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: 6-4-08

OHIO E.P.A.
JAN -4 2008
RECORDED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bates Recycling, Inc.	:	**Director's Final Findings**
12729 Jerry City Road	:	**and Orders**
Cygnet, Ohio 43413	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bates Recycling, 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 or of the facility (as herein identified) 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 operates a scrap yard and recycling operation located at 12729 Jerry City Road, Cygnet, Ohio. Cygnet is a municipal corporation established in accordance with the provisions of Title 7 of the Revised Code.

2. OAC Rule 3745-19-01(H) defines "open burning" as the burning of any material where the air contaminants resulting the combustion are emitted directly into the ambient air without passing through a stack or chimney.

3. OAC Rule 3745-19-01(J) defines a "restricted area" as an area within the boundary of any municipal corporation established in accordance with the provisions of Title 7 of the Revised Code unless otherwise excluded by law.

4. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may issue unilateral orders assessing administrative penalties of not more than one thousand dollars per day for each separate violation of open burning on industrial, commercial, institutional, or municipal property.

5. OAC Rule 3745-19-03(A) prohibits open burning in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11. Open burning of commercial scrap and recyclable items in a restricted area is prohibited under the above rules and law.

6. 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 pursuant to ORC Chapter 3704.

7. From 2002 through 2006, Ohio EPA, Northwest District Office("NWDO"), received several complaints regarding open burning at Respondent's scrap yard. Investigation of these complaints resulted in verification that Respondent was opening burning tires and a mobile home frame. Respondent has been noticed, advised and warned that such open burning is prohibited and the continuation of opening burning could result in Ohio EPA seeking civil penalties.

8. On May 31, 2007, NWDO received a complaint regarding a large fire producing black smoke from Respondent's facility. A representative of NWDO's Office of Special Investigations responded to the complaint on May 31, 2007. The representative observed evidence of open burning of two separate hydraulic tanks. Pictures of the two burning tanks show high flames and large of amounts of black-gray smoke being emitted. Respondent told the investigator that the fires were accidentally started by its employees cutting the tanks with a torch that set the residual oil contents of the tanks on fire. The investigator informed Respondent that open burning was illegal and Respondent acknowledged that he was aware that it was illegal.

9. On June 5, 2007, NWDO sent a certified notice of violation ("NOV") letter to Respondent. The letter cited Respondent for open burning, in violation of OAC Rule 3745-19-03. Additionally, the NOV requested Respondent to submit a written response explaining measures that it would take to prevent any further violations of the open burning regulations. On June 12, 2007, Respondent replied to the NOV stating that tanks would no longer be cut with a torch to prevent any further violations.

10. Based on the above Findings, the Director of Ohio EPA has determined that Respondent violated OAC Rule 3745-19-03(A) and ORC § 3704.05(G) by conducting open burning of the two hydraulic tanks on at least May 31, 2007.

11. Failure to comply with these Orders, may result in the Director of Ohio EPA referring 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.

12. 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. Upon the effective date of these Orders, Respondent shall cease all open burning in violation of OAC Rule 3745-19-03(A), and shall maintain compliance thereafter.

2. 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 Chapter 3704 and OAC Rule 3745-19-06. Within fourteen (14) 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 one thousand dollars ($1,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-0149

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 when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has 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 Respondent of the obligations that have not been performed, in which case Respondent

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 Respondent to Ohio EPA and shall be signed by Respondent.

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.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date 5/30/08