

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Welage Tool & Die Company	:	<u>Director's Final Findings</u>
1907 Powers Street	:	<u>and Orders</u>
Cincinnati, Ohio 45223	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Welage Tool & Die Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership relating to the facility identified in Finding 1 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 used in R.C. Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director of Ohio EPA has determined the following findings of fact:

1. Respondent owns and operates a metal working shop located at 1907 Powers Street, Cincinnati, Hamilton County, Ohio. This facility is located inside the boundary of the municipal corporation of the City of Cincinnati, a "restricted area", as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(I).

2. OAC Rule 3745-19-03 states, in part, that no person or property owner shall cause or allow open burning in a restricted area except as provided in paragraphs (B) to (C) of such rule or in R.C. 3704.11.

3. R.C. 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704.

4. The Hamilton County Department of Environmental Services ("HCDES") is Ohio EPA's contractual representative in Hamilton County.

5. On March 29, 2001, HCDES conducted an investigation into a citizen's complaint regarding open burning at Respondent's Powers Street facility. HCDES observed the open burning of scrap wood in a barrel on the property. Respondent stated that the fire was being used for heat for outdoor workers. Ambient air temperature was over 50 degrees Fahrenheit at the time of the investigation. The HCDES inspector informed Respondent that HCDES' view is that ambient temperatures above 40 to 45 degrees Fahrenheit do not support warming fires for outdoor workers. HCDES verbally warned Respondent that it was in violation of OAC Rule 3745-19-03 for open burning in a restricted area.

6. On May 9, 2001, HCDES conducted an investigation of another complaint regarding open burning at Respondent's Powers Street facility. At that time, HCDES observed burned and burning waste material in three open barrels on the property. Respondent was again verbally warned of the violation of OAC Rule 3745-19-03. On May 17, 2001, HCDES sent a warning letter to Respondent, citing it for a second violation of the open burning standards of OAC Chapter 3745-19.

7. On June 4, 2001, HCDES conducted an investigation of a third complaint regarding open burning at Respondent's Powers Street facility. At that time, HCDES observed open burning of wood waste in an unattended barrel on the property. On June 20, 2001, HCDES sent an Notice of Violation ("NOV") to Respondent via certified mail, citing it for violation of OAC Chapter 3745-19.

8. On October 10, 2001, HCDES investigated a fourth complaint regarding open burning at Respondent's Powers Street facility. HCDES observed the open burning of wood waste in a barrel on the property. As the ambient temperature at the time of the investigation was approximately 72 degrees Fahrenheit, open burning for the purpose of heating for warmth of outdoor workers was not applicable. HCDES sent a second NOV to Respondent on December 13, 2001, citing it again for violation of OAC Chapter 3745-19. The NOV also instructed Respondent to immediately cease open burning and to submit to HCDES a written commitment to suspend all open burning activities in violation of OAC Chapter 3745-19. This written commitment was required to be submitted by December 21, 2001.

9. To date, HCDES has received no written response from Respondent regarding any of the correspondence described above.

10. Based on the above information, Ohio EPA finds that Respondent violated OAC Rule 3745-19-03 and R.C. 3704.05(G) as a result of these open burning incidents.

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. Respondent shall immediately cease open burning of solid waste in violation of OAC Chapter 3745-19 and shall maintain compliance with such Chapter thereafter. Within fourteen (14) days of the receipt of this letter, Respondent shall send a written commitment to Ohio EPA and to the HCDES to cease all open burning on its property that is in violation of OAC Chapter 3745-19 and use legally acceptable waste disposal services.

2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of four thousand dollars (\$4,000) in settlement of Ohio EPA's claim for civil penalties related to the open burning incidents that occurred at Welage Tool & Die Company, 1907 Powers Street, Cincinnati, in Hamilton County, Ohio. Respondent shall pay to Ohio EPA the amount of three thousand and two hundred dollars (\$3,200) of the total penalty amount pursuant to the following schedule:

seven hundred and fifty dollars (\$750) due within sixty (60) days after the effective date of these Orders;

seven hundred and fifty dollars (\$750) due within ninety (90) days after the effective date of these Orders;

seven hundred and fifty dollars (\$750) due within one hundred and twenty (120) days after the effective date of these Orders;

seven hundred and fifty dollars (\$750) due within one hundred and fifty (150) days after the effective date of these Orders; and

two hundred dollars (\$200) due within one hundred and eighty (180) days after the effective date of these Orders.

Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

The remaining eight hundred dollars (\$800) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver a certified check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to James A. Orlemann, Manager, Engineering Section, 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. 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 the Respondent.

VII. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be addressed to:

Hamilton County Department of Environmental Services
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attention: Michael Fair

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

VIII. MODIFICATIONS

These Orders may be modified by mutual agreement of the parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

IX. RESERVATION OF RIGHTS

Nothing contained herein prevents Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, equitable action as deemed appropriate and necessary, including seeking penalties against the Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require the Respondent to perform additional activities pursuant to R.C. Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of the Respondent to raise any administrative, legal, or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of the Respondent.

X. SIGNATORIES

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to this document.

XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's civil liability for the specific violations cited herein. The Respondent hereby waives the right to appeal the issuance, terms, and service of these Orders and hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondent retains the right to intervene and participate in such an appeal. In such event, the Respondent shall continue to comply with these Orders unless said Orders are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Welage Tool & Die Company

By

Date

Title