

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. Jose A. Collazo	:	<u>Director's Final Findings</u>
4028 Lake Avenue	:	<u>and Orders</u>
Ashtabula, Ohio 44004	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Jose A. Collazo ("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 and 3734.85.

**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 of Ohio EPA has determined the following findings:

1. Respondent is the owner of approximately 1.5 acres of land located on State Road, Plymouth Township, Ashtabula County, Ohio (the "Property"). The Property is identified by warranty deed recorded January 30, 2002, in book number 190, pages 458-459, permanent parcel number 42-006-00-058-00.
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(P)(3).
3. Currently, an estimated 23,000 scrap tires are 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 Chapters 3745-27 and 3745-37.

5. 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."
6. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
7. 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. 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."
8. 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."
9. 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 paragraphs (B)(1) through (B)(10).
10. On December 6, 2001, the Ashtabula County Health Department ("the Health Department") received a complaint regarding scrap tires open dumped on the Property.
11. On December 7, 2001, the Health Department investigated the complaint and discovered a large number of scrap tires illegally disposed on the Property. By correspondence dated February 12, 2002, the Health Department notified Respondent of the complaint and directed him to remove and properly dispose of the tires and submit receipts to the Health Department by March 8, 2002.
12. In correspondence the Health Department received on March 8, 2002, Respondent requested additional time to properly dispose of the scrap tires located on the Property.

13. On March 18, 2002, the Ashtabula County Board of Health informed Respondent that the improper storage of scrap tires on the Property constitutes open dumping, in violation of ORC 3734.03 and OAC Rule 3745-27-05(C), and issued an Order ("March 18, 2002 Board Order") to Respondent to remove and properly dispose of the scrap tires and submit receipts to the Health Department by May 1, 2002.
14. Respondent failed to comply with the March 18, 2002 Board Order.
15. By Agreed Judgment Entry dated July 19, 2002, the Ashtabula County Court of Common Pleas found Respondent in violation of open dumping regulations and health department nuisance regulations. The court ordered Respondent to remove and properly dispose of all scrap tires from the Property by January 8, 2003, and to present receipts to the Health Department confirming proper disposal of the scrap tires on a monthly basis.
16. On or about January 9, 2003, Respondent filed a motion with the Ashtabula County Court of Common Pleas for a six month extension to the deadline for removal of the scrap tires from the Property.
17. By Judgment Entry dated January 21, 2003, the Ashtabula County Court of Common Pleas granted Respondent an additional two months (until March 8, 2003) to remove and properly dispose of the scrap tires on the Property.
18. Respondent failed to remove and properly dispose of the scrap tires by March 8, 2003, in violation of the July 19, 2002 and January 21, 2003 Agreed Judgment Entries.
19. On May 12, 2003 the Ashtabula County Prosecuting Attorney filed a Charge of Contempt Motion to Show Cause against Respondent in the Ashtabula County Court of Common Pleas.
20. By Agreed Judgment Entry dated July 11, 2003, the Ashtabula County Court of Common Pleas found Respondent in contempt of court and ordered Respondent to remove and properly dispose of all scrap tires from the Property by September 1, 2003, and to present receipts to the Health Department confirming proper disposal of the scrap tires.
21. On June 23, 2004, the Health Department conducted an inspection of the Property to determine Respondent's compliance with the Agreed Judgment Entries and the March 18, 2002 Board Order. In correspondence dated November 1, 2004, the Health Department informed Respondent of continued violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of approximately 23,000 scrap tires on the Property. Additionally, the Health Department informed Respondent of violations of OAC Rule 3745-27-60(B)(6)(a), for individual scrap tire storage piles exceeding maximum allowable basal area; (B)(6)(f), for failure to

- maintain sufficient fire lanes to allow access of emergency vehicles at all times to and around the scrap tire storage piles; and (B)(8)(a) and (b) for failure to implement mosquito control measures. In the same correspondence, the Health Department also notified Respondent of continued noncompliance with the March 18, 2002 Board Order and the July 19, 2002 Agreed Judgment Entry.
22. On October 13, 2004, Ohio EPA conducted an inspection of the Property. By Notice of Violation ("NOV") dated November 3, 2004, Ohio EPA informed Respondent of violations of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of approximately 23,000 scrap tires on the Property. In the same NOV, Ohio EPA also notified Respondent of violations of OAC Rule 3745-27-60(B)(6)(a), for individual scrap tire storage piles exceeding maximum allowable basal area; (B)(6)(f), for failure to maintain sufficient fire lanes to allow access of emergency vehicles at all times to and around the scrap tire storage piles; and (B)(8)(a) and (b) for failure to implement mosquito control measures; and of continued noncompliance with the March 18, 2002 Board Order and the July 19, 2002 and August 11, 2003 Agreed Judgment Entries.
  23. On April 27, 2005, Ohio EPA conducted another inspection of the Property and observed approximately 23,000 scrap tires open dumped on the ground. In an NOV letter dated May 23, 2005, Ohio EPA informed Respondent of violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), OAC Rule 3745-27-60(B)(6)(a), (B)(6)(f), (B)(8)(a) and (b), the March 18, 2002 Board Order, and the July 19, 2002 and August 11, 2003 Agreed Judgment Entries.
  24. To date, approximately 23,000 scrap tires remain on the Property as confirmed by Ohio EPA during the latest inspection conducted on April 27, 2005.
  25. 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.
  26. In consideration of the proximity of Respondent's scrap tire dump to the City of Ashtabula, to public and private water supplies, and to a sensitive sub-population (a school for people with mental retardation or developmental disabilities); and in consideration of a tire fire's potential to obscure Interstate 90 and to adversely impact a tributary of the Ashtabula River and Lake Erie; and given the confirmed presence of West Nile Virus in Ashtabula County in 2004, 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.
  27. 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 at the Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8) and (B)(9). In accordance with OAC Rule 3745-27-60(B)(10), Respondents shall make mosquito control records available for inspection by the director, the health commissioner, and/or authorized representatives. Respondents shall retain copies of mosquito control records for a minimum period of three years.
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 (B)(6).
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 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 to a licensed disposal facility under one of the following:
  - 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.

4. 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. 3.
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.

#### **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 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 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 Respondent.

#### **VIII. 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  
1110 E. Aurora Road  
Twinsburg, Ohio 44087-1969  
Attn: Unit Supervisor, DSIWM

and

Ashtabula County Health Department  
12 West Jefferson St.  
Jefferson, Ohio 44047-1096  
Attn: Environmental Health Director

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**

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Joseph P. Koncelik, Director