

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

James Dowdell : Director's Final Findings
14977 Gaskill Dr. NE : and Orders
Alliance, Ohio 44601 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to James Dowdell ("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 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 is the tenant of a property located at 14977 Gaskill Dr. NE, Alliance, Ohio. In August of 2019 and September of 2020, Respondent unlawfully open burned materials at the above-referenced property. The property is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(N).

2. OAC Rule 3745-19-03(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(L), in a restricted area, except as otherwise provided in OAC Rule 3745-19-03(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 August 21, 2019, Lexington Township Fire Department (LTFD) responded to an illegal open burn at Respondent's residence located at 14977 Gaskill Dr. NE, Alliance, Ohio. Based on the information from LTFD's August 21, 2019 Run Report, upon arrival, LTFD documented a large open burn approximately 6 feet by 6 feet with burning materials included tires, mattresses, and household items with a large can of gasoline next to fire. The fire was immediately extinguished. Respondent was ordered by LTFD not to restart the fire. The LTFD also informed Respondent of the local open burn regulation. Photos of the open burn were taken for documentation by LTFD.

5. On September 1, 2020, LTFD responded to another illegal open burning incident at Respondent's residence and found a large unattended fire in the back of the residence that contained tires, rims, rolled up carpet, beer cans, plastic bottles, food, speakers, reclining chair, aerosol cans, full size mattress and box springs. The LTFD extinguished the fire and again advised Respondent of the local open burn regulation. In addition, photo documentation was taken by the LTFD. On September 8, 2020, LTFD informed Canton City Public Health – Air Pollution Control ("Canton APC") about the open burning incident.

6. Based on the evidence collected by LTFD on August 21, 2019 and September 1, 2020, Respondent caused or allowed the open burning of the above-referenced items for disposal purposes in a restricted area, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G). On September 15, 2020, Canton APC sent a Notice of Violation letter to Respondent citing the above-referenced violations.

7. 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 five hundred dollars (\$500) 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 five dollars (\$500). 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:

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



Laurie A. Stevenson
Director

11/13/2020

Date

IT IS SO AGREED:

James Dowdell



Signature

10-10-2020
Date