



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

October 31, 2019

Kurtz Bros. Central Ohio, LLC.
2409 Johnstown-Alexandria Rd.
Alexandria, Ohio 43001

**Re: Kurtz Bros. Central Ohio, LLC
Director's Final Findings and Orders (DFFO)
DFFO
Beneficial Use
Licking County
BENU023515**

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 indicated for Kurtz Bros. Central Ohio, LLC.

You are hereby notified that this action of the Director of Ohio EPA (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. 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
30 East Broad Street, 4th Floor
Columbus, Ohio 43215

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

Sincerely,

A handwritten signature in cursive script that reads "Jeri Main".

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

Enclosure

ec: Phil Cherosky, DMWM, CO
John Schierberl, DMWM, CO
Teri Finrock, Legal
Phil Farnlacher, DMWM, CDO
Connie Livchak, DMWM, CDO
Mike Galloway, DSW, CDO

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Kurtz Bros. Central Ohio, LLC.	:	<u>Director's Final Findings</u>
2409 Johnstown-Alexandria Road	:	<u>and Orders</u>
Alexandria, Ohio 43001	:	

Ohio EPA OCT 31 '19
Entered Directors Journal

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Kurtz Bros. Central Ohio, LLC ("KBCO"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02(G) and Ohio Administrative Code ("OAC") Chapter 3745-27.

II. PARTIES BOUND

These Orders shall apply to and be binding upon KBCO, its contractors, agents, and successors in interest liable under Ohio law. No changes in ownership of KBCO or of the Property (as hereinafter defined) shall in any way alter KBCO'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 Chapter 3734 and the rules promulgated thereunder.

As used in these Orders and Attachment A, "yard waste compost overs" and "compost overs" mean screened composted yard waste that contains no more than one percent foreign matter by dry weight, meets appropriate product requirements, and was produced in accordance with Ohio EPA Class IV yard waste registration and processing requirements pursuant to OAC Rules 3745-560-400 through OAC 3745-560-435 at one of the following addresses:

- a. 6055 Westerville Road, Westerville, Ohio;
- b. 711 Frank Road, Columbus, Ohio;
- c. 6279 Houchard Road, Dublin, Ohio; or
- d. 2409 Johnstown-Alexandria Road, Alexandria, Ohio.

IV. FINDINGS

The Director of Ohio EPA (“Director”) has determined the following findings:

1. On February 28, 2019, KBCO submitted a request (“KBCO’s Request”) to Ohio EPA seeking authorization to permanently place up to 9,600 dry tons of compost overs at Site 1 and Site 2, which are depicted in Attachment C (collectively, the “Property”) and are located at 2409 Johnstown-Alexandria Road in Alexandria, Ohio, Parcel: 066-317574-00.000. The Property map is attached hereto as Attachment C and KBCO’s Request is attached hereto as Attachment A.
2. KBCO’s Request is pursuant to its obligation to establish vegetative cover on the Property in furtherance of its Ohio Surface Mine Permit IM-2273 (“Permit IM-2273”), which requires all areas of the Property affected by surface mining activity be reclaimed to the standards identified in ORC Chapter 1514. Permit IM-2273 is attached hereto as Attachment B.
3. ORC Section 3734.01(E) defines “solid wastes” in pertinent part to mean “...such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations[.]”
4. ORC Section 3734.01(F) defines “disposal” in pertinent part to mean “...the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes... into or on any land or ground or surface water or into the air[.]”
5. ORC Section 3734.01(N) defines “facility,” in pertinent part, to mean “any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes[.]”
6. The permanent placement of compost overs at the Property constitutes the disposal of solid waste at a facility pursuant to ORC Chapter 3734 and the rules promulgated thereunder.
7. ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2) and OAC Chapters 3745-27 and 3745-37 require that a permit and license be obtained prior to the establishment or modification and operation of a solid waste facility.
8. The permanent placement of up to 9,600 dry tons of compost overs at the Property constitutes the establishment or modification and operation of a solid waste facility prior to which a permit and license must be obtained.
9. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal that are authorized in Ohio, including sanitary landfilling, incineration, and composting. In addition, OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided the Director determines that such

alternative methods will not create a nuisance or harm human health or the environment and are capable of complying with other applicable laws.

10. The proposed disposal method, which is the permanent placement up to 9,600 dry tons of compost overs at the Property, is a method of disposal other than sanitary landfilling, incineration, or composting and, therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A)(4).
11. OAC Rule 3745-27-05(A)(4) sets forth the requirements for an alternative disposal method authorization. KBCO's Request included all of the required information.
12. The Director has determined that the disposal of solid waste in compliance with these Orders will not create a nuisance or harm human health or the environment, and will not prevent compliance with other applicable laws.
13. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734 and any rules adopted thereunder.
14. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a disposal fee for solid waste disposed at the facility.
15. The permanent placement of compost overs at the Property constitutes the disposal of solid waste at a facility pursuant to ORC Chapter 3734 and the rules promulgated thereunder, and does not fall within the exceptions in ORC 3734.57(D); therefore, the state solid waste disposal fee, absent an exemption, is otherwise applicable to the disposal of compost overs at the Property.
16. The Director has determined that, for the activities described in Finding No. 1, granting KBCO an exemption from the requirements of ORC Chapter 3734 and OAC Chapters 3745-27 and 3745-37 to obtain a permit and a license to establish or modify and operate a solid waste facility and to collect and remit the state solid waste disposal fee, is unlikely to adversely affect the public health or safety or the environment, provided that KBCO performs the activities in accordance with these Orders.

V. ORDERS

1. For compost overs that are disposed at the Property in accordance these Orders prior to the completion of reclamation in accordance with Permit IM-2273, KBCO is hereby exempted from the requirement to remit the state solid waste disposal

fee set forth in ORC Section 3734.57(A) and from the requirements to obtain a permit and license before establishing a solid waste facility set forth in ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2) and OAC Chapters 3745-27 and 3745-37. These Orders do not relieve KBCO from the obligation to collect or remit any other solid waste disposal fee.

2. KBCO may only dispose of compost overs at the Property in accordance with all of the following:
 - a. The total volume of compost overs disposed at the Property shall not exceed 9,600 dry tons;
 - b. Compost overs shall not be disposed within 300 feet of occupied buildings, unless a reduction in this distance is approved, in writing, by the landowner and, if applicable, the resident of the occupied building;
 - c. Compost overs shall not be disposed within:
 - i. 300 feet of wells and surface waters used for drinking water or watering livestock; or
 - ii. 100 feet of wells and surface waters used for drinking water or watering livestock if the entire 100 feet is comprised of a grass buffer between the overs and the wells and surface waters;
 - d. Compost overs shall not be disposed within 33 feet of surface waters of the state as defined in ORC Section 6111.01(H) that are not referenced in Order 2.c;
 - e. Compost overs shall not be disposed during precipitation events;
 - f. Compost overs shall not be disposed onto frozen or snow-covered ground;
 - g. Disposal of compost overs shall not exceed a total of 400 dry tons per acre;
 - h. Compost overs shall be tilled into the soil to a minimum depth of six inches not later than 48 hours after being brought to the Property; and
 - i. KBCO shall immediately cease disposal of compost overs on the Property pursuant to this permit if a discharge to waters of the state is detected. KBCO may resume disposal of compost overs on the Property pursuant to this permit only upon receipt of written notification from Ohio EPA.
3. KBCO shall establish vegetation at the Property where compost overs are disposed in a manner that is consistent with Permit IM-2273 and the standards identified in ORC Chapter 1514.

4. KBCO may dispose of compost overs pursuant to these Orders only within the boundaries of the Property.
5. KBCO shall notify Ohio EPA Beneficial Use Unit at (614) 644-3249 or (614) 644-2621, at least 24 hours in advance of the first disposal of compost overs on the Property.
6. To the extent that any provision of these Orders conflicts with a provision in KBCO's Request, or in any attachment to KBCO's Request, KBCO shall comply with these Orders and these Orders shall supersede any inconsistent requirement in KBCO's Request, in any attachment to KBCO's Request, or any document submitted pursuant to these Orders.
7. KBCO shall obtain and comply with all authorizations required by ORC Chapter 3704 and shall dispose of the compost overs at the Property in such a manner that:
 - a. noise, dust, and odors are strictly controlled so as not to cause a nuisance or a health hazard; and
 - b. attraction, breeding, and emergence of insects, birds, rodents, and other vectors are controlled so as not to cause a nuisance or a health hazard.
8. KBCO shall obtain and comply with all authorizations required by ORC Chapter 6111, including but not limited to a National Pollutant Discharge Elimination System (NPDES) permit for the control of storm water and the discharge of wastewater, and shall dispose of the compost overs at the Property in such manner as to control storm water run-on and run-off and protect waters of the state as defined in ORC Section 6111.01. KBCO shall report any unauthorized discharge to waters of the state to Ohio EPA (Call 1-800-282-9378) within 24 hours of discovery.
9. KBCO shall ensure that the disposal of the compost overs does not create a nuisance or adversely affects public safety or health or the environment. The Director reserves the right to revoke this Order at any time for any lawful reason. Immediately upon the effective date of any such revocation, KBCO shall cease disposing the compost overs at the Property.
10. KBCO shall not store compost overs at the Property.
11. KBCO shall annually sample the compost overs intended for disposal at the Property and analyze those samples in accordance with this Order. If there is a substantial change in the generation process or the raw materials used to create the compost overs, KBCO shall collect additional representative samples of the compost overs and analyze them in accordance with this Order. For the purposes of these Orders, a substantial change in the raw materials is a change that may result in higher concentrations of the constituents in Table 1 or constituents added

pursuant to Order Number 13. When collecting and analyzing samples pursuant to these Orders KBCO shall implement the following requirements:

- a. The samples collected shall be representative of the compost overs to be disposed at the Property;
- b. KBCO shall have the sample(s) analyzed for percent foreign matter;
- c. KBCO shall have the sample(s) analyzed for the constituents listed in Table 1 and constituents added pursuant to Order Number 13;
- d. The reported detection limit for the analysis shall be below the limit specified for each constituent in Table 1 or set for constituents added pursuant to Order Number 13; and
- e. KBCO shall employ analytical methods that generate reliable constituent results in units consistent with the units in Table 1 and the units of the limits set in accordance with Order Number 12.

12. KBCO shall not dispose at the Property any compost overs that exceed any constituent limit specified in Table 1 or set for constituents added pursuant to Order Number 13.

Table 1: Constituent Concentration Limits

Constituents ^{1,2}	Totals Analysis³ Constituent Concentration Limits (mg/kg)*
Arsenic (As)	41
Boron (Bo)	16,000
Cadmium (Cd)	39
Copper (Cu)	1,500
Lead (Pb)	300
Mercury (Hg)	17
Molybdenum (Mo)	75
Nickel (Ni)	420
Selenium (Se)	100
Zinc (Zn)	2,800

* - dry weight basis

13. Ohio EPA reserves the right to add constituents to Table 1 and set limits for those newly added constituents as it deems necessary to protect human health or the

¹ As, Cd, Cu, Pb, Hg, Mo, Ni, Se, Zn: US EPA 40 CFR Part 503 Pollutant Concentrations.

²Bo: US EPA Regional Screening Levels, Residential Soil.

³ EPA publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846).

environment, without modifying these Orders, by providing 30-days written notice to KBCO.

14. KBCO shall maintain a daily log that, for each day compost overs are brought to the Property or are placed at the Property pursuant to these Orders, includes all of the following information:
 - a. The date;
 - b. The amount of compost overs brought on to the Property that day, in dry tons;
 - c. The amount of compost overs placed on the Property that day, in dry tons;
 - d. The locations of where compost overs were placed and areas where compost overs were tilled that day, each depicted using GPS coordinates or illustrations on a topographic map; and
 - e. Actions taken to comply with the setbacks and other requirements set forth in Order Number 2
15. The Director, or the Director's authorized representative(s), may enter upon the Property and any of the properties where compost overs are generated or disposed, at any reasonable time, for the following purposes:
 - a. To inspect and copy records that must be kept under the terms and conditions these Orders.
 - b. To collect samples; perform monitoring; take photographs; perform measurements, surveys, and other tests; and inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required pursuant to these Orders.
 - c. For all other purposes for which the Director or an authorized representative of Ohio EPA has rights of access or inspection authority under applicable law.
16. This authorization shall expire five years after its effective date unless revoked by Ohio EPA or otherwise superseded through enactment or promulgation of laws or rules.

Recordkeeping and Reporting Requirements

17. KBCO shall maintain all of the following records and reports for a minimum of 5 years after the disposal of compost overs pursuant to these Orders, and shall make them available to Ohio EPA upon request:

- a. Daily activity log records required pursuant to Order Number 14;
 - b. All laboratory reports of all sampling results and analyses;
 - c. All other records and reports required by these Orders.
18. Not later than January 31st of each calendar year, KBCO shall submit to Ohio EPA an Annual Report for the previous calendar year that includes, at a minimum, the following:
- a. Total amount, in dry tons, of compost overs disposed at the Property in the previous calendar year.
 - b. An estimate, in dry tons, of the amount of compost overs expected to be disposed the following calendar year at the Property;
 - c. Analytical results for all analyses performed the previous calendar year; and
 - d. A notarized statement from KBCO that, to the best of the knowledge of KBCO, the information contained in the Annual Report is true and accurate.
19. The annual report shall be sent to the following address:

For mailings:

Ohio Environmental Protection Agency
Division of Materials and Waste Management
Attn: Beneficial Use Unit
P.O. Box 1049
Columbus, Ohio 43216-1049

or

For hand delivery:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
Attn: Beneficial Use Unit
50 West Town Street
Columbus, Ohio 43215

VI. 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 KBCO.

VII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary for noncompliance with these Orders, including seeking penalties against Respondent for noncompliance with these Orders.

Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release KBCO from responsibility under ORC Chapters 3704, 3734, or 6111; under the Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

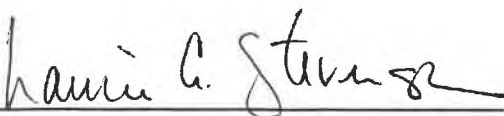
Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require KBCO to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of KBCO to raise any administrative, legal, or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of KBCO.

VIII. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency



A handwritten signature in cursive script, reading "Laurie A. Stevenson", is written over a horizontal line.

Laurie A. Stevenson

Attachment A: KBCO Application

Kurtz Bros. Central Ohio, LLC.
PO Box 207, Westerville, Ohio 43086

February 25, 2019

Phillip Cherosky
OEPA/DMWM/Beneficial Use
P.O. Box 1049
Columbus, OH 43216-1049

RECEIVED
FEB 28 2019
OHIO EPA - DMWM
OHIO EPA - DMWM

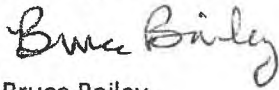
RE: LAMP for Beneficial Reuse of KBCO Yardwaste Overs

Dear Mr. Cherosky:

Attached please find a LAMP (Land Application Management Plan) for the beneficial reuse of yardwaste compost overs from Kurtz Bros. Central Ohio, LLC. OEPA registered Class IV yardwaste compost facilities.

Please review at your earliest opportunity.

Thank you,



Bruce Bailey
KBCO Director of Environmental, Health, & Safety

Attachments: LAMP PTI form A
LAMP form C1
PTIO – Section 1
Check for \$200 for application fee