OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

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: Denise Lassiter Date: 7-13-10

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Robert Ullrich d.b.a. Hidden Valley Fruit Farm 5474 North State Route 48 Lebanon, Ohio 45036	: : : :	**Director's Final Findings and Orders**

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Robert Ullrich, d.b.a. Hidden Valley Fruit Farm ("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 owns the property located at 5474 North State Route 48, Clearcreek Township, Warren County, Ohio. On this property, Respondent operates a fruit farm. The property is located in an "unrestricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K).

2. Hamilton County Department of Environmental Services ("HCDOES") is a contractual agent for Ohio EPA in Hamilton County for the administration of Ohio's air pollution control rules and laws.

3. OAC Rule 3745-19-04(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(H), in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) through (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-04(B)

through (D) and ORC § 3704.11 do not provide for the open burning of agriculture wastes within one thousand feet from an inhabited building not located on the premises of the open burning.

4. 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.

5. On October 1 and 2, 2008, the Clearcreek Township Fire Department responded to an open burning incident located at Respondent's property located at 5474 North State Route 48. On October 1, 2008, the Clearcreek Township Fire Department discovered three large piles of agricultural waste, one of which was being open burned within one thousand feet of neighboring houses. On October 2, 2008, the Clearcreek Township Fire Department and HCDOES again responded to open burning on Respondent's property. Upon arrival, two large piles of the remaining agricultural waste were being open burned within one thousand feet of neighboring houses and one pile that had been burning the previous day had burnt out. On October 2, 2008, HCDOES notified Respondent to suspend all open burning activities. The open burning of agricultural waste material, in an unrestricted area, within one thousand feet of any inhabited building not located on the premises of the open burning is in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). By letter dated October 29, 2008, Respondent was notified of the open burning violations.

6. On September 19, 2009, the Clearcreek Township Fire Department responded to another open burning incident at Respondent's property. Upon arrival, two large piles of agricultural waste were being open burned within one thousand feet of neighboring houses, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). The Clearcreek Township Fire Department extinguished the fires. On September 23, 2009, HCDOES conducted a complaint investigation at Respondent's property and observed remnants of the burn and determined that Respondent had unlawfully open burned agricultural wastes within one thousand feet of neighboring houses. By letter dated October 5, 2009, Respondent was notified of the open burning violations.

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 3745-19-04(A), which prohibits the open burning of such waste materials under such conditions.

8. 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 violations on October 1 and 2, 2008 and September 19, 2009 occurred at Respondent's commercial fruit

farm and is therefore being assessed this penalty.

9. 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 the 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.

10. 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. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two thousand dollars ($2,000) 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 $2,000. 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

2. 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 Environmental Protection Agency
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

Date 7/9/10