

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Hill View Farms, Inc.
18761 State Route 31
Marysville, Ohio 43040

Director's Final Findings
and Orders

OHIO E.P.A.
FEB 26 2003
ENTERED DIRECTOR'S JOURNAL

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Hill View Farms, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of the Respondent or of its Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a beef cattle farm with capacity for approximately 500-900 beef cattle located at 18761 State Route 31 in Marysville, Taylor and Paris Townships, Union County, Ohio (the "Facility"). The cattle are housed on a concrete open feed lot. The manure from the lot is scraped and disposed of in a

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By Zona L. Clements Feb 26, 03

manure storage pond.

2. On August 1 and 2, 2001, the Ohio Department of Natural Resources' (ODNR), Division of Wildlife, Ohio EPA's, Division of Emergency and Remedial Response and Division of Surface Water responded to a report of a manure discharge into an unnamed tributary of Mill Creek. The discharge was determined to be from a six inch field tile from the Respondent's Facility. The discharge was the result of over application of manure and excessively dry field conditions. The manure leached into field tiles and ran off the field surface. Dead fish were observed downstream of the Facility in an unnamed tributary to Mill Creek and Mill Creek. A total of 4,867 dead fish and 14,028 dead minnows and crawfish were counted by ODNR's, Division of Wildlife.
3. Mill Creek and its tributaries are defined as "waters of the state" by ORC Section 6111.01.
4. Respondent, in consultation with Ohio EPA, took remedial actions that included the installation of earthen dams in two locations in the unnamed tributary, a program of flushing and pumping manure contaminated water, and the financing of an aeration project in the Mill Creek from the unnamed tributary. Respondent has also purchased and installed tile plugs and made other improvements to minimize the likelihood of future releases.
5. Water samples taken on August 1st revealed elevated ammonia and total phosphorus concentrations in the manure laden discharge and downstream of the discharge into the unnamed tributary of Mill Creek and subsequently Mill Creek. Extremely elevated pollutant concentrations were revealed in the water sample taken below the mixing point of the discharge and the unnamed tributary, with a total phosphorus concentration of 142 mg/L and ammonia concentration of 392 mg/L.
6. On January 9, 2002, Ohio EPA issued a NOV to Respondent for its August 2001 discharge of manure to waters of the state.
7. ORC 6111.04 prohibits any person who does not hold a valid, unexpired National Pollutant Discharge Elimination System ("NPDES") permit from causing pollution or placing any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution to the any waters of the state.
8. ORC 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC Sections 6111.01 to 6111.08.
9. Respondent does not hold a valid, unexpired NPDES permit for the aforementioned discharges of manure to waters of the state, which is a violation of ORC Sections 6111.04 and 6111.07.

10. The discharge of manure to Mill Creek and the unnamed tributary caused exceedances of the criteria applicable to all waters as defined by OAC Rule 3745-1-04. OAC Rule 3745-1-04(A) states that waters shall be free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life. OAC Rule 3745-1-04(C) states that waters shall be free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance. OAC Rule 3745-1-04(D) states that waters shall be free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
11. The discharge of manure to Mill Creek and the unnamed tributary also caused violations of OAC Rule 3745-1-07 Table 7-1, which lists the Statewide water quality criteria for the protection of aquatic life. According to OAC Rule 3745-1-09, Mill Creek (tributary of South Fork, Scioto Brush Creek, and Scioto River) is designated as an Exceptional Warmwater Habitat. Three out of the six water samples collected of the manure discharge to Mill Creek and tributary indicated exceedances of OAC Rule 3745-1-07 Table 7-3, which lists the outside mixing zone maximum total ammonia-nitrogen criteria for exceptional warmwater habitats. Five out of the six water samples collected indicated exceedances of OAC Rule 3745-1-07 Table 7-6, which lists the outside mixing zone 30-day average total ammonia-nitrogen criteria for exceptional warmwater habitats.
12. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. From the effective date of these Orders, Respondent shall comply with its approved Comprehensive Nutrient Management Plan (CNMP).
2. One year from the effective date of these Orders, Respondent shall submit a report to the Ohio EPA that includes, at a minimum, the total volume of manure applied, total number of acres applied to, average manure application rates, results of manure analysis, and results of soil analysis for the past twelve months.
3. Respondent shall pay to Ohio EPA ten thousand dollars (\$10,000.00) in settlement

of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. This payment shall be made by tendering a check payable to the "**Treasurer, State of Ohio**" for the full amount within thirty (30) days after the effective date of these Findings and Orders to the following address:

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

A copy of this check shall be sent to Cathy Alexander (or Successor) at the address set forth below in Order No. 4.

4. Respondent shall submit all documents required under these orders to the following address unless the Respondent is directed otherwise:

Cathy Alexander (or Successor)
Ohio EPA
Division of Surface Water
PTI/Agricultural Unit
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders, Respondent has complied with the CNMP for twelve (12) consecutive months subsequent to the effective date of these Orders, and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1) for a corporation.

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 activities occurring on or at the Facility.

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 Respondent.

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. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an

event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XII. EFFECTIVE DATE

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

XIII. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



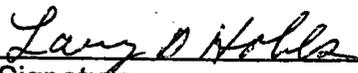
Christopher Jones
Director

2-21-03

Date

IT IS SO AGREED:

Hill View Farms, Inc.



Signature

2/8/03

Date

Larry B. Hobbs

Printed or Typed Name

Pres.

Title