OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Norman E. Walsh Trust **Dennis N. Walsh, Trustee** **1405 Newton Street** **Tallmadge, Ohio 44278**	: : : :	**Director's Final Findings and Orders**

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Norman E. Walsh Trust, Dennis N. Walsh, Trustee ("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 under Ohio law. No change in ownership relating to the property (as hereinafter defined) 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 a trust that owns property located at 344 Old Forge Road, Brimfield Township, Portage County, Ohio.

2. Ohio Administrative Code ("OAC") Rule 3745-15-01 defines "person" as including the state or any agency thereof, any political subdivision, or any agency thereof, public or private corporation, individual, partnership, or other entity. Respondent is a "person" as defined by OAC Rule 3745-15-01.

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: 9-29-08

3. OAC Rule 3745-19-03 specifically prohibits a person or property owner from causing or allowing open burning in a restricted area excepted as provided in paragraphs (B) to (D) of this rule or in ORC § 3704.11.

4. Respondent's property at 344 Old Forge Road is located in a "restricted area" as the term is defined in OAC Rule 3745-19-01(I)(1).

5. On April 28, 2008, Respondent open burned a large pile of land clearing waste at 344 Old Forge Road. An inspector from the Akron Regional Air Quality Management District ("ARAQMD") observed Respondent open burning and directed Respondent to extinguish the burn pile. The ARAQMD inspector then explained the open burning provisions to Respondent and provided Respondent with a copy of the open burning regulations.

6. On May 5, 2008, Respondent again open burned land clearing waste at 344 Old Forge Road. An inspector from ARAQMD again observed the open burning by Respondent and again directed Respondent to cease open burning and comply with the open burning regulations.

7. A Notice of Violation ("NOV") was sent to Respondent on May 7, 2008. The NOV cited Respondent for violating the open burning regulations and directed Respondent to cease and desist all illegal burning activities at the property.

8. OAC rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred and fifty dollars ($250) per day for each violation of the rules of this Chapter for open burning on a residential property. The open burning violations on April 28 and May 5 occurred at 344 Old Forge Road, a residential property owned by Respondent and, therefore, a $500 penalty is being assessed.

9. 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 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.

10. Based on the findings detailed in paragraph 5 and 6 of these Orders, the Director finds that the Respondent violated OAC Rule 3745-19-03(A) and ORC § 3704.05(G) by causing or allowing prohibited open burning of land clearing waste for disposal in a restricted area.

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 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 immediately cease all open burning in violation of OAC Rule 3745-19-03 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, for the violations described in Findings 5 and 6, Respondent is assessed and shall pay a penalty of five hundred dollars ($500) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be 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, or his successor, at the following address:

Division of Air Pollution Control
Ohio EPA
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 be signed by Respondent and 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.

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 9/26/08