

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JAN 12 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ron Smith
U496 Road 8
Liberty Center, Ohio 43532

: **Director's Final Findings** and accurate copy of the
: **and Orders** documents as filed in the records of the Ohio
: Environmental Protection Agency.

I. JURISDICTION

Imp. Cassiter Date: 1-12-10

These Director's Final Findings and Orders ("Orders") are issued to Ron Smith ("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 16899 Kellogg Road, Washington Township, Wood County, Ohio.
2. OAC Rule 3745-19-01(J)(1) of the open burning regulations defines a "restricted area" as (a) within the boundaries of a municipal corporation, (b) a zone extending one thousand feet beyond the boundaries of any such municipal corporation having a population of one thousand to ten thousand persons, and (c) 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. From the 2008 census, the City of Tontogany, in Wood County, the nearest municipal corporation to Respondent's property, has a population of less than one thousand persons. Respondent's property at 16899 Kellogg Road, Washington Township, Wood County is outside of a municipal corporation with a population of less than one thousand persons. Therefore, Respondent's property, at the aforementioned address, is in an unrestricted area as defined in OAC Rule 3745-19-01(K).

5. OAC Rule 3745-19-04(A), in part, states that no person or property owner shall cause or allow open burning in an unrestricted area except as provided therein. No exceptions are provided for open burning rubber and tires.

6. 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.

7. On October 22, 2009, Respondent conducted open burning of a pile of trash (15 feet x 25 feet x 7 feet in size) consisting of multiple mattresses, a bathroom sink, two rolls of fiber glass insulation, metal fencing, brush, wood, several metal bars with ½ inch thick rubberized coating on them and 11 tires at 16899 Kellogg Road, Washington Township, Wood County, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

8. On October 29, 2009, Ohio EPA issued a Notice of Violation ("NOV") letter to Respondent for illegally open burning in a unrestricted area in violation of Ohio's open burning rules.

9. 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 a residential property. The open burning violation on October 22, 2009, occurred at 16899 Kellogg Road, a residential property owned by Respondent and, therefore, a \$250 penalty is being assessed.

10. 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.

11. 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, 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

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 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:

Ohio EPA, NWDO
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attention: Thomas Cikotte

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 thereafter be otherwise specified in writing by Ohio EPA.

IX. RESERVATION OF RIGHTS

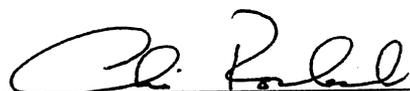
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance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

