

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Tim Maggard, d.b.a. Maggard : Director's Final Findings
Nursery and Garden Center : and Orders
5557 Washington-Waterloo Road :
Washington Court House, Ohio 43160 :

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tim Maggard, d.b.a. Maggard Nursery and Garden Center ("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 facility as hereinafter identified 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates the Maggard Nursery and Garden Center located at 5557 Washington-Waterloo Road, Washington Court House, Fayette County, Ohio. Fayette County Auditor's Office records indicate this commercial property is owned by the Respondent. This facility is located more than one mile outside the boundary of any municipal corporation and is, therefore, in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).

2. OAC Rule 3745-19-04 states, in part, that no person or property owner shall

cause or allow open burning, as defined in OAC Rule 3745-19-01(G), in an unrestricted area, except as provided in paragraphs (B) to (D) of such rule or in ORC § 3704.11.

3. ORC § 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

4. On October 14, 2003, Ohio EPA's Central District Office ("CDO") representative observed open burning at the facility and upon investigation landscape waste was found burning at the facility, in violation of OAC Rule 3745-19-04 and ORC § 3704.05(G).

5. On October 16, 2003, CDO sent a Notice of Violation ("NOV") letter to the Respondent, stating that on October 14, 2003 open burning of materials on the Respondent's property was observed and, upon investigation, evidence of open burning of landscape waste was found on the property, in violation of OAC Rule 3745-19-04 and ORC § 3704.05 (G). The letter advised the Respondent of the prohibition on open burning per OAC Rule 3745-19-04, and stated that such open burning must cease.

6. On June 30, 2004, CDO noticed smoke coming from the Respondent's facility. On June 30, 2004, CDO conducted an investigation and noted the Respondent was burning waste from the nursery, in violation of OAC Rule 3745-19-04 and ORC § 3704.05(G). The CDO representative spoke to the Respondent's wife and explained that they could not burn landscape waste at the facility. Mrs. Maggard refused to make any attempt to put out the fire, and she requested the CDO representative to leave the facility.

7. Mrs. Maggard called the local sheriff to come to the facility on June 30, 2004. On June 30, 2004, deputies Jeff Holbrook and J.L. Matson, from the Fayette County Sheriff's Department, were dispatched to the facility in reference to open burning. Upon investigation the deputies found railroad ties, construction materials, plastic materials and landscape waste being burned at the facility. The open burning of such materials in a restricted area at a commercial facility is not provided in paragraphs (B) to (D) of OAC Rule 3745-19-04 or in ORC § 3704.11. Therefore, the burning was in violation of OAC Rule 3745-19-04 and ORC § 3704.05(G).

8. On July 2, 2004, CDO sent another NOV letter to the Respondent, stating that on June 30, 2004 open burning was observed at the Respondent's proeprty and, upon investigation, evidence of open burning of landscape waste and debris was found on the property, in violation of OAC Rule 3745-19-04 and ORC § 3704.05(G). The letter advised the Respondent of the prohibition on open burning per OAC Rule 3745-19-04, and stated that the open burning must cease.

9. Based on the above information, Ohio EPA finds that Respondent violated OAC Rule 3745-19-04(A) and ORC § 3704.05(G) as a result of the open burning incidents at this facility.

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 relation to benefits to the people of the State to be derived from

such compliance.

V. ORDERS

The Director of Ohio EPA hereby issues the following Order:

1. As of the effective date of these Orders, Respondent shall cease all open burning in violation of OAC Rule 3745-19-04 at the Maggard Nursery and Garden Center facility, and shall maintain compliance thereafter.

VI. 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.

VII. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Air Pollution Control
3232 Alum Creek Drive
Columbus, Ohio 43207-3417
Attention: David Burroughs, Environmental Specialist

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Tom Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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

Joseph P. Koncelik
Director

Date