

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.

By: John Lusater Date: 7-26-11

BEFORE THE

OHIO E.P.A.

JUL 26 2011

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Stanley Scott II
185 Dye Mill Road
Troy, Ohio 45373

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Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Stanley Scott II ("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.

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 property located east of the railroad tracks on the south side of Dye Mill Road at 184 Dye Mill Road, Concord Township, Miami County, Ohio. The property is commercial and is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J). All of the property is located within 1,000 feet from any inhabited building not located on Respondent's property.

2. OAC Rule 3745-19-03(A) prohibits any person from causing, allowing, or permitting "open burning," as defined in OAC Rule 3745-19-01(H), in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) and (D) and ORC § 3704.11. OAC Rule 3745-19-03(B) and (D) and ORC § 3704.11 do not provide for either the open burning of construction and demolition debris, or the open burning of "residential waste", as defined in OAC Rule 3745-19-01(I), on the premises if the fire is located at a point on the premises that is less than 1,000 feet from any inhabited building not located on said

premises.

3. 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. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

4. On April 23, 2009, the Troy Fire Department responded to and extinguished a large fire located on Respondent's property. The Troy Fire Department then contacted the Regional Air Pollution Control Agency (RAPCA), a contractual agent for Ohio EPA in Miami County, and indicated that the fire contained wood scraps and residential trash. RAPCA personnel inspected the site on April 23, 2009 and observed a 25-foot by 15-foot burn pit containing a segment of fence, scrap wood, plastic trash, and garbage, confirming that the open burning was in violation of OAC Rule 3745-19-03(A). RAPCA issued a warning letter for the above-mentioned violation on April 29, 2009, which was received by Respondent on May 7, 2009.

5. On November 23, 2009, the Troy Fire Department responded to and extinguished a large fire located in a pit on Respondent's property. The Troy Fire Department notified RAPCA of the incident on December 2, 2009 and indicated that wood and trash were being burned and then buried by Respondent. RAPCA's inspection of December 4, 2009 found the presence of multiple pits that had been backfilled prior to RAPCA's arrival. Smoke was seeping from several of these pits; also, large piles of demolition debris were present on site. Respondent was present during inspection and indicated to RAPCA personnel that he was burning brush in order to improve soil quality. RAPCA determined that the open burning was in violation of OAC Rule 3745-19-03(A).

6. On February 25, 2010, RAPCA sent a Notice of Violation ("NOV") letter to Respondent for causing, allowing, or permitting the above-mentioned open burnings of April 23, 2009 and November 23, 2009, which were in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G). RAPCA's NOV letter of February 25, 2010 was returned to RAPCA unclaimed; on March 29, 2010, a copy of the NOV letter was posted on the door of a structure at 185 Dye Mill Road, Concord Township, Miami County, Ohio, the designated mailing address for Respondent's property.

7. On November 22, 2010, RAPCA issued proposed Administrative Findings and Orders ("F&Os") to Respondent after receiving no response to RAPCA's NOV letter of March 29, 2010. No response to the proposed Administrative Findings and Orders was received by RAPCA.

8. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC Rule on April 23, 2009 and November 23, 2009:

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704; and

- OAC Rule 3745-19-03(A), which prohibits any person from causing, allowing, or permitting the open burning of such waste materials in a restricted area.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars (\$1,000) per day for each separate violation of the rules in this Chapter for open burning on commercial property. The violations that occurred on April 23, 2009 and November 23, 2009 are each being assessed this penalty.

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 legal action 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 to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two thousand dollars (\$2,000) 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 \$2,000. 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

2. A copy of the check shall be sent to Thomas J. 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 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



Scott J. Nally
Director



Date