OHIO E.P.A.

JUN 25 2007

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mr. Dale Potter 6201 State Route 56 Mechanicsburg, Ohio 43044	: : :	**Director's Final Findings and Orders**

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: _____ Date: 6-25-07

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Dale Potter ("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.

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 owns residential property located at 6201 State Route 56 in Mechanicsburg, Champaign County.

2. Ohio Administrative Code ("OAC") Rule 3745-19-04(B)(3)(c) and (e) state, in part, that open burning shall not be allowed for disposal of residential waste or agricultural waste generated on the premises if the fire is located at a point on the premises less that one thousand feet from any inhabited building not located on the premises and, additionally, if the materials that are burned contain rubber, grease, asphalt or liquid petroleum products.

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.

4. On May 1, 2007, the Mechanicsburg Volunteer Fire Department ("Fire Department") responded to an outdoor fire at Respondent's property located at 6201 State Route 56. Upon arrival, the Fire Department discovered a large burn area which contained remnants of a number of tires and household waste items. The Fire Department submitted an emergency response spill report to Ohio EPA on the evening of May 1, 2007.

5. The burning of tires is a violation of OAC Rule 3745-19-04(B)(3)(e), which prohibits the burning of residential waste that contains rubber. The burn area was also located closer than one thousand feet from the nearest residence, in violation of OAC Rule 3745-19-04(B)(3)(c).

6. On May 3, 2007, the Ohio EPA Southwest District Office ("SWDO") conducted an inspection of the burn area.

7. On May 10, 2007, SWDO sent a notice of violation ("NOV") to Respondent for the above open burning violations.

8. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rules:

a. ORC § 3704.05(G), for violating rules the Director adopted under ORC Chapter 3704;

b. OAC Rule 3745-19-04(B)(3)(e) which prohibits the burning of residential waste materials that contain rubber; and

c. OAC Rule 3745-19-04(B)(3)(c) for conducting open burning within one thousand feet of the nearest occupied residence.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred-fifty dollars per day for each separate violation of the rules in this Chapter for open burning on residential property.

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 the Ohio Revised Code § 3704.06, the Director may request that the Attorney General pursue litigation 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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-04 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay five hundred dollars ($500) to Ohio EPA as civil penalties, assessed pursuant to OAC Rule 3745-19-06. 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, with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement 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. TERMINATION

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

X. SIGNATORY AUTHORITY

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date 6/21/07