

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
MAR 13 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Tim Davidson :  
212 S. Carlisle Street :  
Quincy, Ohio 43343 :

Director's Final Findings  
and Orders

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Tim Davidson ("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 property (as hereinafter 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. "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.
  
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 "land clearing waste," as defined in OAC Rule 3745-19-01(F), 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. Respondent owns a commercial property located at 212 S. Carlisle Street in Quincy, Logan County, Ohio. The property is about 7.6 acres in area and it is located within a "restricted area" as defined in OAC Rule 3745-19-01(J) of Ohio's open burning rules.

5. On May 21, 2009, Director's Final Findings and Orders ("DFFOs") were issued to Respondent as a result of several open burning violations in 2009 at the property. The DFFOs required Respondent to pay a civil penalty of \$3,000 and maintain compliance with OAC Chapter 3745-19. Respondent paid the penalty and the DFFOs were terminated by paying the penalty.

6. On June 28, 2010, Ohio EPA's Southwest District Office ("SWDO") received a complaint stating that Respondent had two large piles of tree branches that were getting ready to be burned. On June 29, 2010, the complainant called SWDO to confirm that the two piles of tree branches had been burned.

7. On June 29, 2010, a representative from SWDO inspected the property to investigate the complaint received on June 28 and 29, 2010. Upon the inspector's arrival, two very large piles of smoldering tree branches were observed and the open burning was within 1000 feet of an occupied building not located on the property.

8. On July 7, 2010, SWDO sent a notice of violation ("NOV") letter to Respondent concerning the open burning violation on June 29, 2010. The open burning of land clearing waste generated on the premises located in a restricted area is a violation of OAC Rule 3745-19-03(A), if the fire is located at a point on the premises less than one thousand feet from any inhabited building not located on said premises.

9. The Director of Ohio EPA finds that Respondent violated OAC Rule 3745-19-03(A), and ORC § 3704.05(G), for conducting prohibited open burning on June 29, 2010.

10. On August 7, 2011, Mayor Dan Robinson, Mayor of the Village of Quincy, received a complaint concerning an open burning at Respondent's residence at 504 s. Carlisle Street in Quincy, Ohio. Upon Mr. Robinson arrival at the property, he noticed smoke coming from Respondent's property. Respondent agreed not to open burn again at his property.

11. Through unilateral orders, the Director may assess a violator not more than one thousand dollars (\$1,000) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on commercial property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs.

12. 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.

13. 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 the Findings, Respondent is assessed and shall pay a penalty of one thousand dollars (\$1,000) 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 Akia Smith, 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 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 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."

This 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.

## **VIII. RESERVATION OF RIGHTS**

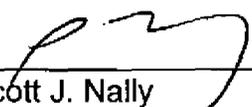
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance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

3/9/12  
\_\_\_\_\_  
Date