

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUL 17 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

John and Tammy Weaver
8932 Caledonia Belleville Road
Galion, Ohio 44833

:
:
:

Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to John and Tammy Weaver ("Respondents") 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 Respondents 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 Respondents' 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. "Unrestricted area" is defined by Ohio Administrative Code ("OAC") Rule 3745-19-01(L) means all areas outside of the boundaries of a restricted area.

2. "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 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.

3. OAC Rule 3745-19-04(A) prohibits a person or property owner from causing or allowing open burning in a unrestricted area except as provided in paragraphs (B) to (D) of this rule or in ORC § 3704.11. According to OAC Rule 3745-19-04(B)(3)(C), open burning of residential waste or agricultural waste is prohibited unless the burn site is located on the premises no less than one thousand (1000) feet from any inhabited building not located on said premises.

4. 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.

5. Respondents John and Tammy Weaver own the residential property located at 8932 Caledonia Bellville Road, Tully Township, in Marion County, Ohio. The property is about 9 acres in area and is located within an "unrestricted area;" however, there are inhabited buildings within 1000 feet of the burn site that are not on their property.

6. On July 1, 2009, the Marion County Health Department ("MCHD") received a complaint regarding the solid waste and trash on the property. On July 7, 2009, MCHD issued a notification of violation to the Respondents concerning the violation of the Sanitary Code of the Marion County General Health District.

7. On March 3, 2011, MCHD went to trial versus Respondents for the health department violations. The Respondents were granted 60 days to come into compliance. On May 3, 2011, it was noted that the property was brought up to code and that previous violations had been taken care of. The MCBH case was completed and filed.

8. On December 30, 2011, Ohio EPA's Northwest District Office ("NWDO") received a complaint from the MCHD stating that they have been receiving complaints in regards to a property where the owners were continuing to burn trash and other items causing a black smoke. The case was referred to Ohio EPA as the MCHD has had a long standing history of non-compliance with the property. This is the first complaint received by Ohio EPA regarding this property or the property owners; however, MCHD has observed evidence of open burning on the Respondents' property on multiple occasions.

9. On January 4, 2012, a representative from NWDO inspected the property to investigate the complaint. Upon the inspector's arrival, a 55-gallon burn barrel and a second burn site on the ground near the barrel were observed. Evidence of burning paper and cardboard products were observed. The ash was fresh, black, and not covered with snow. The burning was determined to have occurred within two to three

days previously, based on the snowfall two or three days prior to the inspection, as the ash was not covered with snow.

10. On January 9, 2012, NWDO sent a notice of violation ("NOV") letter to the Respondents concerning the open burning violation in January 2012. The open burning in an unrestricted area within 1000 feet of an inhabited building was a violation of OAC Rule 3745-19-04(A).

11. The Director of Ohio EPA finds that Respondents violated OAC Rule 3745-19-04(A) and ORC § 3704.05(G), for conducting prohibited open burning in January 2012.

12. Through unilateral orders, the Director may assess a violator not more than two hundred and fifty dollars (\$250) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning of residential waste as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs.

13. Should Respondents 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.

14. 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. Respondents shall immediately cease all open burning in violation of OAC Rule 3745-19-04, and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, for the violations described in the Findings, Respondents are assessed and shall pay a penalty of two hundred and 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 Akia Smith, or her successor, with a letter identifying the Respondents, 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, Environmental Manager, Enforcement Section, or his successor, at the following address:

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

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by Respondents.

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 Respondents.

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 Respondents for noncompliance with these Orders

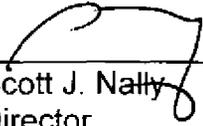
and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. 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

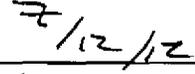
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally
Director



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~~ hundred fifty dollars per day for each separate violation of the rules in this chapter for open burning ~~of on residential property 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. ~~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~~ 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