

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.

OHIO E.P.A.

SEP 23 2010

BEFORE THE

By: *[Signature]* Date: 9-23-10

~~OHIO ENVIRONMENTAL PROTECTION AGENCY~~ REGISTERED DIRECTOR'S JOURNAL

In the Matter of:

Scott Klem
9212 Pierce Road
Garrettsville, Ohio 44231

: Director's Final Findings
: and Orders
:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Scott Klem ("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 Respondent's property 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 residential property that is located at 9212 Pierce Road, Garrettsville, Nelson Township, Portage County, Ohio. This residential property is located in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) concerning open burning.

2. OAC Rule 3745-19-04(A) prohibits any person or property owner from causing or allowing open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) and (C) and in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of waste materials such as brush and leaves at a residential property in an unrestricted area where such burning would occur at a point on the premises less than one thousand feet from any inhabited building not on said premises. Since Respondent's property is less than one thousand from a nearby

residence, the exceptions to the open burning prohibition for residential waste, as provided in OAC Rule 3745-19(B), do not apply, and the other exceptions do not apply.

3. Based on the investigation performed by the Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative in Portage County, the Garrettsville Fire Department ("GFD") responded to a large fire on Respondent's property on September 6, 2008.

4. On July 31, 2009, ARAQMD was notified by GFD that Respondent was going to open burn on the evening of August 8, 2009. The GFD e-mailed ARAQMD photos of a large pile of brush and leaves on Respondent's property which was estimated to be at least 8 feet high and twenty feet round. On August 5, 2009, ARAQMD contacted Respondent and advised him not to conduct the planned open burning. When offered by ARAQMD, Respondent refused to accept copies of the Ohio EPA open burning flyer and the OAC Chapter 3745-19 Open Burning Standards.

5. On August 10, 2009, ARAQMD was notified by GFD that Respondent had a large bonfire on August 8 and 9, 2009 at the property. Photos taken by ARAQMD during its site investigation reveal ongoing smoke and smoldering from the fire.

6. On August 11, 2009, during a follow-up investigation, ARAQMD observed burning and smoke occurring again at the site of the previous fires identified in Finding #5. During this investigation, ARAQMD noticed Respondent continued to burn the brush and leaves as identified in Finding #4.

7. Since Respondent caused or allowed open burning of brush and leaves on the property on September 6, 2008, and August 8, 9 and 11, 2009, Respondent was in violation of OAC Rule 3745-19-04(A).

8. On August 14, 2009, ARAQMD sent Respondent a Notice of Violation ("NOV") letter citing Respondent for the violations that were documented on September 6, 2008, August 8, 9 and 11, 2009. In this NOV, ARAQMD requested that Respondent cease open burning and submit a written commitment to cease all future illegal open burning within seven (7) days of receipt of the NOV. No response from Respondent was received.

9. All of the above-referenced violations also constitute violations of ORC § 3704.05(G), which prohibits any person from violating any rule adopted by the Director of Ohio EPA under this chapter. OAC Rule 3745-19-04 was adopted by the Director of Ohio EPA under this chapter.

10. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may access a violator not more than two hundred fifty dollars (\$250) per day for each violation of the rules of this Chapter for open burning on a residential property. The open burning violations on September 6, 2008, and August 8, 9 and 11, 2009 occurred on a residential property and, 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. Upon the effective date of these Orders, Respondent shall cease all open burning in the State of Ohio that is in violation of OAC Chapter 3745-19, and shall maintain compliance thereafter.

2. Respondent shall pay the amount of one thousand dollars (\$1,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for one thousand dollars (\$1,000). The official check shall be submitted to Brenda Case, or her successor, together 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 above check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
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."

The certification shall be submitted by Respondent to Ohio EPA and shall be signed by 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's operations.

VIII. NOTICE

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

Akron Regional Air Quality Management District
Citicenter - Suite 904
146 South High Street
Akron, Ohio 44308
Attention: Bonetta Guyette

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
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 9/17/10