

OHIO E.P.A.

SEP 19 2001

ENTERED DIRECTOR'S JOURNAL

Issuance Date: SEP 19 2001

Effective Date: SEP 19 2001

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Tom Study
Tom Study Farm
7685 Contreras Road
Oxford, Ohio 45056

Director's Final
Findings and Orders

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are hereby issued to Tom Study pursuant to the authority vested in the Director of Environmental Protection (director) under Ohio Revised Code (ORC) Sections 3734.01 and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon Tom Study, the Tom Study Farm, its agents, servants, assigns, and successors in interest. No changes in ownership relating to the Tom Study Farm will in any way alter Tom Study's responsibilities under these Orders. Tom Study's obligations under these Orders may only be altered by the written approval of the director.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the regulations promulgated thereunder. Unless otherwise stated, all citations of the Ohio Administrative Code (OAC) shall refer to regulations currently effective.

IV. ACTIONS

Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-05(A)(4), the director hereby makes the following findings and issues the following orders.

I certify this to be a true and accurate copy of the
official records of the records of the Ohio
Environmental Protection Agency

By Doreen Jackson on 9/19/01

V. FINDINGS

1. Tom Study is the owner of the Tom Study Farm located at 7685 Contreras Road, Oxford, Ohio 45056 in Butler County.
2. On May 29, 2001, Mary L. Moore of the City of Hamilton's Department of Public Works submitted, on behalf of Tom Study, a request to the director to use flue gas desulfurization (FGD) material as base material in the construction of one livestock feed lot pad at Tom Study Farm. Specifically, Tom Study proposes to use not more than 250 tons of FGD material produced from the City of Hamilton's Municipal Plant located in Butler County.
3. 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 waste . . . into or on any land or ground or surface water or into the air . . .".
4. 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 . . .".
5. The activities described in Finding Number 2, above, will involve the placement of solid waste into or on the ground or surface waters and is therefore "disposal" at a "facility."
6. ORC Sections 3734.02(G), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27, 3745-29, 3745-30, 3745-31, and 3745-37 require that a permit-to-install and license be obtained prior to the establishment and operation of a solid waste facility.
7. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable methods of disposal. In addition, other methods of disposal may be used provided that such methods are demonstrated to the satisfaction of the director to be capable of disposing of solid wastes without creating a nuisance or a health hazard, without causing water pollution, and without violating ORC Chapters 3704 and 3734 and any rules adopted thereunder.
8. The proposed disposal method described in the request and noted in Finding Number 2, above, is a method other than sanitary landfilling, incineration, or composting and, therefore, requires authorization of the director pursuant to OAC Rule 3745-27-05(A)(4).

9. ORC Section 3734.57(A) requires the owner or operator of a solid waste disposal facility to collect and remit to the state a fee of \$1.75 per ton for the disposal of solid wastes at the facility.
10. ORC Section 3734.57(B) requires the owner or operator of a solid waste disposal facility operating in a solid waste management district where tiered disposal fees have been ratified to collect and remit to the solid waste management district the tiered fees on each ton of solid waste disposed at the facility.
11. ORC Section 3734.573 authorizes the solid waste management policy committee of a single or joint county solid waste management district to levy a fee on the generation of solid wastes within the district. ORC Section 3734.573 further requires the owner or operator of a solid waste facility receiving wastes generated from within the district levying the fee to collect and remit to the solid waste management district the generation fee on each ton of solid waste disposal at the facility. The Butler County Solid Waste Management District has a generation fee of \$1 .00 per ton in effect for solid wastes generated within that solid waste management district.
12. Pursuant to ORC Section 3734.02(G), the director may, by order, exempt any person generating, 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.
13. The director has determined that the disposal of solid wastes via the method proposed in the request can be performed without creating a nuisance or a health hazard, without causing water pollution, and without violating ORC Chapters 3704 and 3734 and any rules adopted thereunder, provided it is performed in accordance with the request described in Finding Number 2, above, and the orders specified below.
14. Pursuant to ORC 3734.02(G), the director has determined that granting an exemption to Tom Study from the requirements to obtain a permit-to-install and a license to establish and operate a solid waste facility in order to use FGD in the construction of a livestockfeedlot pad is unlikely to adversely affect the public health or safety or the environment provided it is performed in accordance with the request and the orders specified below.
15. Pursuant to ORC Section 3734.02(G), the director has determined that granting an exemption to Tom Study from the requirements to collect the state disposal fee and

the Butler County Solid Waste Management District's generation fee for solid waste disposed in accordance with the request and the orders specified below is unlikely to adversely affect the public health or safety or the environment.

VI. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4) and ORC Section 3734.02(G), Tom Study is hereby authorized to use FGD material as base material for construction of one livestock feed lot pad at the Tom Study Farm as an other method of disposal, and is hereby exempted from the requirement to obtain a permit-to-install and license to establish and operate a solid waste facility pursuant to ORC Chapter 3734 and OAC Chapters 3745-27, 3745-29, 3745-30, 3745-31, and 3745-37, provided Tom Study complies with the following:
 - a. This exemption shall apply only to the lime-enriched FGD materials from City of Hamilton's Municipal Plant to be used as a base material for the livestock feed lot pad. The FGD material shall be placed in accordance with the following placement procedures:
 - i. Tom Study shall strip any vegetation and organic soil prior to placement.
 - ii. Tom Study shall proof roll exposed subgrade with compaction equipment or hauling equipment prior to placement. If excessively weak or wet soils are encountered, Tom Study shall remove the soils and backfill with additional compacted FGD material.
 - iii. The FGD material shall be placed within three days of delivery to the site.
 - iv. Tom Study shall apply the FGD material in a 15-inch loose lift in order to achieve the final compacted thickness of 12 inches per lift.
 - v. Tom Study shall compact the FGD material with a smooth drum roller until a uniform solid surface is obtained.
 - vi. Tom Study shall maintain the pad humidity for a minimum of seven days to allow for proper curing. This can be accomplished by covering the surface with straw or similar method.
 - vii. Tom Study shall not use the pad for livestock or horses for at least 30 days after the initial seven-day curing period.

5. The exemptions granted in Orders Number 1,2, and 3, above, shall expire 180 days from the effective date of these Orders.
6. Ohio EPA's Southwest District Office and the City of Hamilton's Health Department shall be notified not later than five days prior to the start of the project so that installation can be routinely inspected by the Southwest District Office and the Health Department.
7. Not later than 60 days after completion of the activities authorized in these Orders, Tom Study shall submit a notification to Ohio EPA and the Butler County Solid Waste Management District including a summary report of all the FGD material used. The report shall include total quantities in weight (tons) or volume (cubicfeet) of FGD material used in accordance with these Orders and for which fees and/or surcharges were not remitted (clearly define the unit of measure).
8. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of any other provision of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release Tom Study 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.

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 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 Tom Study or the Tom Study Farm's operation/implementation/performance of using FGD material as a base for construction of the livestock feedlot demonstration pad. Ohio EPA reserves all rights and privileges except as specified herein.

VIII. 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, including seeking penalties against Tom Study or the Tom Study Farm for non-compliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Tom Study or the Tom Study Farm to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. 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:



Christopher Jones, director