BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 23 2010
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Michael Harrod 4515 Fairground Road Celina, Ohio 45862	: : :	**Director's Final Findings and Orders**

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Michael Harrod ("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 Respondent's 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 property located at 4515 Fairground Road, Jefferson Township, Mercer County, Ohio. The property is a residence and 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 "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) through (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-04(B) through (D) and ORC § 3704.11 do not provide for the open burning of residential waste within one thousand feet from an inhabited building not located on the premises of the open burning, and for the open burning of residential waste containing rubber, grease, or liquid petroleum products.

3. ORC § 3704.05(G) states, in part, that no person shall violate any rule of the Director adopted under ORC Chapter 3704. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

4. On June 25, 2010, Ohio EPA's Northwest District Office ("NWDO") received a complaint regarding open burning at the property. On June 30, 2010, a NWDO representative investigated the complaint of open burning at Respondent's property located at 4515 Fairground Road. Upon arrival, the NWDO representative discovered an approximately 18-foot diameter burn site, which was used to burn for waste disposal approximately 15 large tires along with aluminum cans, glass bottles, and household trash including plastics. The open burning site was within one thousand feet of neighboring houses and the waste that was open burned contained material prohibited from being burned.

5. On June 30, 2010, NWDO notified Respondent to suspend all open burning activities. The open burning of residential waste on June 25, 2010, in an unrestricted area, within one thousand feet of any inhabited building not located on the premises of the open burning and containing prohibited waste was in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

6. By Notice of Violation ("NOV") letter dated July 2, 2010, Respondent was notified of the open burning violation.

7. In a letter dated July 18, 2010, the Respondent replied to the NOV letter, stating that no further open burning will occur at the property.

8. 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 separate violation of the rules in this Chapter for open burning on residential property. The violation on June 25, 2010, occurred at Respondent's residence and is therefore being assessed this penalty.

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 the 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. 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

2. 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 Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

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

Date 12/21/10