

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

In the Matter of:

SEP 25 2006

ENTERED DIRECTOR'S JOURNAL

David Scholl : Director's Final Findings
9750 Pasco Montra Road : and Orders
Sidney, Ohio 45365 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

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

II. PARTIES

These Orders shall apply to and be binding upon Respondent and his heirs in interest liable under Ohio law. No change in ownership of Respondent's residence 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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

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

1. On February 9, 2005, the Ohio EPA Southwest District Office received a complaint that open burning was being conducted at Respondent's residence located outside the municipal corporation of Sidney at 9750 Pasco Montra Road, Sidney, Shelby County.

2. On February 18, 2005, an Ohio EPA inspector visited the property to investigate the alleged complaint. Upon arrival, the inspector noticed a large brush pile behind the home on the property. Respondent refused to allow the inspector access to the property to further investigate the claims of open burning. Respondent did admit to burning

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 9-25-06

landscape waste that was not generated on the property. Respondent also acknowledged that the burn piles were not located one thousand feet from an inhabited building not located on the property. The Respondent was in violation of Ohio Administrative Code ("OAC") Rule 3745-19-04 (A).

3. On February 20, 2005, Ohio EPA received a complaint that Respondent had burned a large brush pile the evening of February 18, 2005. This alleged burning would have taken place only a few hours after the Ohio EPA representative gave Respondent a verbal warning to cease open burning.

4. On February 22, 2005, Ohio EPA sent a Warning Letter to Respondent outlining the above noted violations. The Warning Letter also requested that Respondent cease burning waste for disposal purposes and included a copy of Ohio's open burning regulations.

5. On March 19, 2005, Ohio EPA received a complaint that Respondent was burning waste material. Pictures taken by the Port Jefferson Fire Department confirmed the presence of plastics, mattresses, electrical boxes, wire insulation, and other waste material, including vinyl siding.

6. On April 4 and April 16, 2005, Ohio EPA received complaints that Respondent was burning insulation from copper wire and burning brush. Ohio EPA was unable to verify these complaints.

7. On April 20, 2005, Ohio EPA received a complaint that Respondent was burning waste material. Photographs and reports from the Shelby County Sheriff's Department and Port Jefferson Fire Department confirm the presence of waste material in the burning piles located on Respondent's property. During response to the fires by the Shelby County Sheriff's Department and Port Jefferson Fire Department, Respondent attempted to deny access to the emergency responders until a stern warning was given by sheriff's deputies. Respondent alleged that he was within his rights to burn any waste that was generated on his property. Respondent further stated that he would continue to burn waste on the property. Respondent was very aggressive with emergency responders and stated that he would block access to the property so that further fires could not be extinguished by emergency responders.

8. On April 26, 2005, Ohio EPA sent Respondent a Notice of Violation ("NOV") for repeated violations of OAC Rule 3745-19-04, which prohibits open burning within one thousand feet of an inhabited building not on Respondent's property and OAC 3745-400-04, which prohibits burning of demolition debris.

9. Respondent has had previous open burning complaints dating back to 1997. In 1997 the Shelby County Health Department responded to a complaint of open burning at Respondent's property and notified Respondent of open burning regulations. Additionally, in 2002 Respondent was issued an NOV from the Regional Air Pollution Control Agency for demolition and open burning of asbestos-containing waste violations. This violation was later settled by the property owner where the demolition violations occurred.

10. 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 Orders:

1. Respondent shall pay the amount of four hundred dollars (\$400) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Respondent shall also cease open burning activities and comply with the rules listed in OAC Chapters 3745-19 and 3745-400. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$400. The official check shall be submitted to Brenda Case, or her successor, together 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 James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216 - 1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks 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 Facility.

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:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: John Paulian

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. Konecny
Director

Date 9/15/06

IT IS SO AGREED:

David Scholl



Signature

Date 9-9-06