

IN THE COURT OF COMMON PLEAS  
GREENE COUNTY, OHIO

FILED

2011 NOV -4 PM 3: 02

JOYCE A. MAZUR, CLERK  
COMMON PLEAS COURT  
GREENE COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

CASE NO. 2011 CV 0615

Plaintiff,

JUDGE WOLAVER

v.

JAMES BROWN

MAGISTRATE REYNOLDS

Defendant.

**FINAL APPEALABLE  
ORDER**

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

WHEREAS, Plaintiff State of Ohio, on relation of its Attorney General Michael DeWine, at the written request of the Director of Environmental Protection, filed a Complaint seeking injunctive relief and civil penalties from Defendant James Brown ("Defendant") for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder;

WHEREAS, Plaintiff and Defendant have consented to the entry of this Consent Order;

Therefore, without the trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**I. DEFINITIONS**

1. "Complaint" refers to the State of Ohio's Complaint filed against Defendant in the Greene County Common Pleas Court on June 13, 2011.
2. "Defendant" means James Brown.
3. "Director" means the Director of the Ohio Environmental Protection Agency.
4. "Defendant's residential property" refers to Defendant's real property located at 2245 US Route 42 East, Cedarville Township, Greene County, Ohio, 45314.

11-11-0952

5. "Ohio EPA" means the Ohio Environmental Protection Agency.
6. "Order" refers to this Consent Order.
7. "Plaintiff" means the State of Ohio.
8. All other terms not specifically defined herein, are defined, to the extent applicable, in accordance with the definitions provided in R.C. 3704 and Ohio Adm.Code Chapter 3745-19.

## II. JURISDICTION AND VENUE

9. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted under R.C. Chapter 3704. Venue is proper in this Court for the purposes and duration of this Order.

## III. PERSONS BOUND

10. The provisions of this Consent Order shall apply to and be binding upon the Parties to this action in accordance with Civ.R. 65(D).

## IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

11. Plaintiff alleges in its Complaint that Defendant caused or allowed conducted open burning in an unrestricted area on his residential property within 1,000 feet of neighboring residences, in violation of Ohio Adm.Code 3745-19-04(A) and R.C. 3704.05(G). Plaintiff further alleges in its Complaint that Defendant failed to comply with the unilateral Director's Final Findings and Orders issued March 11, 2008 pursuant to R.C. 3704.03 and 3745.01, in violation of R.C. 3704.05(G).
12. Completion of the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Order.
13. This Order shall not be construed to limit the authority of Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Order bar the State of Ohio from bringing any

11-11-0958

action against Defendant for any violation(s) that occur after the entry of this Order. Nothing in this Order shall be construed to relieve Defendant of his obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

#### V. INJUNCTIVE RELIEF

14. Defendant agrees and is hereby enjoined and ordered to comply with R.C. Chapter 3704 and rules adopted thereunder.
15. Defendant agrees and is hereby enjoined and ordered to comply with the requirements of Ohio Adm.Code Chapter 3745-19 by ceasing to conduct illegal open burning activity, which includes any open burning of residential waste on Defendant's residential property.

#### VI. CIVIL PENALTY

16. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of \$6,000.00 to the State of Ohio. Such penalty shall be paid as follows:
  - a. Defendant shall, within 6 months of the entry of this Order, tender a certified check payable to the order of "Treasurer, State of Ohio" for \$3,000.00. Payments shall be delivered via certified check, together with a letter identifying Defendant, to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 388876."
  - b. Defendant shall, within 12 months of the entry of this Order, tender a certified check payable to the order of "Treasurer, State of Ohio" for \$3,000.00. Payments shall be delivered via certified check, together with a letter identifying Defendant, to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio,

11-11-0954

Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 388876."

- i. The Ohio EPA will apply \$1,200 of the total penalty to fund a supplemental environmental project ("SEP") by directing that amount to be deposited in Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0).

#### VII. STIPULATED PENALTIES

17. In the event that Defendant fails to comply with any requirement or deadline contained in this Order or any requirement or deadline contained in any document approved in accordance with this Order, Defendant is liable for and shall on his own accord pay stipulated penalties without demand or notice by the State of Ohio in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with any requirement or deadline of this Order up to and including the first 30 days of each failure, \$250.00 per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement or deadline of this Order for days 31 to 60 days of each failure, \$500.00 per day for each requirement or deadline not met.
- c. For each day of each failure to comply with a requirement or deadline of this Order for each day over 60 days of each failure, \$750.00 per day for each requirement or deadline not met.

18. Any payment required to be made under the provisions of Section VII of this Order shall be made by delivering to Plaintiff, c/o Martha Sexton or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check, or checks, made payable to the order of "Treasurer, State of Ohio" for the appropriate amount within 30 days from the date of the

11-11-0955

failure to meet the requirement or deadline of this Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met and the date upon which the violation of this Order occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "James Brown, A.G. EAGO No. 388876."

19. The demand for, payment of, or the acceptance of stipulated penalties by Defendant from Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional remedies, civil, criminal or administrative, for violations of applicable laws, or to otherwise seek judicial enforcement of this Order for the same violation for which a stipulated penalty was paid or for other violations.

#### **VIII. RETENTION OF JURISDICTION**

20. The Court shall retain jurisdiction of this action for purposes of enforcing this Consent Order.

#### **IX. COURT COSTS**

21. Defendant is hereby ordered to pay all court costs of this action.

#### **X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

22. Pursuant to Civ.R. 58, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket.

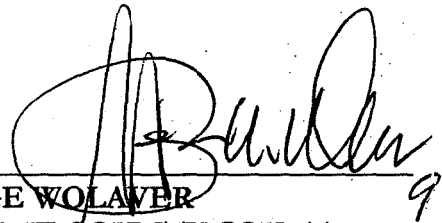
#### **XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

23. The undersigned represents and warrants that he understands the terms and conditions of this Order and certifies that he can execute and legally bind himself to this document.

11-11-0956

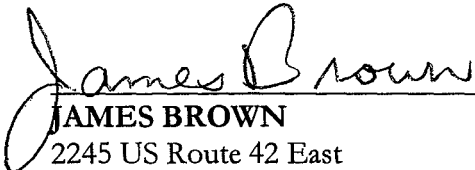
IT IS SO ORDERED:

DATE 11/3/11

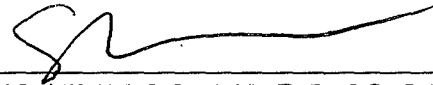
  
JUDGE WOLAVER  
GREENE COUNTY COURT  
OF COMMON PLEAS

APPROVED:

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

  
JAMES BROWN  
2245 US Route 42 East  
Cedarville, OH 45314  
Home Telephone: (937) 766-5656  
Cell Phone: (937) 831-6050

*Defendant Pro Se*

  
SARAH BLOOM ANDERSON (0082817)  
CASEY L. CHAPMAN (0086286)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, OH 43215  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
Sarah.Anderson@OhioAttorneyGeneral.gov  
Casey.Chapman@OhioAttorneyGeneral.gov

*Counsel for Plaintiff, State of Ohio*

ATTORNEY GENERAL OFFICE  
ENVIRONMENTAL ENFORCEMENT

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