



July 1, 2013

**CERTIFIED MAIL**

Ms. Tracy Barry  
Managing Member  
Oryann Ltd, LLC  
8560 Billings Road  
Kirtland, Ohio

Re: Final Findings and Orders for:  
Resolution of ERAC appeal involving  
violations of Ohio EPA's air pollution  
control laws and regulations at 8560  
Billings Road in Kirtland

Dear Ms. Barry:

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

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 that is stamped on the first page of the Orders.

Sincerely,



Bruce D. Weinberg  
Environmental Manager  
Compliance/Enforcement Section  
Division of Air Pollution Control

BDW/bw

xc: Carol Hester, PIC  
Courtney Flowers, DAPC  
Carol Butler, Fiscal Office  
Drew Bergman, Legal Office  
Bert Mechenbier, LCGHD

JUL - 1 2013

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ms. Tracy Barry  
8560 Billings Road  
Kirtland, Ohio

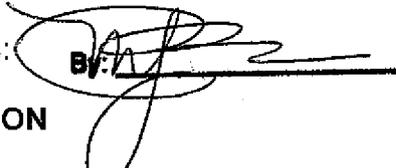
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Director's Final Findings  
and Orders

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: 

Date: 7/1/2013

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tracy Barry ("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 Respondent 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. Oryann Ltd., LLC owns the property located on 8560 Billings Road, Kirtland, Ohio (Lake County). Respondent is the managing member of Oryann Ltd., LLC. The property is located in a "restricted" area, as defined in OAC 3745-19-01(K).
2. OAC Rule 3745-19-03(A) prohibits any property owner or person from causing or allowing "open burning," as defined in OAC Rule 3745-19-01(I), in an unrestricted area except as otherwise provided in OAC Rules 3745-19-03(B) to (D) and ORC 3704.11.

These exceptions to the open burning prohibition do not provide for the open burning of building demolition debris.

3. OAC 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. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

4. In January of 2011, Respondent applied for and obtained permission from the Lake County General Health District, Division of Air Pollution Control ("LCGHD") to open burn for recognized range management practices, as allowed under OAC Rule 3745-19-03(D)(4), at the property located on 8560 Billings Road, in Kirtland.

5. On or about December 13, 2011, Respondent open burned unauthorized waste for disposal purposes, including a telephone pole, pallets, green brush, lumber, and other waste materials. On December 13, 2011, an LCGHD inspector investigated the ongoing fire at the property, confirmed unauthorized waste materials were in the burn pile, and observed evidence of previously burned demolition debris at other burn sites on the property. The LCGHD inspector informed the Respondent that many of the waste materials being open burned on the property could not be open burned under the conditions of the permission granted by the LCGHD.

6. On December 21, 2011, the LCGHD issued a notice of violation letter to the Respondent for the illegal open burning of unauthorized waste materials at the property located on 8560 Billings Road, in Kirtland.

7. In January of 2012, Respondent reapplied for and obtained permission from the LCGHD to open burn for recognized range management practices, as defined in OAC Rule 3745-19-03(D)(4), at the property located on 8560 Billings Road, in Kirtland.

8. On or about June 13, 2012, Respondent open burned unauthorized waste for disposal purposes, including mattress springs and chairs. On June 13, 2012, an LCGHD inspector investigated the burn site at the 8560 Billings Road property and observed waste materials including mattress springs and chairs in the burn pile.

9. On June 27, 2012, the LCGHD issued a second notice of violation letter to the Respondent for the illegal open burning of unauthorized waste materials at the property located on 8560 Billings Road, in Kirtland. Because the Respondent violated the conditions of the open burning permissions issued by the LCGHD in 2011 and 2012, the District revoked the Respondent's authorization to open burn for recognized range management practices at the property located on 8560 Billings Road, in Kirtland.

10. On July 2, 2012, Respondent reapplied for permission from the LCGHD to open burn for recognized range management practices, as defined in OAC Rule 3745-19-03(D)(4), at the property located on 8560 Billings Road, in Kirtland.

11. On September 5, 2012, LCGHD proposed to deny Respondent permission to open burn. The Health District based its proposed denial on OAC Rule 3745-19-05(A)(5), which states that violations of conditions set forth in previous permissions to open burn shall be grounds for refusal to grant future permissions.

12. On September 20, 2012, the Respondent appealed the LCGHD's proposed denial of the permission to open burn for recognized range management practices at the property located on 8560 Billings Road, in Kirtland.

13. 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 of Ohio EPA hereby issues the following Orders:

1. Pursuant to ORC 3704.06, Respondent is assessed a civil penalty in the amount five hundred dollars (\$500) in settlement of Ohio EPA's claims for administrative penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$500. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondents, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of the above checks shall be sent to Bruce Weinberg, Environmental Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. Respondent shall comply with the applicable requirements specified in OAC Chapter 3745-19 for all future open burning activities conducted at the property located on 8560 Billings Road, in Kirtland, Ohio. If Respondent conducts an open burning activity at the 8560 Billings Road property during calendar years 2013 and 2014 that is not in accordance with the applicable requirements specified in OAC Rule 3745-19-03, Respondent shall pay a stipulated penalty of five hundred dollars (\$500) per occurrence. If a stipulated penalty is triggered, the penalty payment shall be made in accordance with the procedures specified in Order 1.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate on December 31, 2014, and upon Ohio EPA's receipt of the official check(s) required by Section V of these Orders.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operations of Respondent.

#### **VIII. 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.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

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

Lake County General Health District  
33 Mill Street  
Painesville, Ohio 44077  
Attention: Bert Mechenbier, Supervisor

Division of Air Pollution Control

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Bruce Weinberg, Environmental Manager  
Enforcement Section

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

#### **XIII. EFFECTIVE DATE**

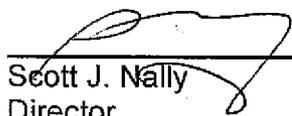
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**ORDERED AND AGREED:**

Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Scott J. Nally  
Director

6/13/13  
\_\_\_\_\_  
Date

**AGREED:**

Tracy Barry

  
\_\_\_\_\_  
Signature

5-20-13  
\_\_\_\_\_  
Date