

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Wendy Plageman and Mike Ogburn	:	<u>Director's Final Findings</u>
4515 Fairground Road	:	<u>and Orders</u>
Celina, Ohio 45862	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Wendy Plageman and Mike Ogburn ("Respondents") 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 Respondents 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. Respondents own/reside at the properties located at 1830 Mineral Road and 8005 State Route 356, New Marshfield, Waterloo Township, Athens County, Ohio. The properties are residential, and each 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 "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 residential waste within one thousand feet from an inhabited building not located on the premises of the open burning or for the open burning of waste containing rubber, grease, asphalt or liquid petroleum products.

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.

4. On April 10, 2009, the Southeast District Office ("SEDO") of Ohio EPA received a complaint regarding open burning at the property at 8005 State Route 356. On April 20, 2009, a SEDO representative responded to the open burning complaint by visiting the property located at 8005 State Route 356. Upon arrival, the SEDO representative discovered evidence of open burning of plastics and household waste which was in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). Additionally, the fire area contained stacks of trash bags, furniture cushions, and other trash. The open burning site was within one thousand feet of neighboring inhabited houses not on the property, and the waste contained materials prohibited from being open burned. By a notice of violation ("NOV") letter dated May 5, 2009, Respondent Ogburn was notified of the open burning violation and requested to cease all open burning on the property.

5. On September 25, 2009, SEDO received a complaint against open burning at the property at 8005 State Route 356. On October 14, 2009, a SEDO representative responded to the complaint at the property located at 8005 State Route 356. Upon arrival, the SEDO representative discovered evidence of open burning of wood, household garbage and other trash in the backyard of the property. On October 22, 2009, SEDO notified Respondent Plageman by letter to suspend all open burning activities.

6. On June 21, 2010, SEDO received a complaint of open burning at the property at 1830 Mineral Road. On June 24, 2010, a SEDO representative responded to the open burning complaint by visiting the property located at 1830 Mineral Road. Upon arrival, the SEDO representative discovered the remnants of the open burning of trash, a box spring, plastic seat cushions, garbage, cans and other solid waste, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). Additionally, upon interviewing the neighbors, the SEDO representative learned that the property with a trailer to the left of the Respondents' residence is also owned by Respondent Plageman.

7. On July 6, 2010, SEDO received a complaint of open burning at the property at 1830 Mineral Road. On July 8, 2010, a SEDO representative responded to the complaint at the property located at 1830 Mineral Road. The SEDO representative discovered a trailer fire had occurred at the site, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). On July 5, 2010, Waterloo Township Fire Department tended to the trailer fire. The fire report indicated that Respondent Ogburn had started the trailer fire. On July 19, 2010, SEDO notified the Respondents by letter to discontinue all open burning activities. The open burning of the trailer and residential waste material, in an unrestricted area, within one thousand feet of any inhabited building not located on the premises of the open burning was in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

8. Based on the above Findings, the Director of Ohio EPA finds that Respondents 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.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred and fifty dollars (\$250) per day for each separate violation of the rules in this Chapter for open burning on residential property. The violations on April, 10, 2009, September 25, 2009, June 21, 2010, and July 5, 2010, occurred at Respondents' residences and are therefore being assessed this penalty.

10. As of the effective date of these Orders, Respondents have not responded to the notice of violation ("NOV") letters.

11. Should the Respondents 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.

12. 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. Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of one thousand dollars (\$1,000) 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 \$1,000. The official check shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondents, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. A copy of the check shall be sent to Thomas Kalman, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondents' 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 the Respondents.

VIII. RESERVATION OF RIGHTS

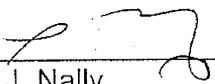
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance 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 Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. 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

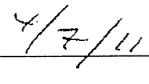
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally
Director



Date