

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Jerry Vestal	:	<u>Director's Final Findings</u>
4140 Gilbert Road	:	<u>and Orders</u>
Luckey, Ohio 43443	:	

and

Brandman Corporation	:	
c/o	:	
Jerry Vestal	:	
4140 Gilbert Road	:	
Luckey, Ohio 43443	:	

**Respondents**

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Brandman Corporation and Mr. Jerry Vestal ("Respondent Brandman," "Respondent Vestal" or collectively "Respondents") 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 Respondents and heirs and successors in interest liable under Ohio law. No change in ownership of Respondent Brandman or of the Site (as hereinafter defined) shall in any way alter Respondents' 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 has determined the following findings:

1. Respondent Brandman, the City of Findlay and Norfolk and Southern Corporation are owners of properties where scrap tires are located at or about 300 North Cory Street, Findlay, Ohio (the "Site").
2. Respondent Brandman and Respondent Vestal are both "persons" as that term is defined in ORC Section 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3), as amended by OAC Rule 3745-27-01(P)(3).
3. Respondent Vestal is the sole shareholder, officer and employee of Respondent Brandman. The Hancock County Common Pleas Court has found that Respondent Vestal is individually liable for the violations at the Site, *State of Ohio v. Brandman Corp., et al.*, Case No. 2001 CV 385.
4. There are currently an estimated 703,000 scrap tires illegally disposed of at the Site. Respondents are the persons responsible for the accumulation of scrap tires at the Site as provided in ORC Section 3734.85.
5. The Site is neither licensed nor permitted as a scrap tire facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
6. OAC Rule 3745-27-01(I)(5), as amended by 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."
7. 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).
8. 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."
9. 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.”

10. OAC Rule 3745-27-01(B)(23), as amended by 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.”
11. 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).
12. 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.
13. On June 8, 2001, September 7, 2001, January 9, 2002, April 10, 2002, July 31, 2002, November 13, 2002, February 6, 2003, June 11, 2003, and July 31, 2003 Ohio EPA conducted inspections of the Site 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.

These inspections were documented in NOV letters to Respondent Brandman dated February 24, 1998, June 29, 2001, October 2, 2001, January 15, 2002, April 17, 2002, August 19, 2002, November 27, 2002, March 10, 2003, June 13, 2003, and August 28, 2003.

14. Given the fact that the Site is located in downtown Findlay next to the Blanchard River, contains approximately 703,000 scrap tires and poses a significantly large mosquito harborage, the Director has determined that the accumulation of scrap tires on the Site constitutes a danger to the public health or safety or to the environment.

15. 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**

The Respondents 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, the Respondents shall implement mosquito control measures at the Site in accordance with the provisions of OAC Rule 3745-27-60(B)(8). The Respondents shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10), 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, the Respondents shall establish storage piles and fire lanes at the Site in accordance with OAC Rule 3745-27-60(B)(1) through (6).
3. Not later than one hundred twenty (120) days after the effective date of these Orders, the Respondents shall remove or cause the removal of all scrap tires from the Site 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.
4. The Respondents 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. 3.
5. The Respondents shall continue to comply with Order Nos. 3 and 4 above until such time as all scrap tires have been removed from the Site.
6. In accordance with ORC Section 3734.85(A) , if within one hundred and twenty days (120) after the effective date of these Orders, the Respondents have not removed all scrap tires from the Site in accordance with Order Nos. 3 and 4 above, the Respondents shall provide the Director and his employees, representatives and contractors with access to its properties to perform whatever measures the Director considers reasonable and necessary to remove and properly manage the scrap tires located on the Site.
7. If the Director removes the scrap tires from the Site, the Respondents 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 Site 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. In accordance with ORC Section 3734.85(A), upon written request of the Respondents, the Director may, in his sole discretion, extend the time for compliance with these Orders if the request demonstrates that the Respondents have acted in good faith to comply with these Orders.

## **VI. TERMINATION**

The Respondents' obligations under these Orders shall terminate when the Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that the 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 the Respondents of the obligations that have not been performed, in which case the Respondents shall have an opportunity to address any such deficiencies and

seek termination as described above.

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

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

### **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 the Respondents.

### **VIII. NOTICE**

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

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Solid and Infectious Waste Management  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

Attn: DSIWM Supervisor

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 the Respondents 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 the Respondents to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the

Respondents. 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**

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Christopher Jones, Director