 according to the Facility's annual reports, Respondents accepted 37,000 tons more composting feedstocks, bulking agents and alternative bulking agents than distributed in compost product.
- 12. By letter dated February 12, 2015, Ohio EPA memorialized a January 15, 2015 meeting between Ohio EPA, David Brausch and Brausch Farms. At the meeting, Ohio EPA provided detailed compliance and technical assistance to Respondents regarding operations at the Facility like odor control, leachate management, composting methodology and best management practices. In 2015, Respondents installed a leachate collection pond and a leachate diversion ditch for leachate management, and submitted an odor control plan to Ohio EPA.
- 13. Between January 1, 2014 and the present, Ohio EPA provided Notice of Violation ("NOV") letters to Respondents. Violations cited in NOVs sent during this time period include:
  - a) Failure to remove prohibited materials (plastic bags, plastic bottles, rope, and packaging);
  - b) Failure to turn static composting pile twice a year,
  - c) Failure to manage leachate emanating from the crescent shaped compost pile,
  - d) Failure to collect, maintain and dispose of litter,
  - e) Failure to complete form 1 of the operations log
  - f) Failure to amend facility registration; and
  - g) Failure to contain materials within the boundaries of the Facility's materials placement area.

#### **OPERATIONAL VIOLATIONS**

- 14. OAC Rule 3745-560-210(C) states, "The owner or operator shall not accept any prohibited material at the facility."
- 15. OAC Rule 3745-560-210(C)(2) states, "If prohibited material is detected, the owner or operator shall immediately do the following: (a) Remove the prohibited material from the materials placement area. (b) Manage the prohibited material in accordance with applicable laws and regulations (c) Record incidents in the log of operations."
- By letters dated May 8, June 21, August 7, September 24, and December 13, 2019, March 6, 2020, and January 26, 2021, Ohio EPA cited Respondents for failing to collect, properly contain, and dispose of scattered litter, in violation of OAC Rule 3745-560-210(H)(4). Because litter is a prohibited material, the same letters cited Respondents for accepting and failing to properly handle prohibited material at the Facility in violation of OAC Rule 3745-560-210(C) and OAC Rule 3745-560-

210(C)(2).

- 17. Respondents have responded to the violations cited in Finding No. 16 by removing approximately three cubic yards of litter in 2019 and 2020. In September 2020, Respondents terminated the customer that was sending the litter mixed into their horse manure.
- 18. Respondents utilize the static pile method of composting at the Facility in accordance with OAC Rule 3745-560-210(D)(4). The owner or operator of a composting facility utilizing the static pile method of composting shall turn the piles a minimum two times per year.
- 19. By letters dated December 13, 2019, March 6, 2020, and January 26, 2021, Ohio EPA cited Respondents for failing to turn the static pile at the Facility twice per year in accordance with the authorized method of composting, in violation of OAC Rule 3745-560-210(D)(4).
- 20. OAC Rule 3745-560-210(N)(3) states, in pertinent part, "The owner or operator shall...(m)inimize ponding of leachate in the materials placement area."
- 21. By letters dated September 24 and December 13, 2019, March 6, 2020, and January 26, 2021, Ohio EPA cited Respondents for failing to minimize ponding of leachate in the materials placement area, in violation of OAC Rule 3745-560-210(N)(3).
- 22. OAC Rule 3745-560-210(N)(6) states, in pertinent part, "The owner or operator shall...maintain any structures or mechanisms used for the collection or containment of leachate."
- 23. By letters dated May 8, June 21, August 7, September 24, and December 13, 2019, March 6, 2020, and January 26, 2021, Ohio EPA cited Respondents for failing to maintain the leachate diversion ditch used for the collection or containment of leachate, in violation of OAC Rule 3745-560-210(N)(6).
- 24. OAC Rule 3745-560-04(A) states, "An owner or operator of a composting facility shall maintain a log of operations on forms prescribed by the director(.)"
- 25. By letter dated March 6, 2020, and January 26, 2021, Ohio EPA cited Respondents for failure to complete form 1 of the log of operation, in violation of OAC Rule 3745-560-04(A), because Respondents' form did not identify the facility class or identification number. Since that time, the form has been completed, and a copy of the completed form has been submitted to Ohio EPA.

#### REGISTRATION VIOLATIONS

- 26. OAC Rule 3745-560-200(G)(1) states in pertinent part, "[t]he registrant shall ensure that changes to the composting facility are in compliance with applicable regulations and all information contained on the plan view drawing and registration application is current by submitting an amended registration application . . . . An amendment to an existing registration is required for changes in the information on the registration application, which may include but is not limited to the information required by paragraph (C) of this rule."
- 27. Ohio EPA's 2019 and 2020 inspections of Respondents' materials placement area revealed that the amount of material in the materials placement area exceeded the 40,833 cubic yards specified in the 2016 registration. Therefore, Respondents are in violation of OAC Rule 3745-560-200(G)(1) due to the failure to amend the facility registration.
- 28. OAC Rule 3745-560-210(A) states, in pertinent part, "The owner or operator shall operate the facility in accordance with applicable authorizing documents including but not limited to maintaining the design and operational capacities specified in the registration."
- 29. During the February 25, 2020 inspection, Ohio EPA observed that Respondents had placed horse bedding and manure on the ground beyond the limits of the materials placement area as set forth in the 2016 registration, which is in violation of OAC Rule 3745-560-210(A). Ohio EPA cited Respondents for this violation by letter dated March 6, 2020. Respondent represents that the materials had been placed there temporarily in preparation for mixing them into the compost pile inside the materials placement area. Respondent further represents that the materials were mixed into the compost pile a few days after the Ohio EPA inspection.
- 30. By letters dated March 6, 2020, and January 26, 2021 Ohio EPA cited Respondents for failure to contain feedstocks and bulking agents within the boundary of the materials placement area as shown on the approved plan view drawing, in violation of OAC Rule 3745-560-210(A).

#### ANNUAL REPORT/FINANCIAL ASSURANCE VIOLATIONS

31. During the February 25, 2020 inspection, Ohio EPA estimated that the total volume of the crescent shaped compost pile exceeded the volume in the facility's registration. Respondents failed to recalculate and increase the Facility's closure cost estimate and financial assurance mechanism, to account for the increase in closure costs and the authorized alternative bulking agents (spent bleaching earth and diatomaceous earth). Respondents' failure to recalculate and increase the facility's closure cost estimate and financial assurance mechanism is a violation of OAC Rule 3745-560-05(A)(2).

- 32. During the September 22, 2020 inspection, Ohio EPA found that the volume of materials exceeded the amount in the registration and also found one truck load of materials outside of the registered placement area. Respondent claims this truck load had been placed there in preparation for adding the materials to the compost pile in the registered materials placement area. Ohio EPA observed that the facility had no blockages of the leachate diversion ditch.
- 33. On September 23, 2020, Ohio EPA and Respondents initiated regular discussions to address the conditions at the Facility.
- 34. On November 20, 2020, a registered professional surveyor hired by Respondents completed a survey of the compost pile at the Facility. The survey indicated that the total volume of the material at the Facility was 78,493 cubic yards, of which an estimated 1,000-2,000 cubic yards consisted of tested compost awaiting sampling results. This measurement indicates a volume at the Facility that exceeds the maximum capacity in the approved 2016 registration by at least 35,000 cubic yards. The survey also indicated the pile had reached a maximum height of 63 feet. The survey was delivered to Ohio EPA on December 3, 2020.
- 35. On January 28, 2021, Ohio EPA received Respondents' annual report for the year 2020. The annual report indicated total materials intake for the year of over 14,000 tons, and total compost product distribution for the year of 12,530 tons.
- 36. By memorandum dated February 11, 2021, Respondents provided Ohio EPA with information relating to the Facility's recent operations and details regarding materials removal plans. As part of this memorandum, Respondents notified Ohio EPA that they had accepted 1,891 tons of new feedstock and bulking agent so far for the year 2021.

#### V. INTERIM ORDERS

Respondents shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

# **Drawdown**

- 1. Upon the effective date of these Interim Orders, Respondents shall not accept any solid waste and additional material (e.g. feedstocks, bulking agents, additives, etc.) for composting other than the waste streams currently being accepted from Cargill, Incorporated for composting at the Facility.
- During the period between the effective date of these Interim Orders and May 31, 2021, Respondents shall limit the total cumulative acceptance of solid waste and additional material for composting at the Facility to no more than 1,600 tons.

- 3. Respondents shall complete the construction of a hoop barn for storage of compost product meeting the compost quality standards specified in OAC Rule 3745-560-230. This barn shall be located on the same parcel of land where the Facility is located.
- 4. By no later than May 31, 2021, Respondents shall have completed relocation of a combined 10,000 cubic yards of compost product meeting the compost quality standards specified in OAC Rule 3745-560-230 from the Facility to two storage barns. One shall be the barn constructed in accordance with Order No. 3, and the second shall be a preexisting barn located at 3812 Route 132, Clarksville, Ohio, 45113, Warren County parcel no. 14071000070, which is currently owned by the Brausch Family Trust, of which Respondents David and Stephanie Brausch are Trustees. The 10,000 cubic yards of compost product meeting the compost quality standards shall be removed from the barns no later than August 15, 2021 using one or more of the methods in Order No. 7.
- 5. Respondents shall not utilize the barns mentioned in Order No. 3 and 4 for storage of any solid waste or additional material for composting that has not met the compost quality standards specified in OAC Rule 3745-560-230.
- 6. On the final day of each month following the effective date of these Interim Orders, until May 31, 2021, Respondents shall submit the following to Ohio EPA by U.S. Postal Service or by e-mail:
  - a. completed logs of operation for the previous calendar month, including but not limited to, all information required by OAC Rules 3745-560-04(A) and 3745-560-215(B); and
  - b. receipts or any other documentation indicating the estimated tonnage and cubic yards of material removed from the Facility.

Not later than ten (10) days after the effective date of these Interim Orders, Respondents shall submit the information required by this Order to Ohio EPA for the months of January and February, 2021.

- 7. By May 31, 2021, Respondents shall have completed removal of a minimum **25,000 cubic yards of existing inventory at the Facility** (e.g. feedstocks, bulking agents or compost product) in the materials placement area. The removal specified in this Order is in addition to the 10,000 cubic yards of compost product removed in accordance with Order No. 4. This removal may be achieved through a combination of the following:
  - Distributing compost product that meets the compost quality standards of OAC 3745-560-230 to farmers, garden centers, landscapers, or other persons for land application or sale;
  - b. Land applying screened compost for agricultural use on the following properties owned by Respondents:

- i. Warren County parcel no. 14071000070;
- ii. Warren County parcel no. 14221000110;
- iii. Warren County parcel no. 14163000200.
- c. Land applying compost product that meets the compost quality standards of OAC 3745-560-230 on land rented by Respondents;
- d. Land applying screened compost in accordance with a separate authorization by the Director;
- e. Transportation to another composting facility of an appropriate class for further composting; or
- f. Properly disposing unfinished feedstocks, bulking agent, and solid waste at a licensed disposal facility.

# Survey

- 8. By no later than June 1, 2021, Respondents shall complete an interim survey of the compost pile at the Facility by a registered professional surveyor to determine the total volume in cubic yards of all material after completion of the removal specified in Order Nos. 4 and 7. Respondents shall submit this information via email to Ohio EPA by June 15, 2021. The total volume of all material shall include, but not be limited to, all feedstocks, all bulking agents, compost product and any other solid waste located at the Facility. The total volume of all material shall not exceed 51,000 cubic yards at the time of this survey.
- 9. If the survey results indicate that the total volume of material at the facility exceeds 51,000 cubic yards then Respondent shall immediately cease accepting new solid waste and additional material (e.g. feedstocks, bulking agents, additives, etc.) for composting, and shall remove the excess material and either transport it to another composting facility of an appropriate class or properly dispose of it at a licensed disposal facility. All excess material beyond 51,000 cubic yards shall be removed from the facility in accordance with this Order by July 15, 2021. Upon Ohio EPA's concurrence that Respondents have reduced the volume of material to below 51,000 cubic yards, additional materials may be accepted at the facility so long as the total volume at the facility does not exceed 51,000 cubic yards.

### Financial Assurance

- 10. By no later than June 31, 2021, Respondents shall submit to Ohio EPA a revised closure cost estimate based upon the total volume of all material identified in Respondents' survey completed in Interim Order No. 8. in accordance with OAC Rule 3745-560-05(A)(2).
- 11. By no later than July 15, 2021, Respondents shall execute, fund, and maintain its financial assurance instrument in the amount no less than the closure cost estimate completed in Order No. 10 in accordance with OAC Rule 3745-503-05(B).

#### **Operations**

- 12. Upon the effective date of these Interim Orders, Respondents shall operate the Facility in such a manner to ensure that operations do not create offsite migration of nuisance odors and do not otherwise cause a nuisance or a health hazard.
- 13. Upon the effective date of these Interim Orders, Respondents shall conduct daily inspections of the leachate collection system including the diversion ditch to ensure the flow of leachate into the collection pond is not impeded. Any material blocking the flow of leachate shall be removed from the ditch immediately upon discovery.
- 14. Upon the effective date of these Interim Orders and continuing throughout the pendency of these Interim Orders, Respondents shall ensure that all feedstocks and bulking agents on the Property are placed either within the materials placement area or properly disposed of at a location authorized to accept feedstocks and bulking agents for a Class II Composting facility.
- 15. Upon the effective date of these Interim Orders, Respondents shall conduct daily litter inspections and remove scattered litter immediately upon discovery.
- 16. During the pendency of these Interim Orders, Respondents shall notify Ohio EPA within fourteen (14) days of any change in the total acreage available for land application. Land application to properties leased by Respondents shall be limited to only compost product that meets the compost quality standards of OAC Rule 3745-560-230.
- 17. Not later than thirty (30) days after the effective date of these Orders, Respondents shall submit to Ohio EPA for approval and implementation a written Odor Response Protocol For Material Removal Activities pursuant to these Interim Orders. The protocol shall include, at a minimum, a procedure for notification to the Warren County Zoning Department, Warren County General Health District, Southwest Ohio Air Quality Agency, and Ohio EPA prior to removing materials from the pile for the purposes of screening or lawful disposal. Upon Ohio EPA approval, Respondent shall immediately implement the Odor Response Protocol For Material Removal Activities.

#### VI. TERMINATION

Respondents' obligations under these Interim Orders shall terminate upon the issuance of Director's Final Findings and Orders. If Ohio EPA does not agree that all obligations in these Interim Orders have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies.

#### VII. OTHER CLAIMS

Nothing in these Interim 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 Interim Orders, for any liability arising from, or related to, the operation of Respondents' Facility.

# VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Interim Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Interim Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

# IX. MODIFICATIONS

These Interim 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. Respondents may submit in writing to Ohio EPA-Southwest District Office any request for a revision to the implementation schedule of these Orders. Upon such a written request, Ohio EPA-Southwest District Office may authorize in writing changes to the schedule.

## X. NOTICE

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

Ohio Environmental Protection Agency Southwest District Office Division of Materials and Waste Management 401 East Fifth Street Dayton, Ohio 45402

Email: <u>SWDODMWM.Submittals@epa.ohio.gov</u>

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

#### XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Interim Orders. Ohio EPA reserves the right to require Respondent to undertake additional actions in future Orders concerning this Facility.

# XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability,

Respondents consent to the issuance of these Interim Orders and agrees to comply with these Interim Orders.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Interim Orders and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Interim Orders either in law or equity.

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

# XIII. EFFECTIVE DATE

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

# XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Interim Orders certifies that he or she is fully authorized to enter into these Interim Orders and to legally bind such party to these Interim Orders. The parties acknowledge and agree that these Interim Order may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

IT IS SO ORDERED AND AGREED:

**Ohio Environmental Protection Agency** 

Laurie A. Stevenson

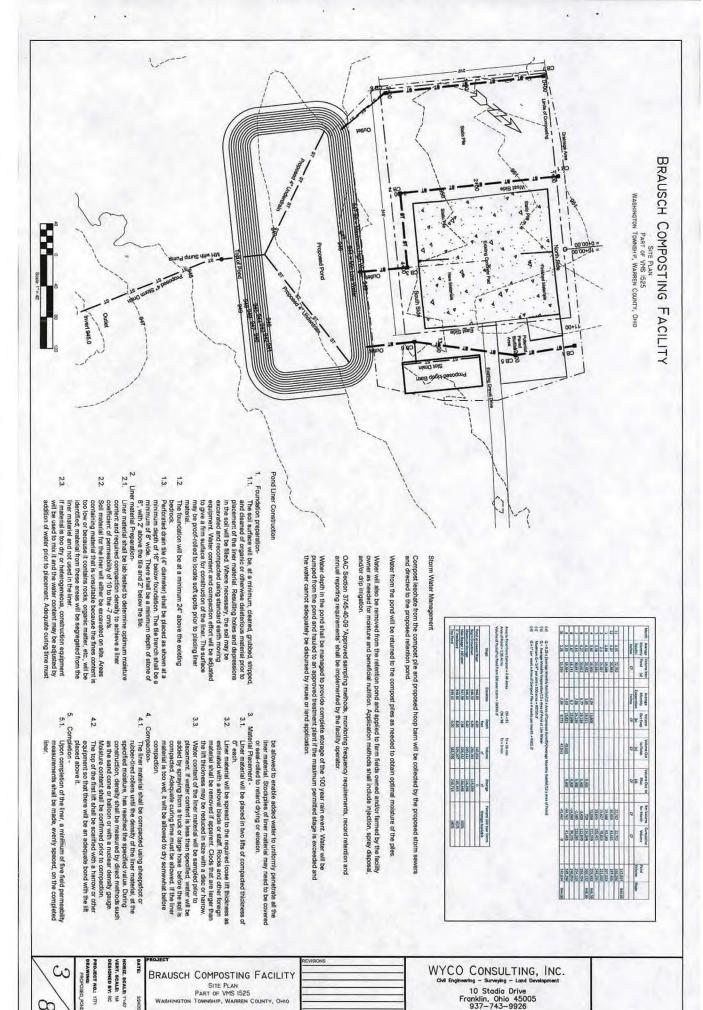
Director

# IT IS SO AGREED:

Title

Brausch Farms, LLC	
(1) 11	<i>A</i>
Signature	<u> </u>
Printed or Typed Name	
Title	
David Brausch	
Signature	3-4-2/ Date
Printed or Typed Name	
Title	
Stephanie Brausch	
Signature Bausel	3-4-2021 Date
Printed or Typed Name	

# **Attachment 1**



WYCO CONSULTING, INC.

neering – Surveying – Land Dev 10 Stadia Drive Franklin, Ohio 45005 937—743—9926

CU 00

DJECT NO.: 1771

BRAUSCH COMPOSTING FACILITY

SITE PLAN
PART OF VMS 1525
WASHINGTON TOWNSHIP, WARREN COUNTY, OHIO

