BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 31 2007
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

M & M Excavating, Inc. **391 Centennial Drive SE** **Vienna, Ohio 44473**	: : :	**Director's Final Findings and Orders**

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to M & M Excavating, Inc. ("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 successors in interest liable under Ohio law. No change in ownership of the Respondent shall in any way alter Respondent's 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 has determined the following findings:

1. Respondent's business address is 391 Centennial Drive SE in Vienna, Trumbull County, Ohio. Respondent performs building demolitions.

2. OAC Rule 3745-19-04(A) prohibits open burning in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) to (D) and ORC § 3704.11. No building demolition debris is permitted to be open burned. Also, OAC Rule 3745-19-04(B) allows open burning for warmth of outdoor workers, but only if clean fuels are employed to minimize emissions.

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: _____ Date: 12/31/07

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 March 15, 2007, the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), Ohio EPA's contractual representative in Trumbull County for open burning matters, received a complaint submitted by Trumbull County Health Department. The complaint stated there was a fire at the demolished Hartford Elementary School located at the intersection of State Routes 7 and 305 in Hartford Township, Trumbull County.

5. A representative of M-TAPCA investigated the complaint on March 15, 2007, and observed evidence of open burning including demolition debris, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). The M-TAPCA representative spoke to Mr. Gary Schultz of Respondent, who stated that a barrel had been knocked over and the contents of the barrel were what was burning on the ground. The M-TAPCA representative advised Mr. Schultz that the materials that were burning were not clean, seasoned firewood; instead, it was demolition debris. Additionally, the M-TAPCA representative advised Mr. Schultz that a fire used for the warmth of outdoor workers should be contained and should be located away from combustible demolition debris.

6. On March 16, 2007, M-TAPCA sent a warning letter to the Respondent. The letter cited the Respondent for open burning in a unrestricted area, as defined in OAC Rule 3745-19-01(K), in violation of OAC Rule 3745-19-04, and advised Respondent to find a legal waste disposal method.

7. On March 27, 2007, M-TAPCA received a complaint about fire at another demolition site, the former Badger High School, located at 8319 Main Street in Kinsman, Trumbull County.

8. A representative from M-TAPCA inspected the site on March 27, 2007 and observed evidence of open burning of remnants of a 4' by 10' fire containing wood, paint ash, and a small amount of steel, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). This demolition was being conducted by Respondent. Mr. James Matash, owner of Respondent was at the site, and claimed a new employee had started the fire before he arrived at the site. The ambient temperatures, in degrees Fahrenheit, ranged in the seventies in the late morning of that day.

9. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator 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.

10. Respondent has conducted open burning in violation of ORC § 3704.05(G) and OAC Rule 3745-19-04(A) on or about March 15, 2007 and March 27, 2007.

11. 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. Respondent shall immediately cease all open burning in violation of OAC Rule 3745-19-04(A), and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two thousand dollars ($2,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $2,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the property, to the following address:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

3. 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
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 valid official checks 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 11/14/07