

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Frank J. Naypaver	:	<u>Director's Final Findings</u>
Lorell A. Naypaver	:	<u>and Orders</u>
1906 Canterbury Ln #L21	:	
Sun City Central, Florida 33537	:	

Respondents

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Frank J. Naypaver, and Lorell A. Naypaver ("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 and 3734.85.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and their heirs and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) owned by the Respondents 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. Respondents are the owners of property located on Risher Road, in Leavittsburg, Trumbull County, Ohio ("Property"). The Property is further identified as Trumbull County Auditor parcel number 41-393850.
2. Respondents are a "person" as that term is defined in ORC Section 3734.01 and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).

3. The Property is neither licensed nor permitted as a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27.
4. 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."
5. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
6. The open dumping of scrap tires is a violation of ORC § 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."
7. 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."
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 Rule 3745-27-60(B)(1) - (8).
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. In correspondence dated September 6, 1994, Trumbull County Health Department ("Health Department") informed Respondents that during the investigation of a complaint received by the Health Department regarding open dumping of scrap tires, the Health Department found that Respondents owned a parcel of property where the open dumping was occurring. The correspondence further stated that Respondents were in violation of the following:
 - A. ORC Section 3734.03 for open dumping of scrap tires; and

- B. OAC Chapter 3745-27-03(B)(1)-(5)¹(as effective June 1, 1994) for improper storage of scrap tires.
11. Following the receipt of the September 6, 1994 Notice of Violation (“NOV”), Respondent Frank J. Napaver contacted the Health Department and stated that he was allowing his son to develop his property into a ski lake and that the tires were being used for construction purposes. A representative of the Health Department then informed Respondent that he was in violation of ORC Section 3734.03 for open dumping of scrap tires and would remain in violation until such time as a beneficial use authorization was obtained from Ohio EPA.
 12. On April 24, 1995, Ohio EPA received a complaint alleging that tires were being buried on Respondents’ Property. The complaint was forwarded to the Health Department for investigation.
 13. On May 16, 1995, the Health Department received an additional complaint regarding the tires disposed of on Respondents’ Property.
 14. On July 27, 1995, the Trumbull County Sheriff’s Department conducted an undercover operation to ascertain if Respondents’ or their son were accepting money to dispose of tires. Based on transcripts from the Sheriff’s Office an individual was present at Respondents’ son’s property and accepting money for the disposal of scrap tires.
 15. The Health Department conducted an inspection of the Property on March 13, 1997. In correspondence dated March 17, 1997, the Health Department notified Respondents’ of the following violations:
 - a. ORC Section 3734.03 for open dumping;
 - b. OAC Chapter 3745-27-61 and OAC Chapter 3745-37-15 for failure to register as, and obtain a license to operate as a storage facility; and
 - c. OAC Chapter 3745-27-78 for failure to obtain a beneficial use project plan approval.

¹ Incorrectly cited as OAC Chapter 3745-27-03(B)

16. On March 20, 2003, Respondents' entered into a Consent Order Permanent Injunction ("COPI") regarding the open dumping of scrap tires on the Property. The COPI was filed in the Trumbull County Court of Common Pleas ("Court") (case # 2002-CV-1485) and contained, in part, the following findings:
 - a. Tires on the Property are buried in an area surrounding a man-made lake, and are serving as an "embankment" and holding waters of the lake on the Property;
 - b. Other tires on the Property are not located within the "embankment" the lake and are unburied;
 - c. The deposition of tires on the Property as described above constitutes open dumping of scrap tires;
 - d. The condition of the Property is both a statutory and a common law nuisance, a fire hazard, and an environmental danger to the residents of Trumbull County.
17. Based on the Courts findings outlined in finding No. 16 above, the Court ordered Respondents' to comply with the following:
 - a. Respondents' are prohibited from depositing, burning, burying, or otherwise disposing of any further solid waste, including scrap tires on the Property;
 - b. Respondents' are ordered to remove all loose scrap tires on the Property that are not contained within the "embankment". At a minimum, Respondents' are to remove five hundred tires a month until all tires are removed and shall file a report with the Health Department every three months that includes copies of receipts showing the removal of the scrap tires;
 - c. Respondents are ordered to remove each scrap tire buried in the "embankment" that becomes unburied in the future by virtue of water erosion;
 - d. Respondents' are further ordered to replace the scrap tires in the embankment that become unburied with a substance that either complies with or is exempted under Ohio's solid waste regulations so that the lake remains properly supported and structurally sound.
18. On July 2, 2003, the Health Department received receipts from Respondents' showing the removal of approximately 311 tires from the Property.
19. On February 24, 2005, Ohio EPA conducted an inspection of the Property. In correspondence dated March 10, 2005, Ohio EPA notified Respondent Frank J.

Napaver of continuing violations of ORC Section 3734.03 and OAC 3745-27-05(C) for open dumping of scrap tires.

20. In correspondence dated September 28, 2005, the Health Department notified Respondent Frank J. Napaver of continuing violations of ORC Section 3734.03 and OAC 3745-27-05(C) for open dumping of scrap tires.
21. Ohio EPA conducted an inspection of the Property on April 27, 2006. In correspondence dated June 5, 2006, Ohio EPA notified Respondents' they were in violation of ORC Section 3734.03 and OAC Chapter 3745-27-05(C) for open dumping of scrap tires.
22. There are currently an estimated 2000 scrap tires visible on the Property in violation of ORC Section 3734.03, OAC 3745-27-05(C), and the March 20, 2003 COPI.
23. Given the Court's finding that the Property is statutory and a common law nuisance and an environmental danger to the residents of Trumbull County, as well as the potential that a tire fire could obscure major transportation routes, and in consideration that the effects of a tire fire could adversely impact waters of the state, the Director has determined that the unlawful accumulation of scrap tires on the Property constitutes a danger to the public health or safety or to the environment.
24. 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."
25. ORC Section 3734.85 further provides, "...[i]f the Director removes the scrap tires from the Property, 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 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.”

V. ORDERS

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, Respondents shall implement mosquito control measures at the Property in accordance with the provisions of OAC Rule 3745-27-60(B)(8). 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 one hundred twenty (120) days after the effective date of these Orders, Respondents shall remove or cause the removal of all unburied scrap tires on the Property by removing a minimum of 500 scrap tires each month, and shall arrange for their transportation, by a registered scrap tire transporter:
 - a. To a scrap tire storage, monofill, monocell, or recovery facility licensed under ORC Section 3734.81; or
 - b. To such a facility in another state operating in compliance with the laws of that state in which it is located; or
 - c. To any other solid waste disposal facility in another state that is operating in compliance with the laws of that state.
4. Respondents shall obtain receipts from the registered transporter and the facility, indicating weight, volume or number of scrap tires received. Respondents shall forward such documentation to Ohio EPA within ten (10) days after completion of Order No. Three (3).
5. Should additional scrap tires become unburied do to erosion those tires shall be disposed of as outlined in Order No. 2 above. Additionally, Respondents are further ordered to replace the scrap tires in the embankment that become unburied with a substance that complies with Ohio's solid waste regulations so that the lake remains properly supported and structurally sound.
6. Respondents shall continue to comply with Order Nos. One (1) and Two (2) above until such time as all unburied scrap tires have been removed from the Property.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents

certify in writing and demonstrate to the satisfaction of Ohio EPA that 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 Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

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

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

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, Respondents and/or the 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 Respondents and/or the Property.

IX. NOTICE

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

Ohio Environmental Protection Agency
Division of Solid and Infectious Waste Management
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087-1924
Attn: DSIWM, Unit Supervisor

and to:

Trumbull County Health Department
176 Chestnut Ave., NE
Warren, OH 44483
Attn: Environmental Health Director

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

X. 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 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 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 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 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.

XI. 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

Joseph P. Koncelik, Director