



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

4/24/2018

Forever Blueberry Barn, LLC
Forever Farms Ohio, LLC
6323 Avon Lake Rd
Spencer, Ohio 44275

RE: Director's Final Findings & Orders
NPDES
Medina County
8DU00046

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Fowler".

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks

Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
B. Palmer, DSW
D. Stoll, NEDO/DSW
J. Martin, DSW
Fiscal
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
B. Fischbein, Legal
P. Simcic, Legal
P. Fallah, DEFA
File

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

Forever Blueberry Barn, LLC	:	<u>Director's Final Findings</u>
6323 Avon Lake Rd	:	<u>and Orders</u>
Spencer, Ohio 44275	:	
	:	
Forever Farms Ohio, LLC	:	
6323 Avon Lake Rd	:	
Spencer, Ohio 44275	:	

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Finding and Orders ("Orders") are issued to the Forever Blueberry Barn, LLC and Forever Farms Ohio, LLC ("Respondents") 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 Respondents and their successors in interest liable under Ohio law.

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 there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents operate a small "you-pick" blueberry farm and a large barn that hosts weddings and other events located at 8109 Branch Road, Medina, Medina County, Ohio ("the Facility.") Before the Facility was constructed in October 2014, the property consisted of open fields and is zoned residential.

2. In anticipation of the installation of an onsite treatment system, Ohio EPA conducted a site and soils evaluation inspection on March 27, 2015. Ohio EPA informed Respondent Forever Blueberry Barn that any construction over an acre requires Respondent to obtain coverage under Ohio EPA's General Storm Water NPDES Permit for Construction Activities pursuant to Ohio Administrative Code ("OAC") 3745-38-02 and would require an onsite treatment system. Respondents claimed that the Facility was exempt from installing an onsite wastewater treatment system because it fell under an exemption for "agricultural use" pursuant to R.C. 519.21. Ohio EPA explained to Respondents that the agricultural exemption does not exist for sewage/wastewater treatment, but that Respondents could use temporary portable toilets for any events until they were able to install an onsite septic system.
3. In a Notice of Violation ("NOV") letter dated April 21, 2015 to Respondent Forever Blueberry Barn, Ohio EPA indicated that Respondent had not obtained coverage for the Facility under the General Storm Water NPDES Permit for Construction Activities pursuant to OAC 3745-38-02. Respondent Forever Blueberry Barn was again notified of this violation by Ohio EPA in an NOV dated August 6, 2015.
4. A Permit-To-Install ("PTI") application for an Onsite Wastewater Treatment System was submitted to Ohio EPA on June 4, 2015. Revisions were received on July 6 and July 15. The PTI (No. 1042347) was approved on July 30, 2015. On the PTI application, Respondent Forever Blueberry Barn indicated that the barn would host "occasional" weddings and other events and is mainly a pick your own blueberry farm.
5. A site visit conducted by Ohio EPA on September 11, 2015 revealed the installation of a sanitary sewage holding tank without a PTI issued from Ohio EPA, in violation of OAC 3745-42-11. Additionally, Ohio EPA also noted that floor drains existed in the restroom and main hall of the Facility, even though Respondent Forever Blueberry Barn indicated on their PTI application that there would be no floor drains at the Facility. Furthermore, there was a black pipe installed that lead into a nearby dried creek bed, with no explanation as to what was being discharged from the pipe. An NOV dated September 16, 2015 was sent from the Ohio EPA to Respondent Forever Blueberry Barn regarding the discovered violations. Respondent was instructed by Ohio EPA to remove the holding tank and Respondent indicated that the tank would be removed by Monday September 14, 2015.
6. Due to a complaint received on October 7, 2015, a follow-up inspection was conducted by Ohio EPA on October 8, 2015. According to the complainant, the Respondents were hosting one, if not two weddings per weekend, not the "occasional" wedding that was indicated on the PTI application. The complainant alleged the holding tank that services the Facility overflowed, causing raw sewage

to spill into the Facility and throughout the property during a wedding on October 2, 2015. The clean-up involved putting straw over the raw sewage.

7. During the inspection, there was a hole in the ground (approximately 2 feet by 2 feet) that exposed the pipe leading to the holding tank and the hole smelled strongly of raw sewage. The October 8, 2015 inspection revealed the holding tank was still installed and servicing the Facility for weddings.
8. A sewage treatment system was eventually installed, which was inspected and determined to be complete by the Medina County Health Department on October 28, 2015.
9. ORC Section 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by ORC 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
10. Pursuant to OAC Rule 3734-42-02, no person shall cause, permit or allow the installation of a new disposal system or cause, permit or allow the modification of a disposal system without first obtaining an individual permit to install, a general permit to install or plan approval in accordance with this chapter and all other applicable rules and laws.
11. The holding tank is considered a "disposal system" as defined in ORC Section 6111.01(G). The holding tank was not the onsite system approved for installation by the PTI issued to Respondent Forever Blueberry Barn by Ohio EPA on July 30, 2015.
12. Pursuant to OAC Rule 3745-38-02, 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 NPDES individual permit in accordance with the requirements of Chapter 3745-33 of the Administrative Code, complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.
13. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the PTI requirements of Ohio Administrative Code ("OAC") Chapter 3745-42.
14. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.

15. 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

The Director hereby issues the following Orders:

1. Respondent shall pay to the Ohio EPA the amount of five thousand dollars (\$5,000.00) in four equal installments in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6111.09. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for \$1,250.00 of the total amount within thirty (30) days of the effective date of these Orders. Thereafter, a check in the amount of \$1,250.00 shall be due on November 1, 2018, May 1, 2019 and November 1, 2019, respectively until the full amount is paid. The official checks and a cover letter identifying the Respondent shall be submitted to Carol Butler, or her successor at:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A photocopy of the checks shall be sent to Ohio EPA, Northeast District Office, at the following address:

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of the Respondents. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03.

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 Respondents.

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 and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these 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 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



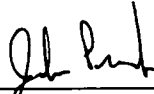
Craig W. Butler
Director

4/23/18

Date

IT IS SO AGREED:

Forever Blueberry Barn, LLC



Signature

Joshua Pniewski

Printed or Typed Name

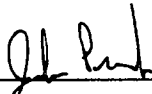
Manager

Title

4/14/2018

Date

Forever Farms Ohio, LLC



Signature

Joshua Pniewski

Printed or Typed Name

Manager

Title

4/14/2018

Date