2/21/2018

S. and L. Fertilizer Co., Inc.
3145 York Street
Toledo, Ohio 43605

Toledo-Lucas County Port Authority
One Maritime Plaza
Suite 701
Toledo, OH 43604

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter

Sincerely,

[Signature]

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks

Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
T. Poffenbarger, NWDO/DSW
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
B. Fischbein, Legal
File
BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

S. and L. Fertilizer Co., Inc.
3145 York Street
Toledo, Ohio 43605

Toledo-Lucas County Port Authority
One Maritime Plaza
Suite 701
Toledo, Ohio 43604

Respondents

Director's Final
Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to S. and L. Fertilizer Co., Inc. and the Toledo-Lucas County Port Authority ("Respondents"), 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 Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or the Facilities (as hereinafter defined) shall in any way alter Respondents' 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.

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

[Signature]
Date: 2/21/18
IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent S. and L. Fertilizer Co. is an Ohio domestic for-profit corporation located in Whitehouse, Lucas County, Ohio.

2. Respondent Toledo-Lucas County Port Authority (Port Authority) is a political subdivision of the State of Ohio founded in 1955 organized and operating pursuant to Ohio Revised Code Chapter 4582. Among its various operations and functions, Respondent Port Authority owns and manages a confined disposal facility (CDF) for dredge material that is removed from the Maumee River and Lake Erie that is necessary to maintain navigation access.

3. Since at least 1991, Respondent S. and L. Fertilizer has produced a product called Nu-Soil which is a blend of sewage sludge from the City of Toledo’s wastewater treatment facility and dredged material from harbor maintenance activities.

4. Respondent’s activities were originally permitted under a Sludge Management Plan issued by Ohio EPA on June 4, 1991. Production activities occurred on Respondent Port Authority’s Facility No. 1.


6. In January 2000, Ohio EPA received a request to move production of Nu-Soil to the Toledo Lucas County Port Authority Facility No. 3. A revised sludge management plan was reviewed and subsequently approved by Ohio EPA on May 18, 2000. The submitted documents indicated that the Nu-Soil meets Class B Pathogen Reduction and Vector Attraction Reduction of 38% Volatile Solids Reduction. The detail report included with the Director’s approval indicates that “Nu-Soil can then be used as a topsoil and topsoil base on Ohio EPA approved sites”.

7. Ohio EPA received delegation of the sludge program from US EPA in 2005. As part of the delegation process, Ohio EPA established Ohio’s sewage sludge/biosolids regulations within Ohio Administrative Code Chapter (OAC) 3745-40. Ohio EPA began regulating the sewage sludge program through the use of National Pollutant Discharge Elimination System (NPDES) permits instead of through Sludge Management Plans.
8. On January 9, 2009, Respondent S. and L. Fertilizer entered into a Non-Exclusive License (License) with Respondent Port Authority for the use of Facility 3 for the production of Nu-Soil. The term of the License was for Two (2) years commencing January 1, 2009 and terminating December 31, 2010 with a provision for automatically extending for four (4) additional, consecutive terms of 2 years, unless either party notified the other party in writing of its intent not to extend the License.


11. Ohio EPA issued a final NPDES permit No. 2IN00240 for the Nu-Soil Production Area on October 19, 2012 with an effective date of December 1, 2012.

12. Respondent S. and L. Fertilizer’s NPDES permit contains the following condition “Part II, Item P. This permit does not authorize Nu-Soil to be used as a Class A EQ product. All use of Nu-Soil shall be in accordance with Class B requirements of OAC 3745-40. The permittee must obtain and submit a Class A EQ equivalency recommendation from the US EPA Pathogen Equivalency Committee (PEC) along with a request to modify this permit in order to obtain authorization from Ohio EPA for Nu-Soil to be utilized as a Class A EQ product.”

13. Nu-Soil was used in multiple projects throughout the greater Toledo area as fill material, soil enhancement, and alternative daily cover at landfills. However, its classification under federal and state regulations as a Class B biosolid limited the market potential of the product.

14. Part II, Item R of Respondent S. and L. Fertilizer’s NPDES permit requires Respondent S. and L. Fertilizer to properly close and remove all Class B biosolids, spent lime and finished Nu-Soil from the Nu-Soil Production Area as soon as possible but no later than two years after it stops receiving City of Toledo Class B biosolids. The NPDES permit also requires the development and submission of the closure plan procedures that will be followed upon completion of activities on Facility 3.
15. Section 9 of the License provides that the Licensee (S. and L. Fertilizer) shall have ninety (90) days from serving notice of termination to remove any and all of its property or equipment and any and all processed dredge material located on the Premises as of the date of said notice. If Licensee fails or neglects to remove its property, equipment or processed dredge material, then upon expiration of the ninety (90) days, said property, equipment and processed dredged material shall become the sole property of the Port Authority.


17. As of the effective date of these Orders, there are approximately 200,000 dry tons of Nu-Soil located on Facility 3. In violation of Part II, Item R of Respondent S. and L. Fertilizer’s NPDES permit, Respondent S. and L. Fertilizer failed to properly close and remove all finished Nu-Soil from the Nu-Soil Production Area by December 31, 2016.

18. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 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.

19. Respondent S. and L. Fertilizer caused a study to be conducted by Bowser Morer that evaluated the potential nutrient impact of the Nu-Soil production area on the Maumee River and Lake Erie. The study concluded that the Nu-Soil operation was not causing an adverse impact on Lake Erie. Ohio EPA accepted the conclusions in the report on this point.

20. Ohio EPA and Respondents have worked cooperatively to better quantify the pollutant levels and structural properties of the remaining Nu-Soil to determine future end uses of the material.

21. Based on this analysis, it has been determined that the material continues to be suitable for various structural fill activities both within and outside of Facility 3.

22. The following 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 PTI requirements of OAC Chapter 3745-42.
23. NPDES permit No. 2IN00240 expired on November 30, 2017. These Orders seek to correct noncompliance with NPDES permit No. 2IN00240 and shall govern future obligations relative to the Nu-Soil remaining at the facility as of the date of the NPDES permit's expiration.

24. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.

25. The Director has given consideration to the factors set forth in ORC Sections 6111.03 and 6111.60, 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. Within 30 days of the effective date of these Orders, Respondent Port Authority shall submit an approvable closure plan for Ohio EPA's review and approval for the final disposition of remaining Nu-Soil material on Facility 3. The closure plan may include uses such as:

   a. Fill material, alternative daily cover or other uses outside of Facility 3 that are approved by Ohio EPA;
   b. Use as a structural material for internal berms on Respondent Port Authority's CDF;
   c. Use in the borrow pit closure activities at the adjacent Toledo Edison Bayshore Power Plant facility; and
   d. Other uses approved by Ohio EPA on a case by case basis.

2. The closure plan shall be implemented and all remaining Nu-Soil be repurposed by no later than one year from the date of the closure plan approval. Upon Ohio EPA's approval of the closure plan, it shall become an enforceable term and condition of these Orders.
VI. TERMINATION

Respondent S. and L. Fertilizer’s obligations under the expired NPDES permit No. 2IN00240 and these Orders shall terminate upon Respondents’ execution of these Orders. Respondent Port Authority’s obligations under these Orders shall terminate when Respondent Port Authority certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent Port Authority has performed all obligations under these Orders and the Chief of Ohio EPA’s Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent Port Authority 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: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

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

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 site.

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.

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 Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Surface Water, NWDO
Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XI 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 agrees 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 or 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

[Signature]
Craig W. Butler, Director
2/16/18

IT IS SO AGREED:

S. and L. Fertilizer Co., Inc.

[Signature] [Date]

Printed or Typed Name and Title:

Toledo-Lucas County Port Authority

[Signature] [Date]

Printed or Typed Name and Title:
XIV. SIGNATORY AUTHORITY

Each undersigned representative or 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

__________________________  __________________________
Craig W. Butler, Director      Date

IT IS SO AGREED:

S. and L. Fertilizer Co., Inc.

__________________________  __________________________
Signature                  Date

STANLEY W. PERRY, PRES
Printed or Typed Name and Title

Toledo-Lucas County Port Authority

__________________________  __________________________
Signature                  Date

Printed or Typed Name and Title
XIV. SIGNATORY AUTHORITY

Each undersigned representative or 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

__________________________
Craig W. Butler, Director

__________________________
Date

IT IS SO AGREED:

S. and L. Fertilizer Co., Inc.

__________________________
Signature

__________________________
Date

Printed or Typed Name and Title

Toledo-Lucas County Port Authority

__________________________
Signature

__________________________
Date

Printed or Typed Name and Title