

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. Charles L. Gray, Jr.	:	<u>Director's Final Findings</u>
56922 Kaptina Way	:	<u>and Orders</u>
Armstrong Mills, Ohio 43933	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Charles L. Gray ("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, 3734.85 and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon the 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 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 has determined the following findings:

1. Respondent is the owner of a parcel of land, which is identified in Deed Record Volume 637, Page 661 of the Belmont County Record of Deeds dated December 9, 1986, and is located on T. R. 118, Washington Township, Belmont County, Ohio (the

- “Property”). The Property is located on the northeast edge of the Village of Armstrong Mills.
2. Respondent is a “person” as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(B)(27).
 3. Respondent formerly operated a retail scrap tire business on the Property. Although Respondent no longer operates the retail scrap tire business, over 2000 scrap tires remain on the Property and are stored in a haphazard fashion immediately next to T.R. 118.
 4. The Property is neither licensed nor permitted as a scrap tire collection facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.
 5. Scrap tires are included in the definition of “solid wastes” under ORC Section 3734.01(E) and Ohio Administrative Code (OAC) Rule 3745-27-01(B)(43).
 6. The open dumping of scrap tires is a violation of ORC Section 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.”
 7. OAC Rule 3745-27-01(B)(23)(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.”
 8. OAC Rule 3745-27-60(B) provides that 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 a fire hazard unless the tires are stored in accordance with the standards set forth within OAC Rules 3745-27-60(B)(1) - (8).
 9. On April 14, 2000, Ohio EPA received a complaint that illegal dumping of scrap tires was occurring at the Property.
 10. Ohio EPA conducted an inspection of the Property on May 17, 2000. In correspondence dated June 22, 2000, Ohio EPA notified Respondent that illegal dumping of scrap tires is occurring at the Property in violation of OAC Rule 3745-27-05(C) and ORC Section 3734.03.

11. On June 29, 2000, Ohio EPA and Respondent discussed via telephone Ohio EPA's June 22, 2000 correspondence regarding the Property. Ohio EPA again informed Respondent of the violations of ORC Section 3734.03 and OAC Rule 3745-27-05©) at the Property. Respondent was also informed that documentation in accordance with OAC Rule 3745-27-60(B)(8) would need to be submitted to Ohio EPA. Ohio EPA confirmed this conversation in correspondence sent to Respondent on July 10, 2000. In that correspondence, Ohio EPA requested Respondent to provide documentation required by OAC Rule 3745-27-60(B) confirming the application of mosquito control pesticide or larvicide.
12. On August 4, 2000, Ohio EPA received a letter via facsimile from Respondent stating he is spraying the scrap tires with a larvicide and that he plans to remove at least 100 tires every other month until no more scrap tires remain at the Property. Ohio EPA acknowledged receipt of this letter by correspondence dated August 14, 2000. By the same August 14 correspondence, Ohio EPA informed the Respondent that violations of open dumping will continue to accrue until the Property is in compliance with Ohio's solid waste laws and regulations. Ohio EPA also requested that Respondent provide the information required by OAC Rule 3745-27-60(B) confirming the application of mosquito control pesticide or larvicide. Respondent failed to provide this information to Ohio EPA.
13. On May 8, 2001, Ohio EPA conducted an inspection of the Property and noted no discernible change in the estimated number and location of scrap tires on the Property and also noted the scrap tires were not being stored with sufficient drainage such that water did not collect in them. In correspondence dated May 15, 2001, Ohio EPA notified the Respondent that he was still in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C). Respondent was also cited for violating OAC Rule 3745-27-60(B)(1) and OAC Rule 3745-27-60(B)(8) and Ohio EPA requested that Respondent provide the information required by OAC Rule 3745-27-60(B) confirming the application of mosquito control pesticide or larvicide. Respondent failed to provide this information to Ohio EPA.
14. On September 18, 2001, Ohio EPA conducted another inspection of the Property and noted no discernible change in the estimated number and location of the scrap tires on the Property. In correspondence dated October 2, 2001, Ohio EPA notified Respondent that he was still in violation of ORC Section 3734.03, OAC Rule 3745-27-05©), OAC Rule 3745-27-60(B)(1), and OAC Rule 3745-27-60(B)(8). Ohio EPA again requested that Respondent provide the information required by OAC Rule 3745-27-60(B) confirming the application of mosquito control pesticide or larvicide. Respondent failed to provide this information to Ohio EPA.
15. On February 20, 2002, Ohio EPA conducted an inspection of the Property and met with the Respondent who was also on site. Ohio EPA again noted no discernible change in the number and location of scrap tires on the Property and estimated the

number of scrap tires on the Property to be between two to three thousand scrap tires. Although Respondent claimed at the time of the inspection to have been applying a pesticide registered for use as a mosquito control, Respondent provided no documentation to Ohio EPA confirming compliance with the mosquito application requirements of OAC Rule 3745-27-60(B). In correspondence dated March 6, 2002, Ohio EPA notified Respondent that he was still in violation of ORC Section 3734.03, OAC Rule 3745-27-05(C), OAC Rule 3745-27-60(B)(1), and OAC Rule 3745-27-60(B)(8).

16. On June 25, 2002, Ohio EPA conducted an inspection of the Property and again noted no discernible change in the estimated number and location of scrap tires on the Property. In correspondence dated July 8 2002, Ohio EPA notified the Respondent that he was still in violation of ORC Section 3734.03, OAC Rule 3745-27-05(C), OAC Rule 3745-27-60(B)(1), and OAC Rule 3745-27-60(B)(8) and confirmed that Respondent had failed to provide the information requested by Ohio EPA to confirm compliance with the mosquito control measures required by OAC Rule 3745-27-60(B).
17. On July 11, 2002, Ohio EPA received a voice mail message from Respondent stating he had recently sprayed for mosquitoes with a product named Black Leak Mosquito Spray, EPA# 6556155887, at an application rate of 3.2 ounces per gallon. Respondent did not indicate the frequency of application.
18. Scrap tires, if not properly managed, may become a breeding ground for mosquitos. Mosquitos are a common disease vector for St. Louis encephalitis, La Crosse encephalitis, Yellow Fever, West Nile Virus and Dengue Fever. As of August 9, 2002, the Ohio Department of Health had confirmed the presence of the West Nile virus in at least one dead crow in Belmont County.
19. Given the proximity of Respondent's scrap tire pile to the Village of Armstrong Mills and the confirmed presence of West Nile Virus in Belmont County, and given the proximity of the scrap tire pile to T.R. 118 and the potential of a tire fire that could obscure the road, the Director has determined that the accumulation of scrap tires on Respondent's Property constitutes a danger to the public health or safety or to the environment.
20. 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, he 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.”

21. On June 2, 2003, Mr. Gray contacted Ohio EPA seeking to modify the March 11, 2003 Orders, in accordance with Section IX. of those Orders. Mr. Gray had requested more time to remove the scrap tires from the property and to pay the civil penalty.
22. Consistent with ORC Section 3734.85, the Director may extend the time for removal of scrap tires from the Property beyond one hundred and twenty days in light of good faith efforts by responsible parties to remove the scrap tires. In light of Respondent's willingness to shred and maintain the scrap tires in portable containers as set forth in these Orders, the Director is willing to extend the time period for removal of the scrap tires from the Property until March 1, 2004, as set forth below.

V. ORDERS

The Director's Final Findings and Orders issued to Respondents on March 11, 2003, are hereby superseded by these Orders. The 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(B)(8). Respondent shall provide copies of the requisite mosquito control records to Ohio EPA Southeast District Office within ten (10) days after each application of the registered pesticide or larvicide.
2. Upon 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)(1) through (6).
3. Starting September 1, 2003 and continuing monthly until March 1, 2004, Respondent shall shred or remove at least 100 scrap tires at the Property each month. All shredded scrap tires are to be maintained in portable containers in accordance with OAC Rule 3745-27-60(B)(3) until all the scrap tires are removed from the Property pursuant to Order No. 4.
4. Not later than March 1, 2004, Respondent shall remove all remaining scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires, and shall arrange for their transportation, by a registered transporter, to a scrap tire storage, monocell, monofill, or recovery facility licensed under ORC Section 3734.81, 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. Respondent shall obtain receipts from the registered transporter and the facility, indicating weight, volume and number of scrap tires received. Respondent shall forward such documentation to Ohio EPA Southeast District Office within 10 days after completion of this Order No. 4.
5. Respondent shall continue to comply with Orders No. 1 and 2 above until such time as all scrap tires have been removed from the Property.
 6. If Respondent has not removed all scrap tires from the Property in accordance with Order No. 4 above by March 1, 2004, Respondent shall provide the Director and his employees, representatives and contractors with access to the Property to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the scrap tires located on the Property.
 7. If the Director removes the scrap tires from the Property, Respondent shall reimburse the Director, within thirty (30) days of written request, for the costs incurred by the Director for conducting the removal operation, storing at a scrap tire storage facility, storing or disposing at a scrap tire monocell or monofill facility, processing scrap tires so removed, the transporting of the scrap tires from the Property to the scrap tire storage, monocell, monofill, or recovery facility where the scrap tires were stored, disposed of, or processed, and for the administrative and legal expenses incurred by the Director in connection with the removal operation.
 8. Respondent shall pay Ohio EPA the amount of \$ 5,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the scrap tire management fund established pursuant to ORC § 3734.82(G). Starting September 1, 2003 and continuing until March 1, 2004, Respondent shall pay at least \$100.00 each month to Ohio EPA toward the \$5000.00 civil penalty. By March 1, 2004, the remaining balance of the civil penalty not yet paid is due. Payments shall be made by official checks made payable to "Treasurer, State of Ohio" for the stated amounts. The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Property and a copy of the checks shall be sent to Jeff Hurdley, Legal, Ohio EPA.

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 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: "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, the Respondent's 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 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 Respondent.

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 Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, OH 43138

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent 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

Date

IT IS SO AGREED:

Charles L. Gray

Signature

Date

Printed or Typed Name

Title