

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

City of Youngstown	:	<u>Director's Final Findings</u>
City Hall	:	<u>and Orders</u>
26 South Phelps Street	:	
Youngstown, Ohio 44503	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Youngstown ("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 Respondent 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 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. Unless otherwise stated, all references to rules adopted under OAC Chapter 3745-27 shall be to the version of the rule in existence on the effective date of these Orders.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a municipal corporation in the State of Ohio, and is a "person" as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code ("OAC")

Rule 3745-27-01(P)(3).

2. Respondent is the owner of two parcels of land, which are identified as parcel numbers 53-086-0-019 and 53-086-0-021 by the Mahoning County Auditor, and which are located at 1475 Teamster Drive (the "Property").
3. The Property is neither licensed or permitted as a scrap tire facility nor a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.
4. There are currently an estimated 50,000 scrap tires and 777 tons of two inch tire shreds on the Property.
5. "Solid wastes" are defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24). Scrap tires are defined under OAC Rule 3745-27-01(S)(6). Scrap tires, including scrap tire pieces, are included in the definition of solid wastes.
6. 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."
7. OAC Rule 3745-27-01(O)(4)(b) defines open dumping as, "[t]he deposition of solid wastes that consist of scrap tires into waters of the state, and also means 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 March 27, 2003, Ohio EPA conducted an inspection at the Property and observed that approximately 50,000 scrap tires and 777 tons of scrap tire shreds were located on the Property. Following this inspection, Ohio EPA informed Respondent of the

following violations of Ohio's scrap tire requirements in a letter dated April 18, 2003:

- a. OAC Rule 3745-27-60(B)(6) for failure to properly store scrap tires.
 - b. OAC Rule 3745-27-05(C)(effective July 29, 1976)/ORC § 3734.03 for conducting, permitting, or allowing open dumping of solid waste.
10. On November 7, 2003, Ohio EPA conducted a follow-up inspection at the Property. Ohio EPA noted that no scrap tires or tire shreds appeared to have been removed from the Property. On the contrary, during the inspection, Ohio EPA observed a truck from the Youngstown Parks Department unloading additional scrap tires onto the existing scrap tire pile. Following this inspection, Ohio EPA informed Respondent of the following violations of Ohio's scrap tire requirements in a letter dated December 5, 2003:
- a. OAC Rule 3745-27-60(B)(6) for failure to properly store scrap tires.
 - b. OAC Rule 3745-27-05(C)/ORC § 3734.03 for conducting, permitting, or allowing open dumping of solid waste.
11. By letter January 5, 2004, Respondent notified the Agency that the City of Youngstown is working with the Mahoning County Solid Waste District to help solve the City's scrap tire storage problem at the Property. Respondent indicated that it is seeking funding from the Mahoning County Solid Waste Management District to have all whole scrap tires located at the Property "shredded by the end of summer, 2004." Respondent also indicated that it would be assembling "a plan of action and an anticipated time frame for disposal of the tire shreds during calendar year 2004."
12. On January 9, 2004, Ohio EPA conducted an inspection at the Property and observed the following violations:
- a. OAC Rule 3745-27-60(B)(6) for failure to properly store scrap tires.
 - b. OAC Rule 3745-27-05(C)/ORC § 3734.03 for conducting, permitting, or allowing open dumping of solid waste.
- Ohio EPA informed Respondent of these violations in a letter dated February 18, 2004.
13. By letter March 4, 2004, the Youngstown Street Department notified Ohio EPA that the Mahoning County Board of Commissioners had agreed to reimburse the City of Youngstown for the cost of shredding and disposal of scrap tires at the Property. The Youngstown Street Department indicated that it would be seeking authorization from the Youngstown City Council to approve of the agreement with the Board of Commissioners and to permit the Youngstown Board of Control to advertise for bid contracts to shred and dispose of scrap tires at the Property.

14. 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. Based on testing of mosquitos in 2002, the Youngstown City Health Department has confirmed the presence of the West Nile virus at the Property.
15. Given the proximity of Respondent's scrap tire pile to residential homes, the Mahoning River, to sensitive sub-populations like schools and a hospital, and the potential of a tire fire that could obscure multiple major thoroughfares and impact waters of the State from pyrolitic oil runoff, 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.
16. 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."

V. 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 mosquito control records required by OAC Rule 3745-27-60(B)(10) to Ohio EPA Northeast 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).
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove all scrap tires from the Property including, but not limited to, scrap tires dumped onto the ground and/or buried scrap tires in accordance with the following draw-down schedule:

- a. Within thirty (30) days after the effective date of these Orders, Respondent shall remove at least ten thousand (10,000) whole scrap tires from the Property;
 - b. Within sixty (60) days after the effective date of these Orders, Respondent shall remove at least an additional twenty thousand (20,000) whole scrap tires from the Property;
 - c. Within ninety (90) days after the effective date of these Orders, Respondent shall remove all remaining whole scrap tires from the Property;
 - d. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove all tire shreds from the Property.
4. Respondent shall arrange for scrap tire 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.
 5. 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 within ten (10) days after completion of Order #3 above.
 6. Respondent shall submit monthly progress reports every month for the previous calendar month until all scrap tires are removed from the Property pursuant to Orders #3-5 of these Orders. Respondent's monthly progress reports, due to Ohio EPA by the 10th day of each month, shall summarize Respondent's efforts to comply with Orders # 3-5 of these Orders. The first progress report shall be delivered to Ohio EPA no later than the 10th day of the month immediately following the month that these Orders become effective.
 7. Respondent shall continue to comply with Orders # 1 and 2, above, until such time as all scrap tires have been removed from the Property.
 8. Respondent agrees to pay Ohio EPA the amount of \$20,163.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. In lieu of paying the civil penalty amount, Respondent may perform the supplemental environmental project (SEP) identified in Orders # 9-11 below.
 9. Respondent shall collect scrap tires that have been abandoned and open dumped in the City of Youngstown and dispose of them at a scrap tire storage, monocell, monofill,

or recovery facility licensed under ORC Section 3734.81, which is neither owned nor operated by Respondent. Respondent may use the civil penalty imposed in Order # 8 of these Orders to cover the cost of disposal of the scrap tires collected and disposed by Respondent under this Order # 9; provided, Respondent obtains disposal receipts indicating the weight, volume and number of scrap tires disposed and Respondent complies with all applicable requirements regarding the collection, storage, transportation and disposal of scrap tires in the performance of this SEP. Respondent may not apply any of the amount allocated for scrap tire disposal costs to the cost of disposing of the scrap tires currently located at the Property and required to be removed under Order # 3 of these Orders.

Respondent shall conduct the scrap tire clean-up activities only at locations where there are less than one hundred scrap tires present at any time.

Respondent shall not conduct the scrap tire clean-up activities at or from:

- a. a scrap tire collection, storage, monofill, or recovery facility licensed under section 3734.81 of the Revised Code;
 - b. a solid waste incineration or energy recovery facility that is subject to regulation pursuant to Chapter 3734. of the Revised Code and that burns scrap tires;
 - c. a premises where scrap tires are beneficially used and for which the notice required by rules adopted under section 3734.84 of the Revised Code has been given; and
 - d. a transporter registered under section 3734.83 of the Revised Code that collects and holds scrap tires in a covered trailer or vehicle for not longer than thirty days prior to transporting them to their final destination.
10. Within three hundred sixty five days (365) after the effective date of these Orders and annually thereafter, Respondent shall submit an annual report documenting its community and residential scrap tire clean-up activities for the previous year which were performed pursuant to Order # 9 of these Orders. This documentation shall include, but not be limited to, quantities or tonnages collected, stored and disposed. Respondent shall obtain receipts from the registered transporter and the scrap tire disposal facility, indicating weight, volume and number of scrap tires received and provide such information to Ohio EPA in the annual report.
 11. Respondent shall continue its scrap tire clean-up activities in accordance with Order # 9 for a period of ten (10) years after the effective date of these Orders or until such time Respondent spends the \$20,163.00 on scrap tire disposal costs as set forth in Order # 9 of these Orders. If Respondent fails to spend \$20,163.00 for scrap tire disposal costs as set forth in Orders # 9 of these Orders within ten (10) years after the effective date of these Orders, Respondent shall immediately remit the difference to

Ohio EPA 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). Payment shall be made by an official check made payable to "Treasurer, State of Ohio." 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 the Respondent and the Property and a copy of the check shall be sent to the Systems Management Unit Supervisor, Ohio EPA-DSIWM.

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 a responsible official of 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, 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
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 E. Aurora Road
Twinsburg, OH 44087-1969

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

IT IS SO AGREED:

City of Youngstown

Signature

Date

Printed or Typed Name

Title