

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUL 17 2012
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Gilbert C. Myers
313 Linden Street
Bellefontaine, OH 43311

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Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Gilbert C. Myers ("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," 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.

2. OAC Rule 3745-19-03(A) prohibits a person or property owner from causing or allowing open burning in a restricted area except as provided in paragraphs

(B) to (D) of this rule or in ORC § 3704.11. The open burning of solid waste materials, including solid waste materials made from petroleum products or treated wood, are not exceptions to the prohibition of 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. The Respondent owns a vacant property on Township Road 198, in Bellefontaine, Ohio (Logan County). The property is located within one mile of the Bellefontaine City limits, and is located within a restricted area, as defined by OAC Rule 3745-19-01(K).

5. In April 2011, Ohio EPA's Southwest District Office ("SWDO") received a complaint regarding the open burning of large quantities of solid waste materials on the property.

6. On April 22, 2011, a notice of violation ("NOV") was issued to the Respondent with instructions to cease all illegal open burning. The issue was considered to be resolved with the issuance of the NOV.

7. On April 9, 2012, SWDO received a complaint concerning the opening burning of solid waste materials near a creek bed on the Township Road 198 property.

8. On April 12, 2012, a representative from SWDO inspected the property to investigate the complaint received April 9, 2012. Upon the inspector's arrival, several large piles of waste materials, including treated lumber, furniture, and plastic materials were observed. In addition, a burn area containing what appeared to be springs from furniture and the remains of a mattress were observed. Based on the nature and quantity of the materials being open burned, it appeared that the materials were being hauled in from other locations to be disposed of.

9. On April 17, 2012, a second NOV was issued to the Respondent with instructions to cease all illegal open burning on the Township Road 198 property.

10. The Director of Ohio EPA finds that the Respondent violated OAC Rule 3745-19-03(A) and ORC § 3704.05(G), for conducting prohibited open burning in April 2011 and April 2012. The Respondent is also found noncompliant with the NOV issued April 22, 2011 by additional illegal open burning of solid waste materials in April 2012.

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 of all wastes that are not residential 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(A), 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 two thousand dollars (\$2,000) 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 Bruce Weinberg, Environmental 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 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

7/12/12

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