

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. Joseph Harr	:	<u>Director's Final Findings</u>
2036A Hackworth Hill Road	:	<u>and Orders</u>
Otway, Ohio 45657	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Joseph Harr ("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 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 Respondent's obligations 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 the 3.448 acre parcel of land (the "Property"), located off Hackworth Hill Road, Otway, Rarden Township, Scioto County, Ohio. The Property is recorded as parcel number 18-0128.000 in the Scioto County Official Records, Volume 905, page 831.
2. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(B)(27), as amended by OAC Rule 3745-27-01(P)(3) (effective August 15, 2003).

3. There are currently an estimated 360,000 burned and 40,000 whole scrap tires illegally disposed of on the Property.
4. The Property is neither licensed nor permitted as a scrap tire facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.
5. OAC Rule 3745-27-01(I)(5), as amended by OAC Rule 3745-27-01(S)(6) (effective August 15, 2003), 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."
6. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(B)(43), as amended by OAC Rule 3745-27-01(S)(24) (effective August 15, 2003).
7. The open dumping of scrap tires is a violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) (effective July 29, 1976) 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."
8. OAC Rule 3745-27-05(C) was amended on August 15, 2003 and currently states:

"No 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."
9. OAC Rule 3745-27-01(B)(23), as amended by OAC Rule 3745-27-01(O)(4)(b) (effective August 15, 2003) 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."
10. OAC Rule 3745-27-60(B) (effective March 29, 1996, as amended March 29, 2002) 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 Rule 3745-27-60(B)(1) - (8).

11. 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.
12. By Board Order dated September 17, 1991, the Scioto County Health Department ordered Respondent to cease all open dumping at the Property, and remove all scrap tires to a licensed landfill within sixty (60) days.
13. Respondent failed to comply with the September 17, 1991 Board Order. As a result, a complaint was filed in the Portsmouth Municipal Court on January 21, 1992. The Municipal Court case was decided on February 27, 1992, and Respondent was found to have failed to comply with the Board Orders and ordered to remove all scrap tires within ninety (90) days. To date, Respondent has failed to comply with the Portsmouth Municipal Court Order.
14. On January 4, 1998, Ohio EPA received a complaint that illegal burning of scrap tires was occurring at the Property. The black smoke plume from this fire could be seen twenty-five (25) miles away. Approximately thirty (30) volunteer fire departments, the Salvation Army, the Scioto County Health Department, the Portsmouth Local Air Authority, Ohio Department of Natural Resources, the State Fire Marshall's Office, local citizens and the U.S. EPA also responded.
15. On January 4, 1998, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 for open dumping and open burning of solid waste.
 - b. OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(6)(a) (effective March 29, 1996) for failure to store scrap tires in piles no greater than two thousand five hundred (2,500) square feet in basal area.
 - d. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.

This inspection was documented in a Notice of Violation ("NOV") letter to Respondent dated January 12, 1998.

16. By letter dated January 19, 1998, Respondent replied to Ohio EPA's January 12, 1998 NOV and stated that he contacted three (3) separate scrap tire facilities to discuss costs of removal. Respondent also stated he would apply mosquito control measures at the Property.

17. On July 24, 2001, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of solid waste. Open dumping is also a violation of ORC Section 3734.03.
 - b. OAC Rule 3745-27-60(B)(8) (effective March 29, 1996) for failure to provide mosquito control.

This inspection was documented in an NOV letter to Respondent dated July 26, 2001.

18. On March 12, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 for open dumping of solid waste.
 - b. OAC Rule 3745-27-05(C) (effective July 29, 1976) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(8) (effective March 29, 2002) for failure to provide mosquito control.

This inspection was documented in an NOV letter to Respondent dated March 24, 2003.

19. On November 5, 2003, Ohio EPA conducted an inspection of the Property and observed the following violations:
 - a. ORC Section 3734.03 for open dumping of solid waste.
 - b. OAC Rule 3745-27-05(C) (effective August 15, 2003) for open dumping of solid waste.
 - c. OAC Rule 3745-27-60(B)(8) (effective March 29, 2002) for failure to provide mosquito control.

This inspection was documented in an NOV letter to Respondent dated December 22, 2003.

20. Pursuant to OAC Rule 3745-27-60(B), a nuisance, a hazard to public health and safety, and a fire hazard exists at the Property.
21. As of December 5, 2003, the Ohio Department of Health had confirmed three (3) cases of West Nile Virus in Scioto County.
22. Given the proximity of Respondent's scrap tire pile to Rarden Township, Brush Creek State Forest, and State Route 772, the confirmed presence of West Nile Virus in Scioto County, the potential of another tire fire occurring, and in consideration of the effects of another tire fire adversely impacting 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.

23. 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. 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.”

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 throughout the mosquito breeding season at the Property in accordance with the provisions of OAC Rules 3745-27-60(B)(8) and (B)(9) (effective March 29, 2002). Respondent shall provide documentation 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. 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)(1) through (6) (effective March 29, 2002).
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of all solid waste from the Property including, but not limited to, burned scrap tire residuals dumped onto the ground and/or buried, and dispose of all solid wastes at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid wastes disposed, and shall forward such documentation to Ohio EPA within seven (7) days after completion of Order No. 3.
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 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 scrap tire transporter:

- a. to a scrap tire storage, monofill, monocell, or recovery facility which is operating in accordance with ORC Chapter 3734. and the rules adopted thereunder; or
 - b. to a scrap tire storage, monofill, monocell, or recovery facility in another state operating in compliance with the laws of that state; or
 - c. to any other solid waste disposal facility in another state that is operating in accordance with the laws of that state and that is authorized to accept scrap tires for disposal; or
 - d. to a location authorized by the Director to beneficially use scrap tires, in accordance with OAC Rule 3745-27-78 (effective March 29, 2002).
5. Respondent shall obtain receipts from the registered transporter and the authorized scrap tire facility or solid waste disposal facility indicating weight, volume or number of scrap tires transported and shall forward such documentation to Ohio EPA within seven (7) days after completion of Order No. 4.
6. Respondent shall continue to comply with Order Nos. 1 and 2 above until such time as all scrap tires and burned scrap tire residuals have been removed from the Property.
7. In accordance with ORC Section 3734.85(A) , if within one hundred and twenty days (120) after the effective date of these Orders, Respondent has not removed all scrap tires from the Property in accordance with Order Nos. 3 and 4 above, 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.
8. If the Director removes the scrap tires from the Property, Respondent shall reimburse the Director, within thirty (30) days after 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.
9. In accordance with ORC Section 3734.85(A), upon written request of Respondent, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that Respondent has acted in good faith to comply with these Orders.

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 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 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.

VIII. 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
2195 Front Street
Logan, Ohio 43138

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

Christopher Jones, Director

Date