BEFORE THE

OHIO E.P.A.

JUL 11 2007

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Robert Henry and April Garner	:	**Director's Final Findings**
56940 Pinch Run Road	:	**and Orders**
P.O. Box 624	:	
Bellaire, Ohio 43906-0624	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Robert Henry and April Garner ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondents' property (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 56940 Pinch Run Road in Pultney Township of Belmont County, Ohio, about 2 miles from the Ohio River. Respondents live in a two-story home on the same property that has an area of 6.27 acres. Current official county records confirm that Respondents are the owners of the property.

2. Respondents have a history of open burning demolition debris and other solid wastes on their property, in violation of Ohio Administrative Code ("OAC") Rule 3745-19-04(A), several times in the last few years. OAC Rule 3745-19-04(A) states that no person or property owner shall cause or allow open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) to (C) and in ORC § 3704.11. The open burning of such commercial waste is not provided in OAC Rule 3745-19-04(B) to (C) or in ORC §

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.

By: _____ Date: 7-11-07

3704.11.

3. The first complaint received by Ohio EPA, Southeast District Office ("SEDO") was on July 16, 1999. The complainant stated that Respondents' hauled loads of debris (demolition from old houses and other solid wastes including tires), piled it up, and burned it several times per week.

4. A representative of SEDO investigated the complaint on July 23, 1999 and observed evidence of open burning including large piles of ash and debris, in violation of OAC Rule 3745-19-04(A). The SEDO representative was not able to talk to Respondents but left a card and a pamphlet describing Ohio EPA's open burning rules.

5. On August 9, 1999, Ohio EPA sent a certified warning letter to Respondents. The letter cited Respondents for open burning in a restricted area, in violation of OAC Rule 3745-19-04(A) and advised Respondents to find a legal waste disposal method. In a follow up phone call on August 12, 1999, Respondent Henry stated open burning will not occur again.

6. On September 18, 2001, SEDO received another complaint. The complainant stated that Respondents' were hauling in construction and demolition debris and open burning on said property every night around 5:00 p.m. for the last three months.

7. A representative from SEDO inspected the site on October 10, 2001 and observed evidence of open burning of tree trimmings, in violation of OAC Rule 3745-19-04(A). Respondent Henry was informed by phone that legal action would be taken against him as a result of the continued open burning and knowingly violating OAC Rule 3745-19-04. He stated that open burning will not occur again.

8. On November 27, 2001, Respondents' property was inspected again. Smoldering piles of debris, which had been hauled onto the property, were observed, in violation of OAC Rule 3745-19-04(A). A pick-up truck with side panels loaded with branches and tree trimmings was also observed on the property.

9. On January 16, 2002, the site was inspected by a representative from SEDO. A large area of ash and partially burned trash near the stream bank of Pinch Run indicated that solid waste and demolition waste had previously been open dumped and open burned at this location, in violation of OAC Rule 3745-19-04(A).

10. In response to January 16, 2002 inspection, a notice of violation ("NOV") letter was sent to Respondents on January 31, 2002, citing the violations in the previous findings. A copy was forwarded to Belmont County Health Department. The NOV requested Respondents to immediately cease open dumping, open burning and illegal

disposal of solid wastes at the property. Respondents were also ordered to remove demolition waste from the property and dispose of it properly at a licensed disposal facility. Respondents were requested to provide SEDO with copies of receipts from the approved disposal facility to acknowledge proper disposal.

11. On February 28, 2002, Ohio EPA sent proposed Director's Final Findings and Orders ("F&Os") to Respondents. Due to Respondents' poor financial condition, the proposed $3,000 civil penalty was waived and final F&Os were sent to Respondents for signing on April 11, 2002.

12. Respondents signed the final F&Os on May 13, 2002. The final F&Os were entered into Ohio EPA Director's Journal on May 22, 2002 and required Respondents to:

a. Immediately cease all open burning and maintain compliance thereafter.
b. Immediately, properly remove and dispose of ash and waste that remains on said property resulting from open burning.

13. On August 8, 2006, SEDO received a complaint of burning materials on Respondents' property. It was indicated that trash, and construction and landscape debris were open burned.

14. A SEDO representative inspected the property on August 16, 2006, and observed wood and other solid wastes being open burned, in violation of OAC Rule 3745-19-04(A). Respondent Henry was home at the time of inspection and he stated that he didn't know who had dumped the debris there or who had burned the waste.

15. During the August 16, 2006 inspection, the SEDO representative explained to Respondent Henry that based on the large amount of materials that have been dumped on Respondents' site it is unlikely that someone could be dumping these materials on their property without their knowledge. The burn area and dump site are in clear view from the front porch where he was sitting at the time of inspection.

16. A NOV was sent to Respondents on September 21, 2006, indicating that Respondents are responsible for any illegal open burning or open dumping on the property that they own.

17. A representative from SEDO inspected the site again on November 30, 2006, and observed a pile of brush that was dumped but not yet burned in addition to a metal pan with ash inside on a large burn area. From the copper pieces on the ground, it appears that Respondents' were recovering copper metal by burning copper wire.

18. On March 1, 2007, the site was inspected by a representative from SEDO,

who found that open burning had not stopped, and was in violation of OAC Rule 3745-19-04(A). The representative took pictures of the smoldering debris.

19. On March 5, 2007, the site was inspected again by a representative from SEDO and open burning was observed, in violation of OAC Rule 3745-19-04(A). The representative took pictures of the smoldering fire. All of the brush and trees that were piled on site on November 30, 2006 were burned up along with tires, metal, mattresses, and other debris.

20. The OAC violations cited in the above findings also constitute violations of ORC § 3704.05(G), which states, in part, that no person shall violate any order, rule or determination of the Director, issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

21. Through unilateral orders, the Director may assess a violator not more than two hundred-fifty dollars ($250) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on residential property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs. If the violator fails to comply with the orders, the Director has the authority, under ORC § 3704.06, to request the Attorney General to initiate legal action to seek penalties of up to twenty-five thousand dollars ($25,000) for each day of each violation.

22. 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 relation to benefits to the people of the State be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondents shall immediately cease all open burning in violation of OAC Rule 3745-19-04(A), and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of one thousand dollars ($1,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $1,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents and the property, to the following address:

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

3. A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development 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 when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control 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 Respondents 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 Respondents to Ohio EPA and shall be signed by Respondents.

VII. 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.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Division of Air Pollution Control
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Lisa Duvall

and to:

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

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski
Director

7/9/07
Date