

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

OHIO E.P.A.

JUL 17 2012

REGISTERED DIRECTOR'S JOURNAL

In the Matter of:

<b>Ron Davis,</b>	:	
<b>d.b.a. Davis Lawn Maintenance Inc.</b>	:	<b><u>Director's Final Findings</u></b>
<b>579 Fayetteville Road</b>	:	<b><u>and Orders</u></b>
<b>Blanchester, Ohio 45107</b>	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mr. Ron Davis, d.b.a. Davis Excavating ("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 small excavation and general contracting business at the property located at 579 Fayetteville Road, Blanchester, Ohio (Clinton County). The property is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K).

2. OAC Rule 3745-19-03(A) prohibits any person or property owner from causing or allowing "open burning," as defined in OAC Rule 3745-19-01(I), in a restricted area except as otherwise provided in OAC Rule 3745-19-03(B) through (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-03(B) through (D) and ORC § 3704.11 do not provide for the open burning of or the disposal of commercial waste.

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 or about October 7, 2011, Respondent caused or allowed the open burning of commercial waste, including mattress frames, wooden planks, plastic materials, and demolition debris, on the Fayetteville Road property, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G). The mattresses were from a job the company was performing in Dayton, Ohio, the demolition of a Roadway Inn.

5. During the investigation of this incident, Respondent admitted to representative of Ohio EPA, Southwest District Office ("SWDO"), that he was burning a few a mattresses taken from a demolition project he was working on in Dayton, Ohio.

6. By letter dated October 14, 2011, Respondent was notified of the open burning violations, and instructed to cease all illegal open burning.

7. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than one thousand dollars (\$1000) per day for each separate violation of the rules in this Chapter for open burning of non-residential waste. The violation on or about October 7, 2011 involved commercial waste transported to the property from another site, and is therefore being assessed the non-residential waste 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 (\$1000) 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 \$1000. The official check shall be submitted to Akia Smith, 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 Bruce Weinberg, Environmental Manager, Enforcement Section, 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

<sup>7</sup> / 13 / 12  
\_\_\_\_\_  
Date

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~~ 24 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.