

Issuance Date: Dec. 28, 2007

Effective Date: Dec. 28, 2007

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In The Matter Of:

Mr. Bill Dagg	:	Director's Final Findings and Orders
1279 East Maple Street	:	
Clyde, OH 43410	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Mr. Bill Dagg ("Mr. Dagg"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02, Ohio Administrative Code ("OAC") Rule 3745-27-03(B), and OAC Rule 3745-27-05(A)(4).

II. PARTIES

These Orders shall apply to and be binding upon Mr. Dagg and successors in interest under Ohio law. No changes in ownership relating to Mr. Dagg's property, as hereinafter defined, shall in any way alter Mr. Dagg's obligations under these Orders.

III. DEFINITION

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the rules promulgated thereunder. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of these Orders.

IV. FINDINGS

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

1. Mr. Dagg is the owner of two tracts of farm land located at 837 South County Road 268 and 846 East McPherson Highway in Clyde, Sandusky County, Ohio.
2. Great Lakes Packers, Inc. owns and operates a potato packaging plant located at 400 Great Lakes Parkway in Bellevue, Huron County, Ohio. The packaging plant

generates a solid waste consisting of potatoes ("potato waste") that do not meet the required packaging grade. The condition and consistency of the potatoes range from partially decayed to solid with some visual defects such as bruising, greening, and spots.

3. On June 18, 2007, Great Lakes Packers, Inc. contacted Ohio EPA, Northwest District Office (NWDO), Division of Solid and Infectious Waste Management (DSIWM) regarding regulatory requirements for the land application of potato waste at Mr. Dagg's farm.
4. On July 13, 2007, Ohio EPA, Central Office (CO), DSIWM, sent Great Lakes Packers, Inc. and Mr. Dagg a letter indicating that the land application of the potato waste requires an exemption for authorization of alternative disposal of solid waste, and outlining the information required for consideration of the exemption.
5. On September 7, 2007, Great Lakes Packers, Inc. and Mr. Dagg submitted a request ("Request") to CO, DSIWM, for land application of potato waste.
6. Specifically, Great Lakes Packers, Inc. proposes to contract with Mr. Dagg to dispose of the potato waste by land applying them on farm land owned by Mr. Dagg. Prior to delivering each load of potato waste, Great Lakes Packers, Inc. will contact Mr. Dagg to verify availability for acceptance and land application. As specified in the request, the material will be spread utilizing a manure spreader and incorporated into the soil by disking six inches deep. The potato waste is generated and will be land applied year round.
7. 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...."
8. 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...."
9. 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...."
10. The activities described in Finding 6, above, and in the Request constitute disposal of a solid waste at a facility.
11. 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 to install and license be obtained prior

to the establishment or modification of a solid waste facility.

12. The activities described in Finding 6, above, and in the Request constitute establishment or modification of a facility and require that a permit to install and license be obtained prior to initiating such activities.
13. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. 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.
14. The proposed disposal method described in the request noted in Finding 6, above, and in the Request is a method other than sanitary landfilling, incineration, or composting and therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A)(4).
15. The disposal of solid waste by the method described in Finding 6, above, and in the Request can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided it is performed in accordance with the Request, as received on September 7, 2007, and the Orders specified below.
16. 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.
17. Based upon a review of the September 7, 2007, Request, granting Mr. Dagg an exemption from the requirement to obtain a permit and a license to establish and operate a solid waste facility, as specified in Finding 6, above, and in the Request, is unlikely to adversely affect the public health or safety or the environment, provided Mr. Dagg performs the activities in accordance with the Request and these Orders.
18. 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 each ton of

solid waste disposed at the facility.

19. Based upon a review of the September 7, 2007, Request, granting Mr. Dagg an exemption from the requirement to collect and remit the state disposal fee is unlikely to adversely affect public health or safety or the environment, provided Mr. Dagg complies with the following Orders.

V. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4) Mr. Dagg is hereby authorized to land apply the potato waste at the locations specified in Finding 1, above, as specified in Finding 6, above, as an alternate disposal method.
2. Mr. Dagg shall utilize the potato waste in accordance with the following placement procedures:
 - a. The potato waste shall be spread with a manure spreader and incorporated into the soil by disking six inches deep, as described in Finding 6, above, and in the Request.
 - b. The potato waste shall be incorporated into the soil not later than forty eight (48) hours after receipt.
 - c. The appropriate application rate for potato waste shall be based on the nutrient removal capacity of the succeeding crop(s).
 - d. The appropriate application rate for the potato waste shall be determined prior to the first land application and annually thereafter.
 - e. The potato waste application rate shall be determined by soil analysis(es), which shall include include, at a minimum, testing for: soil pH; available Phosphorus (Bray P1); Nitrate-Nitrogen; exchangeable Potassium (K), Calcium (Ca), and Magnesium (Mg); cation exchange capacity (CEC); percent organic matter; and percent base saturation of cations (Ca, Mg, K). The soil analysis shall be conducted at a frequency of not less than one sample per twenty (20) acres.
 - f. Mr. Dagg shall notify Ohio EPA, NWDO and the Sandusky County Health Department not later than five (5) days prior to the start of land application activities so that the land application can be inspected by Ohio EPA NWDO and the Sandusky County Health Department.

- g. Land application of the potato waste shall not exceed the recommended application rate determined through soil analyses. Any excess potato waste shall be disposed in a licensed solid waste landfill or a Class II compost facility, or by another alternate disposal method authorized by the Director.
 - h. Mr. Dagg shall not land apply the potato waste within one hundred (100) feet of any waterways or within three hundred (300) feet of any well site.
 - i. If odors or vectors are present on the soil where land application has taken place or at the outdoor cement pad where storage has taken place, or upon request of the Director or the Sandusky County Health Department, Mr. Dagg shall take appropriate measures to abate the odors and vectors.
 - j. This authorization is limited to potato waste meeting the specifications in the Request. Mr. Dagg shall not accept any potato waste that is not equivalent to that described in the request unless the Director has authorized such disposal. Potato waste that does not meet the specifications in the request shall be disposed of in a licensed solid waste landfill or a Class II compost facility, or by another alternate disposal method authorized by the Director.
 - k. If, in the judgment of the Director or the Sandusky County Health Department, Mr. Dagg is unable to abate nuisance conditions or has not complied with the conditions of this authorization, then Mr. Dagg shall dispose of the potato waste in a licensed solid waste landfill or a Class II compost facility, or by another alternate disposal method authorized by the Director.
 - l. Annually, Mr. Dagg shall provide Ohio EPA and the Sandusky County Health Department a map accurately representing the location of the agricultural fields on which the potato waste will be land applied for the following season.
3. Pursuant to ORC Section 3734.02(G), Mr. Dagg is hereby exempted from the requirements contained in ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 to obtain a permit and a license to establish and operate a solid waste facility for the disposal of potato waste disposed at the locations specified in Finding 1, above, in accordance with the Request and these Orders.
4. Pursuant to ORC Section 3734.02(G), Mr. Dagg is hereby exempted from the requirement to collect and remit, in accordance with ORC Section 3734.57(A), the state disposal fee of \$1.75 per ton on solid waste disposed in accordance with these Orders and the Request. This exemption from the requirement to collect and remit the state disposal fee is subject to Order 3, below.

5. The exemptions contained in Orders 1 and 2, above, are subject to the following conditions:
 - a. The exemptions contained in Orders 1 and 2, above, shall not apply to any solid waste other than that which is described in Finding 2, above, and in the Request.
 - b. The exemptions contained in Orders 1 and 2, above, shall not apply to any solid waste originating from any source other than Great Lakes Packers, Inc. as described in Finding 2, above.
 - c. The exemptions contained in Orders 1 and 2, above, shall not apply to any solid waste that is accepted at the project site and that, for whatever reason, is not land applied in accordance with the Request and these Orders.
 - d. The exemptions contained in Orders 1 and 2, above, shall apply only to the land application of potato waste at the locations detailed as proposed in the Request.
6. Ohio EPA and the Sandusky County Health Department may enter Mr. Dagg's land during normal business hours and in accordance with ORC Section 3734.07(C) to inspect, conduct tests, or examine records and reports concerning utilization of the potato waste, and to determine Mr. Dagg's compliance with these orders.
7. If the use of the potato waste proves unsatisfactory to Ohio EPA or the Sandusky County Health Department, the exemptions granted in these orders may be revoked upon written notification from the Director. Immediately upon such revocation, Mr. Dagg shall cease land application of the potatoes and dispose of the material at a licensed solid waste landfill or a Class II compost facility, or by another alternate disposal method authorized by the Director.
8. Nothing in these Director's Final Findings and 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 Mr. Dagg from responsibility under ORC Chapters 3704, 3734 or 6111; under the Federal Clean Water 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.

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these orders shall be taken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Mr. Dagg.

VII. RESERVATION OF RIGHT

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, including seeking penalties against Mr. Dagg for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Mr. Dagg to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Mr. Dagg to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Mr. Dagg. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

IT IS SO ORDERED

Chris Korleski, Director
Ohio Environmental Protection Agency