OHIO E.P.A.
OCT -6 2010
ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

James Beougher 10433 Fulton Street Mendon, Ohio 45862	: : :	**Director's Final Findings and Orders**

I. JURISDICTION

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

1. Respondent owns residential property located at 10433 Fulton Street in Dublin Township, Mercer County, Ohio. This property is located within an "unrestricted area" as defined in OAC Rule 3745-19-01(K) of Ohio's open burning rules.

2. OAC Rule 3745-19-04(A) prohibits open burning in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) to (C) and ORC § 3704.11. Per OAC Rule 3745-19-04(B)(3)(c), the open burning of "residential waste," as defined in OAC Rule 3745-19-01(I), is not permitted in a unrestricted area where the burn occurs less than one thousand feet from an inhabited building not located on the premises. Per OAC Rule 3745-19-04(B)(3)(e), materials containing rubber, grease, asphalt, or liquid petroleum products are not allowed to be burned.

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: Tony Lassiter Date: 10-6-10

3. ORC § 3704.05(G) states, in part, that no person shall violate any rule of the Director adopted under ORC Chapter 3704. The rules in OAC Chapter 3745-19 were adopted by the Director under ORC Chapter 3704.

4. On June 4, 2009, November 5, 2009, June 8, 2010, and June 24, 2010, Respondent caused or allowed open burning of residential waste including, but not limited to, trash, plastics, cans, plywood, and cardboard, within one thousand (1,000) feet of an inhabited building not located on the premises, in violation of OAC Rule 3745-19-04(A).

5. On June 4, 2009, July 16, 2009, November 5, 2009, June 15, 2010 and June 30, 2010, an Ohio EPA representative conducted an inspection of Respondent's property, and observed evidence of prohibited open burning of residential waste.

6. On June 8, 2009, July 20, 2009, November 9, 2009, June 23, 2010, and July 2, 2010, Ohio EPA sent Notice of Violation ("NOV") letters to Respondent for the open burning violations identified in Finding 4. Respondent failed to submit a written response as requested in each of the NOV letters and continued to conduct illegal open burning.

7. Based on the above Findings for the violations occurring on June 4, 2009, November 5, 2009, June 8, 2010, and June 24, 2010, the Director of Ohio EPA finds that Respondent violated OAC Rule 3745-19-04(A), for conducting prohibited open burning, and ORC § 3704.05(G).

8. Through unilateral orders, the Director may assess a violator not more than two hundred-fifty dollars ($250) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on residential property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs.

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 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. Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-04, and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, for the violations described in the Findings, Respondent is assessed and shall pay a penalty of one thousand dollars ($1,000) 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

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:

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

Date 9/30/10