

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: JUL 21 2010

Richard Zahn  
1390 Trails End Drive  
Clinton, Ohio 44216

Director's Final Findings and Orders  
Environmental Protection Agency.

I. JURISDICTION

By: [Signature] Date: 7-21-10

These Director's Final Findings and Orders ("Orders") are issued to Richard Zahn ("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 1390 Trails End Drive, New Franklin, Summit County, Ohio. This property is located within the City of New Franklin and is a "restricted area" as defined in OAC Rule 3745-19-01(J) of Ohio's open burning rules.

2. 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.

3. OAC Rule 3745-19-01(E) defines "landscape waste" as any plant waste material, except garbage, and including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues.

4. OAC Rule 3745-19-03(A) prohibits open burning in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11. OAC Rule 3745-19-03(C)(3) allows for the disposal of landscape waste (i.e., agricultural waste) generated on the premises with prior notification to Ohio EPA and under the specified conditions. Otherwise, the burning of landscape waste is prohibited in a restricted area. Similarly, OAC Rule 3745-19-03(B)(2), allows, in part, open burning for recreational and cooking purposes provided that only clean seasoned firewood or equivalent fuel is used, the burning is not for disposal purposes, and total fuel (i.e., firewood) area is not greater than three feet in diameter and two feet tall.

5. On November 3, 2008, the New Franklin Fire Department ("Fire Department") responded to a complaint and found Respondent burning landscape waste in the backyard of the property identified in Finding 1. The Fire Department informed Respondent of the complaint and the requirements of the open burning regulations.

6. On November 12, 2008, the Fire Department responded to an opening burning complaint and discovered Respondent burning a small pile of leaves (i.e., landscape waste). The Fire Department again informed Respondent of the open burning regulations. Respondent stated he would not burn anymore.

7. On June 8, 2009, Akron Regional Air Quality Management District ("ARAQMD"), the contractual representative for Ohio EPA in Summit County, received a complaint regarding open burning on Respondent's residential property. A representative of ARAQMD investigated the complaint and observed blue smoke rising from a burn site at the rear of the property. On June 9, 2009, during a telephone conversation with ARAQMD, Respondent stated that he had burnt a stump (i.e., landscape waste) that he had been trying to dispose of.

8. On June 15, 2009, ARAQMD issued a notice of violation ("NOV") letter to Respondent for illegally open burning in a restricted area, in violation of Ohio's open burning regulations.

9. Based on the above Findings, the Director of Ohio EPA finds that Respondent on November 3, 2008, November 12, 2008 and June 8, 2009 conducted opening burning in a restricted area, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

10. 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 residential property. The open burning violations occurred at 1390 Trails End Drive, Clinton, Ohio, a residential property owned by Respondent and, therefore, a \$600 penalty (i.e., \$200 per day for three days) 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 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, for the violations described in Findings 5 through 7, Respondent is assessed and shall pay a penalty of six hundred dollars (\$600) to Ohio EPA in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and 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 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

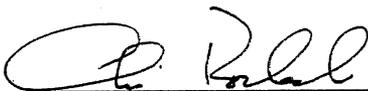
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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

7/19/10  
Date