



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

CERTIFIED MAIL

December 23, 2021

James Carkhuff
Jeffco Lake Free Enterprise Inc.
3556 State Route 307
Austin, Ohio 44010

Re: Proposed Director's Final Findings and Orders for the violations of Ohio Administrative Code ("OAC") Chapter 3745-19 (Open Burning Standards).

Dear Mr. Carkhuff:

My staff has informed me of the violations of OAC Chapter 3745-19 and ORC § 3704.05(G) associated with the illegal open burning incidents at a property located at 914 Garrison Road in Ashtabula, Ohio and at another property located at 6758 Hayes Road in Andover, Ohio.

In order to resolve this matter, I am proposing to issue the enclosed Findings and Orders, prepared by my staff, which includes a provision for the settlement of the claims for civil penalties for the violations that occurred. I am proposing the use of Findings and Orders because this is the most expeditious means of resolving the violations. It is my expectation that this matter will be resolved within six months of the date of this letter. Also, enclosed is an administrative enforcement process guide to facilitate your review of the proposed Findings and Orders. Because this letter and the enclosed documents summarize a proposed settlement, I consider them to be inadmissible for any purpose in any subsequent enforcement action the State may take if settlement cannot be reached.

Please review the attached documents carefully. If Ohio EPA does not hear from you within fourteen (14) days of the receipt of this letter concerning your willingness to accept the Findings and Orders as currently written, or with mutually agreed upon modifications, or if this matter is not resolved with final Findings and Orders within six (6) months of the date of this letter, I will consider alternative enforcement mechanisms including referral of the matter to the Ohio Attorney General's Office for legal action. If you have any questions concerning the proposed Findings and Orders, or if you would like to arrange a conference call to try to negotiate a mutually acceptable settlement, please contact Stephen R. Feldmann, Senior Staff Attorney, at (614) 644-3037 or Stephen.Feldmann@epa.ohio.gov.

I hope that you and Ohio EPA are able to resolve this matter via the enclosed proposal, and I thank you in advance for your cooperation.

Mr. James Carkhuff
Jeffco Lake Free Enterprise Inc.
Proposed Director's Final Findings and Orders

Page 2

Sincerely,

Laurie A. Stevenson
Director

xc: James Kavalec/John Paulian/Tan Tran, DAPC
Doug Dobransky/Misty Whitmyer/Tim Fischer, NEDO-DAPC
Steve Feldmann, Legal Office

Enclosures

LAS:TT:tt

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Jeffco Lakes Free Enterprise, Inc.	:	<u>Director's Final Findings</u>
3556 State Route 307	:	<u>and Orders</u>
Austinburg, Ohio 44010	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Jeffco Lakes Free Enterprise, Inc. ("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 914 Garrison Road, Ashtabula, Ohio. Respondent also owns another property at 6758 Hayes Road, Andover, Ohio. In September of 2021, Respondent unlawfully caused or allowed open burning of unpermitted materials at the above-referenced properties. These properties are 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 September 10, 2021, the Ohio Environmental Protection Agency, Northeast District Office ("NEDO") received information regarding an illegal burn that occurred on September 4, 2021 at 6758 Hayes Road, Andover, Ohio. This information contained an incident report which had been made by the Wayne Township Volunteer Fire Department ("WTVFD"). According to WTVFD, on September 4, 2021, WTVFD was dispatched to the above-referenced property as a response to an illegal fire. According to WTVFD's report, upon arrival, WTVFD documented that there was an active fire of a camper trailer. According to the WTVFD, the camper trailer was burned for disposal purposes. WTVFD extinguished the fire and advised Respondent that burning such camper trailer is prohibited. Photographs of the fire were taken by WTVFD for documentation purposes.

5. On September 28, 2021, NEDO conducted a site investigation at 6758 Hayes Road, Andover, Ohio. Upon arrival, NEDO documented evidence that a trailer had been burned to the ground and an additional burn area in close vicinity. NEDO identified that materials in the burned trailer and separate burn pile were wood, metal, insulation and linoleum floor tile.

6. Based on the evidence collected by WTVFD on September 4, 2021 and NEDO's September 28, 2021 investigation, Respondent caused or allowed the open burning of a camper trailer, wood, metal, insulation and linoleum floor tile for disposal purposes in an unrestricted area, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). On October 8, 2021, NEDO sent a Notice of Violation ("NOV") letter to Respondent citing the above-referenced violations.

7. On September 27, 2021, NEDO received information regarding an illegal burn that occurred on September 25, 2021 at 914 Garrison Road, Ashtabula, Ohio. The information contained an incident report which was made by the Plymouth Township Fire Department ("PTFD"). According to PTFD, on September 25, 2021, PTFD was dispatched to the above-referenced property as a response to multiple reports of an explosion/fire. According to PTFD's report, upon arrival, PTFD documented that there was an active fire of a motorhome at the back of the property. According to the PTFD, accelerant such as gasoline was used to start the fire, and the motorhome was burned for disposal purposes. PTFD extinguished the fire and advised Respondent that burning a motorhome is prohibited. Photographs of the fire were taken by PTFD for documentation purposes.

8. Based on the evidence collected by PTFD on September 25, 2021, Respondent caused or allowed the open burning of a motorhome for disposal purposes in an unrestricted area, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). On October 27, 2021, NEDO sent a NOV 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 five thousand dollars (\$5,000) 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 five thousand dollars (\$5,000). 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 Respondent pursuant to these Orders shall be addressed to:

Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087-1924
Attention: Tim Fischer, Manager, NEDO-DAPC

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

Date

IT IS SO AGREED:

Jeffco Lakes Free Enterprise, Inc.

Signature

Date

Title