



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

OHIO E.P.A.

NOV -5 2015

ENTERED DIRECTOR'S JOURNAL

NOV 05 2015

Jason Ziss
Kurtz Bros., Inc.
6415 Granger Road
Independence, Ohio 44131

Re: Kurtz Bros., Inc.
Permit – Short Term
Approval
Beneficial Use
Cuyahoga County
BENU020977

Permit – Short Term
Exemption

**Subject: Kurtz Bros., Inc.
Amended LAMP Permit Approval and Exemption
Dredged Material from Cuyahoga County Port Authority CDF**

Effective Date: ~~NOVEMBER~~ NOVEMBER 05, 2015

Expiration Date: June 28, 2020

Dear Mr. Ziss:

Through dredging, the United States Army Corps of Engineers (USACE) removes sediment, in its natural or recently deposited condition, from the bottom of the federal navigation channel along the lower Cuyahoga River. The sediment is the product of erosion that has disaggregated soil into sand, silt, clay, and organic matter that has settled out onto the bottom of the channel. Once the dredged material has been collected, it is transported for disposal in a confined disposal facility.

On June 29, 2015, the Ohio Environmental Protection Agency (Ohio EPA) issued a land application management plan (LAMP) permit and exemption to Kurtz Bros., Inc. (KBI), pursuant to Chapters 3734 and 6111 of the Ohio Revised Code (ORC). The LAMP permit and exemption approved beneficial use of dredged material from the lower Cuyahoga River, generated by the USACE. The dredged material is located at the Cuyahoga County Port Authority Confined Disposal Facility No. 12 (CDF12), at 1100 West 9th Street #300, Cleveland, Ohio.

The June 29, 2015 LAMP permit and exemption authorized KBI to beneficially use dredged material from portions of CDF12 for industrial and commercial projects

identified in the approval. Specifically, the June 29, 2015 approval authorized KBI to use dredged material from areas of CDF12 represented by test pits 4, 5, 6, and 9, from a depth of 0 to 6 feet.

On September 28, 2015, and through subsequent correspondence, KBI has requested authorization to use the dredged material from CDF12 for additional commercial and industrial applications. These are:

1. Engineered fill meeting ODOT specifications, such as mechanically stabilized earthen walls
2. Structural fill meeting ODOT specifications
3. Gas line and electric utility line backfill (under a layer of LSM or 304)
4. Sanitary sewer line and storm sewer line backfill
5. Solid waste landfill cap soil (in a soil blend if used on the vegetative layer)
6. Parking lot base material
7. Building backfill for commercial or land bank commercial structures.
8. Sub base for basements of commercial or industrial buildings
9. ODOT embankments for roadside projects
10. Topsoil blends for commercial or industrial properties and as an inclusion in ODOT 659 projects
11. Earthen mounds or noise barrier mounds for commercial or industrial properties
12. ODOT grade changes along highways or in commercial or industrial properties.

Dredged material from the eastern portion of CDF12 has been representatively sampled and analyzed. A statistical analysis of the results of the sample analyses demonstrated that, with the exception of arsenic, the 95% Upper Confidence Limit (UCL) values for the analyzed parameters is less than the U.S. EPA Industrial Regional Screening Levels (RSLs) for the following constituents: volatile organic compounds (U.S. EPA Method 8260B); semi-volatile organic compounds (U.S. EPA Method 8270C); polychlorinated biphenyls (U.S. EPA Method 8082); for Pesticides (U.S. EPA Method 8081); and metals (U.S. EPA Methods 6010B and 7471A for mercury and 7196A for chromium VI); and total cyanide (U.S. EPA Method 335.2). Arsenic concentrations were compared to background levels in the region and were far less than 24 mg/kg, which is the soil background upper limit in Cuyahoga County (Ohio EPA Evaluation of Background Metal Soil Concentrations in Cuyahoga County – Cleveland Area, March 2013).

In addition to the dredged material in the eastern portion of CDF12, KBI has evaluated dredged materials located in an area known as the Chutes. The Chutes were designed to separate the coarse-grained materials and the finer silt particles from the dredged material. As the dredged material is unloaded in the Chutes, the coarse-grained material settles out and the silt particles remain suspended and travel to the silt ponds for subsequent settling. Sampling conducted on the coarse-grained material from the Chutes has shown lower concentration levels of contaminants than dredged material mined from CDF12, with some sampling results indicating parameter values less than the U.S. EPA Residential RSLs.

Ohio EPA has reviewed the sampling and analysis results for the dredged material in the eastern portion of CDF12 and in the Chutes. Based on the analyses, KBI is hereby authorized to use the dredged materials from the eastern portion of CDF12 and the Chutes for the twelve additional uses specified above, as well as the uses specified in the June 29, 2015 LAMP permit and exemption, in accordance with the following conditions.

In addition to the uses specified in the June 29, 2015 LAMP permit and exemption and the twelve additional uses authorized above, KBI has requested authorization for use of the dredged material in soil blends using dredged material. KBI has demonstrated that the use of dredged material in soil blends has the potential to function effectively while still being protective of public health and safety and the environment. Ohio EPA has reviewed this request and has determined that use of the dredged material in soil blends is appropriate provided the soil blends are used in accordance with the conditions below.

To the extent that the dredged material may be considered a solid waste and would require KBI to obtain a permit and license under ORC Chapter 3734 and the rules promulgated thereunder, the director has determined that granting an exemption from the applicable solid waste provisions of ORC Chapter 3734 to use dredged materials in the quantities and under the circumstances specifically authorized in the LAMP permit, is unlikely to adversely affect public health or safety or the environment. Therefore, pursuant to ORC Section 3734.02(G), KBI and any recipient of the dredged material generated from CDF12 are hereby exempted from the applicable solid waste provisions of ORC Chapter 3734 and rules adopted thereunder specific to the land application of dredged material as authorized in this amended LAMP permit approval and exemption.

CONDITIONS

1. This LAMP permit authorizes KBI to beneficially use dredged material managed in accordance with the LAMP permit application received on April 14, 2015 and as amended herein. Only dredged material mined from CDF12 and dredged material separated in the Chutes is eligible for beneficial use under this amended permit. All other beneficial uses must be separately approved by Ohio EPA.
2. Dredged materials from the eastern portion of CDF 12 that were characterized in the April 14, 2015 LAMP permit application with analytical results below the U.S. EPA Industrial RSLs and with arsenic values less than 24 mg/kg are authorized for the twelve proposed beneficial uses specified above.
3. Dredged materials from the eastern portion of CDF 12 that were characterized in the April 14, 2015 LAMP permit application with analytical results that exceed the U.S. EPA Industrial RSLs may be blended with other material or soil resulting in a material with constituents that are less than the U.S. EPA Industrial RSLs and with

arsenic values less than 24 mg/kg. Such blended materials are authorized for the twelve proposed beneficial uses specified above.

4. Dredged materials from CDF12 that have not been sampled shall be representatively sampled and analyzed for the same constituents as described in the LAMP permit application received on April 14, 2015. Dredged materials with results less than U.S. EPA Industrial RSLs and with arsenic values less than 24 mg/kg are authorized for the twelve proposed beneficial uses specified above. Sampled dredged materials that exceed U.S. EPA Industrial RSLs may be blended with other material or soils resulting in a product with constituents that are below the U.S. EPA Industrial RSLs and with arsenic values less than 24 mg/kg. Such blended materials are authorized for the proposed beneficial uses as specified above.
5. For newly dredged material being processed in the Chutes on CDF12, a minimum of one sample shall be collected and analyzed for each 10,000 cubic yards of processed material. Once an adequate number of sample results exist to perform a statistical analysis to determine if the 95% UCL values for the analyzed parameters, with the exception of arsenic, are less than the U.S. EPA RSLs, the newly dredged material can be considered adequately characterized, as long as the source locations of the dredged material do not change and the dredge material is not impacted by spill(s). This adequately-characterized newly dredged material will then only require, at a minimum, annual analytical characterization.
6. If sampling and analysis results for the newly dredged material is less than the U.S. EPA Industrial RSLs, and arsenic values are less than 24 mg/kg, the dredged materials are authorized for those uses approved in the June 29, 2015 LAMP permit and exemption and for the twelve additional proposed beneficial uses specified above. The processed dredged materials separated in the Chutes may be blended with other materials or soils resulting in a material with constituents that are less than the U.S. EPA Industrial RSLs. Such blended dredged materials are authorized for those uses approved in the June 29, 2015 LAMP permit and exemption and for the twelve additional proposed beneficial uses specified above.
7. A copy of the June 29, 2015 LAMP permit and exemption and this amended LAMP permit and exemption, including the LAMP permit application, shall be provided to all distributors and end users that manage or use the dredged material and KBI shall obtain a written agreement from the distributors or end users agreeing to follow the conditions of the June 29, 2015 LAMP permit and exemption and this amended LAMP permit and exemption.
8. The Director, or his authorized representative(s), may enter upon the premises of CDF12 at any reasonable time for the purpose of conducting inspections, collecting samples of dredged material, conducting tests, or examining records or reports pertaining to the beneficial use of dredged material from CDF12.

9. Issuance of this amended LAMP permit and exemption does not relieve KBI of the duty to comply with all applicable federal, state, and local laws, ordinances, and regulations, except as exempted herein.
10. The following records shall be maintained by KBI for a minimum of 5 years and be made available to Ohio EPA upon request:
 - a. Records of the annual volume of dredged material that is mined from CDF12 for beneficial use;
 - b. Records of the direct recipients of the dredged material and the volume provided to each recipient.
 - c. All laboratory reports of all sampling results and analyses of the dredged material.
11. By April 1 of each year, KBI shall submit a report identifying the material characterization and the beneficial use activities involving the dredged material for the previous calendar year. At a minimum, the annual report shall include the volume of dredged material used for that beneficial use and the analytical results for the most recent year's material characterization.
12. In the annual report, KBI shall include the following annual certification statement. The certification statement shall be printed out and signed, and submitted with each annual report as required by Condition number 11:

"I certify, under penalty of law, that the information contained in this annual report that will be used to determine compliance with the requirements contained in Chapters 3734 and 6111 of the ORC, and all rules thereunder, for the period beginning (insert date of last certification statement) and ending (insert current certification statement date) was prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

13. The annual report shall be sent to the following address:

Ohio EPA - DMWM
Reporting and Data Management Unit
P.O. Box 1049
Columbus, OH 43216-1049

14. If any location other than CDF12 is used for storage and blending of dredged materials, and the additional location is not required to have an NPDES permit, KBI shall use Best Management Practices when blending or storing dredged materials, including but not limited to the following:

- a. Storage locations shall be at least 300 feet from wells and ponds used for drinking water or watering livestock.
 - b. Storage locations shall be at least 100 feet from waters of the state (except ground water).
 - c. Surface water diversions such as straw bales or silt fence shall be installed to catch any solids in runoff, or temporary berms shall be installed to divert runoff away from the dredged material.
15. Storage, transportation, and blending of the dredged material shall not create a nuisance and shall not adversely affect public health or safety or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that storage or beneficial use of dredged material is a threat to public health or safety or the environment, then permission to use this material may be revoked upon written notification from the Director. Immediately upon the effective date of any such revocation, KBI shall cease distribution and beneficial use of the dredged material.
 16. No person shall cause pollution or place or cause to be placed any dredged material where it causes pollution to any waters of the state, except in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state must be reported to Ohio EPA within twenty-four (24) hours of discovery.
 17. The Director shall be notified in writing within seven days if KBI discovers noncompliance with this amended LAMP permit and exemption.
 18. Nothing herein shall be construed to release any party, including but not limited to the owner(s) of property upon which the beneficial use of dredge material occurs, from the obligation to comply with all applicable laws governing the placement or use of the dredge material on the property.
 19. The Director may add, delete, or change any conditions of this amended LAMP permit and exemption to protect human health or the environment.
 20. This amended LAMP permit and exemption and the authorization to beneficially use dredged materials from CDF12 and the Chutes shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use dredged material beyond the above date of expiration, KBI shall submit such information and forms as are required by Ohio EPA not later than 180 days prior to the above date of expiration.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated that payment of the full amount of the

fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

If you have any questions concerning this authorization, please contact Scott Hester of Ohio EPA, Division of Materials and Waste Management, at (614) 644-2621.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler". The signature is fluid and cursive, with a large initial "C" and "B".

Craig W. Butler
Director

CWB/MF
Attachment: LAMP
cc: Cleveland-Cuyahoga County Port Authority