

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

DEC 23 2009

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Randy Wise  
10600 County Road 12  
Wauseon, Ohio 4356

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

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Randy Wise ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the property (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 makes the following findings:

1. Respondent owns the residential property located at 10515 County Road 12, Pike Township, Fulton County, Ohio.
2. OAC Rule 3745-19-01(J)(1) of the open burning regulations defines a "restricted area" as (a) within the boundaries of a municipal corporation, (b) a zone extending one thousand feet beyond the boundaries of any such municipal corporation having a population of one thousand to ten thousand persons, and (c) a zone extending one mile beyond the boundaries of any such municipal corporation having a population of ten thousand persons or more according to the latest federal census.

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: 12.23.09

3. OAC Rule 3745-19-01(K) defines "unrestricted area" as all areas outside the boundaries of a "restricted area" as defined in Finding #2 above.

4. From the 2000 census, the City of Wauseon, a municipal corporation in Fulton County, has a population of 7,091. Therefore, any area extending one thousand feet beyond the boundaries of such a municipal corporation is in a restricted area. Respondent's property at 10515 County Road 12, Pike Township, Fulton County, is over one thousand feet outside of Wauseon's city limits and, therefore, is in an unrestricted area as defined in OAC Rule 3745-19-01(K).

5. OAC Rule 3745-19-04(A), in part, states that no person or property owner shall cause or allow open burning in an unrestricted area except as provided therein. No exceptions are provided for burning landscape waste and tires in the manner conducted by Respondent.

6. 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. The rules in OAC Chapter 3745-19 were adopted by the Director under OAC Chapter 3704.

7. On November 5, 2008, Respondent conducted open burning of brush and approximately 20 to 30 tires at 10515 County Road 12, Pike Township, Fulton County, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

8. On December 4, 2008, Ohio EPA issued a Notice of Violation ("NOV") letter to Respondent for illegally open burning in a unrestricted area in violation of Ohio's open burning rules.

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 violation of the rules of this Chapter for open burning on a residential property. The open burning violation on November 5, 2008, occurred at 10515 County Road 12, a residential property owned by Respondent and, therefore, a \$250 penalty is being assessed.

10. 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.

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 be derived from such compliance.

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-04 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two hundred and fifty dollars (\$250) 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 \$250. 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 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 EPA  
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 signed by Respondent and submitted to Ohio EPA.

## **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. NOTICE**

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

Ohio EPA, NWDO  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attention: Tom Sattler

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 thereafter be otherwise specified in writing by Ohio EPA.

## **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 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.

**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**

  
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Chris Korleski  
Director

12/22/09  
\_\_\_\_\_  
Date