

OHIO EPA

BEFORE THE

FEB -9 2016

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

David H. Smith
4589 Erie Ave NW
Canal Fulton, Ohio 44614

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Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to David H. Smith ("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.

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 a residential property located at 4589 Erie Ave NW, Canal Fulton, Ohio. Respondent's property is located in "unrestricted areas" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(N).

2. OAC Rule 3745-19-04(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(K), in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) through (D) and ORC § 3704.11.

3. OAC Rule 3745-19-04(C)(7) states, in part, that open burning for the disposal of land clearing waste shall be allowed upon written permission from Ohio EPA, in accordance with paragraph (A) of Rule 3745-19-05.

3. 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.

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

4. On September 29, 2015, in follow-up to a complaint from the Lawrence Township Fire Department of an open burning at Respondent's property on September 19, 2015, Canton City Health Department ("CCHD"), a contractual representative of Ohio EPA in Stark County, conducted an inspection of the burn site. Upon arrival, CCHD documented that the burn area was 31.5 feet in diameter. It contained at least 3 tree trunks that were still intact and two others that had been burnt and measured 18 feet in length and 19 inches in diameter. The burn area also contained burned rubber that appeared to be a tire from a four-wheeler and various metals, including mechanisms for reclining furniture, mattress/soft springs, a small gas cylinder and a beverage can. In addition, the burn area contained unburned construction debris that included plywood, wiring, painted lumber, and a caulking tube. In a telephone conversation with CCHD on October 5, 2015, Respondent indicated that the above-referenced fire was to dispose of the tree trunks that were cut down to make room for parking for Respondent's business. Based on available information, CCHD concluded that the September 19, 2015 open burning was means to dispose of commercial wastes as well as other household items. Since Respondent open burned non-residential wastes in an unrestricted area which were located 665 feet from the closest neighboring home not located on the property, and without previously obtaining a permission from Ohio EPA to burn the tree trunks, Respondent was in violation of OAC Rules 3745-19-04(A) and ORC § 3704.05(G). By letter dated October 6, 2015, CCHD notified Respondent of the violations.

5. The Director of Ohio EPA finds that Respondent violated OAC Rule 3745-19-04(A) and ORC § 3704.05(G) for conducting prohibited open burning in an unrestricted area.

6. Through unilateral orders, the Director may assess a violator not more than two hundred fifty dollars (\$250) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning of residential waste and not more than one thousand dollars (\$1,000) per day for each separate violation of the rules in this Chapter for open burning of all wastes that are not residential waste. A separate penalty is assessed for each day the violation occurs.

7. 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 the 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.

8. 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:

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 Carol Butler, or her successor, with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's 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 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. APPEAL RIGHTS

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:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

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



Craig W. Butler
Director

2/5/16

Date