



**Environmental
Protection Agency**

**John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director**

June 28, 2011

CERTIFIED MAIL

Mr. Larry Moore
3330 Hamburg Road
Lancaster, Ohio 43130

Re: Director's Final Findings & Orders

Dear Mr. Moore:

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, made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated 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,

Kathleen Phillips
Processing and Records Management Unit
Division of Materials and Waste Management

Enclosure: Director's Final Findings and Orders

cc: Fairfield County Health Department
Kelly Jeter, Environmental Supervisor, DMWM, CO
Jeff Hurdley, Legal, CO
Steve Rath, Environmental Manager, DMWM, CDO

OHIO E.P.A.
JUN 28 2011

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. Larry Moore : Director's Final Findings
3330 Hamburg Road : and Orders
Lancaster, Ohio 4313 :

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Larry Moore ("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 BOUND

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

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

1. Respondent is the current owner of the 2.16 acre parcel of land located at 3330 Hamburg Road SW, Hocking Township, Lancaster, Fairfield County, Ohio identified in the Fairfield County Auditor's Official Records as Parcel ID Number 0180090720 (the "Property").
2. Respondent is a "person" as that term is defined in Ohio Revised Code ("ORC") Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

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: [Signature] Date: 6-28-11

3. Currently more than one hundred (100) scrap tires are estimated to be illegally disposed of on the Property as well as other mixed solid waste.
4. The Property is neither licensed nor permitted as a scrap tire collection facility or a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27.
5. ORC § 3734.01(E) defines "solid wastes" as "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty percent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste."
6. OAC Rule 3745-27-01(S)(6) states, " 'Scrap tire' is a type of solid waste and means any unwanted or discarded tire, regardless of size, that has been removed from its original use."
7. The Fairfield County Combined General Health District ("Fairfield HD") is on the Director of Ohio EPA's list of approved health districts to administer the solid waste regulations within the state of Ohio, in accordance with OAC Rule 3745-37-08.
8. The open dumping of scrap tires is a violation of ORC § 3734.03 which states that "[n]o person shall dispose of solid wastes by open burning or open dumping," and OAC Rule 3745-27-05(C), which states in pertinent part, "[n]o person shall conduct, permit, or allow open dumping." OAC Rule 3745-27-60(B) provides that "the storage of scrap tires in any amount outside or inside a trailer, vehicle, or building is deemed a nuisance, a hazard to public health or safety, or fire hazard unless the scrap tires are stored in a specific manner identified in this rule."
9. OAC Rule 3745-27-60(B) sets forth the requirements in which to properly store scrap tires so as not to cause a nuisance, a hazard to public health or safety, or fire hazard.
10. OAC Rule 3745-27-60(C) identifies the requirements in which to conduct mosquito control when storing scrap tires.

11. OAC Rule 3745-400-11(B) states, "No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.
12. During inspections of the Property on October 9, 2008, November 14, 2008, January 16, 2009, March 6, 2009, May 22, 2009, July 24, 2009, August 21, 2009, October 2, 2009, October 23, 2009, November 19, 2009, January 15, 2010, March 12, 2010, March 31, 2010, May 14, 2010, June 11, 2010, July 23, 2010, August 27, 2010, September 10, 2010, October 8, 2010, November 12, 2010, December 29, 2010, January 26, 2011, and February 25, 2011, an inspector from the Fairfield HD recorded observations of numerous tires and other debris on the Property.
13. By letter dated April 2, 2009, Fairfield HD notified the Respondent to remove all tires from the Property, remove all materials and other debris located in the ravine and throughout the Property to a licensed disposal facility, and submit receipts showing that the material was properly disposed.
14. On March 31, 2010, the Fairfield County HD inspector observed no improvement of the condition of the scrap tires on the Property. That inspection was noted in a follow up letter to Mr. Larry More dated April 12, 2010.
15. By Resolution No. 2010-50 of the Fairfield County Board of Health ("Board") dated April 8, 2010, the Board of Health declared the Property a public health hazard and nuisance. In that resolution the Board found that "there are 250 – 300 tires (including several large equipment tires) dumped and spread across the acreage providing more than enough breeding habitat for mosquitoes[.]"
16. In a letter dated April 12, 2010, the Fairfield HD notified the Respondent of Resolution No. 2010-50 which required the following:
 - Implement mosquito control measures at 3330 Hamburg Road, Lancaster in accordance with the provisions of OAC Rule 3745-27-60(B)(8), and to provide copies of mosquito control records required by OAC Rule 3745-27-60(B)(10) to the Fairfield HD within ten (10) days after each application of the registered, pesticide, larvicide, or adulticide;
 - Establish proper storage piles and fire lanes in accordance with 3745-27-60(B) within thirty (30) days;
 - Within thirty (30) days begin the removal of scrap tires, debris and other solid waste, and every thirty (30) days thereafter continue the removal of at least 100 scrap tires every thirty days until all of the tires have been removed, by a registered transporter, to a licensed scrap tire facility under ORC 3734.81 or to a facility in another state operating in compliance with the laws of that

state, and to retain receipts, and submit those receipts to the Fairfield HD within ten (10) days after completion of the removal;

- Submit progress reports to the Fairfield HD, and continue to comply with the Tire Abatement Orders until all scrap tires have been removed from the property.
17. By letter dated February 11, 2011, the Fairfield HD referred the Respondent to Ohio EPA for the purposes of remediating the Property of illegally disposed scrap tires. In that letter, the Fairfield HD noted the disposal of approximately 200 to 500 scrap tires on the Property.
 18. On April 25, 2011, Ohio EPA conducted an inspection of the Property and observed that the conditions of the Property have not changed.
 19. By letter dated April 29, 2011, Ohio EPA cited the Respondent for being in violation of the following:
 - ORC Section 3734.05 and OAC Rule 3745-27-05(C) for open dumping;
 - OAC Rule 3745-27-60(B)(1) for not allowing sufficient drainage of the scrap tires;
 - OAC Rule 3734-27-60(C)(1)(b) for not maintaining any mosquito control by storing scrap tires such that water does not accumulate in them.
 20. 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.
 21. Given that the Fairfield County Combined General Public Health District has declared the Property a public health hazard and nuisance, and has confirmed that the presence of the scrap tires on the Property has created a breeding habitat for mosquitoes, and given the close proximity of the scrap tires located on the Property to sensitive sub-populations, including primary, elementary and middle schools, 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."
24. To date, Respondent has failed to remove the scrap tires and other solid waste from the Property.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734 of the ORC and the regulations 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)(1) and (2). 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. Upon the effective date of these Orders, Respondent shall cease acceptance and disposal of scrap tires and other solid wastes, at the Property.
3. 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).
4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all scrap tires, solid

waste, and illegally disposed construction and demolition debris from the Property. This removal shall include, but not be limited to, scrap tires dumped in the ravine and onto the ground and/or buried scrap tires. The Respondent shall arrange for the transportation of the scrap tires 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.
5. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondent shall forward all such documentation and receipts for transportation and disposal to Ohio EPA-Central District Office within ten (10) days after completion of Order No. 4.
 6. 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 has acted in good faith to comply with the order.
 7. Respondent shall submit monthly progress reports until all scrap tires are removed from the Property. Respondent's monthly progress reports, due to Ohio EPA Central District Office by the 10th day of each month, shall summarize Respondent's efforts to comply with the requirements of these Orders. The first progress report shall be delivered to Ohio EPA Central District Office no later than the 10th day of the month immediately following the month that these Orders become effective.

VI. TERMINATION

Respondent's obligations 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 Enforcement Coordinator of Ohio EPA's Division of Materials and 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 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.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Central District Office
Division of Materials and Waste Management
Attn: Unit Supervisor, DMWM
PO Box 1049
Columbus, Ohio 43215

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

IX. 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.

X. 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:

Ohio Environmental Protection Agency



Scott J. Nally, Director