

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 22 2009

ENTERED DIRECTOR'S J

In the Matter of:

Charles H. McCarthy, d.b.a.  
McCarthy Corporation  
14234 County Highway 60  
Upper Sandusky, Ohio 43351

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Director's Final Findings  
and Orders

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Charles H. McCarthy, d.b.a. McCarthy Corporation ("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.

**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 makes the following findings:

1. Respondent owns the commercial property located at 2623 Pole Lane Road, Claridon Township, Marion County, Ohio. The property is located in an "unrestricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K).
2. OAC Rule 3745-19-04(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(H), in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) to (C) and ORC § 3704.11. The provisions of OAC Rule 3745-19-04(B) to (C) and ORC § 3704.11 do not provide for the open burning of building debris without permission from Ohio EPA in an unrestricted area.
3. OAC Rule 3745-19-01(K) defines a "unrestricted area" as all areas outside the boundaries of a restricted area as defined in OAC Rule 3745-19-01(J).

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: Joseph Cassiter Date: 9-22-09

4. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars per day for each separate violation of the rules in OAC Chapter 3745-19 for open burning on commercial property.

5. ORC § 3704.05(G) states, in part, that no person or property owner 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. On October 10, 2007, October 11, 2007, and on or about September 25, 2008, Respondent conducted open burning of building debris for waste disposal purposes on the property located at 2623 Pole Lane Road, Claridon Township, Marion County, Ohio, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

7. On October 17, 2007 and October 10, 2008, notice of violation ("NOV") letters were sent to Respondent from Ohio EPA. The letters cited Respondent for open burning in violation of OAC Rule 3745-19-04. Additionally, the NOV requested Respondent to submit a written commitment to cease all further illegal open burning. On October 17, 2008, Respondent replied to the October 10, 2008 NOV letter stating that the Respondent understood that no open burning was permitted without Ohio EPA approval and permit.

8. Based on the above findings, the Director of Ohio EPA has determined that Respondent violated OAC Rule 3745-19-04(A) and ORC § 3704.05(G) by conducting open burning of building debris on October 10, 2007, October 11, 2007, and on or about September 25, 2008.

9. 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.

10. 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. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of three thousand dollars (\$3,000) in administrative penalties pursuant to ORC Chapter 3704 and OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$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 9/18/08