



State of Ohio Environmental Protection Agency

OHIO E.P.A.

NOV 24 2010

MAILING ADDRESS:

STREET ADDRESS:

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

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www.epa.state.oh.us

ENTERED DIRECTOR'S JOURNAL P.O. Box 1049
Columbus, OH 43216-1049

November 24, 2010

CERTIFIED MAIL

Ms. Kim Wright
Manager
MHP Holdings - Forest Creek, Ltd.,
d.b.a. Forest Creek Mobile Home Park
2267 Berry Road
Amelia, OH 45102

Re: Unilateral Director's Final Findings and Orders for the March 19, 2009 violation of OAC Chapter 3745-19 for open burning at the Forest Creek Mobile Home Park located in Monroe Township of Clermont County, Ohio

Dear Ms. Wright:

Transmitted herewith are 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 one thousand dollars (\$1,000) per day for each violation of the rules of this Chapter for open burning on a commercial 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 litigation and seek civil penalties of up to \$25,000 per day of violation.

You are hereby informed that the action of the Director is final and may be appealed to the Environmental Review Appeal 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

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Laura H. Powell, Acting Director

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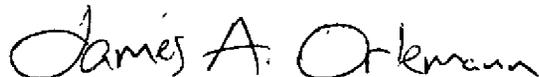
Ms. Kim Wright
Manager
MHP Holdings - Forest Creek, Ltd.,
d.b.a. Forest Creek Mobile Home Park
Page 2 of 2

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, at 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
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

Enclosures

JO/FU/fu

xc: Jim Orlemann, DAPC/CO
Tom Kalman, DAPC/CO
Michael Fair/Kerri Castlen, HCDES
Felix Udeani, DAPC/CO
Stephen Feldmann, Legal Office
Brenda Case, Fiscal
Priscilla Roberson, DAPC/CO
Carol Hester, PIC
Sal G. Scrofano, Statutory Agent, MHP Holdings - Forest Creek, Ltd.

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 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:

MHP Holdings - Forest Creek, Ltd.,	:	<u>Director's Final Findings</u>
d.b.a. Forest Creek Mobile Home Park	:	<u>and Orders</u>
2267 Berry Road	:	
Amelia, Ohio 45102	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to MHP Holdings - Forest Creek, Ltd., d.b.a. Forest Creek Mobile Home Park ("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. No change in ownership of the Respondent or 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. Respondent owns and operates the Forest Creek Mobile Home Park ("Facility") located at Berry Road and County Road 222 in Monroe Township of Clermont County and is over three miles from the nearest incorporated municipalities, i.e., Amelia and Bethel.

2. OAC Rule 3745-19-01(J)(1) of the open burning regulations defines a "restricted area" as within the boundaries of a municipal corporation, 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, or a zone extending one mile beyond

the boundaries of any such municipal corporation having a population of ten thousand persons or more, according to the latest federal census.

3. OAC Rule 3745-19-01(K) defines "unrestricted area" as all areas outside the boundaries of a "restricted area" as defined in Finding #2 above.

4. Respondent's Facility on County Route 222 by Berry Road, in Monroe Township of Clermont County is over three miles from the nearest incorporated municipalities, i.e., Amelia and Bethel. Therefore, Respondent's Facility is in an "unrestricted area" as defined in OAC Rule 3745-19-01(K).

5. OAC Rule 3745-19-04(A) states that no person or property owner shall cause or allow open burning in an unrestricted area except as otherwise provided by rule and law. No exceptions are provided for burning commercial landscape waste, trash, garbage and other waste in an unrestricted area.

6. 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.

7. Hamilton County Environmental Services ("HCES") in Cincinnati, acts under contract as an authorized representative of the Director in Clermont County.

8. On March 19, 2009, Respondent conducted open burning of landscape waste, furniture, rugs, tires, trash and garbage at the Facility, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

9. On March 20, 2009, HCES issued a Notice of Violation ("NOV") letter to Respondent for illegally open burning in an unrestricted area, in violation of Ohio's open burning rules.

10. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars (\$1,000) per day for each violation of the rules of this Chapter for open burning on commercial property. The open burning violation on March 19, 2009, occurred at the Facility, a commercial property managed by Respondent and was a large fire requiring the Fire Department's attention; therefore, a \$1,000 penalty is being assessed.

11. 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.

12. 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 3745-19-04 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand dollars (\$1,000) 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 \$1,000. 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

3. 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, has continued to comply with all continuing obligations, 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 signed by Respondent and submitted to Ohio EPA. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of 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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Hamilton County Environmental Services
Air Quality Management
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attention: Kerri Castlen, Permit & Enforcement Area Supervisor

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

IX. 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.

X. 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

_____ 11/23/10 _____
Date