

OHIO E.P.A.

DEC 29 2004

ENTERED DIRECTOR'S JOURNAL
In the Matter of:

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

Charles and Karen Young
7965 East Street
Adamsville, Ohio 43802

:
:
:

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 Charles and Karen Young ("Respondents") 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 Respondents and their heirs under Ohio law. No change in ownership relating to the properties (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 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents own a property located at 7965 East Street, Adamsville, Ohio ("the property") and own and operate a commercial business at another property ("the store") located at 8108 East Street, Adamsville, Ohio. The property and the store are 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 or of commercial waste in a restricted area.**
3. **On October 16, 2000, Ohio EPA, Southeast District Office ("SEDO"), received a citizen complaint alleging open burning on October 11, 2000, at the store.**
4. **On October 27, 2000, SEDO conducted an investigation regarding the alleged open burning at the store. Respondents operate a business at the store and Respondent Karen Young was present during the investigation.**
5. **During the investigation, Respondent Karen Young admitted that she had been cleaning out an old garage building behind their store and had burnt some of the waste from the garage. This open burning incident was in violation of OAC Rule 3745-19-03 and ORC § 3704.05(G).**
6. **On November 3, 2000, Ohio EPA sent a letter to Respondents memorializing the observations and conversations that occurred during the October 27, 2000 investigation. The letter concluded with a warning to Respondents admonishing them not to violate OAC Rule 3745-19-03 by open burning in a restricted area.**
7. **On May 28, 2002, SEDO documented a phone call from the office of the Mayor of the Village of Adamsville reporting open burning incidents which allegedly occurred at the property on May 25, 2002.**
8. **On June 10, 2002, SEDO received a letter from the Mayor of the Village of Adamsville concerning citizen complaints alleging illegal open burning had occurred at the property on May 25, 2002. The official confirmed witnessing the open burning incident.**
9. **On August 19, 2002, SEDO documented a phone call from the office of the Mayor of the Village of Adamsville reporting open burning incidents which occurred at the property and at the store. The Mayor's Office could not confirm the date but guessed the incidents occurred the first week in August 2002.**
10. **Furthermore, on September 30, 2002, Ohio EPA issued a letter to Respondents indicating that multiple complaints (including one from the office of the Mayor, Village of Adamsville) had been filed with Ohio EPA alleging illegal open burning had occurred at the property and at the store. The letter requested Respondents to submit to Ohio EPA, within 30 days from the receipt of the letter, a plan and schedule for corrective measures. The plan was to include the cleanup of the burn area and any remaining solid waste, with a copy of the landfill receipt as proof of proper disposal, and confirmation of a permanent waste disposal arrangement to prevent any future open**

burning. Respondents failed to provide Ohio EPA with any documentation to indicate that any of the corrective measures were performed.

11. On May 24, 2004, Ohio EPA received a complaint from the office of the Mayor, Village of Adamsville, alleging that Respondents conducted open burning at the property on May 8, 2004 and again on May 14, 2004. In both instances, the complaint alleged that smoke from the open burning caused individuals in the vicinity to have respiratory problems.

12. On June 3, 2004, Ohio EPA conducted an inspection of the property. Respondent Karen Young was present at the time of the inspection. Evidence of open burning of trash and yard waste was observed. Furthermore, unburned boxes and tree limbs were piled in the burn area. At the time of the investigation, Respondent Karen Young indicated that her son was responsible for the burning. As a result of the June 3, 2004 investigation, it was determined that Respondents caused or allowed open burning in a restricted area, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

13. On June 14, 2004, Ohio EPA sent a Notice of Violation ("NOV") by certified mail to Respondents identifying the violation discovered on June 3, 2004. Respondent Karen Young was requested to contact Ohio EPA regarding the violation. The letter was returned by the post office on June 18, 2004 marked "refused."

14. 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 Orders and their benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of three hundred dollars (\$300) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$300. The official check shall be submitted to Brenda Case, Fiscal Specialist, or her successor, in care of Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondents and the properties.

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement, or his successor, at the following address:

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

VI. TERMINATION

Respondents' obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

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, the Respondents' activities at the property and the store.

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. 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 Respondents pursuant to these Orders shall be addressed to:

Ohio EPA, SEDO
2195 Front Street
Logan, Ohio 43138
Attention: Lisa Duvall

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII 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 agree 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

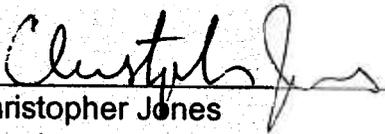
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative 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

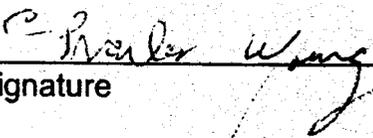


Christopher Jones
Director

12-28-04
Date

IT IS SO AGREED:

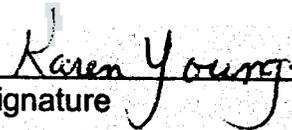
Charles Young



Signature

12-21-04
Date

Karen Young



Signature

12-21-04
Date