OHIO E.P.A.

APR 25 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sam's Excavating Unlimited, Inc. 4324 St. Paul Road Ashville, Ohio 43103	: : : :	**Director's Final Findings and Orders**

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sam's Excavating Unlimited, Inc. ("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 liable under Ohio law. No change in ownership of the property (as hereinafter identified) or of Respondent 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. "Restricted area" as defined by Ohio Administrative Code ("OAC") Rule 3745-19-01(J) means, in part, the area within the boundary of any municipal corporation established in accordance with Title 7 of the Revised Code, plus a zone extending one thousand feet beyond the boundaries of any such municipal corporation having a population of one thousand to ten thousand persons and a zone extending one mile beyond any such municipal corporation having a population of ten thousand persons or more according to the latest federal census.

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: 4-25-12

2. OAC Rule 3745-19-03(A) prohibits a person or property owner from causing or allowing open burning in a restricted area excepted as provided in paragraph (B) and (D) of this rule or in ORC § 3704.11. The open burning of building demolition debris is not an exception to the prohibition on open burning in a restricted area.

3. ORC § 3704.05(G) states, in part, that no person shall violate any rule of the Director adopted under ORC Chapter 3704. The rules in OAC Chapter 3745-19 were adopted by the Director under ORC Chapter 3704.

4. Elizabeth Kandel owns a residential property located at 15156 County Home Road in Paris Township, Union County, Ohio. An old house, barn, and three outbuildings were located at the property. This property is located within a "restricted area" as defined in OAC Rule 3745-19-01(J) of Ohio's open burning rules.

5. On May 3, 2010, Lester Rausch & Sons, Inc. provided Ms.Kandel with an estimate of $12,400 to demolish the house located at 15156 County Home Road and take the resulting debris to a landfill.

6. On June 2, 2010, Marysville Fire Department ("MFD") received a call concerning a structure fire on County Home Road. Upon arrival, MFD found the home at 15156 County Home Road in a pile burning. William Cline with Respondent claimed to MFD that he had received permission from Ohio EPA to burn the house.

7. MFD informed the Central District Office of Ohio EPA ("CDO") about the open burning of the house at 15156 County Home Road and a representative from CDO inspected the property on June 2, 2010. At the time of his arrival, the pile of debris from the house and outbuildings was still smoldering and Mr. Cline was present with heavy equipment. Mr. Cline was informed by the CDO representative that burning the house and the outbuildings at 15156 County Home Road was a violation of OAC Rule 3745-19-03(A).

8. On June 7, 2010, CDO sent notice of violation ("NOV") letters to Respondent for violating OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

9. On a meeting with Respondent on February 1, 2012, Respondent claimed that the debris from the demolition of the house was not open burned but was taken to a landfill. Furthermore, Respondent stated that the debris from the outbuildings and landscape waste were open burned at the foundation of the house at the property

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. Respondent shall pay the amount of two thousand dollars ($2,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment to Ohio EPA shall be made by official checks made payable to "Treasurer, State of Ohio" in four equal monthly installments of five hundred dollars ($500) each within thirty (30), sixty (60), ninety (90), and one hundred twenty (120) days after the effective date of the Orders. The official checks shall be submitted to Akia Smith, 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

2. A copy of each of the above checks shall be sent to Thomas Kalman, Acting 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 upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, operations by Respondent.

VIII. 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.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

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

Ohio Environmental Protection Agency
Central District Office
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: David Burroughs

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman, Acting Assistant Chief,
SIP Development and Enforcement

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

4/17/12
Date

AGREED:

Sam's Excavating Unlimited, Inc.

Signature

3/27/2012
Date

SAM T HALL
Printed or Typed Name

VP
Title