BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 28 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Joseph Smith and Jennifer Smith	:	Director's Final Findings
d.b.a. J & J Barnwood	:	and Orders
36019 Glasgow Road	:	
Salinesville, Ohio 43945	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Joseph Smith and Jennifer Smith, d.b.a. J & J Barnwood ("Respondents") 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 Respondents and heirs 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. Respondents' business address is 36019 Glasgow Road, Salinesville, Ohio. Respondents are in the business of salvaging wood from old barns. In June 2007, Respondents were hired to tear down an old abandoned house located at 39395 Deersville Ridge Road, Cadiz Township, Harrison County, Ohio after demolition had been initiated by another contractor. The house was owned by John Kennedy. The work was completed and what could not be salvaged was burned. This house was located in "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) concerning open burning.

2. OAC Rule 3745-19-04(A) prohibits any person or property owner from open burning in an unrestricted area except as provided in OAC Rules 3745-19-04(B) and (C) or in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of unsalvageable wood, demolition debris, and carpet as part of a commercial business.

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: 12/28/07

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. OAC Chapter 3745-19 was adopted by the Director under OAC Chapter 3704.

4. Ohio EPA, Southeast District Office ("SEDO") was informed by the Harrison County Sheriff's Office that on June 23, 2007, the Cadiz Fire Department ("CFD") was dispatched to 39395 Deersville Ridge Road for a controlled burn that was out of control. Upon arrival, personnel from CFD observed that the debris of the house was burning and the fire was no more than five feet from the roadway. The CFD also observed that a representative of Respondents was conducting the open burning of waste materials including wooden debris and a carpet or foam-type substance. The CFD extinguished the fire and advised both the property owner and Respondents not to conduct further open burning. Since open burning of commercial waste was conducted in an unrestricted area, Respondents were in violation of OAC Rule 3745-19-04(A).

5. On August 2, 2007, SEDO sent a warning letter by certified mail to Respondents. The letter cited Respondents with a violation of OAC Rule 3745-19-04(A) for open burning commercial waste in an unrestricted area and advised them to cease all such open burning. In this letter, SEDO also informed Respondents that the above-referenced incident would be referred to Ohio EPA, Central Office due to the fact that Respondents were continuing to violate Ohio EPA's open burning regulations after they were issued proposed Director's Final Findings and Orders ("Orders") on September 6, 2005 for the same violations in two other counties in Ohio.

6. Based on the evidence concerning the June 23, 2007 open burning incident, the Director of Ohio EPA finds that Respondents were in violation of OAC Rule 3745-19-04(A). Also, the Director of Ohio EPA finds that this incident constitutes a violation of ORC § 3704.05(G).

7. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars ($1,000) per day for each separate violation of the rules in this Chapter for open burning on commercial property. The violation of Ohio's open burning regulations on June 23, 2007 is being assessed a penalty.

8. Should Respondents 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 ORC § 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.

9. 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. Respondents shall immediately cease all open burning in violation of OAC Chapter 3745-19 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of one thousand dollars ($1,000) in settlement of Ohio EPA's claim 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" and shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondents, 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, or his successor, at the following address:

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

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by Respondents.

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 Respondents.

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 Respondents 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 Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. 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.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski
Director

12/26/07
Date