

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
DEC 11 2009

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Duff Quarry, Inc.  
9042 St. Rt. 117  
P.O. Box 305  
Huntsville, Ohio 43324

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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.

**PREAMBLE**

It is agreed by the parties hereto as follows:

By: Debra Casper Date: 12-11-09

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Duff Quarry, 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**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA makes the following findings:

1. Respondent owns property located at the intersection of St. Rt. 33 and 274 in Huntsville in Logan County.
2. OAC Rule 3745-19-04(A) prohibits "open burning," as defined in OAC Rule

3745-19-01(H), in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) to (D) and ORC § 3704.11. The provisions of OAC Rule 3745-19-04(B) to (D) and ORC § 3704.11 do not provide for the open burning of demolition debris in an unrestricted area.

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 July 13, 2009, Ohio EPA Southwest District Office ("SWDO") received a complaint that Respondent was conducting open burning of demolition debris at the above-mentioned property. Upon inspection of the property on July 15, 2009, SWDO discovered two large piles of smoldering waste that were approximately 10 to 15 feet wide and 50 to 70 feet long. Visible flame was observed at one location in the pile.

5. Open burning of such waste material is prohibited by rule, and the open burning was not otherwise exempted from the prohibition of OAC Rule 3745-19-04(A).

6. OAC Rule 3745-20-02(A) requires that the owner/operator of a demolition site conduct a survey of the structure prior to demolition to assess whether asbestos may be present in the structure.

7. OAC Rule 3745-20-03(A) requires that the owner/operator of a demolition project provide Ohio EPA with at least a ten day notice prior to beginning demolition activities.

8. During the open burning inspection, SWDO discovered that the demolition debris being burned resulted from the demolition of several mobile home trailers and a building formerly used as an office building by the previous property owner. SWDO did not receive a notification of demolition or an asbestos survey for the former office building located on the property.

9. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rule at some time on or before July 15, 2009:

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704;
- OAC Rule 3745-19-04(A) which prohibits the open burning of demolition debris;
- OAC Rule 3745-20-02(A) by failing to conduct a thorough inspection for

asbestos prior to beginning the demolition; and

- OAC Rule 3745-20-03(A) by failing to provide notification of demolition or renovation at least ten working days before the beginning of any demolition operation.

10. On July 20, 2009, a notice of violation ("NOV") letter was sent to Respondent by certified mail.

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

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official check made payable to "Treasurer, State of Ohio" within 30 days of the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent to:

Ohio EPA  
Office of Fiscal Administration  
50 West Town Street  
Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
50 West Town Street  
Suite 700  
P.O. Box 1049  
Columbus, OH 43216 - 1049

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the valid 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, the Respondent's activities at the Facility.

## **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. 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 Respondent pursuant to these Orders shall be addressed to:

Ohio EPA  
Southwest District Office  
401 E. Fifth Street  
Dayton, Ohio 45402  
Attn: Tom Schneider

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
50 West Town Street

Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: John Paulian

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 specifically 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.

#### **ORDERED AND AGREED:**

Ohio Environmental Protection Agency

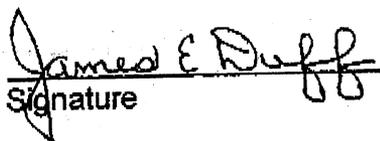


Chris Korleski  
Director

Date 12/9/09

#### **AGREED:**

Duff Quarry, Inc.

  
Signature

Date 12/8/09

JAMES E DUFF  
Printed or Typed Name