

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

City of Findlay	:	<u>Director's Final Findings</u>
318 Dorney Plaza	:	<u>and Orders</u>
Findlay, Ohio 45840	:	

Respondent

COPY
I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Findlay ("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 BOUND

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.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is an owner of properties located at or about 300 North Cory Street, Findlay, Ohio (the "Property"). Specific parcel numbers include: 610001018960, 610001020565, 610001020567, 600000320820, 600000320810, 600000320800 and 600000320790.
2. There are approximately 703,000 scrap tires located on the Property.
3. Respondent 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).

4. The Property is neither licensed or permitted as a scrap tire collection facility or a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapters 3745-27 and 3745-37.
5. Scrap tires are included in the definition of "solid wastes" under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
6. 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."

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7. Judge Routson, Hancock County Court of Common Pleas, ordered the Brandman Corporation, on August 17, 2004, and Mr. Jerry Vestal, on November 19, 2004, to remove and properly dispose of all scrap tires from the Property. The November 19, 2004 Agreed Order specifies that the City of Findlay and Brandman Corporation entered into an Agreement to Purchase Real Property ("Agreement to Purchase") (Attachment A). The Agreement to Purchase provides that the City of Findlay may conduct due diligence at the Property for up to six months and, at the City of Findlay's election, provides for transfer of title to the Property to the City of Findlay for certain consideration.
8. On May 6, 2005, Respondent purchased the Property.

Threats Posed By Scrap Tire Piles

9. 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.
10. Given the fact that the Property 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 Property constitutes a danger to the public health or safety or to the environment.
11. 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). Respondent shall provide copies of the mosquito control records required by OAC Rule 3745-27-60(B)(10), to Ohio EPA within fourteen (14) days after each application of the registered pesticide, larvicide, or adulticide.
2. Not later than January 1 2006, 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, 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.
3. 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 fourteen (14) days after completion of Order No. 2.

4. Respondent shall continue to comply with Order No. 2 above until such time as all scrap tires have been removed from the Property.
5. In accordance with ORC Section 3734.85(A) , if by January 1, 2006, Respondent has not removed all scrap tires from the Property in accordance with Order Nos. 2 and 3 above, Respondent shall provide 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.
6. If the Director removes the scrap tires from the Property, Respondent 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 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.

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: "The City of Findlay certifies 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 representative of Respondent who has authority to bind the City of Findlay.

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
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.

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:

Joseph P. Koncelik, Director

IT IS SO AGREED:

City of Findlay

Signature

Date

Printed or Typed Name of an Authorized Representative