

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY APR -2 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Great Lakes Construction Co. :  
2608 Great Lakes Way :  
Hinckley, OH 44233 :

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.

I. JURISDICTION

These Director's Final Findings and Orders (~~"Orders"~~) are issued to The Great Lakes Construction Co. ("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. 4/2/10

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 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 a construction company located at 2608 Great Lakes Way, Hinckley, Ohio. The City of Cincinnati contracted with the Respondent to restore the 8<sup>th</sup> Street Viaduct in the Lower Price Hill neighborhood.
2. Ohio Administrative Code ("OAC") Rule 3745-19-03(A) prohibits any person or property owner from causing, allowing or permitting open burning in a restricted area except as provided in OAC Rule 3745-19-03(B) to (D) and in ORC § 3704.11. Respondent's property is located in a "restricted area" as the term is defined in OAC Rule 3745-19-01(K).
3. On May 7, 2009, Hamilton County Department of Environmental Services ("HCDOES"), Ohio EPA's contractual representative in Hamilton County, received a complaint concerning alleged illegal open burning on 8<sup>th</sup> Street Viaduct property. On May 7, 2009, HCDOES responded to a fire call at the work site for the 8<sup>th</sup> Street Viaduct project in Lower Price Hill. When HCDOES personnel arrived at 9:00 a.m., they witnessed open

burning of construction debris by Respondent, with flames 10 to 15 feet in the air. HCDOES personnel informed the site foremen that open burning of construction debris was in violation of the state regulations. Additionally, HCDOES requested the Respondent to cease all open burning at the 8<sup>th</sup> Street Viaduct site.

4. Respondent caused, allowed or permitted the open burning of construction debris at the 8<sup>th</sup> Street Viaduct site on May 7, 2009, in violation of OAC Rule 3745-19-03(A).

5. On May 11, 2009, HCDOES sent a notice of violation ("NOV") letter to Respondent. The NOV cited Respondent with violating OAC Chapter 3745-19.

6. On May 26, 2009, HCDOES received Respondent's response to the NOV letter of May 11, 2009. Respondent informed HCDOES that it will cease all open burning at the site.

7. The OAC violation cited in the above findings also constituted a violation 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.

8. Through unilateral orders and pursuant to OAC Rule 3745-19-06, the Director may assess a violator not more than thousand dollars (\$1,000) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on commercial property. 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.

9. 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 3745-19-03, 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 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 Respondent and the property, to the following address:

Ohio Environmental Protection Agency  
Office of Fiscal Administration  
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:

Ohio Environmental Protection Agency  
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."

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:

Hamilton County Department of Environmental Services  
250 William Howard Taft Road  
Cincinnati, Ohio 45219  
Attn: Michael Fair

and to:

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

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 3/31/12