

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.



OHIO E.P.A.

MAR 11 2008

By: [Signature] Date: 3-11-08

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the Matter of:

James Brown	:	<u>Director's Final Findings</u>
2245 US Route 42 East	:	<u>and Orders</u>
Cedarville, Ohio 45314	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to James Brown ("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 property (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 owns residential property located at 2245 US Route 42 East in Cedarville Township, Greene County, Ohio. The property is located in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K).
2. OAC Rule 3745-19-04(A) prohibits any person or property owner from causing or allowing open burning, as defined in OAC Rule 3745-19-01(H), in an unrestricted area except as provided in OAC Rule 3745-19-04(B) through (D) and ORC § 3704.11. The open burning of residential waste, as defined in OAC Rule 3745-19-01(I), pursuant to OAC Rule 3745-19-04(B), is permitted in an unrestricted area except if the materials burned include rubber, grease, asphalt or liquid petroleum products or if the fire is located at a point on the premises less than one thousand feet from any inhabited building not located on the premises.

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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.

4. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than \$25,000 for each day of each violation.

5. On July 18, 2006 and September 8, 2006, the Cedarville Township Volunteer Fire Department ("Fire Department") responded to citizen complaints of outdoor fires at Respondent's property located at 2245 US Route 42 East, Cedarville Township, Greene County, Ohio. Upon arrival, the Fire Department discovered that tires, sofas, furniture, a mattress and vehicle parts were burned at the site. The Fire Department submitted the complaints to Ohio EPA on July 18, 2006 and September 11, 2006. On July 31, 2006, the Regional Air Pollution Control Agency ("RAPCA") sent a Notice of Violation ("NOV") letter to Respondent for the open burning violations observed by the Fire Department on July 18, 2006. On August 24, 2006, the NOV was returned to RAPCA as unclaimed. On August 25, 2006, the NOV was resent via regular mail and also a copy of the NOV was posted on the gate of the Respondent's property.

6. On September 11, 2006, Respondent contacted RAPCA regarding the NOV and scheduled an inspection of the property, as requested in the NOV. On September 11, 2006, RAPCA conducted an inspection of the property and observed four burn sites. Each of the sites were located within 1,000 feet of neighboring residences.

7. On October 16, 2006, RAPCA mailed proposed administrative Findings and Orders to the Respondent. The proposed Findings and Orders included a penalty of \$500 for the two open burning incidents observed at the property. Additionally, RAPCA also requested the Respondent to submit a written plan of commitment to maintain compliance with all open burning regulations. The Finding and Orders were returned unclaimed on December 8, 2006. On March 9, 2007, RAPCA sent the proposed Findings and Orders via regular mail. RAPCA attempted to call the Respondent in reference to the proposed Findings and Orders.

8. On May 9, 2007, a RAPCA representative visited the property and the gate to the property was open. Upon entry to the property, a black plume was visible coming from the rear of the property. Respondent and another man were found tending to a fire. The fire contained vehicle wheels and wood and was located within 1,000 feet of neighboring residences. Respondent was informed that he cannot burn anything for waste disposal purposes.

9. On May 25, 2007, RAPCA sent a warning letter to the Respondent regarding the proposed Findings and Orders that were mailed on March 9, 2007 and regarding the additional open burning violation observed on May 9, 2007. The letter cited Respondent for open burning in an unrestricted area, in violation of OAC Rule 3745-19-04(A) and advised Respondent to cease all open burning. On June 14, 2007, a cover letter and a copy of the May 25, 2007 warning letter were mailed to Respondent. To date, Respondent

has not responded to the warning letters.

10. Based on the above Findings for the violations occurring in 2006 and 2007, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rule:

- a. ORC § 3704.05(G), for violating rules the Director adopted under ORC Chapter 3704; and
- b. OAC Rule 3745-19-04(A), for conducting prohibited open burning on July 18, 2006, September 8, 2006, and May 9, 2007.

11. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred fifty dollars (\$250) per day for each separate violation of the rules in this Chapter for open burning on residential property. The three violations in 2006 and 2007 are each being assessed a penalty.

12. 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 per violation.

13. 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. On the effective date of these Orders, Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-04(A) and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay the amount of seven hundred and fifty dollars (\$750) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and 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

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:

Division of Air Pollution Control
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by Respondent.

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