Ohio | Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

DEC 29 2011

CERTIFIED MAIL

Mr. David Opperman, Owner
Eagle, LLC
4710 Roachester Osceola Road
Morrow, Ohio 97224

Re: Director's Final Findings and Orders for open burning rule violations

Dear Mr. Opperman:

Enclosed are Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the October 4 and 5, 2010, open burning incidents at the former New Vienna School located at 204 South Second Street, New Vienna, Ohio.

These Orders are being issued pursuant to OAC Rule 3745-19-06(A) which states, in part, that through unilateral orders the Director of Ohio EPA may assess a penalty of not more than one thousand dollars ($1,000) per day for each violation for open burning on commercial property. A copy of this rule is enclosed with this letter for your information.

Should you fail to comply with these Orders, the Director of Ohio EPA, under the authority of ORC § 3704.06, may refer this matter to the Ohio Attorney General's Office and may request the Attorney General to initiate legal action to seek penalties of up to $25,000 per day of violation.

This action by the Director is final and may be appealed to the Environmental Review Appeals Commission ("Commission") pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43266-0557

If you decide to appeal, the Director of Ohio EPA and the Ohio Attorney General's Office must be notified within three (3) days of filing with the Commission by sending a copy of the appeal to each of the following addresses:

Director's Office
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

Environmental Enforcement Section
Office of Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date stamped on the first page of the Orders.

Sincerely,

Thomas J. Kalman

Thomas J. Kalman, P.E.
Acting Assistant Chief
SIP Development and Enforcement

TJK:PP:pp

Enclosures

xc: Patty Porter, DAPC-CO
Terry Sanner, SWDO
Stephen Feldmann, Legal Office
Erica Fetty, DAPC-CO
Brenda Case, Fiscal
John Paulian, DAPC-CO
Carol Hester, PIC

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 on residential property and not more than one thousand dollars per day for each separate violation of the rules in this chapter for open burning on industrial, commercial, institutional, or municipal property. Commercial property includes construction sites, including, but not limited to, the construction of residential homes, if the sites are not properly permitted under section 3704.11(C) of the Revised Code. A separate violation is assessed for each day (24-hour period) 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: 07/07/2006

R.C. 119.032 review dates: 07/07/2011

CERTIFIED ELECTRONICALLY
Certification

06/27/2006
Date

Promulgated Under: 119.03
Statutory Authority: R.C. Section 3704.03(E)
Rule Amplifies: R.C. Section 3704.03(A), 3704.03(E)

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 29 2011
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Eagle, LLC	:	**Director's Final Findings**
4710 Roachester Osceola Road	:	**and Orders**
Morrow, OH 45152	:	

RESPONDENT

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Eagle, LLC ("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 the Respondent or of the property (as herein defined) 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 owns the former New Vienna School building, a commercial property, located at 204 South Second Street, New Vienna (Clinton County), Ohio ("property"). This property is located within an "restricted area" as defined in OAC Rule 3745-19-01(J) of Ohio's open burning rules.

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

3. OAC Rule 3745-19-03 prohibits any person or property owner from allowing or causing open burning, as defined in OAC Rule 3745-19-01(H), in a restricted area except as allowed by rule or law.

4. On October 4, 2010, Ohio EPA's Southwest District Office ("SWDO") received a complaint from the Clinton Highland Joint Fire District regarding open burning on the property identified in Finding 1 of these Orders. On October 5, 2010, SWDO investigated the complaint and found a very large pit near the eastern edge of the property which contained a large quantity of material that was emanating smoke. The material appeared to be solid waste, including vinyl covered chairs, mattresses, lumber, petroleum-based materials and construction/demolition debris. Respondent's owner, Mr. David Opperman, stated that he would remove the burn pile by October 6, 2010. However, on October 6, 2010, SWDO visited the site and discovered that the burn pile had not been removed; however, the pile was not emanating smoke.

5. Based on the above Findings, the Director of Ohio EPA finds that on or about October 4 and 5, 2010, Respondent caused and/or allowed open burning in a restricted area, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

6. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars ($1,000) per day for each violation of the rules of this Chapter for open burning on commercial property.

7. 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.

8. 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 immediately cease all open burning in violation of OAC Rule 3745-19-03 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, for the violations described in Finding 5, Respondent is assessed and shall pay a penalty of one thousand five hundred dollars ($1,500) 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 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

3. A copy of the above check shall be sent to Thomas Kalman, Acting Assistant Chief, SIP Development and Enforcement, 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 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

12/22/11
Date