

OHIO E.P.A.

BEFORE THE

AUG -8 2007 OHIO ENVIRONMENTAL PROTECTION AGENCY

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ENTERED DIRECTOR'S JOURNAL
In the Matter of:

Chris Weiss
5194 Lane Road
Perry, Ohio 44081

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

Director's Final Findings
and Orders

By: Will Hill Date: 8/8/07

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PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Chris Weiss ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent or of facility as hereinafter identified 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, with residence at 7320 LeRoy-Thompson Road, Painesville, Ohio, owns a commercial property that is located at 5194 Lane Road, Perry Township, Lake County, Ohio. Respondent uses this commercial property for office and storage space. Respondent's property is located in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J) concerning open burning.

2. OAC Rule 3745-19-04(A) prohibits any person or property owner from open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) and (C) and in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of waste materials at a commercial property in an unrestricted area.

3. On May 14, 2005, the Lake County General Health District ("LCGHD"), a contractual representative of Ohio EPA in Lake County, conducted an investigation at Respondent's above-referenced commercial property. The inspection occurred because of visible smoke the LCGHD representative observed as he drove by the property. Upon entering the property, LCGHD documented that open burning of commercial waste materials was being conducted. LCGHD noticed that there were bad odors and a significant amount of smoke generated from the open burning. Upon examining the fire, LCGHD confirmed that it was an open burning of paint cans, spray cans, a plastic tarp, and other miscellaneous items. LCGHD requested Respondent's representative on site to extinguish the fire but was informed that there was no water available. As a result, LCGHD contacted the Perry Joint Fire District ("PJFD") to extinguish the fire. Since open burning of commercial wastes was conducted in an unrestricted area, Respondent was in violation of OAC Rule 3745-19-04(A).

4. On May 16, 2005, LCGHD met with Respondent on his property to explain the open burning and solid waste regulations. At this meeting, LCGHD informed Respondent of his violation of open burning regulations as a result of the May 14, 2005 incidence.

5. On May 19, 2005, LCGHD sent Respondent a Notice of Violation ("NOV") letter, citing Respondent for the violation that was observed during the May 14, 2005 investigation. In this NOV, LCGHD requested that Respondent cease open burning in violation of Ohio EPA regulations.

6. Information provided by PJFD indicated that on May 2, 2006, an open burning of commercial wastes was conducted at Respondent's property. Based on an anonymous call, PJFD arrived and extinguished the fire. Since open burning of commercial wastes was conducted in an unrestricted area, Respondent was in violation of OAC Rule 3745-19-04(A).

7. On May 31, 2006, LCGHD conducted an investigation at Respondent's property due to visible smoke observed during a drive-by on that day. During this visit, LCGHD witnessed an open burning of 55-gallon drums, spray cans, an old shopping cart, wire, and other miscellaneous items, in violation of OAC Rule 3745-19-04(A). LCGHD took photographs of the open burning for documentation.

8. On July 18, 2006, LCGHD sent Respondent a NOV letter, citing Respondent for the violation that was observed during the May 31, 2006 investigation. In this NOV, LCGHD again requested that Respondent cease open burning in violation of Ohio EPA regulations.

9. All of the above-referenced violations also constitute violations of ORC § 3704.05(G), which prohibits any person from violating any rule adopted by the Director of Ohio EPA under this chapter. OAC Rule 3745-19-04 was adopted by the Director of Ohio EPA under this chapter.

10. Ohio EPA's civil penalty policy for open burning violations at non-residential facilities is one thousand dollars (\$1,000) per incidence.

11. 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 Orders:

1. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of one thousand dollars (\$1,000) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of one thousand dollars (\$1,000) pursuant to the following schedule:

- four hundred dollars (\$400) due within thirty (30) days after the effective date of these Orders;
- two hundred dollars (\$200) due within sixty (60) days after the effective date of these Orders;
- two hundred dollars (\$200) due within ninety (90) days after the effective date of these Orders; and
- two hundred dollars (\$200) due within one hundred twenty (120) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each of these official checks 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

2. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
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 checks 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:

Lake County General Health District
33 Mill Street
Painesville, Ohio 44077
Attention: Bert Mechenbier

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, 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 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

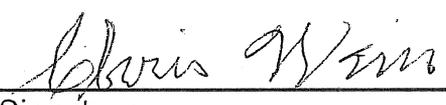


Chris Korleski
Director

8/2/07
Date

IT IS SO AGREED:

Chris Weiss



Signature

20 July 07
Date