

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Donald Miller : Director's Final Findings  
267 49<sup>th</sup> St. SW : and Orders  
Canton, Ohio 44706 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Donald Miller ("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 Respondent's rental property 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 the owner of a property located at 1923 Harrisburg Rd. NE, Canton, Ohio. In October of 2019, May, August and November of 2020, tenants of Respondent unlawfully open burned unpermitted materials at the above-referenced property. The property is located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(N).

2. OAC Rule 3745-19-03(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(L), in a restricted area, except as otherwise provided in OAC Rule 3745-19-03(B) through (D) or 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. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

4. On or about October 8, 2019, Canton Fire Department ("CFD") responded to an illegal open burn at Respondent's property at 1923 Harrisburg Rd. NE, Canton, Ohio. Based on the information from CFD's October 8, 2019 Run Report, upon arrival, CFD documented an open burn approximately 2 feet by 2 feet with burning materials included plastic, wood products from construction, brush, and other unknown material. The fire was immediately extinguished. On October 8, 2019, CFD informed Canton City Public Health – Air Pollution Control ("Canton APC") about the open burning incident.

5. On May 3, 2020, CFD responded to another illegal open burn at Respondent's above-referenced property. Based on the information from CFD's Run Report, upon arrival, CFD documented an open burn in the woods near the creek with burning materials included roof shingles, branches and brush. The fire was immediately extinguished. On May 5, 2020, CFD informed Canton APC about the May 3, 2020 open burning incident.

6. On August 24, 2020, CFD responded to another illegal open burn at Respondent's property. Based on the information from CFD's Run Report, upon arrival, CFD documented a large open burn with burning materials included sticks and brush. The fire was immediately extinguished. On August 27, 2020, CFD informed Canton APC about the August 24, 2020 open burning incident.

7. On November 28, 2020, CFD responded to another illegal open burn at Respondent's property. Based on the information from CFD's Run Report, upon arrival, CFD documented a large open burn of trash. The fire was immediately extinguished. On November 30, 2020, CFD informed Canton APC about the November 28, 2020 open burning incident.

8. Based on the evidence collected by CFD on October 8, 2019, May 3, 2020, August 24, 2020 and November 28, 2020, Respondent caused or allowed the open burnings of the above-referenced items for disposal purposes in a restricted area, in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G). On October 23, 2019, May 6, 2020, September 2, 2020, and December 2, 2020, Canton APC sent a Notice of Violation letters to Respondent citing the above-referenced violations, respectively.

9. The Director has given consideration to, and based her 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. ORDER**

The Director hereby issues the following Order:

1. Respondent shall pay the amount of three hundred dollars (\$300) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for three hundred dollars (\$300). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
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 CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, operations by Respondent.

#### **VIII. 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.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

## **X. NOTICE**

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

Canton City Public Health – Air Pollution Control  
420 Market Ave. N.  
Canton, Ohio 44702  
Attention: Terri Dzienis

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: James Kavalec, Manager, Enforcement Section

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

## **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specially waived in Section XII of these Orders.

## **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders

notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

**XIII. EFFECTIVE DATE**

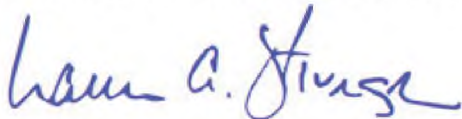
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**



\_\_\_\_\_  
Laurie A. Stevenson  
Director

6/14/2021

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Donald Miller**

  
\_\_\_\_\_  
Signature

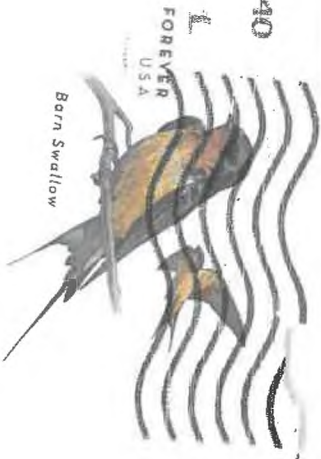
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Date *May 20 2021*

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267 45<sup>th</sup> St SW  
Cleveland Ohio  
44106

Legal

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Protection Agency  
PO Box 1049  
Columbus, OH 43216-1049

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