

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter Of:**

|                             |   |   |
|-----------------------------|---|---|
| <b>Robert G. Keller</b>     | : | <b><u>Director's Final Findings</u></b> |
| <b>410 Woodlawn Drive</b>   | : | <b><u>and Orders</u></b>                |
| <b>Wapakoneta, OH 45895</b> | : | <b><u>Scrap Tire Abatement</u></b>      |

**Respondent**

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Robert G. Keller ("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 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 property located approximately one half mile south of St. Johns, at the intersection of Geyer Road and an existing Indiana & Ohio Railroad line, in Clay Township, Auglaize County, Wapakoneta, Ohio (the "Property").
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 30,000 scrap tires illegally disposed of on the Property.

4. The Property is neither licensed nor permitted as a scrap tire collection 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(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, 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. On July 14, 2001, mosquito sampling was conducted at the Property. The specimens collected were then sent to the Ohio Department of Health's Vector-borne Disease Unit for identification and testing.

12. On September 10, 2001, Ohio EPA was notified that *Culex* mosquito species were identified from the July 14, 2001 sampling event. The identified species found at the Property are known vectors of disease transmission, including West Nile Virus.
13. On September 9, 2002, Director's Unilateral Final Findings and Orders ("September 2002 Orders") were issued requiring Respondent to:
  - a. Implement mosquito control measures in accordance with OAC Rule 3745-27-60 (effective March 29, 2002) and provide records to Ohio EPA within 10 days after each application ("Order No. 1");
  - b. Establish scrap tire storage piles in accordance with OAC Rule 3745-27-60(B)(1) through (6) (effective March 29, 2002) no later than December 2, 2002 ("Order No. 2");
  - c. Remove all scrap tires no later than March 3, 2003 ("Order No. 3");
  - d. Comply with Order Number 1 until full compliance with Order Number 3 is attained ("Order No. 4").
14. On September 24, 2002, 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.

This inspection was documented in a Notice of Violation ("NOV") letter to Respondent dated November 18, 2002.

15. On November 26, 2002, 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to

properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.

This inspection was documented in an NOV letter to Respondent dated January 3, 2003.

16. On February 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.

This inspection was documented in an NOV letter to Respondent dated March 4, 2003.

17. On September 9, 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
  - e. Order No. 1 of the September 2002 Orders for failure to have implemented mosquito control measures in accordance with OAC 3745-27-60 (effective March 29, 2002) and provide documentation of requisite mosquito control to Ohio EPA.
  - f. Order No. 2 of the September 2002 Orders for failure to establish scrap tire storage piles and fire lanes in accordance with OAC Rule 3745-27-60(B)(1) through (6) (effective March 29, 2002).
  - g. Order No. 3 of the September 2002 Orders for failure to remove all scrap tires on or before March 3, 2003.

- h. Order No. 4 of the September 2002 Orders for failure to comply with Order No. 1.

This inspection was documented in an NOV letter to Respondent dated October 2, 2003.

- 18. On October 28, 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
- e. Order No. 1 of the September 2002 Orders for failure to have implemented mosquito control measures in accordance with OAC 3745-27-60 (effective March 29, 2002) and provide documentation of requisite mosquito control to Ohio EPA.
- f. Order No. 2 of the September 2002 Orders for failure to establish scrap tire storage piles and fire lanes in accordance with OAC Rule 3745-27-60(B)(1) through (6) (effective March 29, 2002).
- g. Order No. 3 of the September 2002 Orders for failure to remove all scrap tires on or before March 3, 2003.
- h. Order No. 4 of the September 2002 Orders for failure to comply with Order No. 1.

This inspection was documented in an NOV letter to Respondent dated December 9, 2003.

- 19. On March 23, 2004, 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to

- properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
- e. Order No. 1 of the September 2002 Orders for failure to have implemented mosquito control measures in accordance with OAC 3745-27-60 (effective March 29, 2002) and provide documentation of requisite mosquito control to Ohio EPA.
- f. Order No. 2 of the September 2002 Orders for failure to establish scrap tire storage piles and fire lanes in accordance with OAC Rule 3745-27-60(B)(1) through (6) (effective March 29, 2002).
- g. Order No. 3 of the September 2002 Orders for failure to remove all scrap tires on or before March 3, 2003.
- h. Order No. 4 of the September 2002 Orders for failure to comply with Order No. 1.

This inspection was documented in an NOV letter to Respondent dated April 19, 2003.

20. On September 8, 2004, 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)(6)(a) (effective March 29, 2002) 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)(6)(d) (effective March 29, 2002) for failure to properly separate and store scrap tire piles from other scrap tire piles and from buildings and structures by a fire lane.
  - e. Order No. 1 of the September 2002 Orders for failure to have implemented mosquito control measures in accordance with OAC 3745-27-60 (effective March 29, 2002) and provide documentation of requisite mosquito control to Ohio EPA.
  - f. Order No. 2 of the September 2002 Orders for failure to establish scrap tire storage piles and fire lanes in accordance with OAC Rule 3745-27-60(B)(1) through (6) (effective March 29, 2002).
  - g. Order No. 3 of the September 2002 Orders for failure to remove all scrap tires on or before March 3, 2003.
  - h. Order No. 4 of the September 2002 Orders for failure to comply with Order No. 1.

This inspection was documented in an NOV letter to Respondent dated September 15, 2004.

21. 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. As of December 31, 2003, the Ohio Department of Health had confirmed the presence of the West Nile Virus in 2 dead horses, 1 dead blue jay, and 1 dead robin in Auglaize County.
22. Given the proximity of Respondent's scrap tire pile to St. Johns Township, the confirmed presence of disease vectors at the Property and in Auglaize County, the potential that a tire fire could obscure major transportation routes such as U.S. Route 33, State Route 65 and the Indiana and Ohio Railroad line, and in consideration of the adverse impact that a tire fire could have on 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."

## **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 within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
2. Pursuant to ORC Section 3734.85(A), upon the effective date of these orders, Respondent grants 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.

3. Respondent shall reimburse the Director within sixty (60) days of the Director's written request for: costs incurred by the Director for conducting the scrap tire abatement including; storing the scrap tires at a scrap tire storage facility; storing or disposing of the scrap tires at a scrap tire monocell or monofill facility; processing scrap tires so removed, 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.
4. Within thirty (30) days after the removal of the scrap tires from the Property pursuant to paragraphs 2 and 3 above, Respondent shall pay Ohio EPA the amount of \$2,500.00 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 Section 3734.82(G).
5. All payments for costs or penalties shall be made by official check made payable to "Treasurer, State of Ohio" for the stated amount. 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. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

#### **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 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 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.

### **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  
Northwest District Office  
Division of Solid and Infectious Waste Management  
Attn: Unit Supervisor, DSIWM  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

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 and for

violations specifically cited in the Director's Orders issued on September 9, 2002 upon termination of these Orders.

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 is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

(Orders effective June 16, 2005)  
Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency

**IT IS SO AGREED:**

**Robert G. Keller**

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Signature

June 7, 2005  
Date

