

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

<b>Village of Barnesville</b>	<b>:</b>	<b><u>Director's Final Findings</u></b>
<b>126 Church Street</b>	<b>:</b>	<b><u>and Orders</u></b>
<b>Barnesville, Ohio 43713</b>	<b>:</b>	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the Village of Barnesville ("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 facility, as hereinafter defined, 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 operates a fire department ("Barnesville FD") at a station located at East Church Street, Barnesville, Ohio. Barnesville is an incorporated municipality and is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(B)(I).

2. Ohio Administrative Code ("OAC") Rule 3745-19-03(A), in part, prohibits any person or property owner from causing or allowing open burning in a restricted area except as provided in OAC Rule 3745-19-03(B), (C) or (D). OAC Rule 3745-19-03(D)(2) states that open burning shall be allowed for the purpose of instruction in methods of fire fighting or for research in the control of fire upon receipt of written permission from Ohio EPA, in

accordance with OAC Rule 3745-19-05(A). OAC Rule 3745-19-05(A) requires that an application for permission to open burn be submitted to Ohio EPA at least ten days before the fire is to be set. The application is required to contain all of the applicable information listed in OAC Rule 3745-19-05(A).

3. OAC Rule 3745-20-02(A) requires that each owner or operator of a demolition or renovation operation must, prior to the commencement of such operations, have the affected facility or portion of a facility structure thoroughly inspected for the presence of asbestos-containing materials, including Category I and Category II non-friable asbestos-containing materials as defined in OAC Rule 3745-20-01(B)(9) and (B)(10).

4. OAC Rule 3745-20-03(A) requires, in part, that any owner or operator of a demolition operation provide Ohio EPA with written notice of intention to demolish or renovate at least ten working days prior to the commencement of such operations.

5. OAC Rule 3745-20-04(E) states that if a facility is to be demolished by intentional burning, all regulated asbestos-containing materials, including Category I and Category II non-friable asbestos-containing materials, must be removed in accordance with OAC Chapter 3745-20 before burning.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapters 3745-19 and 3745-20 were adopted by the Director pursuant to ORC Chapter 3704.

7. On December 10 and 12, 2003, Ohio EPA received anonymous complaints regarding smoke emanating from a burning warehouse ("the facility") on Watt Street in Barnesville. The complaints alleged that the fire had been burning since December 5 or 6, 2003.

8. On December 12, 2003, a representative from Ohio EPA, Southeast District Office ("SEDO") spoke with the Chief of the Barnesville Fire Department (FD) ("Fire Chief") regarding the complaints, and requested that the fires be extinguished. The Fire Chief stated that the Fire Department had been burning the warehouse for fire training on December 6, 2003, for a total of 3 ½ hours. SEDO investigated the complaint and found that a 90-foot by 240-foot building on Watt Street had been pushed in and burned. The property that had been burned had previously been an industrial site owned by Watt Car and Wheel Corporation. The property had been purchased by the Respondent in 1996 or 1997.

9. On December 18, 2003, SEDO met with the Fire Chief, the Village Administrator, and the Mayor of Barnesville to discuss the open burning issues resulting from the complaints received on December 10 and 12, 2003. During the meeting, it was stated by the Fire Chief that the building had been pushed in and burned for a period of three days for fire training. Previously, it had been stated that the fire training had only lasted 3 ½ hours.

10. During the December 18, 2003 meeting, the Village Administrator stated that the Barnesville Water Treatment Plant had recently demolished another building. SEDO has no record of a notification of demolition being submitted for such project. Review of the Watt Car and Wheel Corporation site indicated that several other buildings at that location had been demolished in the past.

11. By letter dated January 2, 2004, SEDO requested that Barnesville FD submit a list of buildings that had been demolished or renovated at the Watt Car and Wheel Corporation site and the Barnesville Water Treatment Plant, and the dates of such demolition or renovation, documentation of any asbestos inspection and/or removal, the name and location of the demolition debris disposal facility, any pictures or supporting documentation from the recent fire training at the Watt Street location, and an accurate description of the fire training exercises conducted, including duration of the training exercise, number of fire fighters involved and how many fire fighters were receiving their 36-hour beginner's training. The information was requested to be submitted to SEDO within 30 days of receipt of the warning letter.

12. By letter dated January 21, 2004, Barnesville FD responded to the warning letter of January 2, 2004, from SEDO. The letter included information regarding the fire training requested by SEDO. In the letter, the Fire Chief denied knowledge of OAC Chapters 3745-19 and 3745-20. On October 1, 2002, SEDO mailed copies of an application form for permission to conduct open burning, a notification of demolition or renovation form, and OAC Chapters 3745-19 and 3745-20 to all fire departments under SEDO's jurisdiction, including Barnesville FD.

13. By letter dated January 16, 2004, Respondent submitted information to SEDO regarding a Phase I Environmental Assessment performed by the previous owners of the building. The assessment did not address the presence of asbestos-containing materials, and focused on underground pollution due to inorganic and organic compounds.

14. On January 22, 2004, SEDO asked Respondent for clarification on a question not answered by previous correspondence; specifically, was there any evidence of previous asbestos inspections at the Watt Street location.

15. By letter dated January 23, 2004, SEDO mailed a package to Barnesville FD that included Ohio's open burning standards (OAC Chapter 3745-19), two applications for permission to conduct open burning, and two copies of the notification of demolition or renovation form.

16. By letter dated January 30, 2004, Respondent submitted three letters to SEDO to support statements that there was no asbestos in the building; however, the letters also indicate that no asbestos survey was undertaken at any time at the Watt Car property.

17. Based on the above findings, the Director of Ohio EPA finds that Respondent, as local government authority over the Barnesville FD, violated the following ORC laws and OAC rules:

- a. ORC § 3704.05(G), for violating rules the Director adopted under ORC Chapter 3704;
- b. OAC Rule 3745-20-02(A), for failing to have the structure located at on Watt Street in Barnesville thoroughly inspected for the presence of asbestos-containing materials prior to beginning demolition by intentional burning operations;
- c. OAC Rule 3745-20-03(A), as the owner or operator of the demolition operation, for failing to provide Ohio EPA with written notice of intention to demolish by intentionally burning the structure at least ten working days prior to the commencement of operations;
- d. OAC Rule 3745-19-03(A), for the open burning in a restricted area and not as provided in OAC Rule 3745-19-03(B), (C) or (D); and
- e. OAC Rule 3745-19-05(A), for failure to submit an application for permission to open burn to Ohio EPA at least ten days before the fire was to be set.

18. 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 Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of four thousand dollars (\$4,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$4,000. The official check shall be submitted to Brenda Case, 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, the operation of Respondent's facility.

#### **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  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
Attn: Bruce Weinberg

and to:

Ohio Environmental Protection Agency

Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049  
Attn: Thomas Kalman

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 specifically 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

\_\_\_\_\_  
Joseph P. Koncelik  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

Village of Barnesville

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title