

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUN 19 2006
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Bellaire : Director's Final Findings
3197 Belmont St. : and Orders
Bellaire, Ohio 43906 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Bellaire ("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 under Ohio law. No change in ownership relating to the property (as hereinafter defined) 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. Respondent is a municipality located in Belmont County, Ohio. The Respondent's administrative office is located at 3197 Belmont Street, Bellaire, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3745-15-01 defines "person" as including the state or any agency thereof, any political subdivision, or any agency thereof, public or private corporation, individual, partnership, or other entity. Respondent is a "person" as defined by OAC Rule 3745-15-01.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency

Donna Jackson 6-19-06

RECEIVED
OHIO EPA / OPA
DIVISION / FISCAL SECTION
JUN - 8 AM 10:43

3. OAC Rule 3745-19-03 specifically prohibits a person or property owner from causing or allowing open burning in a restricted area excepted as provided in paragraphs (B) and (D) of this rule or in ORC § 3704.11.

4. OAC Rule 3745-19-03(D)(2) and (D)(3) allows for open burning for instruction in methods of fire-fighting or for research in the control of fires and in an emergency or other extraordinary circumstances for any purpose determined to be necessary by Ohio EPA **but only upon receipt of, and in accordance with, written permission from Ohio EPA, pursuant to OAC Rule 3745-19-05.**

5. Respondent is located in a restricted area as the term is defined in OAC Rule 3745-19-01(I)(1).

6. On January 3, 2005, Ohio EPA received a complaint that a structure located at 3011 Washington Street in Bellaire, Ohio was burned by the local fire department.

7. On January 6, 2005, Ohio EPA investigated the complaint and confirmed that the structure at 3011 Washington Street had been burned. The inspection also revealed that furniture, appliances, tires, cans, insulation, televisions and other miscellaneous solid waste had been burned along with the physical structure of the house. It was also observed that the structure was closely located to several other homes and apartments, thus increasing the chance for an inhalation hazard by the local residents and property damage.

8. During the investigation it was revealed that the Mayor of Respondent at the time, Joseph Campbell, directed that the structure at 3011 Washington Street be burned. In a sworn affidavit provided to Ohio EPA, Mr. Campbell cites concern over public safety related to the dilapidated condition of the structure as the reason for ordering the burning of the structure. At the time of the burning, the property was owned by BAV Investments.

9. The Chief of the Neff's Volunteer Fire Department, John Driscoll, also provided an affidavit regarding the open burning that occurred on January 3, 2005. The Neff's Volunteer Fire Department provides fire services to Respondent. In his affidavit, Chief Driscoll indicated that Mr. Campbell told him that burning the Washington Street structure constituted an emergency and Mr. Campbell further acknowledged that he would take full responsibility for the matter. Mr. Driscoll indicated that he did not have time to follow the entire procedure usually undertaken for a training prior to burning pursuant to OAC rule 3745-19-03(D)(2).

10. Prior to burning the structure at 3011 Washington Street, no one contacted Ohio EPA seeking or obtaining written permission regarding the burning as is required by OAC Rule 3745-19-03(D)(2) or (D)(3).

11. On February 4, 2005, an Notice of Violation ("NOV") letter was sent to Respondent, care of Mr. Campbell. The NOV cited Respondent for open burning in a restricted area, in violation of OAC Rule 3745-19-03(A).

12. The Director finds that the Respondent violated OAC Rule 3745-19-03(A) and ORC § 3704.05(G) by causing or allowing, prohibited open burning in a restricted area and for causing, or allowing the prohibited open burning of solid waste for disposal, and OAC 3745-19-05(A) by failing to submit an application for permission to open burn at least ten (10) days before the fire is to be set;

13. 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 benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand dollars (\$1,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$1,000. The official check shall be submitted to Brenda Case, Fiscal Specialist, or her successor, in care of Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the property.

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 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 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, the Respondent's activities at the property.

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 hereto. 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:

Ohio EPA, SEDO
2195 Front Street
Logan, Ohio 43138
Attention: Lisa Duvall

and to:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

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

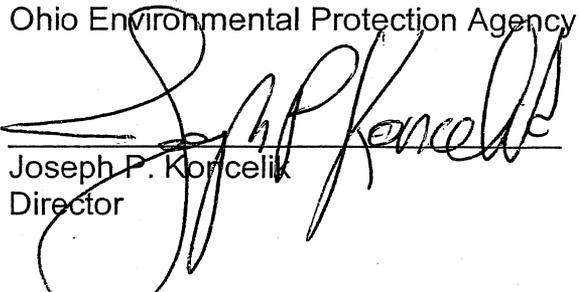
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



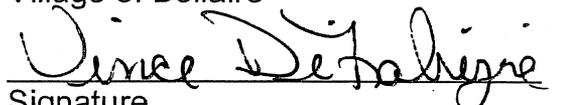
Joseph P. Korcelik
Director

Date

6/14/06

IT IS SO AGREED:

Village of Bellaire



Signature

Date

06.02.06

Vince DiFabrizio

Printed or Typed Name

MAYOR

Title