

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

MHP Holdings - Forest Creek, Ltd.,	:	<u>Director's Final Findings</u>
d.b.a. Forest Creek Mobile Home Park	:	<u>and Orders</u>
2267 Berry Road	:	
Amelia, Ohio 45102	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to MHP Holdings - Forest Creek, Ltd., d.b.a. Forest Creek Mobile Home Park ("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 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 and operates the Forest Creek Mobile Home Park ("Facility") located at Berry Road and County Road 222 in Monroe Township of Clermont County and is over three miles from the nearest incorporated municipalities, i.e., Amelia and Bethel.

2. OAC Rule 3745-19-01(J)(1) of the open burning regulations defines a "restricted area" as within the boundaries of a municipal corporation, plus a zone extending one thousand feet beyond the boundaries of any such municipal corporation having a population of one thousand to ten thousand persons, or 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.

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. Respondent's Facility on County Route 222 by Berry Road, in Monroe Township of Clermont County is over three miles from the nearest incorporated municipalities, i.e., Amelia and Bethel. Therefore, Respondent's Facility is in an "unrestricted area" as defined in OAC Rule 3745-19-01(K).

5. OAC Rule 3745-19-04(A) states that no person or property owner shall cause or allow open burning in an unrestricted area except as otherwise provided by rule and law. No exceptions are provided for burning commercial landscape waste, trash, garbage and other waste in an unrestricted area.

6. ORC § 3704.05(G) states, in part, that no person shall violate any rule of the Director, adopted under ORC Chapter 3704. The rules in OAC Chapter 3745-19 were adopted by the Director under ORC Chapter 3704.

7. Hamilton County Environmental Services ("HCES") in Cincinnati, acts under contract as an authorized representative of the Director in Clermont County.

8. On March 19, 2009, Respondent conducted open burning of landscape waste, furniture, rugs, tires, trash and garbage at the Facility, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

9. On March 20, 2009, HCES issued a Notice of Violation ("NOV") letter to Respondent for illegally open burning in an unrestricted area, in violation of Ohio's open burning rules.

10. 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 violation of the rules of this Chapter for open burning on commercial property. The open burning violation on March 19, 2009, occurred at the Facility, a commercial property managed by Respondent and was a large fire requiring the Fire Department's attention; therefore, a \$1,000 penalty is being assessed.

11. 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.

12. 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. 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 one thousand dollars (\$1,000) 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 \$1,000. 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

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:

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, has continued to comply with all continuing obligations, 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. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function 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. NOTICE**

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

Hamilton County Environmental Services  
Air Quality Management  
250 William Howard Taft Road  
Cincinnati, Ohio 45219  
Attention: Kerri Castlen, Permit & Enforcement Area Supervisor

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 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

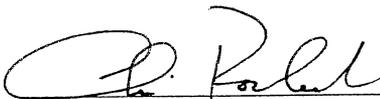
EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to 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 11/23/10