

OHIO E.P.A.

BEFORE THE

DEC 15, 2010

OHIO ENVIRONMENTAL PROTECTION AGENCY ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Seth Powers	:	<u>Director's Final Findings</u>
4830 Greenwood Road	:	<u>and Orders</u>
Rootstown, Ohio 44272	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Seth Powers ("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 Respondent's property 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 makes the following findings:

1. Respondent has a land contract with the land owners of a property that is located at New Milford Road and adjacent to the Interstate 76 overpass, Rootstown Township, Portage County, Ohio. This residential property is located in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) concerning open burning. The owners of the property are the McDaniels of 7581 Cooley Road, Rootstown Township, Ohio.

2. OAC Rule 3745-19-04(A) prohibits any person or property owner from causing or allowing open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) and (C) and in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of waste materials such as land clearing waste without Ohio EPA approval, and brush, leaves, siding and trash at a residential property

Official documents as filed in the records of the Ohio Environmental Protection Agency.

by Denise Lassiter Date 12-15-10

in an unrestricted area where such burning would occur at a point on the premises less than one thousand feet from any inhabited building not on said premises. Since Respondent's property is less than one thousand feet from a nearby residence, the exceptions to the open burning prohibition for residential waste, as provided in OAC Rule 3745-19-04(B), do not apply, and the other exceptions do not apply.

3. On January 2, 2009, the Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative in Portage County, received a complaint stating that an open burning occurred at Respondent's property on January 1, 2009.

4. On January 7, 2009, ARAQMD conducted a site investigation as a follow up to the January 2, 2009 complaint. During the investigation, ARAQMD documented the recent open burning of wood and branches. A photo of the open burn site was taken for documentation. ARAQMD issued a verbal order to Respondent to stop future open burning. In addition, ARAQMD distributed to Respondent copies of the Ohio EPA open burning flyer and OAC Chapter 3745-19 ("Open Burning Standards").

5. On February 11, 2009, ARAQMD sent Respondent a Notice of Violation ("NOV") letter citing Respondent for the violation on January 2, 2009. In this NOV, ARAQMD requested that Respondent cease open burning and submit a written commitment to cease all illegal open burning within fifteen (15) days of receipt of the NOV. No response from Respondent was received.

6. Based on its investigation, ARAQMD documented that on May 20, 2009, the Rootstown Township Fire Department ("RTFD") responded to a call regarding open burning. RTFD had to extinguish a medium size brush fire.

7. According to RTFD, it had to extinguish another open burning of camper siding and trash material as a response to a call that it received on September 25, 2009.

8. Based on the information that was provided to ARAQMD, on November 17, 2009, RTFD had to extinguish another open burning of wood, brush and grass as a response to a call that was received. According to RTFD's report, the size of the fire was quite large (approximately 40 feet by 20 feet).

9. On November 18, 2009, ARAQMD received a complaint regarding the open burning that occurred on November 17, 2009.

10. On November 19, 2009, ARAQMD met Respondent at his property as a follow up investigation to the November 18, 2009 complaint. On this date, a written order to cease and desist all illegal open burning was issued to Respondent by ARAQMD. ARAQMD attempted to give Respondent a copy of the regulations; however, Respondent declined. Respondent claimed that the open burning on November 17, 2009 was a ceremonial fire that got out of hand and that he intended to continue burning at this site. ARAQMD took photographs of evidence of the November 17, 2009 open burning for documentation.

11. On December 1, 2009, ARAQMD conducted another inspection of Respondent's property. During this inspection, ARAQMD documented that additional open burning was conducted after the November 19, 2009 investigation. Photographs of new open burning were taken for documentation.

12. Since Respondent caused or allowed open burning of brush and leaves on the property on January 2, May 20, September 25 and November 17, 2009, and at least once sometime after November 17, 2009, and prior to December 1, 2009, Respondent was in violation of OAC Rule 3745-19-04(A).

13. All of the above-referenced violations also constitute violations of ORC § 3704.05(G), which prohibits any person from violating any rule adopted by the Director of Ohio EPA under ORC Chapter 3704. OAC Rule 3745-19-04 was adopted by the Director of Ohio EPA under this chapter.

14. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred 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 January 2, May 20, September 25, and November 17, 2009, and at least once sometime after November 17, 2009, and prior to December 1, 2009, occurred on a residential property and, therefore, a \$1,250 penalty is being assessed.

15. 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.

16. 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. Upon the effective date of these Orders, Respondent shall cease all open burning in the State of Ohio that is in violation of OAC Chapter 3745-19, and shall maintain compliance thereafter.

2. Respondent shall pay the amount of one thousand two hundred and fifty dollars (\$1,250) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. 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 two hundred and fifty dollars (\$1,250). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

3. A copy of the above check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
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."

The 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's operations.

VIII. NOTICE

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

Akron Regional Air Quality Management District
Citicenter - Suite 904
146 South High Street
Akron, Ohio 44308
Attention: Bonetta Guyette

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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

12/14/10

Date