January 2015

Isaac Williams Property vs. ENVIRONMENT AND CONSERVATION

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STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:                           )        DIVISION OF
                                  )        AIR POLLUTION CONTROL
                                  )
ISAAC WILLIAMS,                           )        CASE NUMBER     APC 14-0090
    Respondent.                        )        DOCKET NUMBER    04.09-127462J

ORDER

This contested case was heard in Nashville, Tennessee, on December 19, 2014, before J. Randell LaFevor, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Board of Air Pollution Control. The Division of Air Pollution Control (Petitioner) was represented by its legal counsel, William Freeman Miller. Mr. Isaac Williams (Respondent) was present for the hearing and not represented by counsel.

The Petitioner presented testimony from two (2) witnesses and introduced eight (8) exhibits into evidence, which included both documentary and photographic evidence. The Respondent testified on his own behalf.

At the conclusion of the hearing, the Administrative Judge announced the determination of the case based on the Findings of Fact and Conclusions of Law set forth below:

FINDINGS OF FACT

1. The Petitioner received a complaint alleging that the Respondent had committed an act of Open Burning on March 17, 2014. Thereafter, the case was assigned to Ken Cooper, an Environmental Scientist for the Petitioner, who conducted an inspection of the property on March 20, 2014.
2. The Petitioner issued a Technical Secretary’s Order and Assessment of Civil Penalty (Order & Assessment) to the Respondent on July 17, 2014. The Order & Assessment set forth a civil penalty in the amount of five-hundred dollars ($500.00). The Respondent timely appealed the Order & Assessment.

3. Based upon evidence found by the Petitioner during the inspection of the Respondent’s property, as demonstrated through ten (10) photographs taken during the inspection, the Respondent had, for some period of time, caused the Open Burning of prohibited and expressly prohibited items, including, inter alia: a tire, a mattress, pressure-treated lumber, plastic, fiberglass shingles, cloth, plywood, oriented strand boards and the combustible portion of coated metal and aerosol cans.

4. The Respondent did not deny that he had burned prohibited and expressly prohibited items, but instead testified that he was unaware of the regulatory prohibitions. Nevertheless, evidence clearly established the Respondent violated rules prohibiting Open Burning of prohibited and expressly prohibited items as set forth in Tenn. Comp. R. & Regs. 1200-03-04-.03(1) & (4).

CONCLUSIONS OF LAW

1. Tenn. Comp. R. & Regs. 1200-03-04-.03(1), provides that no person shall cause, suffer, allow, or permit open burning except as specifically exempted by Rule 1200-3-4-.04 EXCEPTIONS TO PROHIBITION.

2. Tenn. Comp. R. & Regs. 1200-03-04-.03(4), provides that the open burning of tires and other rubber products, vinyl shingles and siding, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials is expressly prohibited, and such materials shall not be included in any open burning conducted under the provisions of Rule 1200-3-4-.04 EXCEPTIONS TO PROHIBITION.

3. The facts and violations as set forth in the Order & Assessment were accurate in all aspects, and the civil penalty assessment in the amount of five-hundred dollars ($500.00) was appropriate. By engaging in Open Burning of the items described above (Findings of Fact,
paragraph 3), the Respondent violated the prohibitions contained in Tenn. Comp. R. & Regs. 1200-03-04-.03(1) & (4).


Based upon these findings and conclusions, and upon full consideration of the testimony and other evidence submitted by the parties, and the entire record, it is hereby determined that the Tennessee Division of Air Pollution Control has met its burden of proof, and has established by a preponderance of the evidence that the Respondent, Mr. Isaac Williams, violated Tenn. Comp. R. & Regs. 1200-03-04-.03(1) & (4).

Accordingly, IT IS ORDERED that the Technical Secretary’s Order and Assessment of Civil Penalty issued to the Respondent on July 17, 2014, is UPHELD, and is incorporated herein by reference in its entirety. Respondent is assessed a civil penalty of five-hundred dollars ($500.00). Payment of the civil penalty shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services – Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243.

Entered and effective this _____ day of ______________, 2015.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this ______ day of __________________, 2015.

J. Richard Collier, Director
Administrative Procedures Division