BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
OCT 16 2008
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Bearcreek Farms, Inc.	:	**Director's Final Findings**
1550 Soldiers Home-West Carrollton Road	:	**and Orders**
Dayton, Ohio 45418	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bearcreek Farms, 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 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 incorporated with the State of Ohio with an office located at 1550 Soldiers Home-West Carrollton Road, Dayton, Ohio. Respondent was formed for the purpose of, but not limited to, the sale of cattle and land.

2. Ohio Administrative Code ("OAC") Rule 3745-19-04(A) prohibits any person or property owner from open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) to (C) and in ORC § 3704.11.

3. On September 16, 2006, the Jefferson Township Fire Department ("JTFD") responded to and extinguished a large debris fire, including tires and carpet, at a property owned and farmed by Respondent and located at 7750 Dayton Farmersville Road, Jefferson Township, Montgomery County, Ohio. This property is located in an "unrestricted area," as defined in OAC Rule 3745-19-01(K).

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: [signature] Date: 10-16-08

4. On September 20, 2006, the Regional Air Pollution Control Agency ("RAPCA"), Ohio EPA's contractual representative in Montgomery County, inspected Respondent's property in conjunction with JTFD. RAPCA observed a large burn site, approximately 40 feet by 20 feet, containing the remnants of the open burning of heavy equipment tires, carpet, and other debris. The open burning of this commercial waste was in violation of OAC Rule 3745-19-04(A).

5. On October 5, 2006, RAPCA sent a Notice of Violation ("NOV") to Respondent for the violation of Ohio Administrative Code ("OAC") Rule 3745-19-04(A).

6. On November 9, 2006, RAPCA received Respondent's response to the NOV. Respondent's President indicated that the debris pile that was burned on September 16, 2006 came from cleaning up the fence lines on properties he had acquired. He indicated that the materials that could not be burned would be put in a roll-off container to be properly disposed of.

7. On November 14, 2006 RAPCA issued proposed Findings and Orders ("F&Os") to Respondent that included a proposed penalty of $1,000 for the open burning violation described above. In the response received by RAPCA on January 23, 2007 and after a series of communications between Respondent and RAPCA, Respondent made a counteroffer of $500 to the proposed $1,000 penalty.

8. On February 2, 2007, RAPCA issued final F&Os to Respondent that included a reduced civil penalty in the amount of $750. Through numerous letters and phone messages, including a follow-up letter on May 29, 2007, Respondent was informed that the case would be referred to Ohio EPA if Respondent did not comply with the Orders within the specified time frame. Respondent never paid the civil penalty.

9. The OAC violation cited in the above findings also constitutes a violation of ORC § 3704.05(G), which 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.

10. Through unilateral orders, the Director may assess a violator not more than one thousand dollars ($1,000) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on commercial property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs. If the violator fails to comply with the Orders, the Director has the authority, under ORC § 3704.06, to request the Attorney General to initiate legal action to seek penalties of up to twenty-five thousand dollars ($25,000) for each day of each violation.

11. On December 28, 2007, Ohio EPA issued Director's Final Findings and Orders to Respondent for the above-mentioned violations. On January 17, 2008, Respondent filed a notice of appeal of the Director's Final Findings and Orders with the Environmental Review Appeals Commission ("ERAC"). On February 6, 2008, Respondent filed an amended notice of appeal of the Director's Final Findings and Orders with ERAC. A tentative settlement of the appeal was reached between the parties, whereby the parties agreed to settle this matter with the issuance of a settlement agreement specifying that Ohio EPA would issue these Orders and rescind the December 28, 2007 Orders.

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. The Director's Final Findings and Orders that were issued to the Respondent to address this violation and that became effective on December 28, 2007, are hereby rescinded.

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

3. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of eight hundred and fifty dollars ($850) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $850. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the property, to the following address:

Ohio Environmental Protection Agency
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

4. 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 Environmental Protection Agency
Division of Air Pollution Control
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 signed by Respondent and submitted to Ohio EPA and shall be.

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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-1280
Att: Brandie Lehman

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

IX. 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.

X. 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 10/9/08