



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

June 25, 2021

Omer R. Klosterman Trust
Steven R. Klosterman, Trustee
4696 State Route 127
Celina, Ohio 45822

Steve Klosterman
4696 State Route 127
Celina, Ohio 45822

Klosterman Development Corporation
Steve R. Klosterman, Statutory Agent
5038 Lake Vista Lane
Celina, Ohio 45822

SRK Holdings, LLC
Steven R. Klosterman, Statutory Agent
4691 State Route 127
Celina, Ohio 45822

and

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

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 **Klosterman Development Corp.**

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; Carl Mussenden, DMWM, CO
Michael Reiser; Mary Ann Miller, DMWM, NWDO
Robin Nichols; Martha Horvitz; Teri Finfrock, Legal
Larry Reeder; Rachael DeMuth, DSW, CO
Joseph Koncelik, Joseph.Koncelik@tuckerellis.com
John Bodin, Jbodin@tdhlaw

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Omer R. Klosterman Trust	:	<u>Director's Final Findings</u>
Steven R. Klosterman, Trustee	:	
4696 State Route 127	:	<u>and Orders</u>
Celina, Ohio 45822	:	
	:	
Steve Klosterman	:	
4696 State Route 127	:	
Celina, Ohio 45822	:	
	:	
Klosterman Development Corporation	:	
Steve R. Klosterman, Statutory Agent	:	
5038 Lake Vista Lane	:	
Celina, Ohio 45822	:	
	:	
SRK Holdings, LLC	:	
Steven R. Klosterman, Statutory Agent	:	
4691 State Route 127	:	
Celina, Ohio 45822	:	
	:	
and	:	
	:	
Kurtz Bros., Inc.	:	
6415 Granger Road	:	
Independence, Ohio 44131	:	

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Omer R. Klosterman Trust, Steve Klosterman, Klosterman Development Corporation, SRK Holdings, LLC (collectively "Klosterman Respondents"), and Kurtz Bros., Inc. (individually "Respondent Kurtz" and collectively with Klosterman Respondents, ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3745.01, and 6111.03.

II. PARTIES

These Orders shall apply to and be binding upon Respondents and their heirs and successors in interest liable under Ohio law. No change in ownership of the Property shall in any way alter Respondents' responsibilities under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapters 3734, 3745, and 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents own and/or operate a facility on approximately thirty-seven acres of land at 4691 U.S. Route 127 in Butler Township, Mercer County, Ohio. The facility is located on two adjacent parcels of real property identified by the Mercer County Auditor's Office, with an estimated thirteen acres of the facility located on Parcel Number 02-014600.0302 and about twenty-four acres of the facility located on Parcel Number 02-014600.0304 (collectively, the "Property").
2. Respondents Omer R. Klosterman Trust and SRK Holdings, LLC are the owners of the Property. Respondent Steve Klosterman ("Klosterman") is the trustee of Respondent Omer R. Klosterman Trust, the agent of Respondent SRK Holdings, LLC, and the agent and sole shareholder of Respondent Klosterman Development Corporation ("KDC").
3. Respondents have accepted and unlawfully disposed of solid waste, industrial waste, and other waste at the Property and failed to obtain appropriate permits for activities at the Property.
4. Respondents Klosterman, KDC, and Kurtz Bros., Inc. ("Kurtz") failed to comply with authorizations that were issued for activities at the Property.
5. Each respondent is a "person" as that term is defined in ORC §§ 3734.01(G) and 6111.01(I) and in Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3) and 3745-38-01(P).
6. On February 29, 2008, Respondent KDC submitted a Notice of Intent ("NOI") application for coverage under the Construction General National Pollutant Discharge Elimination System ("NPDES") Permit ("CGP") for ten acres of earth disturbance related to the construction of two new buildings on the Property. Coverage under this permit was granted on March 25, 2008 (Facility Permit No. 2GC02021.) This permit coverage subsequently terminated.

7. On February 9, 2012, Respondent Kurtz submitted an NOI to Ohio EPA that requested coverage under the Ohio EPA Industrial Storm Water General NPDES Multi-Sector Permit ("MSGP") for the activities being conducted at the Property. The primary SIC code listed was 2875 (Fertilizers, Mixing Only). This category is for establishments primarily engaged in mixing fertilizers from purchased fertilizer and includes mixed potting soil. In this request, Respondent Kurtz listed one outfall with a sub-sector of C1 (Agricultural Chemicals). Under this sub-sector, Respondent Kurtz was required to conduct benchmark monitoring for nitrate plus nitrite nitrogen, total lead, total zinc, and phosphorus.
8. Ohio EPA granted Respondent Kurtz coverage under the NPDES MSGP for industrial storm water discharges at the Property (Facility Permit No. 2GR01782*AG) with SIC code 2875 (Fertilizers, Mixing Only), effective June 1, 2012.
9. On March 5, 2014, Ohio EPA received a Land Application Management Plan permit application proposing to beneficially use spent non-toxic foundry sand at the Property and stating that foundry sand not beneficially used would be disposed at a landfill.
10. On October 8, 2014, Ohio EPA issued a Land Application Management Plan ("LAMP") to Respondent Kurtz. The LAMP allowed Kurtz to beneficially use spent non-toxic foundry sand (mold sand and core sand with chemical binders from iron castings and low pressure die casting sand with chemical binders from aluminum castings) generated only by Honda of America Mfg., Inc., of Anna, Ohio ("Honda") for soil blending, as filtering media in residential and commercial septic systems, as pipe bedding, in low strength mortar backfill, and in concrete production at the Property in accordance with the LAMP permit application submitted on March 5, 2014. The LAMP specified that "all other beneficial uses must be separately approved by Ohio EPA." The LAMP (BENU020613) was effective from October 8, 2014 until October 7, 2019 and designated Respondent Kurtz as the permittee.
11. On December 18, 2017, Respondent Kurtz submitted an NOI to renew MSGP coverage for activities conducted on the Property. The primary SIC code provided was 1446 (Industrial Sand). This category is for establishments primarily engaged in operating sand pits and dredges, and in washing, screening, and otherwise preparing sand for uses other than construction, such as glassmaking, molding, and abrasives. The NOI listed one outfall and indicated the Facility was only subject to Sub-sector J1, Sand and Gravel Mining. Under this sub-sector Respondent Kurtz was required to conduct benchmark monitoring for total suspended solids.
12. On June 27, 2018, Ohio EPA granted Respondent Kurtz coverage for storm water discharges associated with industrial activities at the Property under the MSGP (Facility Permit No. 2GR01782*BG), effective August 1, 2018.
13. On August 9, 2018, Ohio EPA sent a Chief's Warning Letter to Respondent Kurtz for the failure to submit benchmark monitoring under MSGP Permit No.

OHR000005 (2GR01782*AG) for the Property. The letter requested that the required data be submitted within fourteen days or, if data had not been collected during that permit cycle, Respondent Kurtz was directed to collect its first sample under its current permit, MSGP Permit No. OHR000006, and submit it within ninety days.

14. On April 9, 2019, Ohio EPA granted Respondent Kurtz coverage under Ohio EPA Beneficial Use General Permit No. BUGSFS01 (BENU022826). This coverage authorizes Respondent Kurtz to beneficially use foundry sand by placement on land for agronomic benefit as an ingredient in a soil blend, a soil-less potting media, and in soils used for bioretention practices in compliance with the General Permit. The General Permit requires that all of the approved beneficial uses include a mix of foundry sand and soil that does not exceed fifty percent foundry sand by volume. Respondent Kurtz's coverage under BUGPFS01 (BENU022826) became effective on April 9, 2019 and is scheduled to expire on March 31, 2022.
15. General Permit No. BUGPSF01 specifically states in Condition A.2: "This Permit does not authorize beneficial use of foundry sand for structural fill."
16. On April 18, 2019, Ohio EPA received a complaint regarding the Property. The complainant alleged that wastes including foundry sand and metal were being brought to the Property and placed onto and into the ground.
17. On May 1, 2019, Ohio EPA conducted a complaint inspection at the Property, with follow-up inspections conducted on May 14, 2019 and May 17, 2019. During these inspections, Ohio EPA viewed piles of wastes at various locations around the Property, including but not limited to castings, metal slag, foundry sand, clean-out type materials, concrete, metal, lining from kilns, and wastes from refractory ovens. Ohio EPA also observed disposal in three (3) general areas of the Property, Area 1, Area 2, and Area 3, each of which is identified and depicted in the map attached hereto as Attachment A. Ohio EPA observed the following during the May inspections:
 - a. In Area 1, the inspectors observed a shooting range, foundry sand mixed with solid waste from Celina Aluminum Precision Technologies ("CAPT"), as well as piles of mulch, clean hard fill, and soil. Respondent Klosterman stated that foundry sand is staged in Area 1 until it can be disposed of in Area 3 and also indicated that the shooting range backstop is made of clean hard fill that is covered with foundry sand.
 - b. In Area 2, the Ohio EPA inspectors observed a variety of industrial waste streams, including refractory, slag, oven clean outs, and a large amount of solid waste items commingled with the industrial waste. There was no visible foundry sand evident in this area, and waste was observed in contact with water. Respondent Klosterman indicated that the piles in this area were from Honda and further stated that two or more loads per day arrive from Honda and are deposited in this area.

- c. Area 3 is the foundry sand disposal area of the Property. Respondent Klosterman indicated that this area is mostly foundry sand from Honda and CAPT, which had recently started sending its foundry sand to the Property. Respondent Klosterman said that he is a contractor of Respondent Kurtz and hauls the material from CAPT. Respondent Klosterman stated that Respondent Kurtz hauls the material from Honda to the Property.
 - d. A ditch separates Area 2 from Area 3. During the inspections, the ditch was filled with water and waste was observed both on the banks of the ditch and in the water in the ditch. Water discharges from the ditch onto fields at the Property and flows across the fields to Monroe Creek. This ditch is a conveyance that discharges storm water associated with industrial activity as defined in OAC Rule 3745-39-04(B)(13).
18. Following requests from Ohio EPA, on May 16, 2019, Ohio EPA received the following from ENVi-Environmental:
- a. The Storm Water Pollution Prevention Plan ("SWPPP") for the Property;
 - b. Site inspection reports and quarterly visual assessment reports from May 31, 2018, August 17, 2018, November 15, 2018, and March 26, 2019;
 - c. The eDMR reports from August 17, 2018 and March 26, 2019; and
 - d. The MSGP annual report dated December 18, 2018.
19. The SWPPP submitted by ENVi-Environmental on May 16, 2019 was prepared June 18, 2018, but was not certified, signed, and dated as required by the MSGP. The annual report and routine facility inspection reports were certified, signed, and dated by a project manager with ENVi-Environmental. Although ENVi-Environmental appears to be a subsidiary or division of Respondent Kurtz, the individual who signed these reports is not a responsible corporate officer required to sign reports and other documents pursuant to the MSGP (MSGP Appendix B, Subsection 11.A.). Respondents were notified of these violations in a Notice of Violation ("NOV") letter dated September 17, 2019, as described in Finding No. 32.
20. The March 26, 2019 quarterly inspection report submitted on May 16, 2019 noted the following as non-compliance: land application of foundry sand within 33 feet of Monroe Creek; and failure to create and maintain berms identified as a best management practice ("BMP") in the SWPPP.
21. On May 23, 2019, Ohio EPA met with representatives from Honda, CAPT, Univar Solutions (which manages Honda's waste), and Respondents Kurtz, Klosterman, and KDC at the Property for an inspection and sampling event. One of the purposes of this meeting was to identify the types of waste materials brought onsite and determine their origin. The company representatives from Honda and CAPT were able to identify most of the waste materials at the Property.

22. By NOV letter dated July 19, 2019, Ohio EPA notified Respondent Kurtz and Respondent Omer R. Klosterman Trust, through its Trustee Respondent Klosterman, of the following violations observed during the inspections on May 1, 2019, May 14, 2019, May 17, 2019, and May 23, 2019:
 - a. OAC Rule 3745-27-02(A) for establishing a solid waste facility without obtaining a permit to install, and
 - b. OAC Rule 3745-27-05(C) for open dumping,
 - c. OAC Rule 3745-37-01(A) for conducting municipal solid waste landfill operations without possessing a valid license.
23. OAC Rule 3745-27-02(A) specifies that "[n]o person shall establish or modify a solid waste facility without obtaining a permit to install issued by the director."
24. OAC Rule 3745-27-05(C) states that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734 of the Revised Code, and shall submit verification that the solid waste has been properly managed."
25. OAC Rule 3745-37-01(A) (effective Sept. 30, 1996) specifies that "[n]o person shall conduct municipal solid waste landfill, industrial solid waste landfill...operations...without possessing a separate, valid license for each operation[.]"
26. OAC Rule 3745-501-05 (effective July 1, 2020) provides that "[n]o person shall operate or maintain a solid waste or construction and demolition debris facility without a separate license for each facility as required by Chapter 3714. or 3734. of the Revised Code and the rules adopted thereunder."
27. On July 19, 2019, Ohio EPA's Division of Materials and Waste Management ("DMWM") also issued a separate NOV to Respondent Kurtz for beneficial use violations. The NOV noted specific violations of the terms of BUGPSFS01, including the following:
 - a. Respondent Kurtz transported materials from CAPT to the Property that are being dumped and not used for agronomic benefit or the other beneficial uses authorized under the General Permit. This General Permit does not authorize the beneficial use of foundry sand for structural fill or for fill.
 - b. Materials in addition to foundry sand meeting the criteria of the permit are being disposed onsite. Foundry sand commingled with solid wastes is

being hauled to the Property from CAPT and Honda. The onsite disposal of this material is not authorized by this General Permit.

28. The July 19, 2019 NOV from Ohio EPA DMWM to Respondent Kurtz also noted the following violations of the LAMP permit:
 - a. Materials that do not meet the definition of spent non-toxic foundry sand were being transported from Honda to the Property.
 - b. Upon arrival at the Property, the waste stream was not being beneficially used as described in the approved LAMP.
 - c. The LAMP does not permit final deposition of waste at the Property.
 - d. Records of the volume of foundry sand designated for beneficial use and the amount that had actually been beneficially used were not available.
 - e. Waste analysis records were not available during inspections.
 - f. Annual waste characterization data for the Property had not been provided.
 - g. Respondent Kurtz failed to submit annual reports for the years 2015, 2016, 2017, and 2018.
29. On September 5, 2019, Ohio EPA's Division of Surface Water ("DSW") sent an NOV to Respondent KDC to notify it of two violations occurring on the Property in violation of ORC § 6111.04(A)(1), OAC Rule 3745-33-02(A), and OAC Rule 3745-39-04(A)(1)(b):
 - a. Respondent KDC is discharging storm water associated with industrial activities without authorization under an NPDES permit; and
 - b. Respondent KDC is discharging storm water associated with construction activities without authorization under an NPDES permit.
30. Although Respondent Kurtz has obtained MSGP coverage for storm water discharges associated with industrial activities at the Property, Klosterman Respondents do not have coverage under the MSGP. The SWPPP submitted by Respondent Kurtz on May 16, 2019 lists only Respondent KDC as the Facility owner and operator, even though it is not the permittee.
31. On September 13, 2019, an onsite meeting was conducted at the Property. Representatives of Ohio EPA, Respondent KDC, and Respondent Kurtz attended the meeting. Respondents proposed to continue operations.
32. On September 17, 2019, Ohio EPA DSW sent an NOV to Respondent KDC and Respondent Kurtz regarding non-compliance with the MSGP. The NOV

specifically noted that the SWPPP was inaccurate and incomplete and set forth the following violations:

- a. In violation of ORC § 6111.07(A) and MSGP Part 1.3.1, the operators were engaged in industrial activities that fall under different SIC codes and sectors than those provided by Respondent Kurtz in its NOI applications.
 - b. In violation of ORC § 6111.07(A) and MSGP Part 5.1.7 and Appendix B, Subsection 11.A, the SWPPP was not certified, signed and dated, and the inspection reports and annual report submitted were not signed by a responsible corporate officer.
 - c. Although instances of non-compliance and the need for additional controls were noted in the quarterly inspection reports and the December 18, 2018 annual report, the corrective actions required under the MSGP Part 3 were not followed or documented, in violation of ORC § 6111.07(A), and the MSGP Parts 4.4.1, 4.1.2, 5.2, 3.1, 3.2, 3.3, 3.4, 7.2, and Appendix 1, Item 4.
 - d. Employee training had not been conducted or documented in violation of ORC § 6111.07(A) and the MSGP Part 2.2.2.9.
 - e. The description of sediment controls to be implemented to clean pavement in the SWPPP did not conform to requirements in MSGP Part 1.1.3, in violation of that provision and ORC § 6111.07(A).
 - f. In violation of ORC § 6111.07(A) and MSGP Parts 2.1.2.1 and 2.1.2.11, waste was in contact with water and vehicle and equipment wash water were being discharged but had not been included in the SWPPP.
 - g. Oil appeared to have leaked or spilled onsite and stained the driveway and created a sheen on puddles, in violation of ORC § 6111.07(A) and MSGP Parts 2.1.2.2 and 2.1.2.4.
 - h. In violation of ORC § 6111.07(A) and MSGP Parts 2.1.2.5 and 2.1.2.12, fill material and the pile of drinking water treatment material on the Property had eroded and was being deposited on the adjacent farm field and the stone access drive was choked with mud near the entrance.
33. Under MSGP Part 1.3.1, a complete and accurate NOI application to obtain authorization under the MSGP must be submitted. Respondent Kurtz obtained MSGP coverage for storm water discharges associated with industrial activities at the Property using incorrect or incomplete SIC codes in both of its NOI applications. In its May 29, 2012 NOI application Respondent Kurtz listed SIC code 2875, Fertilizers, Mixing Only. In its May 8, 2017 NOI renewal application, Respondent Kurtz listed SIC code 1446, Industrial Sand. The Industrial Sand category is for establishments primarily engaged in operating sand pits and dredges, and in washing, screening, and otherwise preparing sand for uses other

than construction, such as glassmaking, molding, and abrasives. None of these are the activities taking place at the Property.

34. On September 30, 2019, Respondent Kurtz submitted to Ohio EPA a proposal providing for the removal of material from two portions of Area 3. Those portions of Area 3 were identified as red ellipses on a map that was included in the proposal and is attached hereto as Attachment B.
35. On January 16, 2020, Ohio EPA DMWM representatives observed as Respondent Klosterman dug fifteen test pits at the Property. Ohio EPA chose the test pit locations. Four were dug in Area 2 and the material excavated in each was solid waste, mostly ground up. Eleven test pits were dug in Area 3, turning up foundry sand in each, mixed with small pieces of metal in some cases. No other wastes were observed in the test pits in Area 3.
36. The materials observed at the Property, described in Findings Nos. 17 and 47, constitute "industrial waste" or "other waste" as defined in ORC § 6111.01(C) and (D).
37. "Industrial waste" or "other waste," as defined in ORC § 6111.01, discharge from the Property through storm water ditches and, along with storm water from the Property, discharge to Monroe Creek, a tributary to Grand Lake St. Marys. Monroe Creek and Grand Lake St. Marys are "waters of the state" as defined in ORC § 6111.01.
38. Pursuant to ORC § 6111.04(A), no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
39. Pursuant to ORC § 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.
40. OAC Rule 3745-38-02 provides that 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 requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38. Pursuant to OAC Rule 3745-33-04, individual NPDES permit renewal applications must be submitted at least one hundred and eighty days prior to expiration of the permit.
41. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any permit terms and conditions set by the Director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are

imposed by regulation of the Administrator of the United States Environmental Protection Agency. Pursuant to § 402(p) of the federal act, the Administrator of USEPA imposed by regulation requirements to regulate storm water discharges. In 40 C.F.R. 122.26, the Administrator requires dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land to obtain an individual NPDES permit or coverage under a storm water general permit.

42. Each operator of a construction site at which more than one (1) acre of land will be disturbed is required to submit an NOI to obtain coverage under the CGP. A Storm Water Pollution Prevention Plan ("SWP3") specific to the site must be developed prior to submission of an NOI and implemented upon approval of coverage under the CGP and initiation of construction activity at the site. For purposes of the CGP, "construction activities include any clearing, grading, excavating, grubbing and/or filling activities that disturb one or more acres."
43. Respondents Kurtz, KDC, and Klosterman are each "operators" as defined in Part VII of the CGP.
44. Pursuant to Part I.F.1. of the CGP, each operator who will be engaged at a site must seek coverage under the permit. Respondents did not seek coverage under the permit in violation of the permit and ORC § 6111.07(A).
45. OAC Rule 3745-39-04(C)(1) requires dischargers of storm water associated with industrial activity to apply for an individual permit or seek coverage under a current storm water general permit.
46. Based on Ohio EPA's observations during inspections of the Property and conversations with Respondents, Respondents appear to be engaging in the following activities that fall under the SIC codes or rule noted: Mulch manufacturing – SIC code 2499 (Wood Products, Not Elsewhere Classified); concrete crushing – SIC code 1499 (Miscellaneous Nonmetallic Minerals, Except Fuels); Slag crushing or treatment – SIC code 3295 (Minerals and Earths, Ground or Otherwise Treated); Slag recovery – SIC code 5093 (Scrap and Waste Materials); Landfills, land application sites and open dumps that receive or have received industrial wastes (OAC Rule 3745-39-04(B)(13)(e)). These activities are all required to obtain NPDES permit coverage for discharges of storm water associated with industrial activity under OAC Rule 3745-39-04.
47. Piles of wastes at various locations on the Property, including foundry sand, drinking water treatment residuals, castings, metal, slag, clean-out type materials, concrete, kiln linings, refractory oven wastes, plastic, and other miscellaneous solid wastes, were observed that were uncovered and uncontained. These piles are exposed to rainfall and can cause discharges of polluted storm water to waters of the state. Some of these materials were placed in a drainage way, in contact with runoff. In addition, some of the listed solid waste materials were mixed in with the foundry sand being used to fill the area north of the outbuilding and west of the driveway.

48. 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.
49. These 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 plan approval and PTI requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
50. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
51. The Director has given consideration to, and based her 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

Respondents shall achieve compliance with ORC Chapters 3734 and 6111, and the rules promulgated under those Chapters, in accordance with the following:

1. The coverage granted under General Permit No. BUGPFS01 issued on March 31, 2017 is hereby revoked.
2. Beginning on the effective date of these Orders, Respondents shall neither receive at, nor deliver to, the Property or any adjacent Property owned or controlled by Respondents any solid waste, industrial waste, other waste, sludge, sludge materials, or beneficial use materials of any kind, including but not limited to foundry sand and drinking water treatment residuals, for the purpose of staging, processing, storing, disposing, stockpiling, or beneficially using such materials, until they notify both Ohio EPA's Division of Surface Water and Division of Materials and Waste Management in writing in accordance with Section X of these Orders and obtain from Ohio EPA all authorizations required by Chapter 3734 and/or 6111 of the Revised Code, including but not limited to appropriate coverage under an NPDES industrial storm water permit and either a beneficial use permit or LAMP.

Solid Waste Orders

3. Beginning on the effective date of these Orders, Respondents shall neither accept nor dispose of solid waste at the Property unless approved by Ohio EPA in writing.

4. Beginning on the effective date of these Orders, Respondents shall not engage in any composting or construction and demolition debris processing activities at the Property unless authorized by Ohio EPA in writing.
5. Not later than thirty (30) days after the effective date of these Orders, Klosterman Respondents shall submit to Ohio EPA a narrative that describes the purpose of any wood waste and concrete remaining on the Property or proposed to be delivered to the Property and explains the following:
 - a. How the wood waste will be managed to ensure that its presence does not constitute a class I, class II, class III, or class IV composting facility as defined by OAC Chapter 3745-560 or an open dump.
 - b. How Klosterman Respondents will ensure that only clean wood or woody wastes will be staged or delivered to the Property (not other solid waste) and what steps will be taken to process and redistribute the material into a usable product.
 - c. How the concrete will be managed to ensure that its presence does not constitute a construction and demolition debris ("C&DD") processing facility as that term is defined in ORC § 3714.01 and applicable rules or an illegal disposal facility.
 - d. How Klosterman Respondents will ensure that only concrete will be staged or delivered to the Property (not other C&DD or solid waste) and the steps that will be taken to process and redistribute the material as a synthetic aggregate product.
6. Not later than thirty (30) days after the effective date of these Orders, Respondents shall remove waste from portions of Area 3 identified in the plan Respondent Kurtz submitted to Ohio EPA on September 30, 2019 and depicted in the map attached hereto as Attachment B and shall ensure that those wastes are disposed in accordance with Order No. 8.
7. Not later than sixty (60) days after the effective date of these Orders Respondents shall ensure that all wastes have been removed from Area 2 such that only native soil remains and that those wastes have been disposed in accordance with Order No. 8.
8. Respondents shall ensure that, not later than sixty (60) days after the effective date of these Orders, all material required to be removed by Order Nos. 6 or 7 is lawfully disposed at a licensed solid waste landfill.
9. Not later than sixty (60) days after the effective date of these Orders, Respondents shall ensure that all foundry sands staged at or near Area 1 that are not irrecoverably commingled with other solid wastes are either relocated and incorporated into Area 3 or disposed in a licensed permitted solid waste landfill.

10. Not later than sixty (60) days after the effective date of these Orders, Respondents shall dispose all refractory mix and all other solid waste at or near Area 1, including foundry sands irrecoverably commingled with other solid waste, at a licensed solid waste landfill.
11. Not later than seventy-five (75) days after the effective date of these Orders, Respondents shall provide to Ohio EPA receipts documenting compliance with Order Nos. 8, 9, and 10.
12. Not later than one hundred twenty (120) days after the effective date of these Orders, Klosterman Respondents shall ensure that the material that served as a shooting range backstop in Area 1 is appropriately evaluated in accordance with OAC Rule 3745-52-11, at a minimum for characteristic levels of lead. Respondents shall not move this material from Area 1 until after it is evaluated pursuant to this Order. Klosterman Respondents shall manage the material in compliance with ORC Chapters 3734 and 6111 and the rules promulgated thereunder.

Surface Water Orders

13. Not later than fourteen (14) days after the effective date of these Orders, Respondents shall submit a plan detailing what industrial activities will occur at the Property, their respective SIC codes or narrative descriptions as listed in OAC Rule 3745-39-04, and what each Respondent's role and responsibilities are and will be with respect to each activity. Future violations at the Property related to activities for which the plan describes Respondent Kurtz as having no role or responsibilities will not be attributed to Respondent Kurtz, provided there is no evidence that Respondent Kurtz did play a role in or was in some manner responsible for the violation.
14. Not later than thirty (30) days after the effective date of these Orders, Respondents shall do the following:
 - a. Develop and submit for review and acceptance pursuant to Section X. of these Orders a SWP3 for the Property and submit an NOI and obtain coverage under CGP No. OHC000005. The SWP3 shall include the surface water channel required by Order No. 14.b. Where the CGP does not specify, Best Management Practice selection, maintenance, and design included in the SWP3 shall meet the most current version of Ohio's Rainwater and Land Development Manual or similar guidance accepted by Ohio EPA.
 - b. As part of the SWP3, submit to Ohio EPA pursuant to Section X. of these Orders, for review and acceptance a design for the surface water channel between Area 2 and Area 3, prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices. The design shall ensure that all wastes under or adjacent to the channel are adequately separated from waters in the channel and from runoff, and may include separation via

compacted clay soils. In addition, the design must provide for a stable and non-erodible outlet.

- c. Submit to Ohio EPA, in accordance with Section X. of these Orders, NOIs to obtain the appropriate Multi-Sector General NPDES Permit ("MSGP") coverage.
15. Not later than fourteen (14) days after receipt of notification from Ohio EPA, Respondents shall provide Ohio EPA, in accordance with Section X. of these Orders, with a response addressing any comments or deficiencies and/or submitting any additional information requested with regard to the SWP3 or design for the surface water channel required by Order No. 14.
16. Upon Ohio EPA's acceptance of the SWP3, Respondents shall immediately implement it.
17. Upon receipt of coverage under the appropriate MSGP, Respondent Kurtz shall submit a Notice of Termination of coverage under its current MSGP, No. 2GR01782*BG, to Ohio EPA in accordance with Section X. of these Orders.
18. Respondents shall comply with the MSGP, including implementing controls in accordance with the permit to minimize the exposure of any wastes or other materials on the Property and to prevent the discharge of pollutants.
19. Not later than ninety (90) days after Ohio EPA's acceptance of the design submitted in accordance with Order No. 14.b, the construction of the surface water channel shall be completed and Respondents shall submit a certification report, in accordance with Section X. of these Orders, documenting the completion of construction.
20. Respondents shall stabilize Area 3 in accordance with the CGP and ensure that Area 3 has side slopes no steeper than 3:1 (H:V). If final stabilization of Area 3 will be in the form of a perennial vegetative cover, Respondents shall place topsoil of sufficient depth to support its establishment on top of the non-toxic foundry sand.
21. Respondents shall initiate appropriate vegetative practices in accordance with the CGP on all disturbed areas of the Property, including but not limited to Area 2 after completion of the work required by Order No. 7, within seven (7) days where processing activity has temporarily ceased or is expected to temporarily cease for a period of fourteen (14) days or longer.
22. Not later than October 31, 2021, all drinking water treatment materials located on the surface of the ground west of Area 3 shall either be land applied to agricultural fields in accordance with a beneficial use general permit for drinking water treatment materials or disposed in a licensed and permitted solid waste landfill as solid waste by Respondents.

23. Respondents shall comply with the terms and conditions of their effective NPDES permits, including all terms and conditions of any modified, renewed, or new effective NPDES permits.
24. Not later than fourteen (14) days of completion of Orders Nos. 6-11 and 13-22, Respondents shall notify Ohio EPA in writing in accordance with Section X. of these Orders. No earlier than seven (7) days after submission of the notice, if Respondent Kurtz is no longer an owner or operator at the Property, Respondent Kurtz may submit a Notice of Termination form in accordance with Sections IV and V of the CGP and a Notice of Termination form in accordance with Section 1.4 of the MSGP.

Civil Penalty

25. Respondents shall pay the amount of twenty-five thousand dollars (\$25,000.00) in settlement of Ohio EPA's water pollution control law claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Not later than thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" in the amount of twenty-five thousand dollars (\$25,000.00). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondents, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA's NWDO in accordance with Section X of these Orders and to Larry Reeder, Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

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 Ohio EPA's Chief, Division of Materials and Waste Management and the Chief of the Division of Surface Water acknowledge, 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 from Respondents: "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 Respondents or responsible officers of Respondents. For purposes of these Orders, a responsible official is the principal executive officer, the ranking elected official, or other duly authorized employee.

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, Respondents or the Property.

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 or the Property.

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. NOTICE

All documents required to be submitted by Respondents pursuant to Orders Nos. 2 and 3 through 12 shall be electronically submitted to Ohio EPA at NWDODMWM.submittals2@epa.ohio.gov or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

All documents required to be submitted by Respondents pursuant to Orders Nos. 2 and 13 through 24 that are less than 25MB in size and the copy of the check required to be submitted pursuant to Order No. 25 shall be electronically submitted to nwdo24hournpdes@epa.ohio.gov or to such other persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA. For any documents required to be submitted pursuant to Orders Nos. 2 and 13 through 24 that exceed 25 MB, Respondent shall contact Thomas Poffenbarger at Thomas.Poffenbarger@epa.ohio.gov and Lynette Hablitzel at Lynette.Hablitzel@epa.ohio.gov, or to such persons and addresses as may be hereafter specified in writing by Ohio EPA, to arrange for document submittal.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all other rights, privileges, and causes of actions, except as specifically waived in Section XII of these Orders.

XII. 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.

XIII. EFFECTIVE DATE

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

XIV. 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. The parties acknowledge and agree that this agreement 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

6/25/2021

Date

IT IS SO AGREED:

Kurtz Bros., Inc.



Signature

6/24/21

Date

Rick Costello
Printed or Typed Name

PRESIDENT
Title

Omer R. Klosterman Trust

Steven R. Klosterman
Signature

6/24/21
Date

Steven R. Klosterman
Printed or Typed Name

Trustee
Title

Steve Klosterman

Steve Klosterman
Signature

6/24/21
Date

Steve Klosterman
Printed or Typed Name

Individual
Title

Klosterman Development Corporation


Signature

6/24/21
Date

Steven R. Klosterman
Printed or Typed Name

President
Title

SRK Holdings, LLC


Signature

6/24/14
Date

Steven R Klosterman
Printed or Typed Name

member
Title

ATTACHMENT A



Attachment B

