

OHIO E.P.A.

BEFORE THE

DEC 23 2010

OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the Matter of:

Al Brice  
2939 Knauss Road  
Bucyrus, Ohio 44820

I certify this to be a true and accurate copy of the  
Director's Final Findings  
and Orders  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

**I. JURISDICTION**

By Jerry Lassiter Date: 12-23-10

These Director's Final Findings and Orders ("Orders") are issued to Al Brice ("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 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 makes the following findings:

1. Respondent operates a demolition and salvage business where he travels to various locations and dismantles old barns. During each of these projects, Respondent takes any structural beams, siding or stone materials that are fit for resale back to his rental property that is located at 2939 Knauss Road, Bucyrus Township, Crawford County, Ohio. Any waste materials from these operations that are combustible are usually burned on-site and the non-combustible or remnants of the fire are then buried. Respondent's rental property and the documented burning sites at 6504 North State Route 18 in Clyde Township of Crawford County and at 12905 East County Road 58 in Bloomville Township of Crawford County, Ohio, are located in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) concerning open burning.

2. OAC Rule 3745-19-04(A) prohibits any person or property owner from causing or allowing 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 such as brush and leaves at a residential property in an unrestricted area where such burning would occur at a point on the premises less than one thousand feet from any inhabited building not on said premises. Since Respondent's property and each of the documented burning sites is less than one thousand feet from a nearby residence, the exceptions to the open burning prohibition for residential waste, as provided in OAC Rule 3745-19-04(B), do not apply, and the other exceptions do not apply.

3. On July 17, 2009, Ohio EPA, Northwest District Office ("NWDO") conducted a site inspection based on a complaint that was filed against the Respondent and Respondent's property owner. The complaint revealed that a barn was being taken down on a lot adjacent to 6504 North State Route 18 in Clyde Township, Ohio (just outside Bellevue, Ohio) and illegal open burning and illegal disposal of solid waste were occurring. The complainant indicated that pesticide containers had been burned and buried. A large hole was excavated and used to burn waste siding and other debris from the barn. At the time of inspection, Respondent acknowledged the burning that occurred on the property and smoldering debris was observed on site. Since prohibited open burning occurred in an unrestricted area, Respondent was in violation of OAC Rule 3745-19-04(A).

4. On July 24, 2009, NWDO issued a Notice of Violation ("NOV") letter to Respondent and the property's owner. On August 9, 2009, Respondent responded in writing that he clearly understood the rules and promised that there would be no future burning.

5. On April 6, 2010, while in route to a complaint that it received on March 31, 2010, NWDO identified an open burning was in progress at 12905 East County Road 58, Bloomville Township, Ohio. Upon arrival, NWDO observed a large fire in progress, which was approximately 12 to 15 feet in diameter and 5 feet deep. The fire consisted of scrap wood and barn siding from a barn dismantling project on the property. The worker who was tending the fire identified Respondent as the responsible party for this open burning. Since prohibited open burning was conducted in an unrestricted area, Respondent was in violation of OAC Rule 3745-19-04(A).

6. Later on the same day (April 6, 2010), NWDO arrived at Respondent's residence which is located at 2939 Knauss Road in Bucyrus Township, Ohio. Upon arrival, NWDO observed several burn sites. There was evidence that plastics, metal cans, aluminum foil, chain oil containers, barrels had been burned on the property, in violation of OAC Rule 3745-19-04(A). NWDO took photographs of the burn sites and remnants for documentation.

7. On April 13, 2010, NWDO sent Respondent a NOV letter citing Respondent for the violation that was documented on April 6, 2009. In this NOV, ARAQMD requested that Respondent cease prohibited open burning and submit a written commitment to cease all future illegal open burning by April 28, 2010. No response from Respondent was received. NWDO also sent copies of the above-referenced NOV letter to Respondent's property owner and the property owner at 12905 East County Road 58, Bloomville Township, Ohio.

8. 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.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may access a violator not more than two hundred fifty dollars (\$250) per day for each violation of the rules of this Chapter for open burning on a residential property. The open burning violations on July 17, 2009, and April 6, 2010 occurred on three residential properties and, therefore, a \$750 penalty is being assessed.

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 to be derived from such compliance.

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall cease all open burning in the State of Ohio that is in violation of OAC Chapter 3745-19, and shall maintain compliance thereafter.

2. Respondent shall pay the amount of seven hundred and fifty dollars (\$750) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within fourteen (14) 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 seven hundred and fifty dollars (\$750). 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

3. A copy of the above 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 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."

The 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's operations.

#### **VIII. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA - Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402-9398  
Attention: Thomas C. Cikotte

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.

#### **IX. 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.

#### **X. 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

  
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Chris Korleski  
Director

12/21/10  
Date