

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL 13 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Scott Dear
11481 Allen Twp. Rd. 108
Findlay, Ohio 45840

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Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Scott Dear ("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 resides at the property located at 11481 Allen Township Road 108, Allen Township, Hancock County, Ohio. The property is residential and 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 any person from causing, allowing, or permitting "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) and (C) and ORC § 3704.11. OAC Rule 3745-19-04(B) and (C) and ORC § 3704.11 do not provide for (a) the open burning of construction and demolition debris, (b) the open burning of "residential waste", as defined in OAC Rule 3745-19-01(I), on the premises if the fire is located at a point on the premises that is less than 1,000 feet from any inhabited building not located on said premises, and (c) for open burning under improper atmospheric conditions.

accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

Janet Lassiter Date: 7-13-11

3. 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.

4. On August 13, 2008, Ohio EPA issued unilateral Director's Final Findings and Orders to Respondent for violations of OAC Chapter 19-04(A) and ORC § 3704.05(G). The violation occurred on February 22, 2008, when Respondent caused, allowed, or permitted open burning of residential trash under improper atmospheric conditions and within 1000 feet of an inhabited residence not located on the property.

5. On August 9, 2010, Ohio EPA observed a plume of black smoke coming from the property located at 11481 Allen Township Road 108. Ohio EPA requested that a deputy from the Hancock County Sheriff's Office be dispatched to investigate. A deputy confirmed that upholstered furniture and brush had been burned for waste disposal purposes. The Allen Township Fire Department was dispatched and the fire was extinguished. On August 12, 2010, Ohio EPA sent a Notice of Violation letter to the Respondent for causing, allowing, or permitting the above-mentioned open burning, which was in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

6. On April 14, 2011, Ohio EPA observed open burning on Respondent's property. Using information provided by the Hancock County Sheriff's Office and the Allen Township Fire Department, it was determined that the following materials were burned for waste disposal purposes: brush, household trash with plastics, clothing, steel cans, aerosol cans, upholstered furniture, DVDs, wire, Formica countertops, paneling, dimensional lumber, oriented strand board (OSB), miscellaneous metal parts, fiberglass insulation, and other miscellaneous items associated with construction and demolition debris. On April 21, 2011, Ohio EPA sent a Notice of Violation letter to the Respondent for causing, allowing, or permitting the above-mentioned open burning, which was in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

7. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rule on August 9, 2010 and April 14, 2011:

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704; and
- OAC Rule 3745-19-04(A), which prohibits any person from causing, allowing, or permitting the open burning of such waste materials.

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 separate violation of the rules in this Chapter for open burning on residential property. The violations that occurred on August 9, 2010 and April 14, 2011 are each being assessed this penalty.

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 legal action 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 thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of five hundred dollars (\$500) in administrative penalties pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$500. The official check 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

2. A copy of the check shall be sent to Thomas J. Kalman, Acting 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

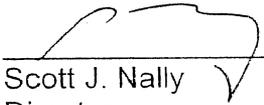
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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



Scott J. Nally
Director

7/8/11

Date