



Missouri  
Department of  
Natural Resources

**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 – David Ward

An inspection on April 24, 2012, of the former MFA elevator/feed mill located at the corner of P Highway and Main Street in Ionia, Benton County, Missouri by the Department of Natural Resources' Kansas City Regional Office (KCRO) documented violations of 10 CSR 10-6.080 "*Emission Standards for Hazardous Air Pollutants*," which adopts, by reference 40 CFR Part 61, Subpart M, "*National Emission Standards for Asbestos*" and of 10 CSR 10-6.045 "*Open Burning Requirements*." Mr. David Ward demolished the former MFA elevator/feed mill and burned the demolition waste. He was issued Notice of Violation (NOV) #KCR201204271475142 for failure to conduct a thorough asbestos inspection prior to initiating demolition activities and failure to provide notification to the Missouri Department of Natural Resources' Air Pollution Control Program (APCP) ten working days prior to the start of demolition of the building. He was issued NOV #KCR2012042713555010 for open burning of demolition waste.

On May 3, 2012, the KCRO sent correspondence notifying Mr. Ward of these violations.

On June 26, 2012, the APCP sent Mr. Ward a settlement offer for the violations, which requested that Mr. Ward respond by July 17, 2012.

On August 3, 2012, Mr. Ward telephoned the APCP regarding the settlement offer letter and discussed his violations. He mentioned he was aware of the asbestos regulations due to a prior asbestos violation that had been issued to him but had been dropped. He did not believe they applied in this circumstance because he was told by an asbestos inspector that elevators were not regulated.

The APCP set a new deadline of August 31, 2012, for Mr. Ward to submit a written response in an August 3, 2012, telephone call. Following the telephone call, the APCP found a record of NOV#1891KC issued in 2003 to Mr. Ward for failure to inspect for asbestos and failure to notify the APCP of demolition related to a roof collapse of the Calhoun Colt Show facility. Although the APCP did not pursue further enforcement of the NOV, the initial issuance of the NOV to Mr. Ward documents he had been made aware of the existence of the asbestos inspection and notification requirements.

On September 5, 2012, the APCP contacted Mr. Ward as no response had been received. Later that day he returned the call and a new response deadline of September 10, 2012, was set.

On September 7, 2012, the APCP received his written response letter. Mr. Ward stated that he was unaware of the requirement of an asbestos inspection prior to "recycling" the elevator. He also stated that neither he nor his employees were responsible for the burning. He cites that local citizens had a bonfire and were responsible for the burning of the demolition waste.

On October 30, 2012, the APCP sent a counter offer letter in response to his written letter. The penalty associated with the burning violation was waived due to the circumstances Mr. Ward explained.

On November 20, 2012, Mr. Ward contacted the APCP about the letter. The APCP returned his call on November 21, 2012. During the telephone call, Mr. Ward stated he wanted to continue negotiations on the penalty. Mr. Ward was given until December 5, 2012, to provide more mitigating information.

On December 11, 2012, the APCP contacted Mr. Ward as no response had been received. His deadline was extended until December 17, 2012. However, Mr. Ward was informed that if his response was not received by the APCP, he would be referred to the Attorney General's Office.

On January 7, 2013, as no response had been received, the APCP sent Mr. Ward a letter informing him that the referral process had started.

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:rhv

c: Michael Cunningham, Kansas City Regional Office



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**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. Curtis Evans d/b/a Curtis Evans Trucking, LLC

As a result of a reported concern, on October 12, 2010, the Missouri Department of Natural Resources' Northeast Regional Office (NERO) visited Mr. Evans' property located at 100 Highway 10 in Norborne, Carroll County, Missouri and observed, in a burn pile, eighteen (18) whole and at least two (2) burned scrap tires; and documented that scrap tires had been open burned. On November 9, 2010, the department issued Notice of Violation (NOV) #NER2010110113164776 for violations of Missouri Air Conservation Regulation 10 CSR 10-6.045, "*Open Burning Requirements*" and Missouri Solid Waste Management Law, Section 260.270.

The Air Pollution Control Program (APCP) conducted conference, conciliation and persuasion beginning on December 3, 2010, to resolve this violation. The Solid Waste Management Program continues to work with Mr. Evans for the solid waste violation and does not plan to refer their portion of this case at this time.

On July 26, 2012, Mr. Evans, during a telephone conversation with a representative from the APCP, agreed to a civil penalty, with a portion being suspended and a portion paid in two equal installments. The first installment was to be paid immediately and the second, paid upon signing an Administrative Order on Consent (AOC).

On September 5, 2012, AOC No. APCP-2012-073 was mailed to Mr. Evans. As of this date, Mr. Evans paid no installment payment as he previously agreed. Mr. Evans would not accept the AOC via certified mail and would not respond to telephone calls or e-mail.

On September 26, 2012, a representative from the NERO met with Mr. Evans at his property and presented AOC No. APCP-2012-073 for review and signature. After review, Mr. Evans signed and accepted the terms of the consent order. Mr. Evans did not provide any payment.

On October 3, 2012, a representative from the APCP called Mr. Evans. Mr. Evans, during that telephone call, was asked when he could pay the up-front penalty as previously agreed.

Mr. Evans stated he thought he could pay half of the agreed upon paid penalty on October 16, 2012, and the remaining amount on November 15, 2012. The APCP agreed to work with Mr. Evans and accommodate his proposed payment schedule.

Several attempts to contact Mr. Evans by telephone and e-mail were made on October 17, 18 and 19, 2012. Messages were left asking Mr. Evans to contact the APCP. Mr. Evans did not respond and did not pay the portion of the paid penalty, which he previously agreed to pay on October 16, 2012.

On October 24, 2012, a letter was provided to Mr. Evans. The letter stated, since the first payment had not been received by the department, and since he had not responded to confirm that a payment was made, this letter was being provided to inform him that the up-front penalty must be paid in full by November 15, 2012. It was further explained if the up-front penalty was not paid in full by this date, he would be in violation of AOC No. APCP-2012-073.

It was made clear to Mr. Evans, should he be found in violation of the consent order, a new NOV would be issued and civil penalty assessed. Mr. Evans was informed, being found in violation of the consent order, would require the entire penalty be paid in full within 15 business days of written demand by the department. Mr. Evans did not respond.

On November 30, 2012, a letter was mailed to Mr. Evans providing him a final opportunity to comply with AOC No. APCP-2012-073. Mr. Evans was informed that he was in violation of the consent order; asked to comply with the consent order and terms previously agreed to; and, to pay the paid portion up-front penalty in full by December 31, 2012. Mr. Evans provided no response.

On January 31, 2013, a letter was mailed to Mr. Evans issuing NOV No. 20130124JSS AP for failing to comply with AOC No. APCP-2012-073, in violation of the Missouri Air Conservation Law under Section 643.151.3 RSMo. Mr. Evans was informed, the NOV triggered the immediate imposition of the entire penalty and was required to remit payment immediately.

Mr. Evans was further informed that the APCP is preparing to place this matter on the agenda of an upcoming Missouri Air Conservation Commission meeting. To date, Mr. Evans has provided no 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:jsv

c: Mr. Steve Boone, Northeast Regional Office  
Mr. Dan Fester, Solid Waste Management Program