OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Brent Saionz, d.b.a. Simon Excavating :
670 West County Road 73 :
Fremont, Ohio 43420 :

Director's Final Findings and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Brent Saionz d.b.a. Simon Excavating ("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 Respondent's facilities 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, with business address at 670 West County Road 73, Fremont, Ohio, was hired by Redline Racing, LLC to perform a land-clearing project at its commercial property that is located at 708 Bartson Road, Ballville Township, Sandusky County, Ohio. This commercial property is located in a "restricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J) concerning open burning.

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) and (D) and in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of waste materials at a commercial property in a restricted area.

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: [signature] Date: 1-13-10

3. On August 4, 2009, Ohio EPA, Northwest District Office ("NWDO") received a complaint concerning open burning being conducted on the above-referenced commercial property.

4. On August 6, 2009, NWDO conducted an investigation at the above-referenced property as a response to the August 4, 2009 complaint. Upon entering the property in the dirt track area, NWDO documented that evidence of open burning of waste materials was being conducted. Upon arrival, NWDO observed a 20 feet X 20 feet pile of ash, stumps, brush, and tire belts (from about 15 to 18 tires) still smoldering. Since open burning of such waste was conducted in a restricted area, Respondent was in violation of OAC Rule 3745-19-03(A).

5. On September 9, 2009, NWDO returned to conduct an investigation at an another area of the above-referenced property known as the "motorcross track". At this area, NWDO documented four (4) burn sites (identified by NWDO as burn sites #1 through #4). Burn site #1 is to the south of the dirt track and contained mostly plastic and glass bottles, aluminum beverage cans and two tires and some brush. Burn site #2 is located along the southeast side of the dirt track and is an old site where open burning occurred but now only a black spot on the ground with some ash remains. Burn site #3 is located along the western part of the dirt track, closer to the paved track, which is a larger pile of mostly brush, a few pieces of metal fencing and several pieces of old tires (some partially burned) and several steel radial belts (total approximately 12-15 tires). Burn site #4 is located to the southeast about 150 feet back from the track and had stumps, brush, two steel radial tires and some debris. Based on its investigation, NWDO concluded that the open burnings at site #1 through #4 had been conducted by Respondent not too long prior to the September 9, 2009 inspection. Since there was evidence that open burnings of waste were conducted in a restricted area associated with the four above-referenced areas, Respondent was in violation of OAC Rule 3745-19-03(A).

6. On September 16, 2009, NWDO sent Respondent a Notice of Violation ("NOV") citing Respondent for the violations that were observed during the August 6, 2009 and September 9, 2009 investigations. In this NOV, NWDO requested that Respondent cease open burning.

7. All of the above-referenced violations also constitute violations of ORC § 3704.05(G), which prohibits any person from violating any rule adopted by the Director of Ohio EPA under this chapter. OAC Rule 3745-19-03 was adopted by the Director of Ohio EPA under this chapter.

8. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may access a violator not more than one thousand dollars ($1,000) per day for each violation of the rules of this Chapter for open burning on commercial property. The open burning violations on August 6, 2009 and September 9, 2009 occurred on commercial property and, therefore, a $2,000 penalty is being assessed.

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 to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall cease all open burning in the State of Ohio that is in violation of OAC Chapter 3745-19, and shall maintain compliance thereafter.

2. Respondent shall pay the amount of two thousand dollars ($2,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA 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, together with a letter identifying the Respondent, to:

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

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

Ohio EPA
Division of Air Pollution Control
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."

The certification shall be submitted by Respondent to Ohio EPA and shall be signed by 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's operations.

VIII. NOTICE

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

Ohio EPA, Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attention: Thomas C. Cikotte

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
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.

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

Chris Korleski
Director

Date 1/12/10