



**Environmental
Protection Agency**

John R. Kasich, **Governor**

Mary Taylor, **Lt. Governor**

Scott J. Nally, **Director**

March 29, 2012

Mr. Bill Knapke
Environmental Manager
Cooper Farms, Inc.
12491 County Road A
Bryan, Ohio 43506

Subject: Resolution to Notice of Violation (NOV) issued to Nettle Creek Turkey Farm on November 4, 2011

Dear Mr. Knapke:

This letter shall serve to resolve the Notice of Violation (NOV) issued to the above referenced facility on November 4, 2011, as well as summarize the Ohio Legislature exclusion for agricultural production activities under ORC 3704.01.

The November 4, 2011, NOV was the result of a complaint investigation conducted by Carol Norman, Ohio EPA Division of Air Pollution Control, Northwest District Office on, September 1, 2011. The NOV was issued for installing a turkey carcass incinerator in 2010 without first obtaining a Permit to Install and Operate (PTIO).

On February 10, 2012, a PTIO application was submitted for a Valco Burn Mizer Cremator. Upon reviewing the PTIO application, it was determined that the emissions unit may qualify for an Ohio Legislature exclusion for agricultural production operations under Ohio Revised Code (ORC) 3704.01. The Ohio Legislature provides for a specific exclusion for agricultural production operations if certain criteria are met. The specific criteria are contained within the definition of air contaminant as defined in ORC 3704.01 (B).

“air contaminant” means particulate matter, dust fumes, gas, mist radionuclides, smoke, vapor, or odorous substances, or any combination thereof, but does not mean emissions from agricultural production activities, as defined in Section 929.01 of the Revised Code, that are consistent with generally accepted agricultural practices, were established prior to adjacent nonagricultural activities, have no substantial, adverse effect on the public health, safety, or welfare, do not result from the negligent or other improper operations of any such agricultural activities, and would not be required to obtain a Title V permit. For purposes of this chapter, agricultural production activities do not include the installation and operation of off-farm facilities for the storage or processing of agricultural products, including, but not limited to alfalfa dehydrating facilities, rendering plants, and feed and grain mills, elevators, and terminals.

The following is a list of specific items that are reviewed to ensure that all the criteria are met such that an activity is considered an agricultural production operation and would not be subject to permitting requirements under ORC 3704.

1. Is the air contaminant source an agricultural production activity as defined in Section 929.01 of the Revised Code?

“agricultural production” means commercial aquaculture, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for noncommercial purpose, if the land on which the timbers is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry production, or growth.

2. Is/are the agricultural production activities consistent with generally accepted agricultural practices?
3. Were the agricultural activities on this site prior to adjacent nonagricultural activities?
4. Do these activities have no substantial, adverse effects on the public health and safety or welfare?
5. Do the emissions result from typical agricultural practices and not from negligent or other improper operations of any such agricultural activities?
6. Are the emissions such that these agricultural production activities qualify as a major source or an affected source for purpose of Title V as defined in OAC rule 3745-77-01?

If the answer to all the questions above is yes, the incinerator is not subject to the requirements of ORC Chapter 3704: Air Pollution Control. If the answer to any one of the questions is no, then the operation would fall under the jurisdiction of ORC Chapter 3704.

Ohio EPA has reviewed the February 10, 2012, PTIO application for the Burn Mizer Cremator and determined that it is an agricultural production activity as defined in ORC Section 929.01.

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Based on the permit application and information gathered during the complaint investigation it was also determined that the agricultural production activity meets all the criteria that must be met for the operation to be excluded from the requirements of ORC Chapter 3704.

Since it has been determined that the cremator is not to be subject to the requirements of ORC Chapter 3704, it is no longer in violation of Ohio Administrative Code (OAC) 3745-31-02(A) and ORC 3704.05. The facility should consider the November 4, 2011, NOV resolved and no further action is required at this time. Also, since a permit is no longer required for the cremator the February 10, 2012, permit application is being sent back as an attachment to this letter.

It is important to note at this time that Ohio EPA was able to come to its determination based on installation of an afterburner to the cremator in 2012. If the afterburner had not been installed, the facility would not have been able to demonstrate that the activities associated with the incinerator would not have had a substantial, adverse effect on the public health and safety or welfare (see item 4. above) and as such would have been subject to the requirements of ORC Chapter 3704.

If you have any questions or comments, please feel free to contact me at 419-373-3132 or e-mail julie.budge@epa.state.oh.us.

Sincerely,


Julie Budge

Division of Air Pollution Control

/cg

Enclosure

pc: NWDO DAPC File: Williams County
Tom Kalman, CO DAPC
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ec: Jennifer Jolliff, NWDO DAPC
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