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BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Fred Luthi
4465 Manchester Ave. SW
Navarre, Ohio 44662

: Director's Final Findings
: and Orders
:

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EPA / OFA
ENVIRONMENTAL
FISCAL SECTION

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Fred Luthi ("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 is the owner of a property located at 4465 Manchester Ave., SW, Navarre, Ohio. Respondent operates Luthi's Towing at this address. In June of 2021, Respondent unlawfully caused or allowed open burning of unpermitted materials 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 June 2, 2021, Canton City Public Health – Air Pollution Control Division ("Canton APC"), a contractual agent of Ohio EPA in Stark County, received an anonymous complaint of ongoing open burning of debris at Respondent's facility located at 4465 Manchester Ave. SW, Navarre, Ohio. The complainant also indicated that open burning typically occurs on evening and weekends at this property. On June 3, 2021, Canton APC and a representative from the Stark County Health Department visited Respondent's facility to investigate the complaint. Upon arrival, Canton APC documented evidence of building materials including plywood, stained and painted wood, wires, plastics and residential waste being burned in several burn areas; the residential waste appears to have not been generated by the business and was brought onto the property for disposal. Canton APC also documented that these burn areas are located within 1,000 feet of several homes not located on the subject property. Canton APC took photographs of burn areas for documentation. According to Canton APC, this recent open burning incident is the second documented incident at this property since 2018.

5. Based on the evidence collected by Canton APC on June 3, 2021, Respondent caused or allowed the open burning of building materials, wires, and plastics for disposal purposes in an unrestricted area, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). On June 15, 2021, Canton APC sent a Notice of Violation letter to Respondent citing the above-referenced violations.

6. 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 one thousand dollars (\$1,000) 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 one thousand dollars (\$1,000). 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 Respondents pursuant to these Orders shall be addressed to:

Canton City Public Health – Air Pollution Control Division
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



Laurie A. Stevenson
Director

8/11/2021

Date

IT IS SO AGREED:

Fred Luthi



Signature

July 23, 21

Date