

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
OCT 18 2004
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Brenda J. Wood
1831 Whychwood Drive
Akron, Ohio 44312

) Director's Final Findings
) and Orders
)

PREAMBLE

It is hereby agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Brenda J. Wood ("Ms. Wood") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Ms. Wood and heirs liable under Ohio law. No change in ownership relating to the property (as hereinafter defined) shall in any way alter Ms. Wood'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 § 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Ms. Wood owns the property located at 1831 Whychwood Drive, Springfield Township, Summit County, Ohio. Ms. Wood's property is located in a "restricted" area as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(I).

2. OAC Rule 3745-19-03(A) prohibits any person or property owner from open burning in a restricted area except as provided in OAC Rule 3745-19-03(B) to (D) and in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of residential waste at a residential property in a restricted area.

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

[Signature] 10-18-04

3. On June 26, 2001, Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA contractual representative in Summit County, received a citizen complaint alleging open burning at Ms. Wood's property on June 23, 2001, at approximately 9:25 p.m. The subsequent investigation on June 27, 2001, at approximately 9:15 a.m., by an ARAQMD representative revealed that the complaint was justified as evidence of illegal burning (painted boards behind the garage) was observed at Ms. Wood's property. This open burning incident was in violation of OAC Rule 3745-19-03 and ORC § 3704.05(G).

4. On June 28, 2001, ARAQMD sent a warning letter to Ms. Wood to discontinue open burning, along with a copy of OAC Chapter 3745-19 that explained the Open Burning Standards.

5. ARAQMD received another citizen complaint on July 19, 2001, alleging open burning at Ms. Wood's property on July 17, 2001, between 7:45 p.m. and 11:47 p.m. An ARAQMD representative investigated this complaint on July 19, 2001, but was unable to determine if the complaint was justified. When contacted by the representative on July 20, 2001, about the complaint, Ms. Wood said that they only had a cookout.

6. On April 22, 2002, ARAQMD received citizen complain, alleging another open burning on April 19, 2002, between 8:30 p.m. and 10:56 p.m. at Ms. Wood's residence. The complaint stated that a large brush pile behind the garage was burning with the flame was as high as the garage. An ARAQMD representative investigated this complaint on April 23, 2002, and observed:

- a. burned wood, along with two burned cans, behind the garage; and
- b. the remains of burning that occurred in a barrel behind the garage.

Based on these observations, ARAQMD concluded that open burning occurred at Ms. Wood's property, in violation of OAC Rule 3745-19-03 and ORC § 3704.05(G).

7. On April 24, 2002, ARAQMD sent a notice of violation ("NOV") regarding the illegal open burning to Ms. Wood, along with another copy of OAC Chapter 3745-19. The NOV cited Ms. Wood for the violation of OAC Rule 3745-19-03. No response was received by ARAQMD from Ms. Wood regarding this NOV.

8. On September 27, 2002, ARAQMD received another citizen complaint alleging open burning at Ms. Wood's property on September 27, 2002. The complaint stated that boards were burning behind the garage and no one was outside. An ARAQMD representative investigated this complaint on September 30, 2002, and found evidence of burnt wood and trash on the ground and in a barrel. Photographs were taken and no Order were issued. This open burning incident was in violation of OAC Rule 3745-19-03 and ORC § 3704.05.

9. On June 20, 2003, ARAQMD received a citizen complaint alleging open burning at Ms. Wood's property at approximately 8:22 p.m. on June 14, 2003. The complaint stated that a big pile of leaves was burning behind the detached garage. An ARAQMD representative investigated this complaint at 2:15 p.m. on June 24, 2003 and concluded that the complaint was justified (i.e., remains of wood, beer cases and pop cases were present in the burn ring). Ms. Wood admitted to burning wood and trash and cleaned the beer and pop cases out of the fire ring. One photograph was taken and the open burning regulations were once again explained to Ms. Wood.

10. By letter dated January 15, 2004, the Director proposed to resolve Ms. Wood's violations through Final Findings and Orders including payment of a civil penalty in the amount \$1,040.

11. In a letter dated January 20, 2004, Ms. Wood responded to the Director's proposed Findings and Orders refuting some of the Director's findings and stated she did not have the ability to pay the proposed civil penalty. Ms. Wood also attached financial documents to her letter to support her claim of an inability to pay a civil penalty.

12. The Director has reviewed these financial documents and finds that Ms. Wood does not have the ability to pay a civil penalty.

13. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Order and its benefits to the people of the State to be derived from compliance.

V. ORDERS

The Director hereby issues the following Orders:

Beginning with the effective date of these Orders, Ms. Wood shall maintain compliance with the requirements of OAC Rule 3745-19-03 at her property.

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 Ms. Wood.

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 Ms. Wood.

IX. RESERVATION OF RIGHTS

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

X. MODIFICATIONS

These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

XI. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Akron Regional Air Quality Management District
146 South High Street, Room 904
Akron, Ohio 44308
Attention: Phillip Meinen

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216 - 1049
Attention: Felix Udeani

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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, Ms. Wood 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 Ms. Wood's liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Ms. Wood agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Ms. Wood retains the right to intervene and participate in such appeal. In such an event, Ms. Wood shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

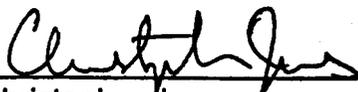
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative 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

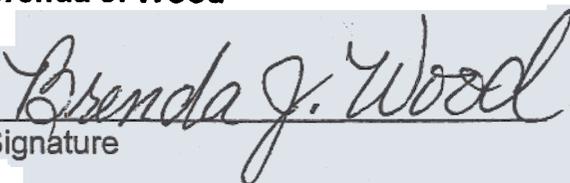


Christopher Jones
Director

10-14-04
Date

IT IS SO AGREED:

Brenda J. Wood



Signature

9-18-04
Date

C:\wp61\...Ms. Brenda&os