

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent Donald Wente currently resides on property located at 245 Ainsley Avenue Wheelersburg, Scioto County, Ohio ("Site") upon which exists an unlicensed and unpermitted open dump. Donald Wente was the owner of the Site from July 14, 1987 to July 8, 1996.
2. Daven Owen Wente purchased the Site on July 8, 1996 and owned the Site until July 29, 2002.
3. Respondent Mryon Wente purchased the Site on July 29, 2002 and is the current owner of the Site.
4. Respondents are each a "person" as that term is defined in ORC Sections 3714.01(G) and 3734.01(G) and Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3) and 3745-400-01(DD).
5. ORC Section 3734.03 prohibits any person from disposing of "solid wastes by open burning or open dumping, except as authorized by the director of environmental protection..." OAC Rule 3745-27-05(C) further provides that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or 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."
6. OAC Rule 3745-27-01(O)(4) defines "open dumping", in part, as "(a) [t]he deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27 and 3745-37 of the Administrative Code...."
7. ORC Section 3714.06 provides that "[n]o person shall establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license..." OAC Rule 3745-400-04(B) further provides that "[n]o person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the

Administrative Code.”

8. OAC Rule 3745-400-01(G) defines “construction and demolition debris facility” or “facility” as “any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris.”
9. OAC Rule 3745-400-01(F) defines “construction and demolition debris” or “debris”, in part, as “those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways.”
10. The Site is neither licensed nor permitted as a solid waste disposal facility nor licensed as a construction and demolition debris facility in accordance with ORC Chapters 3714. and 3734. and OAC Chapters 3745-27, 3745-37 and 3745-400.
11. On May 25, 1999, Ohio EPA received a complaint of open dumping occurring at the Site.
12. On May 25, 1999, Ohio EPA conducted an inspection of the Site. In correspondence dated May 27, 1999, Ohio EPA sent a Notice of Violation (“NOV”) notifying Respondent Donald Wente of violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), and OAC Rule 3745-400-04(D) for open dumping of solid waste and illegal disposal of construction and demolition debris at the Site. OAC Rule 3745-400-04(D) was amended on August 31, 2002 and the rule is now contained in OAC Rule 3745-400-04(B).
13. Additional complaints of open dumping occurring at the Site were received by Ohio EPA on April 19, 2001 and November 1, 2002.
14. Ohio EPA conducted follow-up inspections of the Site on May 2, 2001, October 3, 2001, November 6, 2002, March 12, 2003, and December 16, 2003.
15. As a result of these inspections, Ohio EPA substantiated that Respondents had conducted, permitted or allowed the disposal of solid waste and construction and demolition debris at the Site.
16. In photographs taken during inspections in May 2001, October 2001, and November of 2002, Ohio EPA has documented that solid waste and construction and demolition debris were being unlawfully dumped at the Site.

17. In correspondence dated May 3, 2001, October 18, 2001, November 7, 2002, March 13, 2003, and December 16, 2003, Ohio EPA sent NOV's notifying Respondent Donald Wente of continuing violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C).
18. On May 10, 2001, Ohio EPA received a phone call from Jennifer Wente, wife of Respondent Daven Owen Wente. Mrs. Wente stated that she and her husband would help Respondent Donald Wente remove waste from the Site.
19. On October 25, 2001, Ohio EPA received a voice mail from Respondent Donald Wente stating that he was ill and could not clean up the Site.
20. Ohio EPA received a letter from Respondent Donald Wente dated November 19, 2002, stating that he could not clean up the Site at that time because the ground was soft and the removal of the waste would cause damage to his yard. Additionally he stated that he had been in the hospital and was currently under medical care.
21. In correspondence dated March 13, 2003, and December 22, 2003, Ohio EPA sent NOV's notifying Respondent Myron Wente of violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C).
22. To date, Respondent Myron Wente has not responded to Ohio EPA's NOV's.
23. In correspondence dated December 22, 2003, Ohio EPA Sent an NOV notifying Daven Owen Wente of violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C).
24. On December 28, 2003, and December 29, 2003, Ohio EPA received voice mails from Jennifer Wente inquiring about the December 22, 2003 NOV.
25. Respondents have failed to remove any solid waste or construction and demolition debris from the Site.
26. As a result of the inspections detailed above and further investigation of the open dumping complaints, Ohio EPA has substantiated that Respondents were either owners and/or former owners of the Site during the violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C) and are therefore responsible for the violations occurring at the Site.

V. ORDERS

Respondent shall achieve compliance with Chapters 3714. and 3734. of the ORC and the rules promulgated thereunder according to the following compliance schedule:

1. Immediately upon the effective date of these Orders, Respondents shall cease acceptance and disposal of solid waste and construction and demolition debris at the Site.
2. By September 30, 2004, Respondents shall remove all solid waste and construction and demolition debris from the Site and dispose of all solid waste and construction and demolition debris at a licensed solid waste disposal facility. Respondents shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed.
3. Within fourteen (14) days after completion of Order No. 2, Respondents shall submit to Ohio EPA a written notice of completion, along with documentation of proper removal and disposal, including a copy of the receipts from the solid waste disposal facility.
4. Within sixty (60) days after the effective date of these Orders, Respondents shall collectively pay Ohio EPA the amount of \$2,500 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapters 3714. and 3734. and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC Section 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,500. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent(s) and the Site. A copy of the check shall be sent to Elissa Miller, Legal.

VI. TOLLING AGREEMENT (ORC § 3745.31)

Respondents agree that the time period between the effective date of these Orders and payment in full of the civil penalty settlement amount \$2,500 set out in Section V. of these Orders will not be included in computing the time periods under the statute of limitations set forth in ORC § 3745.31. Respondents agree not to assert, plead or raise in any fashion, in any such action hereafter initiated or maintained by the State of Ohio, whether by answer, motion or otherwise, any defense or avoidance based on (a) the running of the statute of limitations during the aforementioned period; or (b) laches or other principles concerning the timeliness of commencing a civil action based upon the failure of the State of Ohio to assert such claims during the aforementioned period; and the statute of limitations shall be tolled during and for such period.

VII. 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: "We 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 each Respondent.

VIII. 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 operation of Respondents' Site.

IX. 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 Respondents.

X. 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.

XI. NOTICE

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

Ohio Environmental Protection Agency

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

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

XII. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XIII of these Orders.

XIII. 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.

XIV. EFFECTIVE DATE

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

XV. 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:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Donald Wente

Signature

Date

Printed or Typed Name

Myron Wente

Signature

Date

Printed or Typed Name
