BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mr. Lance Dudgeon 3663 Tawana-Maplewood Road Sidney, Ohio 45365	: : :	**Director's Final Findings and Orders**

OHIO E.P.A.
JUL -9 2008
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Lance Dudgeon ("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 successors in interest liable under Ohio law.

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 has determined the following findings:

1. Respondent owns property located at 3663 Tawana-Maplewood Road in Sidney, Shelby County.

2. Ohio Administrative Code ("OAC") Rule 3745-19-04(A) provides that no person shall cause or allow open burning except when written permission is obtained from Ohio EPA or in certain limited circumstances, such as:

> Bonfires, campfires and outdoor fireplace equipment, whether for cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes, if the following conditions are met:

- The fire is fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood;

- The fire is not used for waste disposal purposes; and

- The fire has a total fuel area of three feet or less in diameter and two feet or less in height except when such fire is used for ceremonial purposes it may have a total fuel area no greater than five feet in diameter and five feet in height if the ceremonial fire burns no longer than three hours.

3. 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.

4. On September 12, 2007, Ohio EPA Southwest District Office responded to a complaint of open burning and witnessed Respondent burning plastic, demolition debris, and other waste materials. Photographs were taken to document the open burning.

5. On April 25, 2008, the Shelby County Board of Health conducted a nuisance investigation that discovered an additional open burning event.

6. Ohio EPA had not given permission to conduct an open burn and the open burns were not otherwise exempted from the prohibitions of OAC Rule 3745-19-04.

7. The violations were expressed to Respondent in notices of violation dated September 15, 2007 and June 5, 2008.

8. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rule:

- ORC § 3704.05(G), for violating rules the Director adopted under ORC Chapter 3704; and

- OAC Rule 3745-19-04 which prohibits open burning in an unrestricted area.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA 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.

10. 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 the Ohio Revised Code § 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.

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. Respondent shall comply with the requirements of Ohio's open burning regulations (OAC Chapter 3745-19).

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay five hundred dollars ($500) to Ohio EPA as a civil penalty, 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

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
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 valid 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.

X. SIGNATORY AUTHORITY

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date 7/3/08