



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center  
50 W. Town St., Suite 700  
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184  
www.epa.state.oh.us

OHIO EPA MAILING ADDRESS:

P. O. Box 1049  
Columbus, OH 43216-1049

OCT 19 2009 ENTERED DIRECTOR'S JOURNAL

**CERTIFIED MAIL**

Joseph and Marie Eberz  
715 Eastview Drive  
Akron, Ohio 44312

**Re:** Director's Final Findings and Orders for the violations of Ohio Administrative Code Chapter 3745-19 for open burning at 715 Eastview Drive, Springfield Township, Summit County, Ohio

Dear Mr. and Ms. Eberz:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

These Orders are being issued pursuant to OAC Rule 3745-19-06(A) which states that the Director of Ohio EPA may assess a violator not more than two hundred and fifty dollars (\$250) per day for each separate violation of the rules in this Chapter for open burning on residential property. A copy of this rule is attached.

Should you 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 Ohio Revised Code § 3704.06, the Director may request that the Attorney General pursue legal action and seek civil penalties of up to \$25,000 per day of violation.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission ("Commission") pursuant to Ohio Revised Code § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal 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. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. 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:

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korfeski, Director

Ohio EPA is an Equal Opportunity Employer





Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

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,



James A. Orlemann, P.E.  
Assistant Chief  
SIP Development and Enforcement

JO:JK:jk

Enclosures

xc: Priscilla Roberson, DAPC  
Brenda Case, Fiscal  
Stephen Feldmann, Legal Office  
Tom Kalman, DAPC  
Jim Kavalec, DAPC  
Frank Markunas/Bonetta Guyette, ARAQMD

**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.

3745-19-06

2

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**

In the Matter of:

Joseph and Marie Eberz	:	<u>Director's Final Findings</u>
715 Eastview Drive	:	<u>and Orders</u>
Akron, Ohio 44312	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Joseph and Marie Eberz ("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.

**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. Respondents own the property located at 715 Eastview Drive, Springfield Township, Summit County, Ohio. The property is residential and is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).

2. OAC Rule 3745-19-03(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(H), in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11 do not provide for the open burning of roofing shingles, other building material wastes, and yard wastes for disposal in a restricted area.

3. ORC § 3704.05(G) states, in part, that no person or property owner shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC

Chapter 3704.

4. On May 12, 2008, the Akron Regional Air Quality Management District ("ARAQMD"), a contractual agent for Ohio EPA in Summit County, received a complaint that Respondents had open burned roofing shingles, building materials and yard waste at Respondents' property located at 715 Eastview Drive between May 5 and May 9, 2008. On May 13, 2008, ARAQMD conducted a complaint investigation and verified a large burn pile behind Respondents' house. During the May 13, 2008 investigation, ARAQMD left a written order for Respondents to cease all illegal open burning activities. On May 16, 2008, ARAQMD sent a notice of violation letter to Respondents for the open burning violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G) identified above. On May 20, 2008, ARAQMD conducted a re-inspection and observed partially burned roofing shingles and other debris on the burn pile, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

5. On May 15, 2009, the Springfield Township Fire Department responded to an open burning incident at Respondents' property located at 715 Eastview Drive. Upon arrival, the Springfield Township Fire Department discovered a burn pile with a small fire and ample smoke. The Springfield Township Fire Department extinguished the fire and notified Respondents of the open burning regulations.

6. On June 2, 2009, ARAQMD investigated the May 15, 2009, open burning incident and verified that Respondents had unlawfully open burned building materials for disposal purposes, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G). By letter dated June 4, 2009, ARAQMD sent a notice of violation letter to Respondents for the open burning violation.

7. On July 7, 2009, ARAQMD received a letter from Respondent Joseph Eberz stating, in part, that Respondents would "make sure that the illegal open burn will not happen again."

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

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704; and
- OAC Rule 3745-19-03(A), which prohibits the open burning of such waste materials.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred and fifty dollars (\$250) per day for each separate violation of the rules in this Chapter for open burning on residential property. The violations that occurred between May 5 and May 9, 2008 and May 15, 2009 are each being assessed this penalty.

10. 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 legal action 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. Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of five hundred dollars (\$500) in administrative penalties pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$500. The official check 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

2. A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, 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**

Respondents' 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 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 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



Chris Korleski  
Director

Date

10/15/09