



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

5/14/2018

Mingo Farms, LLC
Attn: Hendrica Janssen
7199 Mingo Lewisburg Rd
North Lewisburg, OH 43060

RE: Director's Final Findings & Orders
NPDES
Champaign County
8OU00054

Ladies and Gentlemen:

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

Sincerely,

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
B. Schuch, CDO/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:

Mingo Farms, LLC
7199 Mingo Lewisburg Road
North Lewisburg, OH 43060

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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 Mingo Farms, LLC ("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 has made the following findings:

1. Respondent is the owner of property located on Cox Road in Champaign County (approximately 40.209561 N, -83.606119 W) Ohio ("the Site").
2. On July 1, 2014, Ohio EPA received a complaint concerning earth moving activities at a construction site adjacent to Spain Creek, a tributary to Big Darby Creek. Spain Creek and Big Darby Creek are "waters of the state" pursuant to R.C. § 6111.01.

3. On July 3 and July 15, 2014, Ohio EPA inspected the Site and determined that Respondent's construction activities had disturbed over 20 acres within the Big Darby Creek watershed without coverage according to Ohio EPA's "Storm Water Permit Associated with Construction Activities within the Big Darby Watershed" as required by Ohio Administrative Code ("OAC") Chapter 3745-39. Ohio EPA documented the lack of storm water controls required under the permit through two Notice of Violation ("NOV") letters issued to Respondent on July 30, 2014 and July 31, 2014.
4. Also during the July 15, 2014 inspection, Ohio EPA documented potential wetland fill impacts at the Site and notified Respondent of the alleged violation in the July 30, 2014 NOV. Respondent did not obtain a 401 water quality certification from Ohio EPA or a 404 permit from the U.S. Army Corps of Engineers ("Corps") under the Clean Water Act to perform this work.
5. Since the July 3, 2014 inspection, Respondent has ceased construction activities and has made efforts to abate the violations, including seeding and mulching approximately six acres at the Site.
6. On August 12, 2014, Michael See of Ohio EPA DSW sent another NOV to Respondent regarding violations of sections 401 and 404 of the Clean Water Act, OAC 6111.04, and ORC 3745-1-54 for wetland and stream impacts identified during the July 15, 2014 inspection. The NOV stated options to correct the violation, including potentially applying for an after-the-fact ("ATF") permit or restoring the area to its pre-impact condition.
7. On September 4, 2014, Ohio EPA conducted a site inspection and found continued violations for failing to protect barren areas from erosion at the Site. An NOV as issued to Respondent on September 11, 2014 for the violation.
8. Ohio EPA participated in a site visit with the Corps on November 11, 2014 to support jurisdictional determination efforts and to review wetland qualitative assessments.
9. Respondent submitted a stream and wetland delineations to the Corps and Ohio EPA for the Site on October 8, 2014, December 2, 2014, and January 22, 2015. On February 5, 2015, the Corps issued a Preliminary Jurisdictional Determination to Respondent determining that two streams, totaling 716 linear feet and five wetlands, totaling 5.37 acres are present on the Site and may be jurisdictional waters of the United States. The Corps determined that 0.714 acres of the onsite wetlands were impacted..
10. On January 20, 2015, Ohio EPA DSW visited the site at Respondent's request and determined that the site remained in violation for failing to obtain appropriate permits

and failing to implement storm water Best Management Practices for the Site. Ohio EPA documented the violations through a NOV letter issued to Respondent on January 22, 2015.

11. On June 20, 2015, by and through counsel, Respondent submitted information to the Corps and the Ohio EPA and asserted the alleged wetlands qualify for the "prior converted cropland" exemption, that wetlands hydrology did not exist in these areas, and that even if wetlands the wetlands do not qualify as "waters of the United States."
12. Thereafter, on August 27, 2015, the Corps issued an Approved Jurisdictional Determination letter that concluded 1.37 acres of onsite wetlands were impacted, rather than the previously determined 0.714 acres.

On October 22, 2015, Respondent, by and through counsel, submitted a timely request for appeal ("RFA") to the Corps of the Corps' August 27, 2015 approved jurisdictional determination. On June 2, 2017, the Corps accepted Respondent's RFA. On September 13, 2017, Thomas Cavanaugh, a Corps Administrative Appeal Review Officer, conducted an administrative appeal meeting on the appeal. As of the effective date of these Orders, Respondents' administrative appeal of the Corps' August 27, 2015 approved jurisdictional determination remains pending.

13. Pursuant to 40 C.F.R. 122.26, anyone who undergoes construction activities resulting in storm water discharges must obtain a NPDES permit. Pursuant to OAC 3745-39-04, discharges that contribute to a violation of an Ohio water quality standard or that are significant contributors of pollutants to surface waters of the state must be covered by an Ohio NPDES permit. Respondent's construction activities have disturbed more than 20 acres without coverage. Respondent has violated 40 C.F.R. 122.26 and OAC 3745-39-04(A)(1)(e).
14. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
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 purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall submit an approvable Storm Water Pollution Prevention Plan in accordance with Ohio EPA's "General Storm Water Permit Associated with Construction Activities within the Big Darby Watershed" or the applicable construction storm water permit within sixty (60) days prior to any future development of the site.
2. Respondent shall pay to the Ohio EPA the amount to twenty-nine thousand six hundred thirty-nine dollars (\$29,639.00) 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 \$29,639.00 within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent, to:

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

- a. A copy of the check shall be sent to Mark Mann, Environmental Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, OH 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 as defined in Ohio Administrative Code Rule 3745-33-03.

VII. 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.

VIII. 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.

IX. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses and causes of action, except as specifically waived in Section X of these Orders, including but not limited to all rights, privileges, defenses and causes of action related to 401 Impact, if any, pending the final resolution by settlement or a court of final authority of Respondent's administrative appeal of the Corps' approved jurisdictional determination.

X. WAIVER

In order to resolve disputed claims, without admission of law, 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.

XI. EFFECTIVE DATE

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

XII. 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

5/11/18
Date

IT IS SO AGREED:

Mingo Farms, LLC



Signature

04-13-2018
Date

MENDORICA JANSSEN
Printed or Typed Name

President
Title