

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.

OHIO E.P.A.

BEFORE THE

MAY - 1 2009

By: *M. Shapiro*

Date: *5/1/09*

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Richard Morrow  
7741 Gane Road  
Williamsfield, Ohio 44093

:  
:  
:

Director's Final Findings  
and Orders

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Richard Morrow ("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 heirs and successors in interest liable under Ohio law. No change in ownership of 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 owns the commercial property located at 3093 South Denmark Road, Dorset, Ohio ("property"). The property is used to store spent oil and gasoline tanks prior to the metal being salvaged.
2. OAC Rule 3745-19-01(H) defines "open burning" as the burning of any material where the air contaminants resulting from the combustion are emitted directly into the ambient air without passing through a stack or chimney.
3. Respondent's property in Dorset, Ohio is in an "unrestricted area," as that term is defined in OAC Rule 3745-19-01(K).
4. OAC Rule 3745-19-04(A) prohibits open burning in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) and (C) and ORC § 3704.11.

Open burning for commercial waste disposal purposes, including the burning of petroleum waste products, is not provided for in OAC Rule 3745-19-04 (B) and (C) and ORC § 3704.11. Therefore, burning of such waste for disposal purposes is prohibited in Dorset, Ohio.

5. 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.

6. Respondent has twice been cited for open burning violations prior to 2008. On November 3, 2004, Respondent open burned a mobile home and other solid waste items. On November 18, 2004, NEDO sent a notice of violation ("NOV") letter to Respondent informing Respondent that open burning for waste disposal was a violation of OAC Rule 3745-19-04. On November 14, 2006, Respondent open burned petroleum-based products from a used storage tank that was set on fire when a torch was used to salvage the metal. Ohio EPA's Northeast District Office ("NEDO") sent another NOV to Respondent on December 28, 2006, advising Respondent on the regulations regarding open burning.

7. On May 11, 2008, Respondent allowed open burning of foam panels and wood in a large oil tank on his property.

8. On June 1, 2008, Respondent conducted open burning of used oil contained in a 55-gallon metal drum prior to Respondent salvaging the metal. Respondent placed a steel plate over the burning drum when a neighbor complained. On June 4, 2008, however, there was still smoke being emitted from the smoldering drum.

9. On June 10, 2008, NEDO sent a NOV letter to Respondent. The letter cited violations of OAC Rule 3745-19-04 for the May 11, 2008 and June 1 and 4, 2008 open burning incidents. Additionally, the NOV requested Respondent to submit within five days of receipt of the NOV a written response on how Respondent intended to prevent any additional violations from occurring. As of the date of these Orders, Respondent has not submitted a written response explaining how he will prevent any additional open burning violations.

10. Respondent violated OAC Rule 3745-19-04(A) and ORC § 3704.05(G) by conducting open burning on November 3, 2004, November 14, 2006, May 11, 2008 and June 1 and 4, 2008.

11. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars (\$1000) per day for each separate violation of the rules in this Chapter for open burning on commercial property. The violations that occurred on May 11 and June 1 and 4, 2008 are being assessed a penalty under this provision.

12. 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.

13. 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 pay Ohio EPA the amount of three thousand dollars (\$3,000) 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 three thousand dollars (\$3,000). 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

2. 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 upon Ohio EPA's receipt of the official check 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.

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Chris Korleski  
Director

\_\_\_\_\_  
Date 4/29/09