

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Mr. Bruce Clark
65 South Chestnut Street
Jackson, Ohio 45640

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:

Director's Final Findings
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bruce Clark ("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 a parcel of land that comprises approximately 4 acres that was identified in the records of the Jackson County Recorder's Office as parcel number G11-001-00-005-00. The parcel is located on Caves Road, Jackson, Jackson County, Ohio (the "Property").
2. Respondent purchased the Property as an asset for his self-directed Individual Retirement Account. The Property was purchased by Respondent at a sheriff's sale, as agent for Mid-Ohio Securities Corporation ("Mid-Ohio"). The deed conveys the Property to "Mid Ohio Securities Corp. Custodian, FBO Bruce Clark IRA #29263, his heirs and assigns".

3. Ohio EPA sent Respondent and Mid-Ohio Invitations to Negotiate Director's Final Findings and Orders on June 2, 2005. Mid-Ohio responded in a letter dated June 13, 2005, that stated that it did not own the IRA, but was merely a passive, non-discretionary custodian of the IRA. Respondent did not respond to the Invitation to Negotiate.
4. 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).
5. There are currently an estimated 1,000 scrap tires illegally disposed of on the Property.
6. 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 Chapter 3745-27.
7. 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."
8. Scrap tires are included in the definition of "solid waste" under OAC Rule 3745-27-01(S)(24).
9. 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."
10. 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."
11. 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.”

12. 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) through (8).
13. 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.
14. On March 4, 2003, Ohio EPA conducted an inspection of the Property and discovered that there were approximately 3,000-4,000 scrap tires located on the Property. In correspondence dated March 31, 2003, Ohio EPA cited Respondent in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires. Respondent was also cited for violating OAC Rule 3745-27-60(B)(8)(a) and (b) for not controlling mosquitoes.
15. On June 20, 2003, Ohio EPA and JCHD conducted an inspection of the Property, and, in correspondence dated July 29, 2003, cited Respondent in violation of ORC Section 3734.03 and OAC Rules 3745-27-05(C) and 3745-27-60(B)(8)(a) and (b). There were still 3,000-4,000 scrap tires dumped on the ground.
16. In correspondence dated August 12, 2004, the Jackson County Health Department (“JCHD”) cited Respondent in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires on the Property.
17. In correspondence dated October 25, 2004, JCHD cited Respondent in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C) and issued Respondent a thirty day clean-up order for the scrap tires on the Property.
18. On October 27, 2004, Ohio EPA and JCHD conducted an inspection of the Property and, in correspondence dated November 3, 2004, cited Respondent in violation of OAC Rule 3745-27-60(B)(1) for not providing sufficient drainage for the scrap tires, OAC Rule 3745-27-60(B)(6)(d) for not separating the scrap tire piles with fire lanes of a width equal or greater to fifty-six feet, OAC Rule 3745-27-60(B)(6)(e) for not maintaining the fire lanes to be free of combustible materials, OAC Rule 3745-27-60(B)(6)(f) for not maintaining the fire lanes to allow access of emergency vehicles, and ORC Section 3734.03 and OAC Rule 3745-27-05(C) for open dumping of scrap tires on the Property. The inspection revealed that there were 2,000-3,000 scrap tires located on the Property. The scrap tires were dumped in piles with no fire

lanes and the scrap tires were not covered to prevent water from accumulating in them.

19. On December 13, 2004, JCHD conducted an inspection of the Property which revealed that none of the scrap tires had been removed. In correspondence dated December 17, 2004, JCHD cited Respondent in violation of ORC Section 3734.03 and OAC Rule 3745-27-05(C). This letter also reminded Respondent of its obligation to comply with the October 25, 2004 clean-up order.
20. On January 21, 2005, Ohio EPA and JCHD conducted an inspection of the Property, and, in correspondence dated January 25, 2005, Ohio EPA cited Respondent in violation of OAC Rules 3745-27-60(B)(1), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), 3745-27-60(B)(6)(f), 3745-27-05(C), ORC Section 3734.03, and the October 25, 2004 board orders. The inspection revealed that no scrap tires had been removed from the Property since January 2004. In correspondence dated January 24, 2005, JCHD cited Respondent in violation of ORC Section 3734.03, OAC Rule 3745-27-05(C), and the October 25, 2004 board order.
21. On February 17, 2005, Ohio EPA and JCHD conducted an inspection of the Property, and, in correspondence dated February 28, 2005, cited Respondent in violation of OAC Rules 3745-27-60(B)(1), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), 3745-27-60(B)(6)(f), 3745-27-05(C) and ORC Section 3734.03. In correspondence dated March 4, 2005, JCHD cited Respondent in violation of the October 25, 2004 board order.
22. On May 13, 2005, Ohio EPA and JCHD conducted an inspection of the Property, and, in correspondence dated May 17, 2005, cited Respondent in violation of OAC Rules 3745-27-60(B)(1), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), 3745-27-60(B)(6)(f), 3745-27-05(C), and ORC Section 3734.03.
23. On July 7, 2006, Ohio EPA conducted an inspection of the Property, and, in correspondence dated July 11, 2006, cited Respondent in violation of OAC Rules 3745-27-60(B)(1), 3745-27-60(B)(6)(d), 3745-27-60(B)(6)(e), 3745-27-60(B)(6)(f), 3745-27-05(C), and ORC Section 3734.03.
24. In August 2001, Ohio EPA performed mosquito trapping near the Property. The results showed that there were mosquitoes capable of carrying disease.
25. Given the confirmed presence of mosquito species capable of carrying disease near the Property and the town of Jackson, 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.

26. 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)(9), to Ohio EPA within ten (10) days after each application of the registered pesticide, larvicide, or adulticide.
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 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:
 - 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 above.
5. Respondent shall continue to comply with Order Nos. 1 and 2 above until such time as all scrap tires have been removed from the Property in accordance with Order No. 3 above.

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 by Respondent 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 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.

VIII. NOTICE

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

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management

Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, Ohio 43138

and

Jackson County Health Department
Attn: Environmental Health Director
200 East Main Street
Jackson, Ohio 45640

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

Joseph P. Koncelik, Director