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OCT 06 2003

OHIO EPA
DIV. OF SOLID & INFECTIOUS WASTE MGMT.

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

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OHIO EPA

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SOUTHWEST DISTRICT

OCT 16 2003

In the Matter of:

D&R Recyclers, Inc.
3851 South Street
Hamilton, Ohio 45011

OHIO EPA
DIV. OF SOLID & INFECTIOUS WASTE MGMT.
Amended Director's Final Findings and Orders

And

Darrel Rutherford
3851 South Street
Hamilton, Ohio 45011

Respondents

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OCT 06 2003

SOUTHWEST DISTRICT

OHIO E.P.A.
OCT 14 2003
AMENDED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Amended Director's Final Findings and Orders ("Orders") are issued to D&R Recyclers, Inc. and Darrel Rutherford ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") sections 3734.13, 3734.85 and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon the Respondents and their heirs and successors in interest liable under Ohio law. No change in ownership of D&R Recyclers, Inc., or of the Storage Area (as hereinafter defined) owned by Respondents, shall in any way alter the Respondents' responsibilities under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734. and the rules promulgated thereunder.

I hereby certify that this is a true and correct copy of the
of the Ohio Environmental Protection Agency
Ohio Environmental Protection Agency

[Signature] 10-14-03

IV. FINDINGS

The Director has determined the following findings:

1. Respondents are the owners of real property located at 3851 South Street (previously 600 Augspurgen Road) in Hamilton, Butler County, Ohio, upon which exists an unpermitted, unlicensed, scrap tire storage area ("Storage Area"). Respondents are also the owners and operators of a class II scrap tire recovery facility which is also located on the aforementioned property.
2. The Storage Area consists of approximately 50 acres and contains an estimated 1.0 to 1.5 million scrap tires. Respondents are responsible for the accumulation of scrap tires at the Storage Area.
3. Pursuant to ORC Section 3734.13 and 3745.01, Respondents entered into consensual Director's Final Findings and Orders on June 18, 2003 ("2003 DFF&O's"), to address outstanding operational and permitting violations at the Storage Area.
4. Subsequently Ohio EPA received correspondence dated July 18, 2003, from Respondent's requesting that the draw down schedule outlined in Order # 8 of the 2003 DFF&O's be amended to allow any scrap tires removed in excess of the required amount in any one month removal period to be credited to the following month's removal period.
5. Order # 8 of the DFF&O's states "Within 90 days after the effective date of these Orders, Respondents shall begin removing scrap tires from the Storage Area including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires by removing thirty-three thousand (33,000) scrap tires within 90 days after the effective date of this Order and shall continue to remove 33,000 scrap tires every 30 days thereafter, until all scrap tires are removed from the Storage Area. Respondents shall indicate, on a form prepared weekly, the number of scrap tires removed from each numbered pile at the Storage Area to any other authorized location."
6. Ohio EPA received correspondence from Rumpke of Ohio LLC. ("Rumpke") dated August 1, 2003, outlining Rumpke's agreement with D&R to assist in the removal of scrap tires from Respondent's Storage Area. Additionally, Rumpke requested on behalf of Respondents that Respondents' draw down schedule be modified to allow for an average removal of 330 tons (equivalent to 33,000 scrap tires) per month. Rumpke's reason for making this request of Ohio EPA was to allow for the seasonal variation in the number of tires that can be processed by Rumpke that is typically experienced due to variable weather conditions.

7. Accordingly, these amended Director's Final Findings and Orders are intended to revise and amend the DFF&O's issued on June 18, 2003. To the extent not otherwise specifically amended herein, the terms and conditions of the original DFF&O's issued on June 18, 2003 shall be incorporated herein and shall remain in full force and effect as if originally rewritten here.

V. ORDERS

Respondents shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

1. Order # 8 of the DFF&O's issued on June 18, 2003, is amended and superseded by the following:

Immediately upon on the effective date of these Orders, Respondents shall begin removing scrap tires from the Storage Area including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires by removing ninety-nine thousand (99,000) scrap tires every quarter until all scrap tires are removed from the Storage Area. Respondents shall indicate, on a form prepared weekly, the number of scrap tires removed from each numbered pile at the Storage Area to any other authorized location. Scrap tires removed from the Storage Area in excess of the required 99,000 tires per quarter may be applied to the following quarter's removal requirement. For the purposes of this Order a quarter is considered to be the following, periods of time; January 1 to March 29, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

2. Orders # 1-7 and # 9-14 of the DFF&O's issued on June 18, 2003 remain unchanged and in full effect as if originally rewritten here.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-31-04(B).

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 Respondents' Storage Area.

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 federal, state, and local laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

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:

Ohio Environmental Protection Agency
Southwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
401 East Fifth Street
Dayton, OH 45402

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

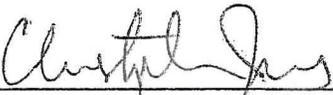
XIII. EFFECTIVE DATE

The effective date of the 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:



Christopher Jones, Director

10-14-03
Date

IT IS SO AGREED:

D&R Recyclers, Inc.

Darrel Rutherford
Signature

Oct 1, 2003
Date

DARREL RUTHERFORD
Printed or Typed Name
President
Title

Darrel Rutherford

Darrel Rutherford
Signature

Oct 1, 2003
Date

DARREL RUTHERFORD
Printed or Typed Name