BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kay Enterprises, Inc.
d.b.a. Waste Removal Equipment
4588 State Route 82
Mantua, Ohio 44255

: **Director's Final Findings and Orders**

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: 2-26-2004

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Kay Enterprises, Inc. d.b.a Waste Removal Equipment ("Respondent") 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 Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter defined) shall in any way alter Respondent'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 Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns the commercial property located at 4588 State Route 82, Mantua Township, Portage County, Ohio. At the property, Respondent sells and services waste removal equipment. The property is located in an "unrestricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K).

2. OAC Rule 3745-19-04(A) prohibits any property owner or person from causing or allowing "open burning," as defined in OAC Rule 3745-19-01(H), in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) to (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-04(B) to (D) and ORC § 3704.11 do not provide for the open burning of commercial waste for disposal in an unrestricted area.

3. ORC § 3704.05(G) 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 OAC Chapter 3704.

4. On September 4, 2008 and continuing through September 8, 2008, Respondent open burned solid waste and construction waste at its property, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

5. On September 10, 2008, a representative from Akron Regional Air Quality Management District ("ARAQMD") performed an inspection of the Respondent's facility and confirmed that such open burning had occurred at the facility. During the inspection, Respondent acknowledged to the inspector that open burning of waste had occurred from September 4, 2008, and continued through September 8, 2008.

6. The open burning of such waste material is prohibited by rule, and the open burning was not otherwise exempted from the prohibition of OAC Rule 3745-19-04(A).

7. On September 12, 2008, ARAQMD sent a Notice of Violation ("NOV") letter to Respondent for the open burning violations identified above. On September 16, 2008, Respondent sent ARAQMD a response to the NOV. In its response, Respondent acknowledged receipt of the NOV and pledged to maintain compliance with Ohio's open burning laws and regulations.

8. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars ($1,000) per day for each separate violation of the rules in this Chapter for open burning on commercial property. The violations that occurred on September 4, 2008 through September 8, 2008 are being assessed a penalty of $400 per day for five days of violation.

9. Should Respondent 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 litigation and seek civil penalties of up to $25,000 per day of violation.

10. 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. Upon the effective date of these Orders, Respondent shall achieve compliance with the requirements of OAC Chapter 3745-19 and shall maintain compliance thereafter.

2. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two thousand dollars ($2,000) in settlement of Ohio EPA's claims for civil penalties which may by assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for two thousand dollars ($2,000). 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

A copy of each 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

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has 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 Respondent of the obligations that have not been performed, in which case Respondent 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 Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

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 Respondent.

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 Respondent 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 Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent 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

2/24/09
Date