

OHIO E.P.A.
APR 16 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

George Rank	:	<u>Director's Final Findings</u>
3511 State Route 314	:	<u>and Orders</u>
Shelby, Ohio 45875	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to George Rank ("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 has determined the following findings:

1. Respondent owns the residential property located at 3526 State Route 314 in Sharon Township, near Shelby, Richland County, Ohio. This property is located within an "unrestricted area" as defined in OAC Rule 3745-19-01(K) of Ohio's open burning rules.
2. 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. The rules in OAC Chapter 3745-19 were adopted by the Director under OAC Chapter 3704.

3. OAC Rule 3745-19-04(A) prohibits open burning, as defined in OAC Rule 3745-19-01(H), in an unrestricted area.

4. On September 14, 2007 and July 29, 2008, Respondent conducted open burning at 3526 State Route 314, in violation of OAC Rule 3745-19-04(A).

5. On August 11, 2008, Ohio EPA Northwest District Office issued a Notice of Violation ("NOV") letter to Respondent for illegally open burning in an unrestricted area in violation of Ohio's open burning regulations.

6. Based on the above Findings, the Director of Ohio EPA finds that Respondent on September 14, 2007 and July 29, 2008 violated OAC Rule 3745-19-04(A), for conducting prohibited open burning, and ORC § 3704.05(G).

7. 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 violation of the rules of this Chapter for open burning on a residential property. The open burning violations on September 14, 2007 and July 29, 2008, occurred at 3526 State Route 314, a residential property owned by Respondent, and therefore a \$500 penalty is being assessed.

8. 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.

9. 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 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 3745-19-04 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, for the violations described in Finding 4, Respondent is assessed and shall pay a penalty of five hundred dollars (\$500) 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

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, 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 signed by Respondent and 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.

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

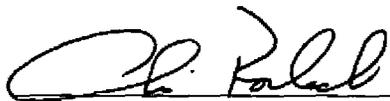
EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to 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



Chris Korleski
Director

4/15/09
Date

Penalty Calculation
George Rank
3511 State Route 314
Shelby, Richland County, Ohio 45875

Dates of Violation	Location	Number of Days Violation Occurred	Penalty Each Day Violation Occurred*	Total Penalty Amount
9/14/07 & 7/29/08	3526 State Route 314	2	\$250*	\$500
Total penalty				\$500

* Ohio EPA penalty factors are \$250 per day per incident for illegal burning on residential property and \$1,000 per day per incident for illegal burning on commercial property, pursuant to OAC Rule 3745-19-06.