OhioEPA
State of Ohio Environmental Protection Agency

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P.O. Box 1049
Columbus, OH 43216-1049

December 30, 2009

Ms. Margaret Davis O'Sullivan
4604 Graystone Drive
Austin, TX 78731

Re: Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission.

Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General=s Office, Environmental Enforcement Section. An appeal may be filed at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Sincerely,

Brian Dearth
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Bruce McCoy CO, DSIWM
Lynn Sowers, NEDO, DSIWM
Heidi Griesmer, CO, PIC
Jeff Hurdley, CO, Legal
Robin Nichols, CO, Legal
Bob Large, CO, DSIWM

OHIO E.P.A.

DEC 30 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Margaret Davis O'Sullivan	:	
4604 Graystone Drive	:	Director's Final Findings
Austin, Texas 78731	:	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.

By: _____ Date: 12/30/09

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Margaret Davis O'Sullivan (the "Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13 and 3734.85.

II. PARTIES

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) shall in any way alter Respondent's 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.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. On or about October 20, 1971, three parcels of land, located at 1144 Poland Avenue, Mahoning County, Youngstown, Ohio 44502 (the "Property") were transferred to Max Davis via warranty deed. The warranty deed is included in the Mahoning County Recorder's Official Record at Deed Record Volume 1242, Pages 247 and 248. The Property is further identified as Youngstown City Lot Numbers 5811, 5812, and 5813.

2. ORC Section 2105.06 provides that "[w]hen a person dies intestate having title...to any real estate...in this state...the real estate...shall descend and

pass...in the following course...[i]f there is no surviving spouse, to the children of the intestate[.]"

3. Max Davis died intestate on or about April 18, 2002, and was not survived by a spouse.

4. Respondent and Michael S. Davis are the children and heirs of Max Davis.

5. To the best of the Director's knowledge and belief, Respondent and Michael S. Davis are both an "owner "of the Property.

6. On August 26, 2009, Director's Final Findings and Orders were issued to Michael S. Davis, requiring him to comply with ORC Chapter 3734 and the rules promulgated thereunder.

7. Respondent is a "person" as that term is defined in ORC Section 3734.01(G), and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

8. There are currently an estimated 13,000 scrap tires illegally disposed of on the Property.

9. The Property is not licensed or permitted as a scrap tire collection facility, a solid waste disposal facility, a junk yard, or any type of legitimate recycling facility.

10. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

11. OAC Rule 3745-27-01(S)(6) defines "scrap tire" as "a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use."

12. The open dumping of scrap tires is a violation of ORC § 3734.03 and OAC Rule 3745-27-05(C) which respectively state that "[n]o person shall dispose of solid wastes by open burning or open dumping" and "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping . . . has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734 of the Revised Code, and shall submit verification that the solid waste has been properly managed."

13. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "the final deposition of scrap tires on or into the ground at any place other than a scrap tire collection, storage, monofill, monocell, or recovery facility licensed under section 3734.81 of the Revised Code, or at a site or in a manner not specifically identified in division

(C)(2), (C)(3), (C)(4), (C)(5), (C)(7), or (C)(10) of section 3734.85 of the Revised Code, or at any licensed solid waste facility if the deposition is not in accordance with Chapters 3745-27 and 3745-37 of the Administrative Code."

14. OAC Rule 3745-27-60(B) provides that "the storage of scrap tires in any amount outside or inside a . . . building shall be deemed a nuisance, a hazard to public health or safety, or fire hazard unless the tires are stored in accordance with [the standards set forth within OAC Rule 3745-27-60(B)(1) through (11)].

15. Scrap tires, if not properly managed, may become a breeding ground for mosquitoes. Mosquitoes are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever.

16. On July 29, 2004, Ohio EPA inspected the Property and observed the following violations:

    a. OAC Rule 3745-27-05(C) for open dumping of solid waste.

    b. ORC Section 3734.03 for open dumping of solid waste.

    c. OAC Rule 3745-27-60(B)(6)(f) (current version at OAC Rule 3745-27-60(B)(7)(e)) for failure to keep fire lanes free of combustible material.

    d. OAC Rule 3745-27-60(B)(6)(e) (current version at OAC Rule 3745-27-60(B)(11)) for failure to maintain emergency vehicle access.

    e. OAC Rule 3745-27-60(B)(8) (current version at OAC Rule 3745-27-60(C)(1) for failure to control mosquitoes.

    This inspection was documented in an NOV from Ohio EPA to Max Davis dated August 2, 2004.

17. On April 19, 2006, Ohio EPA inspected the Property and observed the following violations:

    a. OAC Rule 3745-27-05(C) for open dumping of solid waste.

    b. ORC Section 3734.03 for open dumping of solid waste.

    c. OAC Rule 3745-27-60(B) for failure to store scrap tires in accordance with this rule.

    This inspection was documented in an NOV from Ohio EPA to Max Davis dated May 1, 2006.

18. On August 11, 2008, a tire fire involving less than 10,000 passenger tires equivalents occurred on the Property. OAC Rule 3745-27-79 requires that the owner conduct characterization and removal activities of scrap tire fire residuals after a tire fire. Respondent has failed to conduct these required activities.

19. On March 11, 2009, Ohio EPA inspected the Property and observed the following violations:

    a. ORC Section 3734.02(C) for establishing a solid waste facility without submitting an application for a permit;

    b. ORC Section 3734.03 for open dumping of solid waste;

    c. OAC Rule 3745-27-05(C) for open dumping of solid waste;

    d. ORC Section 3734.05(A)(1) for operating a solid waste facility without a license;

    e. OAC Rule 3745-27-60(B)(1) for failure to maintain sufficient drainage such that water does not collect in the area where scrap tires are stored;

    f. OAC Rule 3745-27-60(B)(7)(a) for having individual scrap tire piles greater than two thousand five hundred square feet in basal area;

    g. OAC Rule 3745-27-60(B)(7)(b) for having scrap tire piles greater than eight feet in height;

    h. OAC Rule 3745-27-60(B)(7)(c) for failure to have scrap tire piles at least twenty five feet away from buildings and other scrap tire piles;

    i. OAC Rule 3745-27-60(B)(7)(d) for failure to have fire breaks of at least fifty six feet between scrap tire piles;

    j. OAC Rule 3745-27-60(B)(8)(a) for having individual scrap tire piles greater than two thousand five hundred square feet in basal area inside a building;

    k. OAC Rule 3745-27-60(B)(8)(b) for failure to have aisle widths between scrap tire piles at least eight feet inside a building;

    l. OAC Rule 3745-27-60(B)(8)(d) for failure to have a clearance from the top of scrap tire storage piles to sprinkler deflectors by at least three feet;

    m. OAC Rule 3745-27-60(B)(11) for failure to keep fire breaks free of combustible material;

    n. OAC Rule 3745-27-60(C) for failure to provide mosquito control;

o. OAC Rule 3745-27-79(B)(1)(a) for failure to characterize and, if necessary, remediate areas of contamination resulting from the open burning of scrap tires;

p. OAC Rule 3745-27-79(B)(3) for failure to notify proper personnel as well as take all reasonable actions and measures necessary [under this Rule] after a tire fire has occurred;

q. OAC Rule 3745-27-79(C)(1) for failure to perform Priorities One through Five [of this Rule] after a tire fire has occurred;

r. OAC Rule 3745-27-79(C)(2)(a) for failure to perform Priorities Two through Five of OAC Rule 3745-27-79(C)(1).

This inspection was documented in an NOV from Ohio EPA to Michael S. Davis dated April 15, 2009.

20. The Ohio Department of Health confirmed a human case of West Nile Virus in 2005, and confirmed West Nile Virus-positive mosquito pools in 2008 in Mahoning County.

21. Given the documented proximity of the scrap tire pile to Youngstown and sensitive sub populations such as elementary schools, middle schools, and hospitals, the confirmed presence of West Nile Virus in the County, the potential that a tire fire could obscure major transportation routes such as Interstate Route 680, and the adverse impact that a tire fire could have on the waters of the state, the Director has determined that the accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.

22. ORC Section 3734.85 provides that "[i]f the director determines that an accumulation of scrap tires constitutes a danger to the public health or safety or to the environment, the director shall issue an order under section 3734.13 of the Revised Code to the person responsible for the accumulation of scrap tires directing that person, within one hundred twenty days after the issuance of the order, to remove the accumulation of scrap tires from the premises on which it is located and transport the tires to a scrap tire storage, monocell, monofill, or recovery facility licensed under section 3734.81 of the Revised Code, to such a facility in another state operating in compliance with the laws of the state in which it is located, or to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state. If the person responsible for causing the accumulation of scrap tires is a person different from the owner of the land on which the accumulation is located, the director may issue such an order to the landowner."

23. ORC Section 3734.85 further provides, "If a person to whom a removal order is issued under this division fails to comply with the order and if the director performs a removal action under this section, the person to whom the removal order is issued is liable to the director for the costs incurred by the director for conducting the removal operation, storage at a scrap tire storage facility, storage or disposal at a scrap tire monocell or monofill facility, or processing of the scrap tires so removed, the transportation of the scrap tires from the site of the accumulation to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and the administrative and legal expenses incurred by the director in connection with the removal operation.

V. ORDERS

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

1. Upon the effective date of these Orders, Respondent shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(C). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(C)(3) to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.

2. Not later than thirty (30) days after the effective date of these Orders, Respondent shall establish storage piles and fire lanes at the Property in accordance with OAC Rule 3745-27-60(B).

3. Not later than thirty (30) days after the effective date of these Orders, Respondent shall characterize and, if necessary, remediate areas of contamination resulting from the fire that occurred at the Property on August 11, 2008. Remediation activities shall be prioritized in accordance with OAC Rules 3745-27-79(C)(1)(b) through (e).

4. Not later than ninety (90) days after the effective date of these Orders in accordance with OAC 3745-27-79(C)(2)(a), Respondent shall remove or cause the removal of all burned and partially burned scrap tires from the Property including, but not limited to, burned and partially burned scrap tires dumped onto the ground and/or buried. Pursuant to OAC Rule 3745-27-79(C)(1)(b), all burned and partially burned scrap tires shall be disposed as a solid waste at a licensed solid waste disposal facility.

5. Respondent shall obtain disposal receipts from the solid waste disposal facility, indicating weight and/or volume of burned and/or partially burned scrap tires received. Respondent shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Four (4), above.

6. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all unburned scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried, and shall arrange for their transportation, by a registered scrap tire transporter:

   a. to a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81; or
   b. to such a facility in another state operating in compliance with the laws of that state in which it is located; or
   c. to any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.

7. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of unburned scrap tires received. Respondent shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Six (6), above.

8. Respondent shall continue to comply with Order Nos. One (1) and Two (2) above until such time as all scrap tires, burned and unburned, have been removed from the Property unless otherwise provided by Ohio EPA in writing.

VI. TERMINATION

Respondent's obligation under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has 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 Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

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

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by Respondent.

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, Respondent or the Property.

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 or the Property.

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.

Upon the written request of the recipient of an order issued under ORC Section 3734.85(A), the Director may extend the time for compliance with the order if the request demonstrates that Respondent have acted in good faith to comply with the order.

X. NOTICE

All documents required to be submitted by Respondent under to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 East Aurora Street
Twinsburg, Ohio 44087

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

XI. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the

future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XII. EFFECTIVE DATE

The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

IT IS SO ORDERED:

Chris Korleski, Director