



**Environmental  
Protection Agency**  
John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

JAN 10 2012

**CERTIFIED MAIL**

OHIO E.P.A.  
JAN 10 2012  
ENTERED DIRECTOR'S JOURNAL

Mr. Dick Green  
Green & Sons, LTD.  
12350 State Route 56 SE  
Mt. Sterling, Ohio 43143

**Re:** Director's Final Findings and Orders for the violations of Ohio Administrative Code Chapter 3745-19 for open burning at 12350 State Route 56 SE, Pleasant Township, Madison County, Ohio.

Dear Mr. Green:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

These Orders are being issued pursuant to OAC Rule 3745-19-06(A) which 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. A copy of this rule is attached.

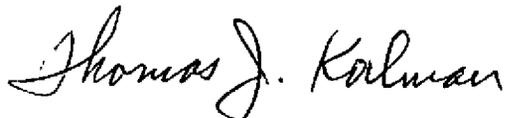
Should you fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, under the authority of Ohio Revised Code § 3704.06, the Director may request that the Attorney General pursue legal action and seek civil penalties of up to \$25,000 per day of violation.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission ("Commission") pursuant to Ohio Revised Code § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date stamped on the first page of the Orders.

Sincerely,



Thomas J. Kalman, P.E.  
Acting Assistant Chief  
SIP Development and Enforcement

TK:JK:jk

Enclosures

xc: Erica Fetty, DAPC  
Brenda Case, Fiscal  
Marcus Glasgow, Legal Office  
Jim Kavalec, DAPC  
Adam Ward/David Burroughs, DAPC CDO  
Carol Hester, PIC

3745-19-06      **Open burning unilateral order.**

- (A) The director may assess and collect administrative penalties from any person who violates any of the rules in this chapter. Through unilateral orders, the director may assess a violator not more than two hundred-fifty dollars per day for each separate violation of the rules in this chapter for open burning on residential property and not more than one thousand dollars per day for each separate violation of the rules in this chapter for open burning on industrial, commercial, institutional, or municipal property. Commercial property includes construction sites, including, but not limited to, the construction of residential homes, if the sites are not properly permitted under section 3704.11(C) of the Revised Code. A separate violation is assessed for each day (24-hour period) the violation occurs.
  
- (B) The director's authority under paragraph (A) of this rule is in addition to, and not in limitation of, the director's authority under section 3704.06 of the Revised Code to request the attorney general to initiate legal action to seek penalties of not more than twenty-five thousand dollars for each day of each violation for the violation of rules in this chapter.

3745-19-06

2

Effective: 07/07/2006

R.C. 119.032 review dates: 07/07/2011

CERTIFIED ELECTRONICALLY  
Certification

06/27/2006  
Date

Promulgated Under: 119.03  
Statutory Authority: R.C. Section 3704.03(E)  
Rule Amplifies: R.C. Section 3704.03(A), 3704.03(E)

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

<b>Green &amp; Sons, LTD.</b>	:	<b><u>Director's Final Findings</u></b>
<b>12350 State Route 56 SE</b>	:	<b><u>and Orders</u></b>
<b>Mt. Sterling, Ohio 43143</b>	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Green & Sons, LTD. ("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 makes the following findings:

1. Respondent operates a farm equipment business at the property located at 12350 State Route 56 SE, Pleasant Township, Madison County, Ohio. The 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 pallets and plastics for waste disposal at a commercial facility.

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 October 22, 2010, Ohio EPA responded to an open burning incident located at Respondent's property located at 12350 State Route 56 SE. Upon arrival, Ohio EPA observed black smoke coming from the back of Respondent's facility. Upon further investigation, Ohio EPA observed a large fire which was contained in an 8 foot wide by 16 foot long by 6 foot high open top drop off container. The fire contained wooden pallets and what appeared to be a black plastic drainage tile. During this investigation, a Mr. Dick Green was present and Ohio EPA notified him that it was illegal to burn wooden pallets and plastic according to Ohio's regulations. Ohio EPA instructed Mr. Green to suspend all open burning activities and to extinguish the fire. Upon walking to the front of the facility, a Mr. Bill Green approached the Ohio EPA's inspector and inquired to what was going on. Ohio EPA's inspector informed Mr. Bill Green of the open burning regulations and that Respondent was illegally open burning. Mr. Bill Green became hostile towards Ohio EPA's inspector; therefore, the inspector left the facility. The open burning of wooden pallets and plastic material, in an unrestricted area, for waste disposal at a commercial facility is in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). By letter dated October 25, 2010, Respondent was notified of the open burning violations.

5. By letter dated October 29, 2010, the Director of Ohio EPA notified Mr. William Green of the open burning violations and that his hostility towards an Ohio EPA inspector was unacceptable.

6. 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.

7. 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 violation on October 22, 2010 occurred at Respondent's commercial farm equipment facility and is therefore being assessed this penalty.

8. 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.

9. 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, Respondent 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 Respondent, 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, Acting Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
50 West Town Street, Suite 700  
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**

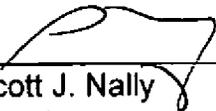
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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

  
\_\_\_\_\_  
Scott J. Nally  
Director

4/4/12  
\_\_\_\_\_  
Date