OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Daniel Gallagher	:	**Director's Final Findings**
2001 Spencerville Road	:	**and Orders**
Lima, Ohio 45805	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Daniel Gallagher ("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.

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 manages the property (Gethsemani Cemetery) located at 2001 Spencerville Road in Lima, Allen County, Ohio. The property is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).

2. OAC Rule 3745-19-03(A) prohibits any person or property owner from causing or allowing "open burning," as defined in OAC Rule 3745-19-01(H), in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-03(B) to (D) and ORC § 3704.11 do not provide for the open burning of landscape wastes from a nonresidential or nonagricultural facility in a restricted area.

3. ORC § 3704.05(G) states, in part, 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.

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.

By: _____ Date: 3-11-08

4. On September 28, 2007, the Shawnee Township Fire Department ("Fire Department") responded to a fire at Gethsemani Cemetery located at 2001 Spencerville Road. Upon arrival on-site, the Fire Department discovered a large fire that was caused by the illegal open burning of landscape waste. The Fire Department had to use over 10,000 gallons of water to extinguish the fire.

5. On October 15, 2007, the Fire Department notified Ohio EPA of the illegal open burning activity and Ohio EPA conducted a complaint investigation on October 19, 2007. During the complaint investigation, Ohio EPA witnessed the remnants of the burn pile and determined that Respondent had unlawfully open burned landscape wastes from a nonresidential or nonagricultural facility in a restricted area.

6. The open burning of such waste material is prohibited by rule, and the open burning was not otherwise exempted from the prohibition of OAC rule 3745-19-03(A).

7. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rule:

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704; and
- OAC Rule 3745-19-03(A), which prohibits the open burning of such waste materials.

8. On October 22, 2007, Ohio EPA sent a Notice of Violation letter to Respondent for the open burning violations identified above.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars ($1,000) per day for each separate violation of the rules in this Chapter for open burning on commercial property. The violation that occurred on September 28, 2007 is being assessed this penalty.

10. Should Respondent fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, under the authority of ORC § 3704.06, the Director may request that the Attorney General pursue litigation and seek civil penalties of up to $25,000 per day of violation.

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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall achieve compliance with the requirements of OAC Chapter 3745-19 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand dollars ($1,000) to Ohio EPA in administrative penalties pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $1,000. The official check shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

3. A copy of the check 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 check required by Section V of these Orders.

VII. 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.

VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking

penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

IX. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Chris Korleski
Director

3/3/08
Date