

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL 16 2008

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

W. A. Miller,  
dba D M Enterprises  
6017 Weaver Road  
Clinton, Ohio 44216

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Director's Final Findings  
and Orders

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.

**I. JURISDICTION**

By: [Signature] Date: 7-16-08

These Director's Final Findings and Orders ("Orders") are issued to W. A. Miller, dba D M Enterprises ("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. No change in ownership of the Respondent's property (as hereinafter defined) 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, of 6017 Weaver Road in Clinton, Ohio, owns the residential property located at 2004 Portage Line Road, Springfield Township, Summit County, Ohio ("property"). The property is located in an "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).
2. OAC Rule 3745-19-04(A) prohibits any property owner or person from causing or allowing "open burning," as defined in OAC Rule 3745-19-01(H), in an restricted area except as otherwise provided in OAC Rule 3745-19-04(B) to (C) and ORC § 3704.11.
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 Ohio EPA pursuant to ORC Chapter 3704.

4. Akron Regional Air Quality Management District ("ARAQMD") is Ohio EPA's contractual representative in Summit County for the administration of OAC Chapter 3745-19 (Open Burning Standards).

5. On February 12, 2007, open burning of part of the unsalvageable materials ("debris") from a razed barn and building occurred at Respondent's property, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). Respondent was informed by an officer of the Springfield Township police department who was present at that time that such open burning was illegal and was requested to extinguish the fire.

6. On February 17 and 20, 2007, in response to citizen's complaint, an officer from Springfield Township police department observed that open burning of the debris from the razed barn continued to occur at Respondent's property, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

7. On February 21, 2007, open burning of the debris occurred in a pit at the back of the Respondent's property, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G). Respondent informed an ARAQMD representative that one of his employees was responsible for the open burning.

8. On February 21, 2007, ARAQMD sent a Notice of Violation ("NOV") letter to Respondent. The NOV memorialized the observations made on February 20, 2007, and conversations that occurred during the February 21, 2007 investigation and cited Respondent for the aforementioned violations. The NOV requested that Respondent submit, within 15 days of receipt of the NOV, a written commitment to cease all further illegal open burning. To date, ARAQMD has not received a response to the NOV.

9. Through unilateral orders, the Director may assess a violator not more than two hundred and fifty dollars (\$250) per day for each separate violation of the rules of OAC Chapter 3745-19 for open burning on residential property as specified in OAC Rule 3745-19-06. A separate penalty is assessed for each day the violation occurs. If the violator fails to comply with the Orders, the Director has the authority, under ORC § 3704.06, to request the Attorney General to initiate legal action to seek penalties of up to twenty-five thousand dollars (\$25,000) for each day of each violation.

10. 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 benefits to the people of the State to be derived from such compliance.

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall cease all open burning in violation of OAC Chapter 3745-19, 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 one thousand dollars (\$1,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. 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, Fiscal Specialist, or her successor, in care of Ohio EPA, Office of Fiscal Administration, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the property.

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Compliance 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 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 DAPC acknowledge, 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 signed by the Respondent and submitted by Respondent to Ohio EPA.

**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**

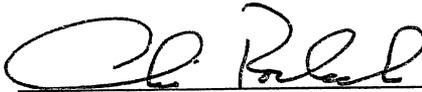
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance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

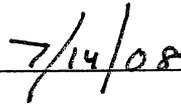
**IX. EFFECTIVE DATE**

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

  
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Chris Korleski  
Director

  
\_\_\_\_\_  
Date

C.L. W. A. Miller

**Penalty Worksheet**  
**W. A. Miller, dba D M Enterprises**  
**6017 Weaver Road**  
**Clinton, Ohio 44216**

Dates of Violation	Location	Penalty Each Day Violation Occurred*	Total Penalty Amount
February 12, 2007	2004 Portage Line Road	\$250	\$250
February 17, 2007	2004 Portage Line Road	\$250	\$250
February 20, 2007	2004 Portage Line Road	\$250	\$250
February 21, 2007	2004 Portage Line Road	\$250	\$250
Total Penalty			\$1,000

\* Ohio EPA penalty factors are \$250 per day per incident for open burning on residential property and \$1,000 per day per incident for open burning on commercial property, pursuant to OAC Rule 3745-19-06.