



State of Ohio Environmental Protection Agency

STREET ADDRESS

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Columbus, Ohio 43215

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Handwritten notes: "COLUMBUS, OHIO", "OCT 21 2010", "Columbus, OH 43203-0449"

OCT 21 2010

CERTIFIED MAIL

Mr. Steve Mox
d.b.a. Mox Warehousing LLC and
TSM Logistics
12806 State Route 118
Rockford, Ohio 45882

Re: Director's Final Findings and Orders for the violation of Ohio Administrative Code Chapter 3745-19 for open burning at 12806 State Route 118, Dublin Township, Mercer County, Ohio

Dear Mr. Mox:

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.

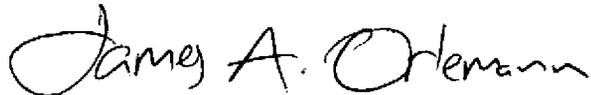
You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission ("Commission") pursuant to Ohio Revised Code § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based.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

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Beahm, Director

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,



James A. Orlemann, P.E.
Assistant Chief
SIP Development and Enforcement

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Enclosures

xc: Priscilla Roberson, DAPC
Brenda Case, Fiscal
Donald L. Vanterpool, Legal Office
Tom Kalman, DAPC
Jim Kavalec, DAPC
Mark Budge/Tom Sattler/ Thomas Cikotte, DAPC NWDO

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

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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:

Steve Mox	:	<u>Director's Final Findings</u>
d.b.a. Mox Warehousing LLC and	:	<u>and Orders</u>
TSM Logistics	:	
12806 State Route 118	:	
Rockford, Ohio 45882	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Steve Mox, d.b.a. Mox Warehousing LLC and TSM Logistics ("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 warehouse and trucking company located at 12806 State Route 118, Dublin Township, Mercer 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 tires, used oil filters, used oil hydraulic reservoirs, telephone poles and other trash 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. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

4. On July 1, 2010, Ohio EPA received two reports of an open burning incident located at 12806 State Route 118, just outside the Village of Rockford and in Dublin Township of Mercer County. One report, received from Ohio's State Highway Patrol, indicated that approximately 25 to 30 tires were being burned at the aforementioned location. On the same day, Ohio EPA contacted Respondent about the open burning incident. Respondent informed Ohio EPA that trash, including tires, was being burned. On July 6, 2010, Ohio EPA conducted a complaint investigation at the site and observed remnants of the burn and determined that Respondent had unlawfully open burned approximately 39 tires, used oil filters, a used oil hydraulic reservoir, burned mattress springs, miscellaneous metal parts, plastic automotive parts, telephone poles and trash in and around a 20 foot by 15 foot by 3 foot excavated pit, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). By letter dated July 7, 2010, Respondent was notified of the open burning violation.

5. 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 July 1, 2010 occurred at Respondent's commercial business and is therefore being assessed this penalty.

6. 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.

7. 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 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 James A. Orlemann, 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

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



Chris Korleski
Director

Date 10/18/10

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