OHIO E.P.A.
MAR 13 2009
ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Miller Garage Door Company :
2845 Industry Road :
Rootstown, Ohio 44272 :

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.

By: [signature] Date: 3/13/09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Miller Garage Door Company ("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 is incorporated with the State of Ohio with an office located at 2845 Industry Road, Rootstown Township, in Portage County of Ohio. Respondent was formed for the purpose of sale, service and installation of garage doors and openers. The property is also the residence of Mr. Gary Miller and Ms. Karen Miller, the owners of Respondent.

2. Ohio Administrative Code ("OAC") Rule 3745-19-04(A) prohibits any person or property owner from open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) to (C) and in ORC § 3704.11. Respondent is located in an "unrestricted area" as the term is defined in OAC Rule 3745-19-01(K).

3. Akron Regional Air Quality Management District ("ARAQMD") acts as an agent of Ohio EPA for the Division of Air Pollution Control in Portage County.

4. On July 19, 2006, ARAQMD received a complaint concerning open burning activities that occurred at Respondent's property located at 2845 Industry Road at 6:30

p.m. and 8:15 p.m. on July 18, 2006. ARAQMD inspected the site on July 19, 2006, and the complaint was verified. It was observed that the burn pile contained partially burned garage doors including metal, glass, and other debris. ARAQMD contacted Respondent at that time and the open burning regulations were explained.

5. Through routine inspection on September 2, 2008, ARAQMD noticed the remains of burnt garage doors and related items on Respondent's property. These burnt materials indicated an open burning at Respondent's property. ARAQMD visited the site again on September 5, 2008, and talked with Ms. Miller regarding the open burning of garage doors. Mr. Miller called ARAQMD later that day and indicated that Respondent is only burning wood (doors) that he thought it was legal. After ARAQMD explained the regulations to Mr. Miller, he assured ARAQMD that Respondent will stop open burning of its waste.

6. The open burning of the commercial waste at Respondent's property was in violation of OAC Rule 3745-19-04(A).

7. On September 16, 2008, ARAQMD sent a Notice of Violation ("NOV") letter to Respondent for the violation of OAC Rule 3745-19-04(A). Respondent's response to the NOV was received on September 19, 2008, and represented a written commitment to cease all illegal open burning.

8. The OAC violations cited in the above findings also constitute violations of ORC § 3704.05(G), which 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.

9. Through unilateral orders, the Director may assess a violator not more than two hundred-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 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, 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 hundred fifty dollars ($250) 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 $250. 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:

Ohio Environmental Protection Agency
Office of Fiscal Administration
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:

Ohio Environmental Protection Agency
Division of Air Pollution Control
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 Division of Air Pollution Control acknowledges, 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 Respondent and submitted 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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Akron Regional Air Quality Management District
Citicenter , Suite 904
146 South High Street
Akron, Ohio 44308
Attn: Bonetta Guyette

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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

IX. 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.

X. 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 3/11/09