



**Environmental  
Protection Agency**

John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

OHIO E.P.A.

JUN -8 2012

ENTERED DIRECTOR'S JOURNAL

**CERTIFIED MAIL**

June 8, 2012

Mr. John Wolford, President  
F. H. Williamson Farms, Inc.  
4946 Day Lily Way NW  
Acworth, GA 30102

Mr. Steve Miller  
S & P Miller Excavating  
17628 Road 111  
Paulding, Ohio 45879

**Re: Director's Final Findings and Orders for open burning rule and law violations on January 3 and 4, 2012 at 5616 US Route 127 in Latty Township, Paulding County, Ohio**

Dear Mr. Wolford and Mr. Miller:

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

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 that is stamped on the first page of the Orders.

These Orders are being issued pursuant to OAC Rule 3745-19-06(A) which states, in part, that through unilateral orders the Director of Ohio EPA may assess a penalty of not more 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 the rule is attached.

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

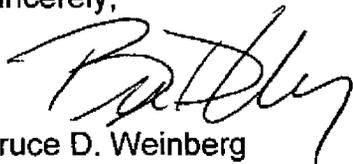
You are hereby notified that this action by the Director is final and may be appealed to the Environmental Review Appeals Commission ("Commission") pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the 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

Mr. Steve Miller and Mr. John Wolford  
Director's Final Findings and Orders  
Page 2

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 Commission at the following address:

The Environmental Review Appeals Commission  
77 South High Street, 17th Floor  
Columbus, Ohio 43215

Sincerely,



Bruce D. Weinberg  
Environmental Manager  
Enforcement Section  
Division of Air Pollution Control

BDW:AL:al

Enclosure

xc: Allison Lim, DAPC  
Marc Glasgow, Legal Office  
Thomas Cikotte, NWDO  
Tom Sattler, NWDO  
Akia Smith, Fiscal Office (Agency # NA)  
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~~ hundred fifty dollars per day for each separate violation of the rules in this chapter for open burning ~~of~~ on residential ~~property waste~~ and not more than one thousand dollars per day for each separate violation of the rules in this chapter for open burning of all wastes that are not residential waste, 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-twenty-four hour period) or portion of a day 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.

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

S & P Miller Excavating LLC  
17628 Road 111  
Paulding, Ohio 45879

:  
:  
:  
:  
:  
:  
:

Director's Final Findings  
and Orders

F. H. Williamson Farms, Inc.  
4946 Day Lilly Way NW  
Acworth, GA 30102

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to S & P Miller Excavating LLC and F.H. Williamson Farms, Inc. ("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 successors in interest liable under Ohio law. No change in ownership of the Respondents or of the property (as hereinafter defined) shall in any way alter Respondents' 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. "Unrestricted area" is defined by Ohio Administrative Code ("OAC") Rule 3745-19-01(L) means all areas outside of the boundaries of a restricted area.

2. "Restricted area," is defined in OAC rule 3745-19-01(K) and means, in part, the area within the boundary of any municipal corporation established in accordance with Title 7 of the Revised Code, plus a zone extending one thousand feet beyond the boundaries of any such municipal corporation having a population of one

thousand to ten thousand persons and a zone extending one mile beyond any such municipal corporation having a population of ten thousand persons or more according to the latest federal census.

2. OAC Rule 3745-19-04(A) prohibits a person or property owner from causing or allowing open burning in a unrestricted area except as provided in paragraphs (B) to (D) of this rule or in ORC § 3704.11. Open burning as defined in OAC Rule 3745-19-01(I), of tires, is not an exception to the prohibition on open burning in an unrestricted area.

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. Respondent F.H. Williamson Farms, Inc. owns the commercial property located at 5616 US 127, Latty Township, in Paulding County, Ohio. The property is about 255 acres in area and is located within an "unrestricted area."

5. On January 9, 2012, Ohio EPA's Northwest District Office ("NWDO") received a complaint stating that there were two properties where there were preparations to burn, and one property where burning had already occurred.

6. On January 12, 2012, a representative from NWDO inspected the property to investigate the complaint received on January 9, 2012. Upon the inspector arrival, at 5616 US 127, a pile of approximately 20 burned metal tire rims, with beading wire remaining on most of them, as well as enough burned beading wire to account for another approximately 10 tires, with was observed. A freshly graded area, approximately 100' by 100' was also observed.

7. On January 12, 2012, Mr. Steve Miller, of Respondent S & P Miller Excavating LLC, admitted to the NWDO representative that Respondent S & P Miller Excavating LLC had been contracted by Mr. John Wolford, of Respondent F.H. Williamson Farms, Inc., to take down a barn on the property and burn it. The barn was burned in what Mr. Miller called a "controlled burn" on January 3 and 4, 2012. He also stated he burned 4-5 tires remaining in the barn, but that they were removed when metal was seen in the fire.

8. During discussions with a NWDO representative, Mr. Wolford confirmed he was the one who contracted with Respondent S & P Miller Excavating LLC to dismantle and burn the barn; however, he claimed he had no knowledge of the tires being burned.

9. On January 18, 2012, NWDO sent a notice of violation ("NOV") letter to the Respondents concerning the open burning violation on January 3 and 4, 2012. The

open burning of tires and the C&DD in an unrestricted area was a violation of OAC Rule 3745-19-04(A). No response was received.

10. The Director of Ohio EPA finds that Respondents violated OAC Rule 3745-19-04(A) and ORC § 3704.05(G), for conducting prohibited open burning on January 3 and 4, 2012.

11. Through unilateral orders, the Director may assess a violator not more than one thousand dollars (\$1,000) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on commercial property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs.

12. 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.

13. 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. 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 two thousand dollars (\$2,000) 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 Akia Smith, 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 Bruce Weinberg, Environmental Manager, Enforcement Section, 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

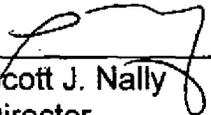
construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**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**

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

6/1/12  
\_\_\_\_\_  
Date