



MEMORANDUM

DATE:

TO: Missouri Air Conservation Commission

THROUGH: Leanne Tippett Mosby, Director
Division of Environmental Quality

FROM: Kyra L. Moore, Director
Air Pollution Control Program

SUBJECT: Attorney General's Office Referral Request – Mr. Steven A. Klein

As a result of a reported concern, on September 23, 2012, at 1:37 a.m. the Pettis County Sheriff's Department and Pettis County Fire Department investigated a report regarding the open burning of regulated waste on Mr. Klein's property located at 4015 South Highway U in Sedalia, Pettis County, Missouri. Upon arrival, Deputy Jimmy Moore and Reporting Officer Larry Lehman documented that they observed green flames emanating from a large fire, where a pile of garbage, wood, paint buckets, plastic items, wire and tires were being illegally open burned. After the Pettis County Fire Department extinguished the fire, the officers noted that they further observed several five (5) gallon buckets of oil setting adjacent to the fire.

On September 24, 2012, a representative of the Missouri Department of Natural Resources' Kansas City Regional Office (KCRO) received a telephone call from the Pettis County Fire Department reporting the incident. On November 15, 2012, based on the observations and findings documented, the KCRO issued Notice of Violation (NOV) No. KCR2012101615025412, to document the violation of Missouri Air Conservation Regulation 10 CSR 10-6.045, "*Open Burning Requirements.*"

The Air Pollution Control Program (APCP) conducted conference, conciliation and persuasion beginning on January 3, 2013, to resolve this violation.

On January 3, 2013, the APCP mailed a letter to Mr. Klein, informing him that a monetary penalty had been assessed for the violation and requested a compliance plan be submitted to the APCP by January 31, 2013.

On January 29, 2013, the APCP received a letter from Attorney at Law, Kenneth M. Dake, informing the APCP that Dake & Dake, LLC, had been retained by Mr. Klein as his

representative, concerning the above referenced NOV. Mr. Dake stated, after review, his client did not appear to be in violation of the Missouri Air Conservation Regulation and requested all evidence be submitted to him.

On January 30, 2013, the APCP sent an e-mail to Mr. Dake confirming receipt of his letter. A copy of the reports and photographs (evidence) provided by the Pettis County Sheriff's Office and Pettis County Fire Department were provided as requested.

On February 1, 2013, the APCP sent an e-mail to Mr. Dake. Mr. Dake was informed that a letter had been mailed to Mr. Klein on January 3, 2013, requesting a compliance plan be submitted to the APCP by January 31, 2013. Mr. Dake was informed that no compliance plan had been provided as requested. The APCP acknowledged Mr. Dake's letter and allowing time for him to confer with his client, extended the response date and respectfully requested the compliance plan be submitted by February 15, 2013.

On February 7, 2013, the APCP sent an e-mail to Mr. Dake. Attached to the message was seven (7) larger photographs provided by the Pettis County Sheriff's Department.

On February 15, 2013, at 2:37 p.m., Mr. Dake sent an e-mail to the APCP and attached Mr. Klein's response regarding the requested compliance plan.

On March 5, 2013, the APCP mailed a second letter to Mr. Dake. The letter confirmed receipt of his client's compliance plan and informed Mr. Dake that the violation still warranted a penalty. The APCP offered to negotiate the penalty and requested a response by March 22, 2013. On March 19, 2013, Mr. Dake's office telephoned the APCP and asked if they could delay their client's response until March 26, 2013. The APCP agreed.

On March 25, 2013, Mr. Dake sent an e-mail to the APCP. He stated that he never received the photograph's (evidence) as requested. Mr. Dake again emphasized that his client did not do anything illegal. Mr. Dake stated, the Pettis County Sheriff's Department deputy was not an expert and that made his statement speculative. Mr. Dake further stated his client did not wish to negotiate the penalty.

On April 2, 2013, the APCP mailed a third letter to Mr. Dake. The letter addressed Mr. Dake's claim that no photographs (evidence) were provided and again offered to negotiate the penalty. Enclosed with the letter, was a copy of three e-mails sent on January 30, 2013, February 1, 2013, and February 7, 2013, containing the requested evidence, and, a CD containing photographs provided by the Pettis County Sheriff's Department. In this letter, Mr. Dake was informed that this would be the last and final attempt to negotiate the penalty with his client. Mr. Dake was asked to respond by April 15, 2013. No response was provided.

On April 17, 2013, the APCP sent a courtesy e-mail to Mr. Dake asking if his client had responded to the April 2, 2013, letter. The e-mail addressed the fact that no response had been received by the APCP, by April 15, 2013, and again, the APCP offered to negotiate the penalty. Regarding the penalty, the letter informed Mr. Dake, if his client does not provide a response, the APCP would request authorization to refer the outstanding violation to the Attorney General for appropriate legal action. Later that day, Mr. Dake's Office Manager, Ms. Gina Doogs, sent an e-mail stating, she reviewed the April 2, 2013, letter; that Mr. Dake had the letter in his office reviewing the pictures; and, that she would bring this issue to his attention the following morning. To date, no response has been provided.

In light of failure to resolve the violations with conference, conciliation, and persuasion, the Air Pollution Control Program is requesting authority to refer the case to the Attorney General's Office to institute a civil action in a court of competent jurisdiction on behalf of the Missouri Air Conservation Commission and Missouri Department of Natural Resources. I recommend approval of this action.

KLM:jsv

c: Ms. Dee Ann Gregory, Kansas City Regional Office



MEMORANDUM

DATE:

TO: Missouri Air Conservation Commission

THROUGH: Leanne Tippet Mosby, Director
Division of Environmental Quality

FROM: Kyra L. Moore, Director
Air Pollution Control Program

SUBJECT: Attorney General's Office Referral Request – Mr. Vernard Tucker,
Rockin Diamond T Construction

On July 5, 2012, the Missouri Department of Natural Resources' Kansas City Regional Office (KCRO) investigated a concern regarding the open burning of roofing shingles by Rockin Diamond T Construction at 884 Southeast Highway BB in Deepwater, Missouri. During the investigation, the inspector observed remnants of burned roofing shingles on the property. Open burning construction waste, demolition waste, and trade waste (e.g. roofing shingles) is a violation of the Missouri Air Conservation Law and its implementing regulation, 10 CSR 10-6.045, "*Open Burning Requirements*." On July 6, 2012, the KCRO issued Notice of Violation (NOV) #KCR11374182 to document the violation.

On July 13, 2012, the KCRO referred NOV #KCR11374182 to the department's Air Pollution Control Program (APCP).

On September 5, 2012, the APCP mailed by certified mail a settlement offer to Mr. Vernard Tucker, Rockin Diamond T Construction, with a response date of October 2, 2012. On September 22, 2012, the United States Postal Service (USPS) returned the letter as "return to sender – Unclaimed –Unable to forward."

On October 1, 2012, the APCP mailed Mr. Vernard Tucker, Rockin Diamond T Construction, by regular U. S. mail, a settlement offer with a response date of October 16, 2012.

On October 3, 2012, Mr. Tucker telephone called the APCP. Mr. Tucker said he did not start the fire, but that it was started by his sister's ex-boyfriend. The APCP requested that he write a letter of explanation for the APCP to review in its consideration for a negotiated civil penalty. Mr. Tucker failed to write the letter of explanation.

On December 4, 2012, the APCP made a follow-up telephone call to Mr. Tucker. On December 7, 2012, Mr. Tucker returned the telephone call and said he had some serious health issues occur but he and his sister would write a letter detailing the open burning information. The APCP has not received the letter.

On December 17, 2012, the APCP mailed, by regular U. S. mail, another settlement offer to Mr. Vernard Tucker, Rockin Diamond T Construction, with a response date of December 28, 2012. The APCP did not receive a written response.

On January 9, 2013, the APCP telephoned Mr. Tucker, but the telephone number was disconnected.

On January 31, 2013, the APCP telephoned Mr. Tucker and his sister, Ms. Tina Routh, but both telephone numbers were disconnected.

On May 1, 2013, the APCP mailed, by regular U. S. mail, another settlement offer to Mr. Vernard Tucker, Rockin Diamond T Construction. The APCP has not received his written response.

In light of failure to resolve the violations with conference, conciliation, and persuasion, the Air Pollution Control Program is requesting authority to refer the case to the Attorney General's Office to institute a civil action in a court of competent jurisdiction on behalf of the Missouri Air Conservation Commission and Missouri Department of Natural Resources. I recommend approval of this action.

KLM:cjv

c: Dee Ann Gregory, Kansas City Regional Office
Henry County enforcement file