BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Joseph and Marie Eberz 715 Eastview Drive Akron, Ohio 44312	: : :	**Director's Final Findings and Orders**

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Joseph and Marie Eberz ("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.

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 makes the following findings:

1. Respondents own the property located at 715 Eastview Drive, Springfield Township, Summit County, Ohio. The property is residential and is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).

2. OAC Rule 3745-19-03(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(H), in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11 do not provide for the open burning of roofing shingles, other building material wastes, and yard wastes for disposal in a restricted area.

3. ORC § 3704.05(G) states, in part, that no person or property owner 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.

4. On May 12, 2008, the Akron Regional Air Quality Management District ("ARAQMD"), a contractual agent for Ohio EPA in Summit County, received a complaint that Respondents had open burned roofing shingles, building materials and yard waste at Respondents' property located at 715 Eastview Drive between May 5 and May 9, 2008. On May 13, 2008, ARAQMD conducted a complaint investigation and verified a large burn pile behind Respondents' house. During the May 13, 2008 investigation, ARAQMD left a written order for Respondents to cease all illegal open burning activities. On May 16, 2008, ARAQMD sent a notice of violation letter to Respondents for the open burning violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G) identified above. On May 20, 2008, ARAQMD conducted a re-inspection and observed partially burned roofing shingles and other debris on the burn pile, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

5. On May 15, 2009, the Springfield Township Fire Department responded to an open burning incident at Respondents' property located at 715 Eastview Drive. Upon arrival, the Springfield Township Fire Department discovered a burn pile with a small fire and ample smoke. The Springfield Township Fire Department extinguished the fire and notified Respondents of the open burning regulations.

6. On June 2, 2009, ARAQMD investigated the May 15, 2009, open burning incident and verified that Respondents had unlawfully open burned building materials for disposal purposes, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G). By letter dated June 4, 2009, ARAQMD sent a notice of violation letter to Respondents for the open burning violation.

7. On July 7, 2009, ARAQMD received a letter from Respondent Joseph Eberz stating, in part, that Respondents would "make sure that the illegal open burn will not happen again."

8. Based on the above Findings, the Director of Ohio EPA finds that Respondents violated the following ORC law and OAC rule:

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704; and

- OAC Rule 3745-19-03(A), which prohibits the open burning of such waste materials.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred and fifty dollars ($250) per day for each separate violation of the rules in this Chapter for open burning on residential property. The violations that occurred between May 5 and May 9, 2008 and May 15, 2009 are each being assessed this penalty.

10. Should Respondents fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, under the authority of ORC § 3704.06, the Director may request that the Attorney General pursue legal action and seek civil penalties of up to $25,000 per day of violation.

11. 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 to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of five hundred dollars ($500) in administrative penalties pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $500. The official check shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

2. 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 upon Ohio EPA's receipt of the official check required by Section V of these Orders.

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. 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 Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

IX. 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

Date 10/15/09