

BEFORE THE

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.

OHIO ENVIRONMENTAL PROTECTION AGENCY

JUL 15 2010

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

By:  Date: 7-15-2010

Joseph L. Yochman & Robin Yochman :
610 S. Newton Falls Road :
Diamond, Ohio 44412 :

Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Joseph L. Yochman & Robin Yochman ("Respondents") 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 Respondents 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 Respondents' 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. Respondents own the residential property located at 610 S. Newton Falls Road, Milton Township, Mahoning County, Ohio. This property is located within an "unrestricted area" as defined in OAC Rule 3745-19-01(K) 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 3745-19-04(A) prohibits any person or property owner from allowing or causing open burning, as defined in OAC Rule 3745-19-01(H), in an unrestricted area except as allowed by rule or law.
4. On January 9, 1998 through January 12, 1998, Respondents conducted prohibited open burning in the 7200 block of Sharon Warren Road, Brookfield

Township, Trumbull County, Ohio, in violation of OAC Rule 3745-19-04. On January 12, 1998, Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), a contractual representative of Ohio EPA for Mahoning and Trumbull counties, issued a Notice of Violation ("NOV") letter to Respondents regarding the violations of Ohio's open burning rules.

5. On March 20, 2007, M-TAPCA observed the burning of demolition debris and land clearing waste on Respondents' property located at 610 S. Newton Falls Road, Milton Township, Ohio, in violation of OAC Rule 3745-19-04(A). The open burning began on March 17, 2007. On March 21, 2007, M-TAPCA issued a NOV to Respondents advising them that burning of demolition debris and land clearing waste for waste disposal purposes and in such manner was a violation of Ohio open burning rules and could result in the assessment and collection of administrative penalties. The NOV also included a pamphlet explaining Ohio's open burning rules.

6. On March 6, 2009, Respondents again conducted open burning at 610 S. Newton Falls Road, in violation of OAC Rule 3745-19-04(A). On March 23, 2009, M-TAPCA observed a pile of burned debris on Respondents' property consisting of municipal solid waste that included: glass, paper, cardboard, a tire, and miscellaneous batteries. On April 27, 2009, M-TAPCA issued a NOV letter to Respondents for illegally open burning in an unrestricted area, in violation of Ohio's open burning regulations.

7. Based on the above Findings, the Director of Ohio EPA finds that Respondents on March 17 through 20, 2007 and March 6, 2009 conducted opening burning in a unrestricted area, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

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 violation of the rules of this Chapter for open burning on residential property. Respondents received ample warning for the open burning violations that occurred in 1998 and 2007. Therefore, a \$250 penalty is being assessed for the March 6, 2009, opening burning at 610 S. Newton Falls Road, a residential property owned by Respondents.

9. Should Respondents 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.

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. Respondents 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 violation described in Finding 6, Respondents are assessed and shall pay a penalty of two hundred and fifty dollars (\$250) to Ohio EPA in settlement of Ohio EPA's claim 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 Respondents, 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

Respondents' 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 Respondents.

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 Respondents 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 Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. 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

7/13/10
Date