



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

October 30, 2020

CERTIFIED MAIL

Marilyn McCoy
5350 East Sparta Ave. SE
East Sparta, Ohio 44626

Re: Final Findings and Orders for air pollution violations

Dear Ms. McCoy,

Transmitted herewith for, your records, 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,

A handwritten signature in black ink, appearing to read "James Kavalec", is written over a horizontal line.

James Kavalec, Manager
Compliance/Enforcement Section
Division of Air Pollution Control

ec: Don Vanterpool, Legal
Tan Tran, DAPC
Linda Morckel/Terri Dzienis, Canton
John Paulian, DAPC

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

10/30/2020

In the Matter of:

Marilyn McCoy	:	<u>Director's Final Findings</u>
5350 East Sparta Ave. SE	:	<u>and Orders</u>
East Sparta, Ohio 44626	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Marilyn McCoy ("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 Respondent's property 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 property located at 5362 East Sparta Ave. SE, East Sparta, Ohio. In July and August of 2020, Respondent allowed open burnings at the above-referenced property. The property is located in an "unrestricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(O).

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

3. ORC § 3704.05(G) states 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 July 16, July 17 and August 8, 2020, the Canton Township Fire Department ("CTFD") responded to open burning incidents occurring at Respondent's property located at 5362 East Sparta Ave. SE, East Sparta, Ohio. July 20 and August 10, 2020, Canton City Public Health – Air Pollution Control ("Canton APC") was provided information from the CTFD regarding the open burning incidents.

5. Upon arriving on site for the July 16, 2020 open burning incident, CTFD observed a fire approximately 8-feet by 8-feet which contained green wood/leaves along with bundles of paper. The CTFD extinguished the fire.

6. On July 17, 2020, CTFD responded to another illegal open burn at Respondent's property. Upon arrival, CTFD documented an approximately 10-foot by 10-foot fire which contained large wood from a structure and shingles. The fire was immediately extinguished by CTFD.

7. On August 8, 2020, CTFD responded to another illegal open burn at Respondent's property. Upon arrival, CTFD documented a large unauthorized burn pile estimated to be 8-feet by 5-feet by 4-feet which contained trash, construction debris (walls, roofing, siding), and a bicycle wheel. CTFD extinguished the fire.

8. Based on the evidence collected by CTFD on July 16, 2020, July 17, 2020, and August 8, 2020, Respondent caused or allowed the open burning of the above-referenced items for disposal purposes in an unrestricted area, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). On July 23, 2020, and on August 10, 2020, Canton APC sent a Notice of Violation letter to Respondent citing the above-referenced violations.

9. The Director has given consideration to, and based her 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. ORDER

The Director hereby issues the following Order:

1. Respondent shall pay the amount of two hundred and fifty dollars (\$250) in settlement of Ohio EPA's claims for civil 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 two hundred and fifty dollars (\$250). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
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 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, operations by 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:

Canton City Public Health – Air Pollution Control
420 Market Ave. N.
Canton, Ohio 44702
Attention: Terri Dzienis

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: James Kavalec, 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 specially 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

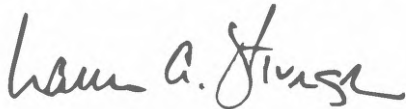
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



10/30/2020

Laurie A. Stevenson
Director

Date

IT IS SO AGREED:

Marilyn McCoy



Signature

Date