

OHIO E.P.A.

BEFORE THE

FEB 28 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

John Erb, d.b.a.

Tree Saver Pallets Recycling Company

1784 Mini Ranch

Geneva, Ohio 44041

:
:
:
:

**Director's Final Findings
and Orders**

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to John Erb d.b.a. Tree Saver Pallets Recycling Company ("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 the 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 the 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 waste materials from a business operation is not an exception 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 the commercial property located on 5750 West 58 Street, Ashtabula, Ohio (Ashtabula County), which it uses for rebuilding wood pallets. The property is located within a restricted area, as defined by OAC Rule 3745-19-01(K).

5. On September 4, 2007, an Ohio EPA, Northeast District Office ("NEDO") investigator gave the Respondent a verbal warning regarding an earlier open burning incident that was conducted on the property and explained the open burning regulations to the Respondent.

6. On September 19, 2007, Ohio EPA sent a Notice of Violation ("NOV") letter to the Respondent for the open burning violation identified above and requested Respondent to cease all illegal open burning and find an alternative means of waste disposal. The issue was considered to be resolved with the issuance of the NOV.

7. On March 3, 2011, NEDO received a letter from the Ashtabula Township Fire Department ("ATFD") requesting NEDO's help with citizens' complaints about continual open burning on the Respondent's property. The letter indicated that ATFD responded to open burning incidents at the Respondent's property on June 18, 2010, July 10, 2010, January 25, 2011, and February 16, 2011. ATFD enclosed in its letter, a copy of ATFD's dispatch call sheet for the complaints received on March 3, 2011.

8. On March 16, 2011, NEDO sent another NOV letter to the Respondent regarding ATFD's numerous responses to the open burning incidents on the Respondent's property between 2010 and 2011. The NOV letter explained the open burning regulations and stated that further action by NEDO would not be necessary if the Respondent complied with the open burning standards in the future.

9. On June 30, 2011, a NEDO inspector observed open burning in three large vessels on the Respondent's property for waste disposal purposes. ATFD did not respond to this illegal open burning incident because the fire truck could not access the burn sites. Respondent's open burning of improper waste materials in a restricted area

constitute violations of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

10. On July 11, 2011, NEDO sent a third NOV letter to Respondent. The NOV cited the Respondent for the aforementioned violations and requested the Respondent to submit in writing, its compliance plan to prevent future violations of the open burning standards on its property. The Respondent did not respond to the NOV letter.

11. On November 30, 2012, ATFD responded to another illegal open burning incident at the Respondent's property. On December 17, 2012, NEDO sent a fourth NOV letter to the Respondent citing a violation of OAC Rule 3745-19-03 for the November 30, 2012 open burning incident.

12. 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 2010, 2011, and 2012. The Respondent is also found noncompliant with the NOV's issued in 2007 and 2011 by additional illegal open burning of improper waste materials in 2012.

13. 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.

14. Should the 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.

15. 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. The Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

2. Within thirty (30) days after the effective date of these Orders, for the violations described in the Findings, the Respondent is assessed and shall pay a

penalty of six thousand dollars (\$6,000) 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 Carol Butler, 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, 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

The Respondent's obligations under these Orders shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of the Ohio EPA that the 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 the Ohio EPA does not agree that all obligations have been performed, then the Ohio EPA will notify the Respondent of the obligations that have not been performed, in which case the 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 the Respondent to the Ohio EPA and shall be signed by the 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 the Respondent.

VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent the 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 the Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent the Ohio EPA from exercising its lawful authority to require the 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 the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which the Ohio EPA may seek to require of the Respondent. Nothing in these Orders shall be construed to limit the authority of the 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

2/21/13

Date