

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.

John Lassiter Date: 8-10-11

OHIO E.P.A.

AUG 10 2011

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Delbert Troyer : Director's Final Findings
9697 Amish Pike : and Orders
Plain City, Ohio 43064 :

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Delbert Troyer ("Respondent") pursuant to the authority vested in the Director of Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

Those Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law.

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 the Ohio EPA makes the following findings:

1. Respondent owns A & J Container Service, a commercial facility ("Facility") on property located at 9697 Amish Pike, Canaan Township, Madison County, Ohio ("Property"). This Property is located within an "unrestricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) of Ohio's open burning rules.
2. OAC Rule 3745-19-04(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(H), in an unrestricted area.
3. The provisions of OAC Rule 3745-19-04(B) and (C) and ORC § 3704.11 do not provide for the open burning of solid waste from a commercial facility.

Director's Final Findings and Orders

Delbert Troyer

Page 2 of 4

4. On April 23, 2010, Pleasant Valley Joint Fire District was called to Respondent's Facility. The Fire Lieutenant found a large fire which was contained in a roll off dumpster on the Property. Respondent told the firefighters he was burning a small shed and a few shingles in the dumpster. The firefighters extinguished the fire. The Fire Lieutenant also observed debris including springs, paint cans, shingles and wire.
5. On May 5, 2010, an Ohio EPA inspector went to the Facility and observed the remains of open burning of construction debris, asphalt shingles, fiberglass and other plastic materials. The Ohio EPA inspector advised Respondent that he could not burn construction debris.
6. A Notice of Violation ("NOV") letter was sent to the Respondent on May 6, 2010. The letter stated Respondent must cease all illegal open burning.
7. Through unilateral orders, the Director may assess a violator not more than one thousand dollars (\$1,000) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on industrial, commercial, institutional, or municipal property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs.
8. 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 per violation.
9. 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 the Findings, Respondent is assessed and shall pay a penalty of

Director's Final Findings and Orders

Delbert Troyer

Page 3 of 4

seven hundred and fifty dollars (\$750) 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 Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, OH 43216-1049

3. A copy of the check shall be sent to Thomas Kalman, Acting 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

Director's Final Findings and Orders

Delbert Troyer

Page 4 of 4

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 Order are entered into the Ohio EPA Director's Journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

7/29/11

Date