

OHIO E.P.A.

BEFORE THE

OCT 10 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of: \_\_\_\_\_

Mr. Don Hauenstein  
424-23 East Sycamore Street  
Columbus Grove, Ohio 45830

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Director's Final Findings  
and Orders

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mr. Don Hauenstein ("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 the 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 the 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," is defined in OAC rule 3745-19-01(K) and means, in part, the area within the boundary of any municipal corporation established in accordance with Title 7 of the Ohio 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. An "unrestricted area" is defined in OAC rule 3745-19-01(L) as any area that does not meet the above definition

2. OAC Rule 3745-19-04(A) prohibits a person or property owner from

causing or allowing open burning in an unrestricted area except as provided in paragraphs (B) to (D) of this rule or in ORC § 3704.11. OAC Rule 3745-19-04 does not allow for the open burning of rubber, building materials, or trash for waste disposal purposes.

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. The Respondent's father owns the residential property located at 5950 Bentley Road, Bluffton, Ohio (Allen County), which the Respondent uses and maintains. The property is located within an unrestricted area, as defined by OAC Rule 3745-19-01(L).

5. On August 13, 2012, an Ohio EPA Northwest District Office ("NWDO") Division of Waste Management ("DMWM") employee reported to the Allen County Sheriff's Office that a plume of black smoke was being emitted from the above-mentioned property on August 13<sup>th</sup>. On August 14, 2012, the incident was reported to the NWDO, Division of Air Pollution Control ("DAPC").

6. On August 23, 2012, an Ohio EPA DAPC inspector visited the property and observed that a large brush and waste material pile had been open burned. The pile was approximately 20 feet by 30 feet and contained evidence of: brush, 3-4 tractor tires; a large quantity of shingles; a mattress; miscellaneous metal and automotive components; and 3-4 standing trees.

7. On August 30, 2012, Ohio EPA sent the Respondent a Notice of Violation letter for violating OAC Rule 3745-19-04(A).

8. The Director of the Ohio EPA finds the Respondent in violation of OAC 3745-19-04(A) and ORC § 3704.05(G) for conducting prohibited open burning in an unrestricted area.

9. Through unilateral orders, the Director may assess a violator not more than two hundred fifty dollars (\$250) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning of residential waste and not more than one thousand dollars (\$1,000) per day for each separate violation of the rules in this Chapter for open burning of all wastes that are not residential waste. A separate penalty is assessed for each day the violation occurs.

10. Should the 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 twenty-five thousand (\$25,000) per day of violation.

11. 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. The Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

2. Within thirty (30) days after the effective date of these Orders, for the violations described in the Findings, the Respondent is assessed and shall pay a penalty of two hundred fifty dollars (\$250) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to Treasurer, State of Ohio and shall be submitted to Carol Butler, or her successor, 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 check shall be sent to Bruce Weinberg, Manager, Enforcement Section, DAPC, or his successor, at the following address:

Division of Air Pollution Control  
Ohio EPA  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate on and upon Ohio EPA's receipt of the official check (s) 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 the Respondent.

### **VIII. RESERVATION OF RIGHTS**

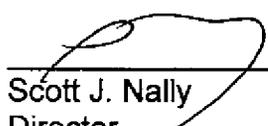
Nothing contained herein shall be construed to prevent the Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against the Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent the Ohio EPA from exercising its lawful authority to require the 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 the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which the Ohio EPA may seek to require of the Respondent. Nothing in these Orders shall be construed to limit the authority of the 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

<sup>10</sup>/<sub>2</sub>/<sub>13</sub>  
\_\_\_\_\_  
Date

3745-19-06      **Open burning unilateral order.**

- (A) The director may assess and collect administrative penalties from any person who violates any of the rules in this chapter. Through unilateral orders, the director may assess a violator not more than two hundred fifty dollars per day for each separate violation of the rules in this chapter for open burning of residential waste and not more than one thousand dollars per day for each separate violation of the rules in this chapter for open burning of all wastes that are not residential waste. A separate violation is assessed for each day (twenty-four hour period) or portion of a day the violation occurs.
  
- (B) The director's authority under paragraph (A) of this rule is in addition to, and not in limitation of, the director's authority under section 3704.06 of the Revised Code to request the attorney general to initiate legal action to seek penalties of not more than twenty-five thousand dollars for each day of each violation for the violation of rules in this chapter.

Effective: 05/27/2012

R.C. 119.032 review dates: 01/30/2012 and 05/27/2017

CERTIFIED ELECTRONICALLY

Certification

05/17/2012

Date

Promulgated Under: 119.03  
Statutory Authority: 3704.03(E)  
Rule Amplifies: 3704.03(A), 3704.03(E)  
Prior Effective Dates: 07/07/2006