

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Glen James & Sons, Inc.	:	<u>Director's Final Findings</u>
3000 Dillon School Drive	:	<u>and Orders</u>
Zanesville, Ohio 43702	:	
	:	
RESPONDENT	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Glen James & Sons, Inc. ("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 successors in interest liable under Ohio law. No change in ownership of the Respondent 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 has determined the following findings:

1. Jack Downing, of 2880 East Pike, Zanesville, Ohio, was the owner of two residential houses that were demolished by Respondent. One house and outbuilding were previously located at the corner of Boggs and Sonora Roads ("site # 1") and the other house and outbuildings were previously located near the intersection of Cinderpit Road and State Route 40 ("site # 2"), Perry Township, Muskingum County, Ohio. Respondent, with principal

place of business located at 300 Dillion School Drive, Zanesville, Ohio, was contracted by Jack Downing to tear down the two residential houses and outbuildings and clear the properties for development.

2. OAC Rule 3745-19-01(E) defines, in part, "land clearing waste" as plant matter which is removed from land for the purpose of rendering the land useful for residential, commercial, or industrial development.

3. OAC Rule 3745-19-01(G) defines, in part, "open burning" as the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney.

4. OAC Rule 3745-19-04(A) states, in part, that no person or property owner shall cause or allow open burning in an "unrestricted area" as defined in OAC Rule 3745-19-01(J), except as provided by rule or law.

5. OAC Rule 3745-19-04(C) allows, in part, open burning of land clearing waste with written permission from Ohio EPA and under certain specified conditions.

6. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director issued, adopted, or made under the authority of ORC Chapter 3704.

7. On April 16, 2001, the Ohio EPA, Division of Air Pollution Control's Southeast District Office ("SEDO") observed a Sears truck dumping wood and plastic waste on an old burn pile on Respondent's property located on Adamsville Road (at the "old race track"), Washington Township, Muskingum County, Ohio. The old burn pile contained ash and partially burned railroad ties, tires, insulation and trash, all of which are prohibited from being burned as commercial waste by OAC Chapter 3745-19. Further, SEDO noticed that fresh tree trimmings had been dumped on top of the ashes.

8. On April 25, 2001, SEDO sent Respondent a notice of violation ("NOV") letter explaining that OAC Rule 3745-19-04(A) prohibited the type of open burning that had occurred on Respondent's property prior to or on April 16, 2001. The NOV also required Respondent to immediately stop all open burning that was in violation of OAC Rule 3745-19-04.

9. On February 19, 2003, SEDO investigated a complaint about brush and trees being open burned on property located between Interstate 70 and State Route 40, east of Zanesville, Ohio. The investigation revealed that the property (located between State Route 40 addresses 2885 and 2745), an unrestricted area, was owned by Jack Downing. Respondent had been contracted by the owner to clear the property for development.

Respondent was observed burning a large pile of trees and brush at the time of the investigation. SEDO spoke to one of Respondent's employees working at the site, explaining that the material being burned met the definition of "land clearing waste." SEDO further explained that OAC Rule 3745-19-04 prohibited the burning of land clearing waste without written permission from Ohio EPA. At the time of the investigation, Respondent had not applied for or obtained permission from the Director to burn "land clearing waste."

10. On March 6, 2003, SEDO sent a NOV letter to the owner of the property (i.e., Jack Downing) and to Respondent for the open burning violation witnessed by SEDO on February 19, 2003. The NOV letter requested the immediate stoppage of all open burning and explained that open burning violations were punishable by fine. The NOV letter also included a copy of OAC Chapter 3745-19 (i.e., Open Burning Standards) as an attachment.

11. On May 5, 2003 and May 6, 2003, SEDO received telephone complaints about the demolition and open burning of structures located at site # 1 and site # 2.

12. On May 6, 2003, SEDO contacted the Muskingum County Sheriff's Office about the May 5 and 6, 2003, open burning complaints and was told the Sheriff's Office had received information about a controlled burn of homes on May 3, 2003 from the Perry Township Fire Department Fire Chief. The Fire Chief was the dispatcher at the Sheriff's Office on May 3, 2003, and had received a telephone notification from Danny James (i.e., Respondent's President) for a "controlled burn" scheduled for May 3, 2003. The Fire Chief informed SEDO that Respondent did not say what was going to be burned; however, he had noticed a building, or the remains of a building that had been burned. He further stated that the building was located near the Fire Department and was owned by Jack Downing. No follow-up by the Fire Department or Sheriff's Office was done during the burn.

13. On May 13, 2003, SEDO inspected the burn sites (i.e., site # 1 and site #2) and confirmed that the buildings had been burned and found identifiable charred demolition debris and paint cans, mattress springs and other waste materials at the sites.

14. On May 20, 2003, SEDO inspected the demolition sites and took pictures and samples of the debris.

15. On June 11, 2003, SEDO sent NOV letters to Respondent and Jack Downing for the open burning of demolition and other waste materials prohibited from being burned by OAC Chapter 3745-19.

16. Respondent caused and allowed open burning on February 19, 2003, at Interstate 70 and Adamsville Road in Zanesville, Ohio, and on or about May 3, 2003, at site # 1 and site # 2, in violation of the requirements of OAC Rule 3745-19-03(A) and ORC §

3704.05(G).

17. 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 makes the following Order:

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of four thousand five hundred dollars (\$4,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. 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, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and sites.

A copy of the official check shall be submitted to James A. Orlemann, Enforcement Coordinator, Compliance and Enforcement, or his successor, at Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

2. Respondent shall comply with the open burning requirements specified in OAC Chapter 3745-19.

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 except for the requirements specified in Order 2.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, Respondent's operations.

VIII. 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.

IX. MODIFICATIONS

These Orders may be modified by 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.

X. NOTICE

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

Division of Air Pollution Control
Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attention: Jeff Bowers

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

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

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

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 these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Glen James & Sons, Inc.

Director's Final Findings and Orders
Glen James & Sons, Inc.
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Signature

Date

Printed or Typed Name

Title